



Residential  
Property  
TRIBUNAL SERVICE

**Leasehold Valuation Tribunal**

**LON/00AF/LSC/2007/0252**

**London Rent Assessment Panel**

**Landlord and Tenant Act 1985 sections 27A and 20C**

**Address:** 34 Shepperton Road, Orpington, Kent BR5 1DN

**Applicant:** Mrs D B Frooms

**Represented by:** Mr Victor Frooms

**Respondent:** Trendgrove Properties Ltd

**Represented by:** Mr Chiko Mwinga, CHP Management Ltd

**Tribunal members:** Mr T J Powell LLB  
Mr P Roberts RIBA  
Mrs R Turner JP

**Application:** 10th July 2007

**Oral pre-trial review:** 15th August 2007

**Hearing:** 8th October 2007

**Decision:** 31st October 2007

### **Decisions of the Tribunal**

- (1) The Tribunal determined that it was necessary for business efficacy to imply a term in the Lease that, following the demise of Eagle Star Insurance Company Ltd, insurance of the building will be effected by the Lessor in some other office of repute;
- (2) The Tribunal determined that the insurance premiums for the periods 2001/02 to 2007/08 were reasonably incurred and reasonable in amount;
- (3) The Tribunal made no decision as to the level of future insurance premiums for the periods 2008/09 to 2011/12.

### **Application**

1. This is an application by a leaseholder of a maisonette at 34 Shepperton Road, challenging the cost of insurance premiums incurred by the Lessor for an 11 year period between 2001/02 and 2011/12.

### **Attendance**

2. The leaseholder was represented by her son, Mr Victor Frooms, and the Lessor was represented by Mr Chiko Mwinga of CHP Management Ltd, the managing agents.

### **Property**

3. Mrs Frooms' one bedroom maisonette is on the ground floor of a semi-detached property, which comprises four units altogether. Neither party requested an inspection and the Tribunal did not consider that one was necessary.

### **The Lease**

4. The lease of the flat is dated 7th March 1986 for a term of 125 years from 25th March 1981 at an initial ground rent of £30 for the first 30 years. By clause 1(ii) the Lessee covenants to pay by way of further rent a yearly sum equal to the due proportion of the sum which the Lessor shall pay by way of insurance premium, for keeping the building insured, such further rent to be paid on the 24th June of each year.
5. By clause 4(2) of the lease the Lessor covenants to keep insured the building of which the demised premises forms part "against loss or damage by fire explosion storm tempest earthquake aircraft and articles dropped therefrom and all other risks usually included in an index-linked comprehensive insurance policy to be placed through the agency of the Lessor with Eagle Star Insurance Company Limited in the full reinstatement value thereof ... including an amount to cover professional fees including architects and surveyors fees and cost of

removal of debris and other incidental expenses in connection with the rebuilding or reinstatement ...”

### **The law**

6. Service charges and relevant costs are defined in Section 18 of the Landlord and Tenant Act 1985 (as amended) and include an amount payable by a leaseholder for insurance. The amount of service charges which can be claimed against leaseholders is limited by a test of reasonableness which is set out in Section 19 of the Act. Under Section 27A an application may be made to a Leasehold Valuation Tribunal for a determination whether a service charge is payable, including an advance service charge.
7. Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 allows a Tribunal to order a party to reimburse the whole or part of any fees paid by another party.
8. Section 20C of the Landlord and Tenant Act 1985 Act provides that a Tribunal can make an order preventing the Lessor recovering its costs of proceedings through the service charge, if the Tribunal considers it to be just and equitable.

### **Background to the Application**

9. It was common ground that Eagle Star Insurance Company Ltd, referred to in clause 4(2) of the Lease no longer exists as an independent company, having been purchased and absorbed by Zurich Insurance in 1998. The Applicant confirmed that although it was no longer possible for the Lessor to insure the building strictly in compliance with the wording in the Lease, there was no question but that the property must be insured.
10. The Applicant was content that the Lessor had continued to insure the premises with a different insurer of repute and did not dispute her liability to pay for such insurance under the Lease. However, her complaint was in relation to the amount of the insurance premiums, which she said were unreasonably high since insurance had been placed with AXA Insurance in 2001/2002.

