RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION SERVICE

Case No: CHI/00ML/LIS/2009/0091

Property: 42B London Road,Brighton,. BN1 4JD

Tribunal: T A Clark (Lawyer Chairman)
R Wilkey FRICS FICPD (Valuer Member)

Between:-

NEW LIBERTY PROPERTY HOLDINGS LIMITED

Applicant

And

GAYLE AMY CHAPMAN

Respondent

Paper Decision of the Tribunal
On a Preliminary Issue

This matter was listed for a paper determination as to whether or not this Tribunal has jurisdiction to hear an application for arrears of service charges. The issue is whether or not a determination made by an earlier Tribunal on 10th April 2007 is binding on the application before the Tribunal now.

Background

1. The current application commenced in the Hitchen County Court by proceedings issued on the 2nd April 2009.

2. In those proceedings the Claimants, who are the Applicants to this application applied for arrears of ground rent and buildings insurance arrears.

3. The Particulars of Claim stated that;
   "In accordance with the terms of the lease the Claimant has issued demands for rent and rendered invoices in respect of maintenance charges to the Defendant as detailed in the Statement of Account attached. In breach of the terms of the lease the Defendant has failed to pay the said charges."

The Particulars of Claim refers to building insurance premiums and ground rent totaling £1,980.28.

4. It should be noted that the Tribunal has no jurisdiction to adjudicate on ground rent. This aspect of the claim must therefore be remitted back to the County Court for a determination.

5. A Defence was filed referring to section 21B paragraph 3 of the Landlord and Tenant Act 1985. This section states that;
"A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand." Subsection 1 refers to the obligation to accompany with a demand a summary of the rights and obligations of tenants of dwellings in relation to service charges.

6. On 9th September 2009 the District Judge transferred the matter to the Land Valuation Tribunal stating "The matter relates to a service charge dispute".

7. On 17th December 2009 directions were given by the Tribunal. These included that the Applicant was to prepare a bundle of documents relevant to the preliminary issue which is before the Tribunal today .

8. It is of note that at the first directions appointment the Tribunal appeared to have been shown documents which made up the claim as follows;

service charges June 2007 to June 2008	£819.80
service charges June 2008 to June 2009	£860.48
ground rent	£300
total	£1,980.28

This total figure accords not only with the sum claimed in paragraph 5 of the Particulars of Claim but also with the sum of those invoices for the years referred to and provided by the Applicants pursuant to directions given by the Tribunal on 17th December 2009.

9. The Applicants bundle was filed as directed. So far as it is aware the Tribunal hearing this issue not seen the Statement of Account referred to in the Particulars of Claim issued in the County Court.

10. The issue before the Tribunal is to what extent the tribunal is bound by an earlier adjudication dated 10th April 2007. A copy of this decision has been provided to us.

<u>The Tribunal decision of 2007</u>

11. The decision of the Tribunal of 10th April 2007 related to an application under Section 27A and Section 20C of the Landlord and Tenant Act 1985.

12. The application related to the reasonableness of insurance premiums for the period "June 2005 onwards" and goes on to state that;

"she (the Applicant) asks the Tribunal to adjust her contribution for the year 2005 to 2006 and 2006 to 2007 accordingly."

13. The Tribunal in 2007 concluded that, although high, in the absence of comparable quotations it was "not minded to interfere and disallow any part of the insurance cost as a service charge item."

14. The Tribunal in 2007 also referred to the issue of apportionment.

"The Tribunal has been told that the premium is apportioned between the various parts of the building by reference to floor area. On this basis the subject property is responsible for 12.1% of the total premium.

In our experience the above method of apportioning the premium is one of several methods generally used and we think it a reasonable basis of apportioning the premium between the various parts of the building"

<u>The hearing today of the preliminary issue</u>

15. This Tribunal today has concluded that the finding of the Tribunal in 2007 only had jurisdiction to determine the reasonableness of service charges that had already been rendered. The Tribunal in 2007 could not and did not bind or adjudicate in any way on the reasonableness of future service charges

16. In one respect only is the 2007 Tribunals decision binding and that is that is in respect of the proportionate split between the respective tenants of 12.1% which the Tribunal found to be "reasonable and proper."

17. The Particulars of Claim in respect of the proceedings in the County Court did not refer to the years the subject of the claim Neither does the pleading refer to any adjudication on the part of the Tribunal in support of a claim for enforcement by way of a judgment through the County Court. No clear Statement of Account has been provided to the Tribunal which clearly sets out the figures and dates in support of the amount claimed in the County Court.

