FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/OOHY/LSC/2020/0085
Property	**:**	Flat 8, Alexander House, Sidbury Heights, Sidbury Circular Road, Tidworth SP9 7HP
Applicant	**:**	Madeleine Walsh
Representative	**:**	Dickens Hopgood Chidley LLP
Respondent	**:**	Sinclair Gardens Investments (Kensington) Limited
Representative	**:**	
Type of Application	**:**	Application for a determination of liability to pay and reasonableness of service charges Section 27A of the Landlord and Tenant Act 1985
Tribunal Member(s)	**:**	Judge R Cohen
Date and venue of hearing:		Paper determination
Date of Decision	**:**	10 November 2020

DECISION

Decision of the Tribunal

1 The Tribunal has decided, for the reasons that follow, that the Respondent's service charge demand for 2019 is unreasonable in amount and is reduced by £121.The Tribunal would have made further reductions but did not consider that it had the evidence to make an assessment. The consequential orders for which the Applicant applied are made.

The Application

2 Since August 2005, the Applicant has been the registered leasehold proprietor of Flat 8, Alexander House, Sidbury Heights, Sidbury Circular Road, Tidworth SP9 7HP ("the Flat"). The Respondent is the registered freehold proprietor of Alexander House. On 8 June 2020, the Applicant applied to the Tribunal under section 27A of the Landlord and Tenant Act 1985. By her application, the Application seeks a decision of the Tribunal on the following questions:

(1) What is the amount of the service charge payable in relation to insurance premium?

(2) Is the service charge reasonable in accordance with section 19 Landlord and tenant Act 1985?

Those questions are posed for every year from 2010 to 2025 except for 2013.

3 The subject premises comprise a two bedroomed first floor flat in a block of 11 flats originally built by the Ministry of Defence in the 1960's.

4 In her original application, the Applicant made no application under section 20C of the Landlord and Tenant Act 1985 but did make an application under paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002. However, in paragraph 20 of her statement of case the Applicant did make an application under section 20C of the Landlord and Tenant Act 1985.

5 For each of the years 2010 to 2020 but not 2013, the Applicant has quantified the amounts she seeks by way of reimbursement and these are set out in the following table. For the years from 2021 to 2025, the issue is how are the insurance premiums to be charged to ensure reasonableness? No quantified amounts are claimed, as that would be premature. The amounts the Applicant claims are:

Year	Excess service charge (insurance premium) claimed by Applicant	Comparable premiums obtained on open market basis show overpayment of

2010	£220.03	£120.28
2011	£220.04	£120.29
2012	£418.40	£318.65
2014	£348.89	£249.14
2015	£401.13	£301.38
2016	£382.73	£282.98
2017	£395.63	£295.88
2018	£419.34	£319.59
2019	£376.28	£276.53
2020	£389.72	£289.97

The Lease

6 The lease of the Flat is dated 21 March 1992. It recites that the original lessor was the proprietor of five freehold properties on which there had been erected blocks of flats known as Sidbury Heights. The lessor was in the course of granting leases to those flats. The lease was granted for a premium and a ground rent for a term of 99 years from the date of grant.

7 There was reserved also by way of further rent:

"A sum or sums of money equal to the amount which the Lessors may expend in effecting or maintaining the insurance of the demised premises against loss or damage by fire storms tempest flood subsidence aircraft damage and falling trees and other such risks (if any) as the lessors think fit as hereinafter mentioned such last mentioned rent to be paid without any deduction on the half yearly day for the payment of rent next ensuing after the expenditure thereof"

8 Clause 3(2) of the Lease is a covenant by the Lessor

"at all times during the ...term (unless such insurance shall be vitiated by any act or default of the tenant or the owner lessee or occupier of any other flat on the Lessor's estate) insure and keep insured the buildings on the demised premises against loss or damage by fire storm tempest flood aircraft damage subsidence falling trees and such other risks if any as the lessors think fit in some insurance office of repute in what they shall regard as the full value thereof (without being liable if such value is incorrectly stated) and whenever required produce to the Tenant the policy or policies of such insurance and the receipt of the last premium for the said building being damaged or destroyed by fire or such other insured risks as soon as reasonably practicable lay out the insurance monies in or towards the repair rebuilding or reinstatement of the said buildings any balance being payable by the Tenant."