### **Applicant's case**

11. The Applicant was very ably represented by her son, an economist, who had prepared a clear and comprehensive paginated bundle of documents, which was of great assistance to the Tribunal.
12. Mr Frooms was able to demonstrate, and this was not disputed by the Respondent, that the premiums paid by the Applicant had, until the current year, been increasing since 2001/2002. The summary of premiums paid by the

Applicant during this period with AXA Insurance was:

<u>Date</u>	<u>Amount (£)</u>
2001/2002	210.80
2002/2003	221.32
2003/2004	242.79
2004/2005	242.79
2005/2006	242.79
2006/2007	264.89
2007/2008	<u>179.94</u>
TOTAL	<u>1605.32</u>
Average per year:	229.33

13. Mr Frooms said that the Applicant's property was very small. It was a one-bedroom ground floor maisonette in a 1930's brick built semi-detached property. There was a flat above, and two equivalent flats in the attached house to the side. He submitted that it was a property on a hill, not likely to be flooded. He also argued that the property had not suffered from subsidence in the past.
14. Mr Frooms' main point was that the insurance premiums were excessive for a property of this size.
15. Mr Frooms demonstrated that the Lessor was a wholly-owned subsidiary of the William Pears Group of companies (WPG), which he described as one of the largest private companies in the UK, with a large portfolio of commercial and residential properties (which he put at 15,000+). He sought to criticise WPG for its business practices, referring to previous Tribunal decisions and a recent case before the Office of Fair Trading. While the Tribunal did not consider that these comparisons were relevant to the present case, it noted that the current property had been insured under a block policy, covering large numbers of WPG properties.
16. Mr Frooms did not object to the Lessor using a block policy in principle, but he expressed concern that the policy would also cover commercial as well as residential properties, and that elements of commercial risk would affect and increase the premiums of the residential properties. He said that as an economist, he would have expected the use of the block policy to have brought about economies of scale with regard to insurance premiums, and that it was extraordinary that premiums quoted above were so much higher than would have been the case, if the property had been individually insured.

17. Mr Frooms characterised the AXA insurance policy as high cost and probably aimed at the commercial market with too much emphasis on cover for property owner's liability. He complained that there were high levels of excess which, in his view, should have resulted in lower overall premiums, but had not done so in the present case.
18. As part of his case, Mr Frooms relied on the previous LVT decision of Bylina -v- Wright (CHI/43UG/LCI/2005/0002) and he provided a copy of that decision in the bundle. He said that he was aware of the Court of Appeal decision in Berrycroft Management Co Ltd v Sinclair Gardens Investments (Kensington) Ltd [1997] 1 EGLR 47, but he only dealt with that case in the Applicant's statement of case in the following way: "Notwithstanding the Berrycroft -v- Sinclair precedent, the Applicant contends that there is a implicit duty of care on the part of the Lessor to ensure that the insurance is arranged in a fully efficient and least cost manner that does not impose any unreasonable costs on the Lessee". He complained that there had been no market testing by the Lessor and that there was no full transparency of the insurance arrangements (including disclosure of any commissions and administrative costs imposed).
19. While Mr Frooms sought to distinguish the Berrycroft -v- Sinclair decision in the statement of case, he gave no further detail in writing and very little orally at the hearing. Mr Frooms also complained that the Applicant had not been consulted about the use of AXA Insurance or about the use of Alexander Forbes as insurance brokers (since 2004). With regard to the current insurance policy, the Applicant challenged the extent of cover provided. In particular, Mr Frooms said that £5m cover for property owners' liability was excessive and unnecessary for a building of this size. He estimated that the declared value for rebuilding costs should be about £65,000 including fees and VAT and he challenged the need for a higher 'building sum insured' of £100,087 on the current certificate of insurance. Mr Frooms considered that the terrorism premium of £5.34 in the current year was unreasonable and unnecessary for a small property in Petts Wood, near Orpington. He criticised the high levels of excesses in the sum of £250 for all perils, save subsidence where the excess was £2,500.
20. Mr Frooms likened the AXA insurance policy to a commercial policy with "over-blown provisions". He blamed these commercial elements and excessive cover for the high premium.
21. Mr Frooms had obtained his own alternative quotations, some of which had been copied and included in the trial bundle. Mr Frooms described the quotation that he had obtained from Norwich Union as the "best" of his alternatives. There were two such quotations, one dated 20 March 2007 with a £60,000 sum insured and an annual premium of £80.00, and one dated 17 April 2007, with a sum insured of £65,000 and an annual premium of £86.99. Both quotations were on the basis of a five years' no claims discount. Mr Frooms accepted that he had not enquired about the claims history of the building as a whole, but he stated that he was 'unaware' of any such claims. In any event, he said that the Applicant had not made any claims on the insurance for the past 15 years. However, Mr Frooms maintained that the Norwich Union policy was perfectly and fully adequate for a property of this size in this location. He also drew a comparison with his own household insurance policy where he only pays