18. It may well have been partly in the light of the first two of these omissions that the matter was transferred to the Tribunal.

19. The Debit notes which have now been produced by the Applicants pursuant to the directions given by the Tribunal on 17th December 2009 refer to the following periods

10th June 2009 to 9th June 2010
10th June 2008 to 9th June 2009
10th June 2007 to 9th June 2008
10th June 2006 to 9th June 2007

As already stated, the Tribunal today finds that the earlier Tribunal can in no way bind the parties in relation to future service charges, but only in respect of those service charges which were before them for consideration at the hearing in 2007.

20. The Tribunal would observe that it has no knowledge of whether or not its decision of 2007 resulted in the payment of the charges by the Respondent for the years 2005 to 2006 and 2006 to 2007. Obviously if payment had not been made then these years alone could form the basis of a properly pleaded claim for judgment in the County Court.

21. As already stated the Tribunal does not have jurisdiction in respect of ground rent.

22. In light of the above this Tribunal is satisfied that it is not bound by the decision of the 2007 Tribunal save on the issue of i) apportionment ii) the years June 2005 to 2006 and June 2006 to 2007 and iii) that the decision of that tribunal might, in certain circumstances, be persuasive to a future Tribunal but is in no way binding upon them.

23. This Tribunal today therefore makes the following directions;

Directions

1. The Applicants are to file and serve within 28 days a written statement annexing
   i. a complete schedule showing the statement of account in respect of each year of service charges to which this application relates, save for the years June 2005 to 2006 and June 2006 to 2007 which have already been adjudicated upon by the Tribunal on 10th April 2007.
   ii. All demands for payment with any accompanying documents pursuant to section 21B(1) of the Landlord and Tenant Act 1985 or otherwise.
   iii. All correspondence passing between the parties in respect of the years in question

2. In respect of the years 2005 to 2006 and 2006 to 2007 the Applicants are to file a statement of account showing whether or not such sums as are due and owing have been paid (so that the Tribunal may consider remitting this aspect of the matter back to the County Court at the conclusion of the hearing along with any claim for ground rent.)

3. The Respondents shall within 28 days of the written statement having been served upon her file with the Tribunal and serve upon the Respondents a written statement setting out her case as to why each and every item claimed is not reasonable with supporting documentation.

4. The matter shall be listed for hearing on the first available date after 3 months with a time estimate of 1 day. Both parties are to provide the Tribunal with any dates to avoid within 21 days of the date of these directions.

5. The Applicants shall provide the Tribunal with 3 copies of a paginated bundle containing all documents of each party not less than 14 days prior to the final hearing. The parties shall agree the contents of the bundle if possible not less than 21 days prior to the final hearing. The bundle shall have an index referring to the relevant page number. In addition the Applicants shall provide the Respondent with a copy of the bundle not less than 14 days prior to the final hearing.

6. Both parties shall file with the Tribunal written submissions setting out their case not less than 14 days prior to the final hearing. Both parties are to provide the Tribunal with 4 copies of their submissions, 3 for the Tribunal and one which the Tribunal will send to the other party.

7. The Tribunal shall carry out an inspection of the property on the day of and immediately prior to the final hearing. The parties are invited to attend that inspection but evidence will not be heard during the course of the inspection.

8. The parties have permission to apply to vary these directions to extend the time for filing of documents but any application should be made prior to the time limit for such documents to be filed and served. Such an application should give an explanation of the reasons for requesting an extension of time and the extension of time being requested.

9. Any application to delay the final hearing should be made not less than 4 weeks prior to the final hearing. Such application should be supported by reasons why the hearing cannot proceed on the given date.

Signed Tonia Clark

Dated Monday 8th March 2010

THE RESIDENTIAL PROPERTY TRIBUNALSERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Residential Property
TRIBUNAL SERVICE

S.27A & S.20C Landlord & Tenant Act 1985(as amended)("the Act")

Case Number:	**CHI/OOML/LIS/2009/0091**
Property:	**42b London Road Brighton East Sussex BN1 4JD**
Applicant:	**New Liberty Property Holdings Limited**
Respondent:	**Gayle Chapman**
Appearances for the Applicant:	**Mr. Bush of Counsel Mr. Holloway of Mulberry Insurance Services Limited**
Date of Inspection / Hearing	**16th July 2010 and 6th August 2010**
Tribunal:	**Mr. R T A Wilson LLB (Lawyer Chairman) Mr A Mackay FRICS (Valuer Member) Ms J Dalal (Lay Member)**
Date of the Tribunal's Decision:	**3rd September 2010**

THE APPLICATION

The applications made in this matter are as follows;

1. For a determination pursuant to section 27A of the Act of the Respondent's liability to pay service charge in respect of insurance premiums for the years 2007/8, 2008/9 and 2009/10.

