

**Southern Rent Assessment Panel and Leasehold Valuation Tribunal**

**Case No. CHI/00ML/LIS/2009/0034**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL  
SECTIONS 27A & 20C of the LANDLORD AND TENANT ACT 1985**

**Property:** 6 Upper Lewes Road, Brighton BN2 3FJ

**Applicant:** Mr D Saxby (tenant)

**Respondent:** Mr M Larson (landlord)  
Represented by William Sturges & Co, Solicitors

**Application:** 13 April 2009

**Directions:** 29 April 2009

**Consideration:** 09 September 2009

**Decision:** 25 September 2009

**Members of the Leasehold Valuation Tribunal**

Ms J A Talbot MA  
Mr R Wilkey FRICS

**Summary of the tribunal's decision**

Mr Saxby is liable under the terms of the lease to contribute one third of the cost insurance expended by the landlord. For the years in question – ending 23 June 2005, 2006, 2007 and 2008 – those costs were reasonably incurred. Mr Saxby is liable to pay immediately to Mr Larson the sum of £1,038.96 in respect of his one third share of the insurance costs.

**Case No. CHI/00ML/LIS/2009/0034**

**6 Upper Lewes Road, Brighton BN2 3FJ**

### **Application**

1. This was an application made on 13 April 2009 by the tenant, Mr D Saxby, for a determination of service charges payable in respect of the buildings insurance premium for the accounting years ending 23 June 2005, 2006, 2007 and 2008.
2. Directions were issued by the Tribunal on 29 April 2009, proposing that the matter should be dealt with on the papers without an oral hearing or inspection. Neither party requested a hearing. Accordingly, the matter was determined by a tribunal on the consideration of documents.
3. The Directions provided that the respondent should provide all documents relating to insurance for the years in issue, for the applicant to produce a statement of case and for the respondent to provide a statement in reply if he opposed the application. Both parties complied with the Directions.

### **Lease**

4. The tribunal was provided with a copy of the lease of the garden flat, 6 Upper Lewes Road, Brighton, dated 21 July 1983 for a term of 99 years from 29 September 1982 at a ground rent of £50 and rising thereafter.
5. Insofar as is material to the application, the lease contains the following covenants by the tenant at Clause 2(17)::

*to keep the Lessor indemnified from and against one third of all costs charges and expenses incurred by the Lessor in carrying out obligations under his covenant contained in Clause 3 hereof or otherwise in managing the property.*

6. The landlord is obliged under Clause 5(3)(i) *to insure the property and keep it insured against loss or damage by fire and other such risks as are included in a comprehensive policy with an insurance office of the Lessor's choice to an amount equal to the full replacement value".*

### **Consideration**

7. The matter came before the LVT on 9 September 2009. The tribunal carefully considered the written evidence and submissions from both parties.
8. Mr Saxby was at all material times the lessee of the ground floor flat at 6 Upper Lewes Road. The property comprised three flats with each tenant liable to contribute one third of the cost of the insurance by way of service charges under Clause 2(17) of the lease.
9. Mr Larson arranged the insurance for the property with Royal Sun Alliance. Copies of the renewal notices for the years 2005 to 2009 were provided showing a renewal date of 14 May each year. The building insured was shown as 6 Upper Lewes Road. The sum insured on the renewal notice of 14 May 2005 was £279,302 and this increased each year according to a stated percentage increase for index linking. It is

not known whether or when the property was professionally valued for insurance purposes or whether there was a claims history.

10. The insurance premiums for the years in question, as shown in the annual accounts to 23 June each year, along with Mr Saxby's one third share, were as follows:

Year ending 23 June	premium	one third share
2005	£709.40	£236.48
2006	£765.44	£255.15
2007	£803.72	£267.91
2008	£838.28	£279.43