£70 a year for a similar property in Mitcham, Surrey CR4, though it is apparently twice the size.

22. Mr Frooms put forward other reasons why the Norwich Union quotations were lower, namely: they excluded terrorism cover and they did not have any accidental damage cover. He also emphasised the much lower excesses (£100 for all risks, except for subsidence claims where the excess was £1,000), which he said would normally tend to raise premiums but had not done so to any appreciable extent with his alternative quotations.
23. His other quotations included one from Liverpool Victoria for £156.74 and one from NBJ United Kingdom Ltd for £139.45, both of which were lower than the current AXA premium of £179.94.
24. Mr Frooms contended that an appropriate insurance premium for the Applicant's property should be not more than £100 per year. He therefore sought a refund of overpaid premiums amounting to approximately £900 since 2001/2002.
25. Mr Frooms also pointed out that having raised objections with the managing agents to the current high levels of insurance premiums, and having made the current Tribunal application, the managing agents had reduced the current insurance premium very significantly from the previous year. He questioned why such a reduction could not have been made in previous years, and also relied on this to say that the past and present insurance premiums were inflated.
26. Mr Frooms complained that it had been difficult to obtain information from the managing agents, especially with regard to details of the block policy or any commissions that may have been received; matters which were still unclear. He described the AXA policy as "bells and whistles" insurance cover, which is not required by, nor stipulated under the terms of the Lease. When questioned by the Tribunal as to the meaning of the words in clause 4(2) of the Lease "all other risks usually included in an index-linked comprehensive insurance policy" Mr Frooms said that "comprehensive" is not defined in the Lease and in his submission it should only cover principal risks.

### **Respondent's case**

27. Mr Mwinga was the insurance manager for the Lessor's managing agents, CHP Management Ltd (CHP). He had a BA Honours in management, a certificate in insurance, and was an associate of the Chartered Management Institute (CMI). He had started his career with Lloyds of London in 1995 as a junior claims technician for Marsh & McLellan, which he described as "the biggest insurance broker in the world". Before taking up his post with CHP in 2005, Mr Mwinga had worked for five different insurance brokers in the City of London.
28. In seeking to justify the Lessor's choice of insurer and the level of insurance premiums, Mr Mwinga relied heavily on the wording of clause 4(2) of the Lease, saying that the Lessor had a duty of care to the leaseholder to ensure against

"all other risks usually included in an index-linked comprehensive insurance policy". He said that "comprehensive" meant precisely that: all risks; that is, all of the risks which were listed in the Respondent's statement of case, namely: fire, lightning, aircraft, explosion, earthquake, riot, civil commotion, malicious damage, storm, flood, escape of water, property owners' liability, impact and theft, subsidence, landslip and/or heave and terrorism insurance.