9 The Tribunal notes that:

9.1 these provisions contain no express, contractual criterion of reasonableness or of propriety governing the amount of the insurance premium; and

9.2 The lease requires that cover be obtained against loss or damage to the buildings from certain specified risks and other risks at the lessor's discretion. Public liability is not a specified risk.

10 The Respondent in its applications for payment to the Applicant refers to the further or additional rent for insurance as an "Excess Service Charge".

The Applicant's case

11 The Applicant says that the premiums paid for the insurance are significantly higher than what could be achieved on "an open market basis". The Respondent ,says the Applicant, has "significant bargaining power" to achieve a lower cost making the charges for the insurance unreasonable in terms of the 1985 Act.

12 The Applicant seeks to make good its case by reference to the service charge year 2020 for which the insurance premium paid by the Respondent to its chosen insurer ,Ecclesiastical Insurance Office Plc ("Ecclesiastical") was £4,171,52. This sum included terrorism and public liability cover, the premium for property damage cover was £4012.29.The Applicant obtained four quotations, on the dates stated, from the following insurers:

MS Amlin 13 February 2020	£1,880.16	Sum insured £2,275,000;declared value £1,750,000
AXA 21 February 2020	£954.31	Buildings sum insured £2,625,000 ;declared value £1,750,000
Ageas 21 February 2020	£800.18	Buildings sum insured £2,362,500;declated value £1,750,000
RSA 21 February 2020	£1,274.12	(average of premiums quoted plus terrorism cover) Buildings sum insured £2,362,500;declated value £1,750,000

13 The Applicant did not produce any evidence as to what premiums might have been available in earlier years had the Respondent or its agents made other enquiries as to the cover available.

14 However, in reply to the Respondent's statement of case, the Applicant obtained the following further quotations

Date	Insurer	Premium	Comments	
11/09/2020	RSA	£1225.88	General excess	Details of all claims

			£250,subsidence excess £1000 (premium £1195.86 for general excess of £500) Buildings declared value £1,750,000)	within last 3 years; 1/1/2018 storm £500:1/1/2019 storm £750)
18 Sept 2020	Ageas	£1549.22	Buildings declared value £1,500,000	Losses or incidents in last 5 years 1.11.16 storm £760 1.11.19 storm £640 1.11.18 storm £570 1.10.17 storm £620
16 Sept 2020	UK Insurance Limited	£2678.69	Buildings insured £1,750.000	
17 Sept 2020	Covea Insurance plc	£1925.97	Buildings declared value £ 1,750,000	Incidents disclosed 8.1.19 storm £2,500 24.1.20 storm £2850 11.1.18 storm £2750

15 In between these two exercises of obtaining quotes by the Applicant, the Respondent tested the market via its agents. The Respondent's witness, Mr Kelly, produced two copy emails in this regard. The first was dated 4 August 2020 and was from Alan Boswell Group (styled as independent insurance brokers authorised by the Financial Conduct Authority) to the Respondent's agent. The brokers stated:

"… we are unable to provide a quotation for Alexander House, Tidworth due to the claims experience …

As an indication, if this was claim free for the past five years and the tenants were restricted to working/students/benefits or LHA, as long as the AST is direct between the landlord and the tenant the annual premium would be no more than £1,900 based on a rebuild cost of £1,755,233"

16 On 7 August 2020 Endsleigh Insurance (Brokers) Limited (also FCA authorised) emailed the Respondent's agents to say

" .. I cannot obtain an insurance quote based on the claims history and the fact that there have been claims every year for the last 5 years (and beyond) at a rough cost of £3,000. I have approach (sic) a panel of around 12 insurers."