2. Pursuant to section 20C of the Act that the Applicant's costs in these proceedings are not relevant costs to be included in the service charge for the building in future years.

3. The Tribunal was also required to consider, pursuant to regulation 9 of the Leasehold Valuation Tribunal (England) Regulations 2003, whether the Respondent should be required to reimburse the fees incurred by the Applicant in these proceedings.

4. The Tribunal was also required to determine, pursuant to Schedule 12 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") whether either party should be required to make a contribution towards the costs incurred by the other.

DECISION IN SUMMARY

5. The Tribunal determines for the reasons set out below, that the amounts charged by the Applicant for insurance in each of the years 2008, 2009 and 2010 were not reasonably incurred. The amount payable by the Respondent for insurance for these years is capped at £445 for 2008 and 2009 and £360 for 2010 plus terrorism cover in each case.

6. An order is made under section 20C of the Act precluding the Applicant from recovering its costs of these proceedings from future service charges.

7. No order is made in relation to the repayment of Tribunal fees incurred by the Applicant in these proceedings.

8. No order is made under Schedule 12 of the 2002 Act.

JURISDICTION

Section 27A of the 1985 Act

9. The Tribunal has power under Section 27A of the Landlord and Tenant Act 1985 to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. The Tribunal can decide by whom, to whom, how much and when service charge is payable.

10. By section 19 of the Act service charges are only payable to the extent that they have been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.

THE LEASE

11. The Tribunal had a copy of the lease relating to the property. The lease is dated 10th July 2003 and is for a term of 125 years from the date of the lease. The initial annual rental is £100 rising to £150 after the first 25 years of the term.

12. By clause 4.2.1 of the lease the landlord is obliged to insure the building against loss or damage by fire lightning explosion earthquake riot civil commotion aircraft aerial devises storm flood impact by vehicles and damage by malicious persons and vandals and other risks which the landlord from time to time reasonably considers should be covered.

13. By clause 4.2.2.2 the sum insured must be at least the full rebuilding costs and by clause 4.2.2.3 the policy must be issued by a reputable insurance office.

INSPECTION

14. The Tribunal inspected the exterior of the property and the interior of Flat 42b on the morning of the hearing and found the property to comprise a terraced building situated in the London Road shopping thoroughfare with a frontage at rear to Providence Place. The ground floor is occupied by a branch of the National Westminster Bank. The building is arranged on part basement, ground and three upper floors. A rainwater hopper head on the front elevation is marked 1894 and in the absence of any information to the contrary, we assume this notates the original date of construction. The upper floors comprise 3 flats and a maisonette formed as a result of a conversion, which includes alterations, extensions and additions to the original structure.

15. Flat 42b is situated on the second floor approached from Providence Place. Access to the flat is shared with Flats 42a and 42c. There is a separate access to 41a only. Internally, Flat 42b comprises an entrance hall, a living room (facing London Road) with a door to the kitchen, again facing London Road. There is a combined bathroom and WC internally planned and mechanically ventilated, with a panel bath, vanity unit, a close coupled WC and a chromium plated heated towel rail. At the rear of the flat, looking towards providence Place, there is a double bedroom.

16. The front elevation of the property facing London Road is part brick and part rendered and painted. The back elevation to Providence Place is formed in solid brickwork with the later additions, also in brick, but of a cavity type construction. The main roof is pitched and slated and of a Mansard design on the front elevation with a flat top to the dormer style window on the rear elevation. The windows are of a wooden sash type and painted. There is a small rear forecourt with a car parking area. Generally, we formed the opinion that the property was in fair condition.

PRELIMINARIES / ISSUES IN DISPUTE.

17. The Tribunal had held a pre-trial review of the case at which it was established that the only issues in dispute for determination by the Tribunal were the insurance premiums for 2008 and 2009.

18. Directions were given for the Applicant to file with the Tribunal and serve on the Respondent a statement of case setting out their claim. The directions further provided for the Respondent to file with the Tribunal and serve on the Applicant her response.

19. At the hearing, the parties agreed that the scope of the hearing should be extended to include a determination in respect of the 2010/11 insurance premiums.

20. Both parties had submitted a statement of case and had produced a hearing bundle which included the documents relevant to their case. At the hearing both parties developed their cases and the issues are considered below.