29. Although Mr Mwinga had objected to Mr Frooms' references to the William Pears Group of companies (WPG), emphasising that the correct Respondent to the application was Trendgrove Ltd, he was happy to confirm that the AXA insurance policy was a block policy taken out by WPG, and that it covered other properties within the group, not only those held by the Respondent. He was also happy to confirm that the block policy covered both commercial and residential properties, but said that these were quite separate: the commercial rates were more expensive than the residential rates and the excesses were higher for commercial properties than for residential ones.
30. In Mr Mwinga's words, the Lessor's duty to obtain comprehensive insurance meant that it "had to act prudently and responsibly". He said that the Lessor would be liable if a claim was made and the Lessor had not covered the particular risk when the Lease required it to do so.
31. While it was true the current policy included cover for loss of rental and unlimited un-occupancy (compared with 30 days under the Norwich Union policy), these came as a benefit to the leaseholder at no extra cost. In addition, CHP handled all insurance claims using their in-house claims staff at no extra cost to leaseholders and there was no commission payable to the Lessor in respect of the insurance.
32. Mr Mwinga criticised the Norwich Union and other quotations obtained by the Applicant. He said that the crucial question which had not been answered by Mr Frooms is: "what is actually covered?" He said that there was insufficient information about the quotations which, in any event, would all have been made subject to the submission of a completed proposal form.
33. In particular, with regard to the Norwich Union quotations, Mr Mwinga challenged the sums insured at £60,000 and £65,000. He drew a distinction between the declared value of the current AXA insurance certificate of £66,725, which was the insured's assessment of the cost of reinstatement, including professional fees and the cost of removing debris, with the 'building sum insured' of £100,087, which he said was the true value of the insurance policy. Mr Mwinga said that the buildings sum insured under the Norwich Union quotations at £60,000 and £65,000 were too low and could not be compared with the £100,087 in the AXA policy.

34. Mr Mwinga also pointed out a number of other differences between the AXA block policy and the Norwich Union quotations, which included:

Item	AXA	Norwich Union
Accidental Cover	Included	Not included
Definition of buildings	Includes trees, bushes and shrubs	Would not be covered
Un-occupancy warranty	Unlimited/ warranty-free	30-day limit
Alternative accommodation	Up to maximum 30% of building's declared value	Not included
Cover provided for trace and access (e.g leaks)	Unlimited	Limited
Property owners' liability (third party liability)	Up to £5m	Up to £2m
Day 1 uplift value	50% of the declared value	Not provided
Handling of claims	Bespoke loss adjuster	Insured would have to deal with all aspects of the claim themselves.
Cost of replacing any undamaged items which form part of a pair/ set/ suite	Policy will cover	Policy will not pay
Building work by the insured	Full cover	Not covered
Terrorism cover	Provided	Not covered & as an individual, the leaseholder cannot purchase terrorism cover

35. Mr Mwinga said that all of these additional benefits from the AXA policy were justified because the word "comprehensive" was used in the Lease. The Norwich Union quotations were not like-for-like. He also criticised the other quotations saying, in respect of Liverpool Victoria and Rias: these were not 'triple A' rated insurers and it was not clear the extent of the cover that they



were offering. Mr Mwinga said that he had pointed this out to Mr Frooms, but had not received a response, especially in relation to the extent of cover.

