



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case reference** : **LON/00AP/LSC/2019/0348**

**Property** : **74 and 76 Albert Road, London N22  
7AH**

**Applicant** : **74 Albert Road: Mr Stephen Jones  
and Ms Charlotte Devlin  
76 Albert Road: Ms Jackie Myles**

**Representative** : **None**

**Respondent** : **Mr Aristides Marcou**

**Representative** : **None**

**Type of application** : **Reasonableness and liability to pay  
service charges - s.27A Landlord  
and Tenant Act 1985**

**Tribunal member(s)** : **Judge N Rushton QC  
Mr D Jagger MRICS**

**Date and venue of  
hearing** : **11 November 2019 at 10 Alfred  
Place, London WC1E 7LR**

**Date of decision** : **11 November 2019**

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**DECISION**

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**Decisions of the tribunal**

- (1) The Tribunal determines that the (revised) insurance premium charged for the year 2019-2020 of £799.61 (including insurance premium tax (“IPT”) is not reasonable and that the maximum reasonable insurance premium would be £600 including IPT, in each case that figure being shared 50-50 between the two maisonettes.

- (2) The Tribunal makes an order under section 20C the Landlord and Tenant Act 1985 (“**the 1985 Act**”) that any costs incurred by the Respondent or his managing agents in connection with these proceedings are not to be regarded as relevant costs in determining the amount of any service charge to be paid by the Applicants.
- (3) The Tribunal makes an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“**the 2002 Act**”) extinguishing any liability of the Applicants to pay any administration charge in respect of any litigation costs of the Respondent or his managing agents in relation to this application.

### **The issue**

1. This is a service charge dispute in relation to the single issue of the reasonableness of the insurance premium for the year 2019-2020 in respect of the property at 74 and 76 Albert Road, London N22 7AH (“**the Property**”). The freehold owner and landlord of the Property is Mr Aristides Marcou, who is the Respondent, having been substituted as such as set out below.

### **The Property**

2. The Property is a purpose-built house comprised of two maisonettes, in Wood Green, London. Number 74 is the ground floor maisonette, occupied under a long lease by Mr Stephen Jones and Ms Charlotte Devlin. Number 76 is the first floor maisonette, occupied under a long lease by Ms Jackie Myles. These three tenants are together the Applicants (and are the only tenants of the Property).

### **The Application**

3. By an application dated 11 September 2019 the Applicants seek a determination under Section 27A of the 1985 Act of the reasonableness of the insurance premium charged in relation to the Property for the year 2019-2020. At that stage the total premium sought by the landlord in relation to the Property was £1,600.52. The Application named the landlord’s managing agents, Daniel Payne and Lorren Carter of Warwick Estates Property Management Ltd (“**Warwick**”) as the Respondents.
4. The Applicants also applied in the Application for orders under s.20C of the 1985 Act and paragraph 5A of Schedule 11 to the 2002 Act in relation to any litigation costs incurred by the Respondent.
5. On 16 September 2019 the Tribunal wrote to Mr Payne and Ms Carter at Warwick notifying them that the Application had been received and enclosing a copy of it.

6. Directions were issued by the Tribunal on 24 September 2019. By paragraph 2 the landlord Mr Aristides Marcou was substituted as the Respondent in place of Warwick. Paragraph 3 provided that the Tribunal would determine the application on the basis of written representations unless either party applied for an oral hearing within 7 days of the date of the directions. No such application has been received, so the Tribunal has proceeded to determine this application on the basis of the written representations and documents which it has received.
7. Paragraph 6 of the directions included the statement: “*Parties should be aware that failure to provide evidence requested may result in the Tribunal drawing an adverse inference from the lack of that evidence. If documentation cannot be provided for a good reason a full explanation should be sent.*” Neither party has requested any such extension.
8. Paragraph 8 of the directions provided that the landlord should prepare for the determination by sending to the Tribunal by 9 October 2019 a statement and a bundle of documents including those documents listed in sub-paragraphs (a) to (o). These included the certificate of insurance for the 2019-2020 year with summary of policy terms and conditions; any claims history taken into account by any broker; any “additional risks” covered; any remuneration, commission or other sources of income or benefits received by the landlord in connection with placing or managing the insurance; if the insurance was on a block policy, how it was apportioned to the two flats which are the subject of the Application and whether this took into account the claims histories of other properties; any alternative quotes for the Property; and any steps taken to test the market.
9. Paragraph 9 of the directions provided that the tenants should prepare for the application by sending to the Tribunal by 23 October 2019 a copy of their statement and a bundle of documents. This was to include among other things any alternative premium quotations on a like-for-like basis; their grounds for objection to the premium; and comparable evidence from very similar properties.
10. By a letter of 24 September 2019 the Tribunal confirmed that the application would be dealt with on the documents without an oral hearing and enclosed a copy of the directions, sending this to: Mr Marcou; Mr Payne and Ms Carter at Warwick; and the tenants of each maisonette.
11. No documents or statement have been filed by or on behalf of Mr Marcou (or by Warwick) with the Tribunal.
12. By a letter dated 27 September 2019 from Ms Carter to Ms Myles (which the Tribunal has seen), Ms Carter sent her a “*revised invoice for*

*the block buildings insurance premium as placed by your freeholder... We apologise for the confusion caused previously, the Freeholder was quick to contact the insurers and ensure that the issue was rectified immediately. It was an issue with the insurer and not the Freeholder".* On the attached policy certificate the premium had been reduced to £799.61 (including IPT of £85.67), but the details were otherwise identical.