THE HEARING

THE APPLICANT'S CASE

21. Mr. Bush presented the case for the Applicant in two parts. Firstly he sought to deal with the Respondent's objections to payment because of the demands failing to contain the prescribed statutory information. Secondly he sought to address the Respondent's contention that the premiums had not been reasonably incurred. He called Mr. Holloway of Mulberry Insurance Services to give evidence on both these issues.

22. Turning first to the prescribed information on the demands Mr. Holloway confirmed that his firm was responsible for issuing the demands for insurance. He told the Tribunal that demands had been sent out in each year some six weeks before the due date. He referred the Tribunal to the hearing bundle which contained copies of these demands. On being questioned by the Tribunal he confirmed that the tenants summary of rights was not sent out as a matter of course with invoices. Instead he believed each leaseholder had been told about the summary of rights and had been told that they could call upon the landlord to provide a summary at any time. In other words it was left to the tenant to request the summary of rights. He told the Tribunal that when his client had acquired the portfolio in 2005 each leaseholder had received a letter confirming the identity of the freeholder and were given details of where, how and to whom the service charge should be paid. Therefore there was no doubt about how the payments were to be made.

23. Mr. Bush then addressed the Tribunal on the provisions of section 47 of the 1987 Act. In particular he referred the Tribunal to subsection 3, which he contended had the effect of excluding the provisions of section 47 when a landlord company was in receivership. He told the Tribunal that at the relevant time the Applicant was in receivership and accordingly there was no requirement for the demands to contain the name and address of the landlord or a UK address of a service of proceedings. In any event the demand contained the address of Grimley Eve the managing agents, which was in Birmingham.

24. In his closing submissions, Mr. Bush conceded that there was nothing in the hearing bundle, which provided evidence that the Applicant had complied with the provisions of section 20B of the 1985 Act until 20th April 2010. (Section 20B relates to a notice containing a summary of the tenants' rights to refer matters to the Tribunal and failure to comply renders the demand temporarily suspended.) He reluctantly had to concede that compliance with this legislation had only been achieved in April of this year. However from this point on, all defects in the invoices had been cured and it was his submission that the Respondent should have paid the insurance premiums in full at that point.

25. As to the insurance premiums themselves, he stated that his clients were a large property holding corporate client which owned a substantial number of commercial properties. The portfolio, which included the subject property, was similar in that nearly all had bank premises on ground floor with residential parts above. His clients had formed a close working relationship with their brokers Mulberry Insurance Services Limited and they were retained to place insurance cover for the entire portfolio. In this way economies of scale could be achieved.

26. Mr. Bush called Mr. Holloway again to give evidence in relation to the placing of insurance. Mr. Holloway told the Tribunal that when the Applicant acquired the property in 2005 the due diligence carried out had failed to reveal any insurance claims record. This was because the previous owners self-insured. In the circumstances his firm had to go to the market without any evidence of past claims. Great Lakes Reinsurance (UK) Plc had offered competitive premiums without this

information and accordingly the business was given to them. On cross-examination Mr. Holloway agreed that the absence of a claims record would have an adverse impact upon the premiums but he was unable to say exactly what that impact would be.

27. He told the Tribunal that in 2010 when the previous long-term agreement had come to an end he was able to obtain a more competitive quotation firstly because the market was soft and secondly because the property had a good claims record. Indeed to the best of his knowledge and experience no claims had been made in the previous five years.

28. Mr. Holloway told the Tribunal that the Applicant's lenders required amongst other things for the insurance policy to contain a non-vitiation clause. It was a condition of funding. It was his contention that the provisions of the lease at clause 4.2.2.3 enabled the Applicant to include such a provision at the expense of the Respondent. It was in effect a reasonable requirement.

29. Mr. Holloway told the Tribunal that in his opinion a normal range of premiums for a property of this kind would be in the region of 35p to 39p per £100 of cover.

30. Mr. Holloway confirmed that his firm was remunerated in the form of commission. They received 30% of the premium quoted by the insurers as a fee for negotiating the premiums and handling insurance claims. This commission had not been declared to the leaseholders and no part had been credited to the service charge account.