36. Mr Mwinga submitted that the Lease does not limit the risks to be covered; it would be prudent to cover the risk of flooding because, although the property may be outside the immediate flood zone, there were streams nearby, and exceptional flooding might still occur, as had happened in large parts of England during the summer of 2007. He also said that the leaseholder would benefit from a dedicated claims team run by his company.
37. With regard to market testing, Mr Mwinga said that this would have been carried out by the insurance brokers in the past, but he could provide no evidence about this and he had no direct knowledge of it, having only joined the company himself in 2005. However, it was their policy to market test every three years, which was a normal market practice. The next market testing would take place at the 2008 renewal. He said that once an underwriter had underwritten a risk, they would like to build a relationship with the insured and there were advantages to both sides in developing a good working relationship. He described his relationship with AXA as "fantastic". It was due to CHP's longstanding relationship with AXA that he had been successful in negotiating a premium reduction for all leaseholders under the block insurance for the year 2007/8. This was a 20% reduction in the rate which was not, he said, due to Mr Frooms' correspondence with CHP.
38. In order to demonstrate to Mr Frooms that the Applicant received good value from the current insurance arrangements, Mr Mwinga had carried out his own market testing, by instructing Locktons (the brokers which had bought the UK arm of Alexander Forbes in 2006) to obtain a quote from Zurich (which had purchased Eagle Star) for the property in question. That quote had come back at £244.18, which was higher than the current year's premium with AXA and all previous years, except for 2006/7 (£264.89). However, Mr Mwinga did accept in evidence that this was an individual quote, and not a block policy quote.
39. With regard to the Applicant's challenge to future years' insurance, Mr Mwinga said it was not possible to predict the level of future premiums because an insurer had no knowledge of any claims which might be made, any act of God, or the state of the insurance market. He would be testing the market next year to get the best deal for the leaseholders and landlord. He therefore contended that the Tribunal was not in a position to make any decision about future years' premium.
40. Mr Mwinga relied on the Court of Appeal decision in *Berrycroft -v- Sinclair* which held that it was reasonable for the landlord not to take the cheapest quote in certain circumstances. He also sought to distinguish the Tribunal decision of *Bylina -v- Wright* where the Respondent in that case had declined to consider any alternatives to her existing insurance arrangements. To the contrary, Mr Mwinga said that the Lessor in this case was committed to market testing every three years.
41. Mr Mwinga disputed allegations that were made that he had not responded adequately to Mr Frooms' enquiries, but claimed rather than Mr Frooms had

responded inadequately to his response and comments to the quotations he had obtained.

42. The Tribunal asked Mr Mwinga if there was any documentary evidence of the existence of and payment for the block policy, and how it linked with the certificates of insurance for individual properties. Mr Mwinga said that he could provide that information to the Tribunal within seven days, and the Tribunal directed that copies should also be sent to Mr Frooms, who would then have a further seven days to comment on those documents if he wanted.
43. The Tribunal considered the documents subsequently supplied by the Respondent, together with the further comments thereon by the Applicant. These confirmed that the insurance certificate for 34 Shepperton Road shared the same policy number and was therefore linked to the WPG block policy for all WPG's properties; and that the block policy premium had been paid. Mr Frooms commented that there were probably hundreds of individual properties included in the block policy, but no details of the portfolio had been provided. He considered it "highly likely" that the portfolio included commercial properties and that commercial risks were being unfairly loaded onto the Applicant and the property at Shepperton Road.

### **Decision**

44. The Tribunal determined that it was necessary for business efficacy to imply a term in the Lease that, following the demise of Eagle Star Insurance Company Ltd, insurance of the building will be effected by the Lessor in some other office of repute.
45. The Tribunal accepted that the property appeared to be outside of the immediate flood zone on the map produced by the Respondent and that it had suffered no subsidence in the past 15 years, but still determined that insurance to cover these risks was both necessary and prudent. More importantly, such insurance was usual in a comprehensive policy, as required under the Lease. Equally, the Tribunal does not disagree with the additional premium for terrorism cover since, in the current climate, terrorism-related incidents can occur anywhere in the capital, or indeed the country.
46. The Tribunal accepted Mr Frooms' submissions that some aspects of the AXA insurance policy were more or exclusively for the Lessor's interest, for example, the loss of rental income and the cover for un-occupancy. However, the Tribunal also accepted that these benefits and other benefits accrued from the advantage of using a block policy and that the leaseholders were not paying for all of the items of cover, or at least not the full cost for them. Having said that, the Tribunal was surprised that the Lessor received no commission or some other benefit for placing its block policy with AXA. The Tribunal also accepted Mr Mwinga's evidence that the Lessee had been charged no more than the premiums paid by the Lessor.
47. The Tribunal was concerned that the alternative premiums quoted to the Applicant by Norwich Union at £80 and £86.99 were artificially low. They were

based on five years' no claims, but there was no evidence that that was the case. The Tribunal was also concerned that the 'building sum insured' on the Norwich Union quotations may have been too low, but the evidence on this point was unclear and not conclusive. The Tribunal also noted that Mr Frooms had approached Zurich for an individual quotation, but that company had declined to provide one to the Applicant (though Mr Mwinga had been more successful in this regard).