17 The Tribunal notes that the Respondent did not produce the instructions given to either broker or the detail of the claims record produced. Nor is any information provided by the Respondent or the brokers as to which insurers they approached.

18 Until the production of the four quotations obtained in September 2020, the Applicant's case was based on the average of the premiums quoted in the first four quotations that the Applicant had obtained. The Tribunal calculates that the average of the first four premiums quoted to the Applicant to be £1227.19. The Applicant does not state her average but working back from her apportioned cost for each of the 11 flats of £111.56, her average is £1227.16, a negligible difference from the Tribunal's figure.

19 The Applicant concludes from the average of the quotations she obtained for 2020 that the charge for each flat for 2020 should be £111.56. The Applicant then goes on to say that the charge per flat for insurance for each year back to 2010 should be £ 111.56 and that there has been an overpayment in each year from 2010 to 2020 calculated by deducting £111.56 from the amount in fact paid. The Applicant accepts that the quotations obtained related to policies not identical to the policy purchased by the Respondent. However, each policy for which a quotation was obtained was a close match and without any material differences.

20 A statement of service charges for the period ended 25 December 2019 contains the following estimates for the period ending 25 December 2020

Terrorism insurance	£159.23
Public liability insurance	£ 115.40
Buildings Insurance	£ 4,012.29
Total	£ 4,286.92
Buildings sum insured /declared value	£1,755,233

The Sum Insured is the Declared Value increased by 20%.

20% of the Declared Value is £351,046

The Sum Insured is therefore £2,106,279

The Respondent has charged the Applicant £389.72 for Excess Service Charge being one –eleventh of the above total.

However, the certificate of buildings insurance from Ecclesiastical shows that the premium paid was £4171.52 for terrorism and buildings cover but no public liability cover was in the event obtained.

21 The Applicant's complaint is that, to quote her statement of case, the manner in which the Respondent has incurred the insurance premiums is not reasonable. Whilst the insurance has been purchased on a block basis, the premium paid is significantly higher than what can be achieved on an open market basis. This, along with the bargaining power of the Respondent to achieve lower cost, renders the amount of the Excess Service Charge sought by the Respondent unreasonable and it should accordingly be limited to a reasonable sum pursuant to section 19 of the Landlord and Tenant Act 1985. In her statement of case in reply, the Applicant contends that in order for the charge to be reasonable under section 19 the premium paid must be considered as well as the process in obtaining the premium. The Applicant says that quotations show that a more reasonable outcome is achievable on an open market basis. The Applicant does not contend that the Respondent must select the proposal offering the lowest quote. The Applicant says that the purchase of insurance on a portfolio basis as opposed to open market results in an unreasonable outcome.

The Respondent's case.

22 The Respondent says in its statement of case that it relies on the evidence of Mark Kelly to explain the differences in premiums quoted and paid.

23 Mr Kelly made a witness statement verified by a statement of truth on 25 August 2020.

24 Mr Kelly stated that he is a director of First Management Limited, trading as Hurst Managements, which manages Alexander House, ("the Building") on behalf of the Respondent. He is also a Director of Cullenglow Limited trading as Princess Insurance Agencies ("PIA").Princess Insurance Agencies (PIA) are registered with the Financial Conduct Authority.

25 Mr Kelly stated that the Respondent has placed insurance at renewal each November through the agency of Princess Insurance Agencies in accordance with its covenant to insure. From information supplied by instructing clients and the RICS, PIA prepares accurate schedules for Buildings, Terrorism, Property Owners Liability and Engineering Insurance in order that the market has accurate data from which fact based underwriting assessments can be made. This process takes account of any special requirements of the insured such as deletions and amendments and increases in the declared value due to factors other than index linking.

26 Mr Kelly stated that PIA prepares a schedule ("the Insurance Schedule") covering five years claims history (if available) of each property with details of all relevant endorsements related to individual properties from the detailed claims records maintained by PIA for each property insured. This information is essential to all insurance companies in assessing the risk profile of individual properties in the overall portfolio.