31. Mr. Holloway told the tribunal that he did not accept that any of the quotations put forward by the Respondent were comparable. There were a number of reasons for this:

    i) Firstly none of the quotations provided contained a non-vitiation clause. The existence of such a clause could add as much as 50% to the premium. However on being questioned by the Tribunal Mr. Holloway did concede that some insurers would make no charge for such a clause. The uplift was therefore anything from 0% to 50%.

    ii) Secondly, the AXA quotation related to owner-occupiers only and as the Applicant did not occupy the property they could not obtain such a policy. As a consequence this quotation was not comparable.

    iii) Thirdly the Zurich quotation was given on the basis that the property was constructed with concrete floors, however, the subject property had wooden floors and in his experience wooden floors would add significantly to the cost of insurance.

    iv) Fourthly the Lloyds quotation required the freeholder to give confirmation regarding the type of tenant in the flat, something that the Applicant had no control over. The Applicant's policy had no such clause and accordingly this policy could not be regarded as comparable and in any event would not be acceptable to the Applicant.

    v) Fifthly the Intasure quotations were specific to a block of flats and not comparable to the subject property which was a mixed use of residential/ commercial.

    vi) Finally in the Intasure quotations the property owner's liability was limited to only £2 million whereas the Applicant's policy provided cover of £5 million. Furthermore the contents cover for the common parts was only £5,000 compared with £50,000 with the applicant's policy.

32. For all of these reasons Mr. Bush contended that the alternative quotations put forward by the Respondent were not comparable and therefore should be discounted by the Tribunal. In effect the Respondent was comparing pineapples with bananas. He contended that Ms Chapman had led no credible evidence proving that the insurance placed by the landlord had been unreasonably incurred. The decided cases were clear that a landlord could place all its insurance with one insurer who suited its business needs and there was no obligation on the landlord to obtain the cheapest cover. Provided the insurance had been reasonably obtained which it had been, then under the terms of the lease the Applicant was entitled to recover the premium from the Respondent. He contended that the lease terms entitled the Applicant to place the insurance with whomever they choose and the lease terms enabled the scope of cover to include not only the landlord's requirements but also the requirements of the landlord's mortgagees. In this case the mortgagees did require the non-vitiation provisions and therefore the Respondent had to bear her share of this cover. He invited the Tribunal to make a determination that all the premiums paid by the landlord for insurance over the disputed years were recoverable in full.

THE RESPONDENT'S CASE

33. Ms Chapman opened her case by informing the Tribunal that the issue to be determined was whether the insurance premiums affected by the Applicant for the years 2008, 2009 and 2010 had been reasonably incurred and properly demanded.

34. To begin with she contended that until April 2010 the demands issued by or on behalf of the Applicant had failed to include the information required by statute and as a result they were not payable until the information had been provided. Firstly the demands failed to comply with section 47 of the 1987 Act which required each demand to include the name and address of the landlord and a UK address for the service of proceedings. Secondly the demands failed to include the tenants' summary of rights that was a requirement of section 20B of the 1985 Act. She had made no secret of this fact and had on at least three occasions informed the Applicant's agents that she relied upon these omissions in withholding payment. Ms Chapman told the Tribunal that the Applicant's agent had ignored her comments and had simply instructed debt recovery agents to try and collect the monies and more recently they had commenced County Court proceedings with the defects remaining uncured.

35. In cross examination she accepted that by April 20th 2010 these defects had been cured, but by then the County Court proceedings had been transferred to the Tribunal and she had received legal advice that she should not pay the sums demanded until the outcome of the Tribunal case was known.

36. Secondly it was her case that the landlords had been guilty of overcharging in respect of the insurance premiums since they had taken over the portfolio in 2005.

37. In support of this contention she had gathered quotations for like-for-like cover from other insurance companies. These quotations illustrated how excessive the Applicant's premiums had been. She summarized the quotations as follows: during the period 10th of June 2007 to 10th June 2008 the property was insured with a declared value of £1,575,000 with a 30% inflation provision taking it to £2,040,750. The Applicant's insurance had costed £6,736 whereas she had been able to obtain similar terms from AXA at a premium of £1,950. This represented a difference of £4,785 or a 71% reduction.

38. During the period 10th of June 2008 to 9th June 2010 the property was insured with a declared value of £1,654,000 with a 30% inflation provision taking it to £2,152,200. The Applicant's insurance had costed just over £7,000 p.a. whereas she had been able to obtain a number of lower quotations: AXA quoted a premium of just over £2,000 p.a. which represented a difference of over £5,000 or a reduction of 71%; another quotation from Heath Lambert for £3,515, which represented a difference of £3,555 or a 50% reduction; Intasure had quoted a lower premium of £1,641, which represented a reduction of around 77% and finally Commercial Express had quoted a higher premium namely £4,202 but this still represented a reduction of 23%.

39. For the final year 2010 to 2011 the declared value had remained the same but Mulberry had reduced the premium. Whilst she accepted that this premium was more competitive she had still been able to obtain substantially better terms. Axa quoted £2,048 representing a reduction of 53%.