48. Overall, the Tribunal found that the alternative quotations were not like-for-like, though Mr Frooms had obviously done the best that he could, except with regard to the claims history.
49. The Tribunal accepted that the Respondent had used reputable brokers to obtain insurance from a reputable insurer (said to be 'triple A' rated, though there was no independent evidence of this) and that the insurance obtained was fully comprehensive in accordance with the terms of the Lease. The Tribunal accepted that a prudent and responsible Lessor would obtain the best available cover that it could in these circumstances. There was no evidence before the Tribunal that the Respondent had carried out market testing of the insurance since the AXA policy was first instigated in 2001, apart from the evidence that the Respondent had used reputable brokers and the assertion that brokers do carry out market testing on a regular basis. Mr Mwinga had only been employed as insurance manager since 2005 and had no knowledge of any market testing that may or may not have occurred before that. However, the Tribunal accepted his evidence that it was the Respondent's policy to market test the insurance every three years and that it would next be done in 2008.
50. There have been a number of decisions in the courts relating to the cost of insurance procured by landlords for their portfolios of property. The Court of Appeal in *Berrycroft v Sinclair* held that the landlord's right to nominate an insurer was unqualified. In the case of *Viscount Tredegar v Harwood* (HL) [1929] AC 72, Lord Shaw of Dumfermline said that where the landlord owned a large number of properties (some thousands in that case) there were "sound business reasons" for him to require that lessees (who had the obligation to insure) to insure all his properties with one insurer. In *Forcelux v Sweetman* [2001] 2 EGLR 173, the Lands Tribunal, considering a landlord's block policy which covered over 300 properties in the landlord's portfolio, also set out the advantages to a commercial landlord in insuring all of its properties under one policy. The Lands Tribunal held that although the landlord did not have a licence to charge a figure out of line with the market norm, cover for commercial landlords was more expensive than that available for owner-occupiers, and if the lease required the landlord to insure and the landlord's block policy was competitively obtained in accordance with market rates, the cost of premiums was reasonably incurred.
51. In *Havenridge Ltd v Boston Dyers Ltd* [1994] 2 EGLR 73 (a case relating to commercial premises to which section 19 of the 1985 Act did not apply) the Court of Appeal held that the landlord need only insure in accordance with the lease with an insurer of repute. The court agreed with Roskill J in *Bandar Property Holdings v JS Darwin (Successors) Ltd* [1968] 2 AER 305 who held that there was no justification for making the implication of acting "reasonably"

in placing such insurance so as not to impose an unnecessary burden on the lessees.