27 PIA instructs London (city based) international brokers, HW Wood, to present to the current insurers on their behalf the Insurance

Schedule-in order to ascertain the current insurer's willingness to offer renewal terms for the forthcoming year. PIA employ H W Wood for a fee as they have day-to-day dealings with such major "A" rated insurers.

28 If the current insurer is unable to offer acceptable renewal terms, H W Wood approaches Insurers with a Standard & Poor's (S & P) "A-" rating or better financial security rating with the Insurance Schedule to establish their willingness to underwrite the portfolio. In 2015, the current insurer declined to continue the insurance at the same premium rates. It was established that Ecclesiastical, an "A-" rated insurer, would write the business on the same terms and conditions as the previous insurer having considered the Insurance Schedule.

29 The annual property premiums are market tested as detailed below.

SPECIFIC RENEWAL NEGOTIATIONS

30 Mr Kelly stated the following in relation to specific renewal negotiations. Prior to renewal in November 2012, 2013 & 2014 the Landlord requested H W Wood to approach the existing insurer to obtain insurance at the same premium rates for the next year. Liberty offered insurance for the portfolio policy with no premium rate increases.

31 Prior to 2011, IPT Tax was 5%. On 4 January 2011, IPT Tax was increased from 5% to 6%. On 1 November 2015, IPT Tax was increased from 6% to 9.5%, which was required to be applied from renewal of the Buildings Insurance.

32 During 2015, Liberty decided that it would no longer provide buildings insurance to the UK market and consequently informed PIA that it would not renew the cover expiring on 19th November 2015.

33 Consequently, PIA, with the assistance of HW Wood, established that Ecclesiastical Insurance Office PLC ("Ecclesiastical") would offer cover at exactly the same rates as Liberty. This transfer of risk on identical terms to those agreed with Liberty took effect from 20th November 2015.

34 On 1 October 2016, IPT Tax was increased from 9.5% to 10%, which was required to be applied from renewal of the Buildings Insurance.

35 On 1 June 2017, IPT Tax was increased from 10% to 12% which was required to be applied from renewal of the Buildings Insurance.

TESTING THE MARKET

36 Mr Kelly stated the following concerning testing the market. The annual property premiums are tested to ensure they are reasonable and in line with the premium rates from insurers of repute currently available in the market to commercial Landlords of a property with a claims history that can be let to occupants without restriction even if they were, for example, unemployed DHSS tenants or asylum seekers.

37 In 2014, PIA requested H W Wood to test the market prior to renewal. None of the five major insurers approached were able to provide direct comparable quotations. The total premiums quoted by Aviva and RSA were in excess of the total premiums then being charged by Liberty. Three of the major insurers declined to quote at all.

38 In 2016, PIA requested H W Wood to test the market prior to renewal. None of the five major insurers approached were able to provide comparable quotations. An email from H W Wood to PIA stated, "Residential property remains an undesirable appetite for many insurers due to the nature of the risk being claims heavy".

39 In 2020, the Landlord attempted to obtain comparable quotations for the Buildings Insurance for the property but no quotations were available.

40 Mr Kelly produced the substantial claims history for Alexander House. From November 2015 to November 2019, the settled claims totalled £14,750. This equates to an average claim settlement of £3,687.50 per year.

41 The claims history document produced to the Tribunal can be summarised as follows. Claims were made in 1996, 2001, 2005, 2006.2010 and 2012. In last 5 years or so

Year	No of claims	Value of claims
2014	1	Storm damage £950
2015	2	Storm damage £ 3200 and £2300 both paid to same person
2016	1	£3450 storm damage paid to same claimant as in 2015
2017	1	Storm damage £2750
2018	1	Storm damage £2500
2019	1	Storm damage £2850

The law

42 The Landlord and Tenant Act 1985

The following provisions of this Act are relevant.

19. Limitation of service charges: reasonableness.

(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 provision 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.