40. All of the quotations obtained by her involved an excess of £250 whereas the Applicant's policy suffered a £500 excess. In cross examination she accepted that there were differences between the cover of the Applicant and the cover that she had obtained but she insisted that the differences were minor and not material.

41. She reminded the Tribunal of the landlord's statutory duty under section 19 of the 1985 Act. She considered that to discharge this duty it would be reasonable for the landlord to approach more than one insurer before deciding which to use. Instead the Applicant had, since 2005 used the same underwriters. She referred the Tribunal to no less than five previous Tribunal cases which had involved the Applicant and Mulberry Insurance Services. In each of these cases the Applicant had been shown many examples of other insurers who could offer more competitive premiums yet the Applicant had continued to retain Mulberry. To her knowledge, since 2006 Mulberry had been involved in at least seven Tribunal decisions six of which involved insurance for properties over banks. Five of which had been defended and four were found in favour of the tenant. She contended that the reason that the Applicants continued to use Mulberry was because the Applicant was somehow benefiting from Mulberry's involvement.

42. Ms Chapman also contended that the floor area split between the flats in the property was not correct. She told the Tribunal that she had suspected for a while that the floor area used to work out the apportionment was incorrect since Flat C which was above her flat is shown to be about 60% smaller when its floor print was similar to her flat.

43. She also contended that a number of the features contained in the landlords insurance benefited only the landlord and not her. For example the non-vitiation clause related to the Applicant's own commercial interests rather than the building. This clause gave the Applicant's lender priority on claims and did not benefit the tenant in any way. In these circumstances she should not be penalized by having to pay for the lender's requirements.

44. She further contended that the landlord's insurance policy included an estimate for loss of rent of 36 months equating to £150,000. Assuming that all the residential flats had a similar lease as hers then 36 months loss of rent from all four flats would be in the region of £1,200. Accordingly £150,000 was excessive cover.

45. Another main element in the Mulberry policy was a 30% inflation provision which she considered was excessive. In addition there was £10,000 cover for loss of keys, £50,000 worth of landlord's contents cover, £5 million of public liability cover and

£5,000 cover for glass breakages all of which figures were excessive. It was also her contention that she should not have to pay for these features.

46. For the above reasons she invited the Tribunal to reduce the amount recoverable by the landlord by way of a service charge in the light of her evidence and also the Tribunal's collective knowledge and expertise.

ANALYSIS AND DETERMINATION

47. There is no dispute between the parties as to the standing of the insurers preferred by the Applicant. The question for determination is whether the insurance affected by them over the challenged years has involved the payment of premiums which have been unreasonably incurred. The Respondent argues that this question should be answered in the affirmative since comparable cover is available at a significantly lower cost. The Applicant, however, argues that no comparable quotations have been put forward, that its insurance arrangements are reasonable and that the premiums currently payable and payable in the past are and always have been reasonable and that their agent places the insurance with the company that best suits the freeholders business interests, something which it is entitled to do.

48. In arriving at its decision, the Tribunal has analysed all the evidence presented to it and borne in mind a line of similar cases, starting with *Berry Croft Management Company Limited and others v Sinclair Gardens Investments (Kensington) Investments Ltd. 1997 22 EG 141*. In this case which was followed by *Forcelux Limited v Sweetman [2001] 2 EGLR173* and others after it, it was successfully argued that if a landlord negotiates insurance cover in the open market with insurers of repute, then the premiums obtained should not be held to be unreasonable solely because a more competitive premium could be obtained elsewhere. In short landlords are not obliged to obtain the cheapest quotation; their duty is to ensure that they obtain cover in the open market with an insurer of repute on reasonable commercial terms.

49. Having regard to these cases we accept the Applicant's submissions that they prefer, and in effect have a right, to place all their insurance via one insurance broker because it suits their business needs. Further we accept that the test is not whether the premiums themselves are reasonable but whether they have been reasonably incurred which is a broader issue. In effect there is no obligation on the landlord to shop around and obtain the cheapest quotation.

50. However, there are in our judgment two distinctly separate matters to consider in this case. Firstly consideration of the evidence and from that whether the landlord's actions were appropriate and properly effected in accordance with the requirements of the lease, the RICS code and the 1985 Act. Second whether the amount charged was reasonable in the light of that evidence. This point is important to consider otherwise it would be open to any landlord to plead justification to any particular figure on the grounds that the steps it took justified the expense, without properly testing the market.

51. It has to be a question of degree and the correct interpretation of the phrase "reasonably incurred" cannot amount to a licence to charge a figure that is out of line with the market norm.