52. The limit placed on the tenant's obligation to indemnify the landlord so as to preclude an exorbitant claim (or "outlandish" per Cairns LJ in *Finchbourne v Rodrigues* [1976] 3 AER 581) is that the landlord cannot recover in excess of the premium he has paid and agreed in the ordinary course of business. The fact that the landlord might have obtained a lower premium elsewhere does not prevent him from recovering the premium he had paid. Nor does it permit the tenant to show what other insurers might have charged, nor need he, the landlord, shop around. If he approaches only one insurer being an insurer of "repute" and a premium is negotiated and paid in the normal course of business as between them, reflecting the insurer's usual rate for business of that kind then the landlord is entitled to succeed. The fact that other insurers would have offered a lower rate is irrelevant unless it casts doubt on the genuineness of the particular transaction. The judge said it follows that if the landlord proves either that the rate is representative of the market rate or that the contract was negotiated at arms length and in the market place he establishes it was a genuine contract.
53. In the *Berrycroft* case the court followed the *Bandar* and *Havenridge* cases and adopted the test of "in the normal course of business" so that the landlord does not have to shop around but just insure with a company "of repute". If the rate seems high in comparison with other rates then the landlord can be called on to prove there was no special feature of the transaction which took it outside the normal course of business.
54. The Tribunal considered the evidence of the Applicant and Respondent in the light of the above cases. The Tribunal was very sympathetic to the Applicant and considered that if she had the right to insure the building, she could have insured it with a reputable insurer, on reasonable terms and for a reasonable sum, for less than the Lessor has paid. Nevertheless, the Tribunal considers itself bound by the decided cases to conclude that the Lessor, who has the right - indeed, the obligation - to insure, has acted reasonably in insuring its large portfolio with one insurer, AXA. The Tribunal was not bound by the finding of another Leasehold Valuation Tribunal in the case of *Bylina v Wright*, where in any case the landlord acted unreasonably by refusing to consider alternatives to the existing insurance arrangements. In the *Bylina* case the landlord had placed only six properties in the block policy and could easily have insured the properties individually making savings, compared with several thousand properties insured under the block policy in the present case.
55. The Tribunal found the Applicant's quotations were not directly like-for-like and were not therefore fully comparable. Although some of the cover in the block policy might be of no benefit or of limited benefit to the Applicant, she was in a different category when it came to insuring the property to a commercial landlord, so that a direct comparison with the alternative quotations was difficult in any event.
56. The Lessor had procured the AXA insurance in the normal course of business. There was no evidence to challenge the genuineness of the transaction or the fact

that the insurance contract was negotiated at arms length and in the market place. The insurer was "of repute" in accordance with the implied term of the Lease and the premium was negotiated and paid in the normal course of business by the landlord. The landlord has not recovered in excess of the premium he paid and agreed in the ordinary course of business. In the light of this finding, it did not matter that a lower premium could have been obtained elsewhere, because it was not incumbent on the Lessor to "shop around".

57. Although the Tribunal was cautious not to apply the tests in *Havenridge* and *Berrycroft* mechanistically, in a fashion that would defeat the protection for leaseholders afforded by Section 19 of the Landlord and Tenant Act 1985, on balance the Tribunal considered that there was insufficient evidence to show that the premiums charged by the Respondent were not reasonably incurred.
58. With regard to the level of premiums, while there was no evidence of market testing prior to 2005, Mr Mwinga's enquiries of Zurich in 2007 had resulted in a much higher quotation for the current year than the AXA premium and, indeed, the Applicant had produced two quotations that were not much lower. Overall, the premiums, while perhaps not the lowest, remained within a band of reasonable premiums, and were not so high as to be described as "outlandish".
59. The Tribunal therefore determined that the insurance premiums for the periods 2001/2002 to 2007/2008 were reasonably incurred and reasonable in amount.
60. Although the Respondent does not have an obligation to "shop around" for the cheapest quotation, good practice requires the Respondent to test the market at regular intervals, to ensure that the rate for future years is representative of the market rate. This means that the Respondent should not continue to place the insurance with the present company regardless. The Tribunal notes that the Respondent intends to test the market next year and every three years thereafter and considers that these are the minimum necessary steps to be taken, to ensure that future premiums are competitive.
61. As for the level of future insurance premiums for the periods 2008/09 to 2011/12, the Tribunal did not feel able to make any decision because the amounts of those premiums are unknown and unknowable.

#### **Refund of fees and section 20C application**

62. The Applicant had paid no fees to the Tribunal. The Respondent indicated that it did not intend to recover any of the costs incurred in respect of the Tribunal proceedings and indeed there is no provision for such costs to be claimed under the Lease. The Applicant therefore agreed that there was no need for the Tribunal to make an Order under Section 20C of the 1985 Act and that

application was therefore treated as withdrawn.

Handwritten signature of Timothy Powell in black ink, featuring a stylized 'T' and a long horizontal flourish at the end.

Chairman:

\_\_\_\_\_  
Timothy Powell

Date:

31 October 2007