27A Liability to pay service charges: jurisdiction

(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.

(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 of an application under subsection (1) or (3).

43 There was ample citation of the case law, some of it more helpful than other parts. The Tribunal can best refer to the decision of Judge Stuart Bridge in *Cos Services Limited v Nicholson* [2017] UKUT 382 (LC).That decision contains a review of the relevant authorities, which the Tribunal in this case should properly adopt. Judge Bridge said the following in discussing the cases:

"37 It is clear from these authorities that the burden is on the landlord to satisfy the relevant tribunal on the balance of probabilities that the costs in question have been reasonably incurred. There does, however, seem to be a degree of conflict between the decisions in *Forcelux* and in *Avon Estates* as to how a tribunal is to assess whether insurance costs have been "reasonably incurred".

38. In *Forcelux*, the Lands Tribunal required two issues to be addressed, first the appropriateness and lawfulness of the landlord's actions in claiming the costs, and secondly the reasonableness of the amount being claimed. In *Avon Estates*, the Upper Tribunal required the landlord to prove one of two things, either that the rate charged was representative of the market rate, or that the contract was negotiated at arm's length and in the market place. According to this test, provided that the landlord had conducted the proper processes it could be that an insurance premium which is itself for an unreasonably high amount was nevertheless "reasonably incurred."

44 Judge Bridge then referred to the decision of the Court of Appeal in. W*aaler v Hounslow LBC* [2017] EWCA Civ 45, [2017] HLR 16, a case about service charges which did not concern insurance. Judge Bridge noted that

"43. The Court of Appeal considered at some length the meaning of "reasonably incurred" within section 19. Examining the concepts of rationality and reasonableness, Lewison LJ explained at [20] that where a contract, such as a lease, has empowered one party to make discretionary decisions which impose financial liability on another, the law will restrict the exercise of that discretion to what is rational. In other words, a term will be implied to the effect that the decision-making process be lawful and rational in the public law sense, that the decision is made rationally (as well as in good faith) and consistently with its contractual purpose; and that the result is not so outrageous that no reasonable decision-maker could have reached it: see *Braganza v BP Shipping Ltd* [2015] UKSC 17, [2015] 1 WLR 1661. However, rationality is not the only criteria to be applied when considering whether costs are "reasonably incurred", as Lewison LJ explained further:

[25] If the landlord incurs costs that are not justified by applying the test of rationality, then the costs in question will fall outside the scope of the contractually recoverable service charge. The Landlord and Tenant Act 1985 must have been intended to provide protection against costs which, but for its operation, would have been contractually recoverable. It follows in my judgment that merely applying a rationality test would not give effect to the purpose of the legislation. The statutory test is whether the cost of the work is reasonably incurred.

[26] Part of the context for deciding whether costs have been reasonably incurred is the fact that, in principle, the cost of the work is to be borne by the lessees…

[27]… When any tribunal considers whether a cost has been reasonably incurred it will always have as its context that, if it has been reasonably incurred, the tenant will have to contribute to it.

"44. The Court of Appeal, addressing section 19 in the context of repairs, made the important point at [29] that the provision "must have been intended to protect the leaseholder against charges that were contractually recoverable otherwise it would serve little useful purpose."

45. …. the Court of Appeal commented at [33]:

It is true that the member considered the landlord's decision-making process. But the important point is that he did not stop there. He also tested the outcome by reference to what the cost of cover was on the market. In other words, the landlord's decision-making process is not the only touchstone. The outcome was also "particularly important."