52. In this case, under the terms of the lease, it is for the landlord to insure and the tenant does not have the option to nominate the insurer. However we are not satisfied from Mr. Holloway's evidence that the Applicant's block policy was competitively obtained in accordance with market rates. Drawing on our own collective experience the annual premiums charged to the Respondent in this case at £820 in 2007, £860 in 2008 and 2009 and £568 in 2010 are extraordinarily high and

in our opinion fall outside of the range of premiums that we would have expected for a property of this size, configuration, age and location.

53. It is not for this Tribunal to ascertain the reasons why this might have been the case but in considering whether or not the insurance was reasonably incurred we have had regard to 3 quantifiable areas; firstly the sum insured, secondly the premium obtained and thirdly the standard of cover.

54. The Tribunal summarises the relevant insurance data provided to it as follows:-

Insurance Year	Declared Value	Premium	Lessees Apportionment	Apportioned Premium	£1 per £100 of sum insured	Terrorism Premium
2007/2008	£1.575M	£6,775.21	12.10%	£819.80	43p	£34.88pa
2008/2009	£1.654M	£7,111.40	12.10%	£824.29	43p	£36.19pa
2009/2010	£1.654M	£7,111.40	12.10%	£860.48	43p	£36.19pa
2010/2011	£1.654M	£5,507.18	10.31%	£567.79	33.29p	£36.19pa

55. At the hearing we were told by Mr. Holloway that the gross internal area for the Property at 11,540 sq ft stated in his written evidence was wrong, and that it was now agreed at 6,507 sq ft, but despite this material change the price per sq ft had not changed. The Respondent did not necessarily agree and continued to query the calculations. We therefore sought to analyse the Declared Value of £1.654M in years 08/09 to 2010/2011 firstly by dividing it by the Applicant's assessment of the floor area of 6,507 sq ft (some 43.62% less than originally measured) but despite this material change and to the Tribunals surprise neither the declared value nor the quantum of the premium required had changed. This produces a rebuilding cost of £254.18 per sq ft. We were told that the Declared Value figure included an allowance of 10% for demolition, 18% for fees, and 17.5% for VAT. Working through these figures, i.e. by deducting the allowances for demolition, fees and VAT, the calculation made by the Tribunal resulted in a net price for the building costs of £166.66 per sq ft. We then compared this figure to the quarterly review of building prices April 2010 Issue No. 117 prepared by the Building Cost Information Service of the RICS. This contains a range of mean figures depending on the user of the building. Offices with shops are assessed at £78 per sq ft and shops with domestic at £105 per sq ft.

56. The Tribunal having made these calculations and having contrasted and compared the Applicant's assessment of the Declared Value with the BCIS Guide have come to the conclusion that the Declared Value as arranged by the Applicant is excessive and should be reduced to a £105 per sq ft. This results in the following calculation:

6,507 sq ft @ £105	=	£ 683,235
Add 10% for demolition	=	£ 751,558
Add 18% for fees	=	£ 886,839
Add 17.5% for VAT	=	£ 1,042,035
Say: Declared Value	=	£1.05M

57. Furthermore, the Tribunal is critical that the Applicant went to the insurance market in 2005 without any claims record and then entered into a five year fixed insurance contract. In the opinion of the Tribunal it is reasonable to assume the lack of the claims record would have had the effect of increasing the premium quoted and it is not reasonable for the Respondent to be asked to indemnify the Applicant against the costs of its failure to carry out proper due diligence. The Tribunal notes that in 2010 the Applicant was able to achieve a more competitive quotation not least of all because they were able to supply a claims record, and a good one at that. Although the Tribunal was told that the insurance market was soft in 2010 the reason for the reduced premium might also have been the existence of the claims record.

58. The Respondent points to the existence of a non-vitiation clause and contends that the existence of this clause has led to an excessive insurance premium. Mr. Holloway told the Tribunal that the existence of such a clause could have the effect of increasing the premium by as much as 50% although on cross-examination he conceded that in some cases insurers would offer this cover without charge. In the experience of the Tribunal a non-vitiation clause is not commonly asked for and although it might be a requirement of the Applicant's lender in this case, no tangible benefit flows to the Respondent. The Applicant's repairing covenants in the lease are absolute and not dependent upon the receipt of insurance money. In the circumstances we do not think it reasonable for the Respondent to bear any additional premium required as a result of such a clause. Whilst the Tribunal heard no evidence demonstrating that the existence of such a clause had led to an increase premium we consider it incumbent upon the Applicant to satisfy the lessees that this cover is either provided free of charge or paid for by the freeholder.