13. By an email of 3 October 2019 addressed to all the tenants (also seen by the Tribunal) Mr Payne said that the previous premium had been reversed and the replacement charge applied on 27 September 2019. He also asked the tenants to confirm whether they were satisfied in order to close the Application which they had filed, i.e. to the Tribunal.
14. By a letter dated 15 October 2019 and addressed to both the Tribunal and Mr Marcou, the tenants said that by that time, their investigations had shown this new figure was higher than the other offers they had obtained and the amount their neighbours were paying. They therefore wished to continue with their Application to the Tribunal. That letter and its enclosures were not received by the Tribunal until 31 October 2019 (possibly because the postage was underpaid by £2). The Tribunal assumes (from the fact it was addressed to Mr Marcou as well) that a similar letter was sent by the Applicants to Mr Marcou.
15. In any event, in light of the other correspondence from the Tribunal, the Tribunal considers that, insofar as he may have done so, the Respondent should not have assumed that there was no need for him to comply with the directions or that the Application had been withdrawn.
16. The Applicants' letter did not enclose a statement as they said none had been received from Mr Marcou. They did include two quotations from alternative brokers; and a copy of their next door neighbour's buildings insurance. He is said to be the freeholder of a very similar property at 78 and 80 Albert Road. They stated that the grounds of their objection were that the premium even as revised was still above the market rates and no alternative quotes or evidence of market testing had been submitted by the landlord.

### **The Lease**

17. The Tribunal has been supplied with a copy of the lease for number 76, and it is assumed both leases are in identical terms. Page 4, subparagraph (a) in the preamble to the lease provides that the tenant shall pay, by way of further and additional rent, one half of such sum as the lessor shall expend on discharging the premium payable in respect of insuring the building "*...against lost or damage by fire storm tempest explosion and such other risks as the Lessor may from time to time deem desirable...*"

18. The landlord's obligation to insure the Property is contained in clause 3(2) of the lease.

### **The law**

19. The relevant statutory provisions are set out in an Appendix to this decision.
20. In its decision in *Cos Services Ltd v Nicholson* [2017] UKUT 382 (LC); [2018] L. & T.R. 5 the Upper Tribunal confirmed that whether insurance premiums have been "reasonably incurred" under the 1985 Act and are therefore payable as service charges depends not only on the rationality of the landlord's decision-making process but also on whether the sum being charged was in all the circumstances a reasonable charge. In doing so the Upper Tribunal noted that the Court of Appeal in *Waaler v Hounslow London Borough Council* [2017] EWCA Civ 45; [2017] 1 W.L.R. 2817 had approved a decision of the Lands Tribunal to this effect as to determining reasonableness of insurance premiums in *Forcelux Ltd v Sweetman* [2001] 2 EGLR 173.

### **The evidence before the Tribunal**

21. No evidence or documentation was put before the Tribunal by or on behalf of Mr Marcou. The Tribunal is satisfied from the correspondence that the landlord's managing agents at Warwick are aware of this Application and that letters from the Tribunal concerning both the Application and the directions have been sent to both Warwick and Mr Marcou. In those circumstances the Tribunal has proceeded on the basis of the documents before it, which are those submitted by the Applicants.
22. The Tribunal has before it a copy of the policy certificate relating to the 2019-2020 year from CO Veia Insurance obtained by the landlord. The revised certificate states a premium of £713.94 plus IPT of £85.67 or a total of £799.61. The Property Occupancy is described as "Professional Let PDH". The buildings declared value is £317,508 and the buildings sum insured is £476,262. There is provision for alternative accommodation or loss of rent at 33.3% of the buildings sum insured, which would equate to £158,752. There is landlords contents insurance for £25,000. The limit of the indemnity is £5m. Cover is for the usual range of events and does not expressly include terrorism cover. The excesses are nil for fire, explosion, lightning and aircraft; £1,000 for subsidence, landslip and heave and £250 for all other risks. There are no additional endorsements or interests.
23. The Applicants have submitted details of two insurance quotations which they have obtained. It is noted that they say they have had some difficulty obtaining quotes from brokers as they are not the freeholders.

It is also noted that in the absence of any statement or further information from the landlord or Warwick, neither they nor the Tribunal have any information as to any claims history or specific policy terms, nor as to any commission which the landlord may have received.