46. The Court of Appeal emphasised that in the course of the decision in *Forcelux* the Tribunal, when considering the cost of other works, made no criticism of the landlord's policies or procedures, but held nevertheless that the sum charged was in excess of an appropriate market rate. Lewison LJ continued, at [37]:

"In my judgment, therefore, whether costs have been reasonably incurred is not simply a question of process: it is also a question of outcome. "

47. This is in my judgment a crucial point. If, in determining whether a cost has been "reasonably incurred", a tribunal is restricted to an examination of whether the landlord has acted rationally, section 19 will have little or no impact for the reasons identified by the Court of Appeal in *Waaler*. I agree with the Court of Appeal that this cannot have been the intention of Parliament when it enacted section 19 as it would add nothing to the protection of the tenant that existed previously. It must follow that the tribunal is required to go beyond the issue of the rationality of the landlord's decision-making and to consider in addition whether the sum being charged is, in all the circumstances, a reasonable charge. It is, as the Lands Tribunal identified in Forcelux, necessarily a two-stage test.

48. Context is, as always, everything, and every decision will be based upon its own facts. It will not be necessary for the landlord to show that the insurance premium sought to be recovered from the tenant is the lowest that can be obtained in the market. However, the Tribunal must be satisfied that the charge in question was reasonably incurred. In doing so, it must consider the terms of the lease and the potential liabilities that are to be insured against. It will require the landlord to explain the process by which the particular policy and premium have been selected, with reference to the steps taken to assess the current market. Tenants may, as happened in this case, place before the Tribunal such quotations as they have been able to obtain, but in doing so they must ensure that the policies are genuinely comparable (that they "compare like with like"), in the sense that the risks being covered properly reflect the risks being undertaken pursuant to the covenants contained in the lease.

49. It is open to any landlord with a number of properties to negotiate a block policy covering the entirety, or a significant part, of their portfolio. That occurred in Forcelux itself, and the landlord satisfied the Tribunal in that case that the charges had been reasonably incurred. It is however necessary for the landlord to satisfy the Tribunal that invocation of a block policy has not resulted in a substantially higher premium that has been passed on to the tenants of a particular building without any significant compensating advantages to them."

45 That concludes the citation from the judgment of Judge Stuart Bridge.

46 I refer also to the current edition of Woodfall on Landlord and Tenant which says at [7.193]

"Where the issue is whether the cost of insurance has been reasonably incurred, it will not be necessary for the landlord to show that the insurance premium is the lowest that can be obtained in the market, but the Tribunal must be satisfied that the charge in question was reasonably incurred, and in doing so, it must consider the terms of the lease and the potential liabilities that are to be insured against; it will require the landlord to explain the process by which the particular policy and premium have been selected, with reference to the steps taken to assess the current market; and whilst it is open to any landlord with a number of properties to negotiate a block policy covering the entirety, or a significant part, of their portfolio, it is necessary to satisfy the Tribunal that invocation of a block policy has not resulted in a substantially higher premium that has been passed on to the tenants of a particular building without any significant compensating advantages to them. Where considerably lower premiums for similar protection could have been obtained from other insurers on the open market, it was held that the insurance premiums charged by the landlord were excessive, and therefore that the landlord had failed to satisfy the tribunal that the amounts charged to the tenants were reasonably incurred. "

47 Accordingly, it is the task of the Tribunal to consider both the process and the outcome in relation to the agreement of the insurance premiums in dispute. To that the Tribunal now turns, bearing in mind that it is for the respondent to prove the reasonableness of the sums claimed.

Discussion

48 The Tribunal notes Mr Kelly's assertion that the insurance policy for the premises in this case is not a block policy under which cover is provided for a number of properties. In a block policy, as Mr Kelly describes it, the claims experience on one property affects the premium rates on other properties within the block portfolio. However, the Respondent does ensure all its properties through PIA. All flats in each property are insured with the same insurer.

49 Reading the evidence of Mr Kelly, the Tribunal noted that his comments on the first set of quotations obtained by the Applicant criticised the quotations on a variety of grounds, not all of which were of any real weight. Criticisms, which did not advance the case, were:

1. the freeholder's address was wrongly stated and no copy of the proposal form was provided;

2. the proposal form was not provided;

3. there was no evidence to suggest the policy was a commercial policy;

4. public liability insurance is limited to £ 5,000,000 (when there was no requirement for public liability insurance in the lease);

5. the complaint that the freeholder could not confirm certain factual matters listed in the Ageas quotation when no doubt at least some of those facts could be established if the Respondent so wished; and

6. the name of the proposer was not that of the Respondent.