59. The Tribunal also concludes that the standard of cover is in parts excessive and accordingly unreasonable. The Tribunal accepts the Respondent's submissions that the sum insured for plate glass of £5000 is excessive as is the sum insured for landlords contents in the common ways of £50,000. The Tribunal had inspected the interior common ways and a figure of £50,000 cannot possibly be justified. The Tribunal is also concerned that the public liability insurance in this case is higher than it need be and that cover of £10,000 for the loss of keys is not something that the Respondent should have to pay for. No evidence was placed before the Tribunal quantifying how the existence of this level of cover may have impacted upon the premiums obtained nonetheless the Tribunal concluded that in this particular case some elements of cover provide a Rolls-Royce service whereas the building is more in the nature of a Mini.

60. The Tribunal accepted Mr Holloway's evidence that none of the quotations put forward by the Respondent are truly comparable, however the Tribunal considers that the quotations are helpful to the extent that they confirm the Tribunal's view that the premiums obtained by the Applicant in this case are outside of a range of premiums that one would reasonably expect.

61. Having regard to the above we have concluded that the premiums obtained by the Applicant are excessive and therefore it cannot be said that the insurance has been reasonably incurred. Drawing upon the Tribunal's collective experience and expertise we would have expected premiums in the order of 15 pence per £100 of cover up to 35 pence per £100 of cover. In this case the premiums charged have averaged approximately 43 pence per £100 of cover for the challenged years. Using 43p per £100 rate for years 07/08, 08/09 and 09/10, based on a revised sum insured of £1.05M, would produce an annual premium of £4,515, which when apportioned in years 07/08 would give a premium payable based on 12.1% for the subject flat of £546.31 plus the terrorism premium. In the last year, 10/11 where the apportionment reduces to 10.31%, the premium would fall to £465.04, again plus the terrorism premium. Using a premium rate of 35p based on a revised sum insured of £1.05M would bring down the premium in years 07/08, 08/09 and 09/10

to £444.67, say £445, and in 2010/2011 to £378.52, say £380 plus terrorism premium.

62. Doing the best that it can with the evidence before it and drawing on its own collective experience, the Tribunal considers that the appropriate sum for insurance purposes should be in the order of £1.05M and that the premium for cover should not exceed 35p per £100 of cover for any of the years. Adopting these figures means that the premiums for 2007/08 2008/09 and 2009/10 are capped at £445. The premium rate negotiated by the Applicant for 2010/11 is 33p which on a declared value of £1.05M gives rise to a premium of £3,495.45 which apportioned to the subject flat at 10.31% produces a premium payable of £360.38 say £360 in each case plus terrorism cover, such sums to be due and payable by the Respondent within 28 days of a valid demand being served on her.

SECTION 20C APPLICATION REIMBURSEMENT OF FEES AND SCHEDULE 12 COSTS

63. All these matters can be taken together as the Tribunal's considerations in relation to all are largely the same. The legislation gives the Tribunal discretion to disallow in whole or in part the costs incurred by a landlord in proceedings before it. The Tribunal has a very wide discretion to make an order that is, 'just and equitable' in all the circumstances.

64. The Tribunal first reminded itself that the Respondent had successfully challenged the application which in the absence of any other reasons was a prime facie reason for the Tribunal making an order which would limit the Applicant's costs from being recoverable as service charge.

65. Furthermore the Tribunal considered that the conduct of the Applicant had been less than exemplary. The Applicant had been late in filing its hearing bundle and it included a response to the Respondent's reply, which was not provided for in the directions. This response had sought to challenge the Respondent's alternative quotations as not being comparable and had been seen by the Respondent only a few days before the hearing. As a result she was put at a disadvantage. The Tribunal was also concerned that the Applicant was not able to satisfy the Tribunal that they include the statutory information on service charge demands as a matter of course. For these reasons the Tribunal considers that it is just and equitable in all the circumstances for an order to be made under section 20C of the 1985 Act and it so orders. In effect this means that both parties will be responsible for their own costs.

66. The Tribunal makes no order in relation to the repayment of fees as the outcome of this hearing does not merit a sanction of this kind.

67. Neither does the Tribunal make any order that one party should make a contribution toward the costs of the other pursuant to Schedule 12 of the 2002 Act. The Tribunal does not consider that the conduct of either party comes anywhere near to being vexatious, frivolous or otherwise unreasonable which are the grounds that need to be established for such an order to be made and therefore there are no grounds to make such an order.

Chairman _____
RTA Wilson LLB

Date 3rd September 2010