24. The quotations obtained by the Applicants are from Residents Insurance Services (“**RIS**”) for £408.16 plus IPT of £48.98 or a total of £457.14 and from Abacus for £599.70 including IPT and fee.
25. Overall, having reviewed the documentation available, the Tribunal’s view is that both quotations are on terms which are sufficiently similar to those of the policy obtained by the landlord as to be directly relevant. There are some differences of detail, but in the Tribunal’s view, and in the absence of any submissions or evidence to the contrary from the landlord, these are not sufficient to prevent these quotations from being comparable. Nor have any submissions been received from the landlord as to why the use of a block policy in this case was reasonable.
26. The RIS quotation includes cover for property owners’ liability of £5m like the CO Veia policy; the Abacus cover is lower at £2m. There is no apparent difference of any significance in the types of event insured against. There are some limited differences in the excesses given but these are not significant (e.g. £250 instead of nil under fire, flood and water damage in the RIS policy). Sub-letting on ASTs is permitted. The RIS policy provides cover for alternative accommodation at 30% of value; the Abacus policy for loss of rent or alternative accommodation at £95,252 – this is less than under the CO Veia policy but not to a significant degree in all the circumstances.
27. While it is not apparent that the RIS policy covers for landlord’s contents, and the Abacus policy covers communal contents up to a maximum of £5,000 (less than the £25,000 in the CO Veia policy), no submissions or evidence have been received from the landlord as to why such cover is reasonably required or as to the value of any such contents. This is a two maisonette house, each maisonette having a separate front door, so the need for cover for any landlord’s contents is not obviously apparent.
28. The Applicants have in addition provided a copy of a renewal schedule for the 2019-2020 year obtained from Churchill by the freeholder of numbers 78 and 80 Albert Road, which appears to be an essentially identical property. That policy was for buildings insurance at a cost of £471.52 including IPT.
29. While the details of that policy have not been disclosed, the Tribunal also considers this to be relevant evidence, especially since there is nothing apparently unusual about the Property so far as its insurance requirements are concerned.

## **Decision**

30. In those circumstances and in the absence of any further explanation from the landlord, the Tribunal determines that the revised premium charged of £799.61 for the two maisonettes is not reasonable.
31. The Tribunal concludes on the evidence before it that the maximum premium which would be reasonable for this Property for the 2019-2020 year, given in particular the evidence of market rates for sufficiently similar policies, is £600. The Tribunal has allowed a figure at the top of the bracket covered by the quotations and evidence obtained by the Applicants to allow for the fact that there are some limited differences in the apparent terms of the other quotations provided as compared to the CO Veia policy.
32. Given its conclusions, the Tribunal also considers that it would not be reasonable for the landlord to charge any of his (or Warwick's) costs of dealing with this Application to the tenant Applicants by way either of service charges or administration charges (insofar as there is any power to charge such an administration charge under the lease, as to which the Tribunal expresses no view).
33. The Tribunal accordingly makes an order under section 20C of the 1985 Act that any costs incurred by the Respondent or Warwick in connection with these proceedings are not to be regarded as relevant costs in determining the amount of any service charge to be paid by the Applicants. It further makes an order under paragraph 5A of Schedule 11 to the 2002 Act extinguishing any liability of the Applicants to pay any administration charge in respect of the litigation costs of the Respondent or Warwick in relation to this Application (insofar as any such charge would otherwise be payable).

**Name: Judge N Rushton QC      Date: 11 November 2019**

## **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).



## **Appendix of relevant legislation**

### **Landlord and Tenant Act 1985 (as amended)**

#### **Section 18**

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -

(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

#### **Section 19**

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

#### **Section 27A**

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -

(a) the person by whom it is payable,

(b) the person to whom it is payable,

- (c) the amount which is payable,
- (d) the date at or by which it is payable, and
- (e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -

- (a) the person by whom it would be payable,
- (b) the person to whom it would be payable,
- (c) the amount which would be payable,
- (d) the date at or by which it would be payable, and
- (e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -

- (a) has been agreed or admitted by the tenant,
- (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
- (c) has been the subject of determination by a court, or
- (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

### Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

(aa) in the case of proceedings before a residential property tribunal, to that tribunal;

(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

## **Commonhold and Leasehold Reform Act 2002 (as amended)**

### Schedule 11, paragraph 1

(1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,

(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,

(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—

(a) specified in his lease, nor

(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—

(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).

Schedule 11, paragraph 5A

(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

(3) In this paragraph—

(a) “litigation costs” means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and

(b) “the relevant court or tribunal” means the court or tribunal mentioned in the table in relation to those proceedings.

| Proceedings to which costs relate | “The relevant court or tribunal”   |
|-----------------------------------|--|
| Court proceedings                 | The court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, the county court |
| First-tier Tribunal proceedings   | The First-tier Tribunal  |
| Upper Tribunal proceedings        | The Upper Tribunal   |
| Arbitration proceedings           | The arbitral tribunal or, if the application is made after the proceedings are concluded, the county court.                                  |