50 Mr Kelly's Appendix A raised various questions which it did not answer. Mr Kelly stated that PIA prepares a schedule covering 5 years' claims history but did not state if that is the schedule he produced or some other document.

51 Mr Kelly explained what happens if the current insurer does not offer acceptable terms without explaining what might be acceptable.

52 Critically, the Respondent seems to have been wholly reactive as to the choice of insurer. It was only in 2015 when the then insurer declined to continue insurance that a new insurer was found by a process that Mr Kelly does not describe

53 Mr Kelly commented in paragraph 5 of Appendix A on testing the market. However, Mr Kelly does not explain how the market was tested, how the insurers who were approached in 2014 and 2016 were selected, what thought was given to approaching other insurers and what if anything was done in that regard ?

54 Mr Kelly then relies on the two emails from brokers as evidence of the market testing said to have occurred this year. The Tribunal has sought to apply the standards applied by Mr Kelly to the evidence of the quotations obtained by the Applicant. By those standards, the evidence produced by Mr Kelly is, insufficient to satisfy the Tribunal that, on the balance of probabilities, the process by which the insurance cover was procured was a reasonable process. There is simply insufficient evidence to support the proposition that it was more likely than not that the Respondent, through its agents, had taken reasonable steps to obtain a better deal, if not the best deal, for the tenants of the block.

55 The Tribunal now turns to the outcomes.

56 .The premium agreed in November 2019 was £ 4,012.29. The most expensive of the second tranche of quotations obtained by the

Applicant in September 2020 was £2678.69. That substantial difference suggests that it is more likely than not that the premium proposed by the actual insurer were greater than they might have been had the Respondent tested the market to a reasonable extent.

57 The next issue is what order the Tribunal ought to make. The only evidence concerning premium levels is in respect of the year to November 2020 from the Respondent and for cover beginning in Autumn 2020 from the Applicant.

58 The Respondent did not suggest that any amounts had been agreed by the Applicant or admitted by her. The fact of payment does not mean that the Applicant is to be taken as having agreed or admitted any matters. Therefore, the Tribunal has power to determine what was payable reasonably for the insurance premium for prior years. However, there is little evidence available on which to base a decision.

59 In her application, the Applicant assessed an overpayment and then sought to apply the same figure to prior years. The Tribunal does not accept that approach. Premium rates may stay static from one year to the next or they may fluctuate. The Tribunal needs evidence on which to make a finding and that evidence, prior to the 2019 insurance year is not available.

60 It is a reasonable inference that the difference between the actual premium for this year and the quotes obtained by the Applicant this Autumn are the best guide to a reasonable amount for the insurance. The difference, precisely, is £1,333.60, For the insurance year 2019, it is reasonable to round that figure to £1331 as the reduction necessary to achieve a reasonable amount. This equates to a £ 121 reduction to the benefit of the Applicant.

61 The Tribunal does not consider that it can make any reliable assessment in respect of prior years.

62 What this application has disclosed is that the Respondent must, going forwards, take all reasonable steps in terms of its processes and outcomes to achieve insurance premiums that are reasonable in terms of the Landlord and Tenant Act 1985.

63 The Tribunal turns to the Applicant's application under section 20C for an order that the Respondent's cost of the proceedings are not to be included in any service charge payable by the Applicant under the lease. The lease in clauses 2(c) and 3(3) contain basic service charge provisions. The Tribunal determines that as the Respondent's claim was for insurance premiums in excess of what is reasonable, the Tribunal should make such an order. For the same reason, the Tribunal orders under paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002 that any liability to pay a charge in respect of litigation costs under the lease be extinguished.

64 **Accordingly, the Applicant's application to the Tribunal is allowed to the extent stated.**

Rights of APPEAL

1 A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.