11. Mr Saxby's case was that the insurance premiums were unreasonably high and that he had queried the cost of insurance over several years without receiving a satisfactory reply from either Mr Larson or his managing agents, Port Hall Property Management Limited.
12. Mr Saxby did not give any specific or detailed reasons why he objected to the landlord's insurers apart from the fact that he thought he could obtain insurance cheaper elsewhere. He produced a letter dated 4 October 2007 from TCPM Limited, a local property management firm, stating that they could insure the property through a comprehensive policy with Allianz Cornhill in the sum of £500,000 at a premium of £630 (£600 plus £30 IPT). The cover was stated to include employer's liability and loss of rent at 30% of the sum insured. It is not known how the proposed sum insured was arrived at.
13. The landlord's case was presented in an unsigned, undated and unattributed statement of case. This was highly unsatisfactory, particularly as it was presumably prepared by solicitors William Sturges & Co. However, the tribunal inferred that this document was intended to be a statement by or on behalf of Mr Larson, as it referred to "my managing agents, Port Hall Property Management" and "my firm" having an account with Royal Sun Alliance.
14. On that assumption, Mr Larson argued that even though Mr Saxby had obtained a cheaper alternative quote, the premium was only one factor to be taken into account by a landlord when arranging insurance. Other factors included the insurer's reputation and financial soundness, continuity of cover, future premiums, method of dealing with claims, the relationship between the landlord and the insurer, and the availability of credit. As he had a long-term relationship with Royal Sun Alliance he was given flexibility in delayed premium payments, which had been necessary due to late service charge payments by Mr Saxby.
15. Mr Larson considered that Royal Sun Alliance offered a competitive premium for this property. The cover was adequate and summarized in the policy document which had been disclosed. He further contended that although other insurers might give a competitive quote for the first year in order to attract new business, it was likely that premiums would substantially increase in subsequent years. He did not think a landlord was obliged to shop around each year to obtain the cheapest premium, or to trawl the internet for an insurer offering the most attractive terms at the renewal date.
16. Mr Larson stated that the specimen policy document provided by Allianz Cornhill showed that the cover was not appropriate for the property. It was a "property owners" policy and required notice if any part of the property became vacant or

unoccupied and if any occupier had criminal convictions. As Mr Saxby's flat was sub-let this was an additional risk for which a higher premium might be charged.

### **Decision**

17. The tribunal had regard to all the written evidence. It was clear that Mr Saxby was liable under the terms of the lease to contribute one third of the cost incurred by the landlord in insuring the property. The tribunal was satisfied that for the period in question the landlord had effected adequate insurance cover in accordance with his obligations under Clause 5(3)(i). The premiums for the years in issue were as set out in paragraph 10 above and reflected in the annual accounts as a cost incurred by Mr Larson. There was no dispute about the figures.
18. The tribunal was further satisfied, from its own knowledge and experience, that the insurance premiums were reasonable and within the market range for a property of this type and location. In particular, it noted that the sum insured, and the premium, had increased on an index-linked basis, and that the price was £2.74 per £1,000 insured cover. This was within the usual and acceptable range of £1 – 3 per £1,000, albeit on the high side of that range.
19. The tribunal accepted that premium payments are not excessive or unreasonably incurred simply because they are not the cheapest. There is a range of reasonable premiums available to any landlord and he cannot be faulted because he has not selected the cheapest available. He can choose his insurer provided he acts reasonably in the normal course of business. The tribunal broadly accepted Mr Larson's submissions on the additional factors to be taken into account by a landlord.
20. That said, the tribunal did not altogether agree with Mr Larson's somewhat glib assertion that a landlord cannot be expected to "shop around" or "trawl the internet". In fact, a landlord can reasonably be expected to negotiate at arm's length in an open market to ensure that the premium he is paying for the level of cover is competitive, perhaps by using a broker to test the market periodically, or to obtain regular valuations on the sum insured.
21. The weakness of Mr Saxby's case was that his alternative quote was out of date, it was not known on what basis the sum insured was arrived at, and the specimen policy terms from Allianz Cornhill suggested that the cover was not on a like-for-like basis. Some of its requirements, as pointed out by Mr Larson, were more onerous. Also, the inclusion of loss of rent cover and employer's liability suggested to the tribunal that the policy was aimed at commercial occupancy rather than a converted residential property.

### **Determination**

For each and every reason given above, the tribunal determines that the following sums are payable immediately by Mr Saxby to Mr Larson in respect of his one third contribution towards the cost of buildings insurance reasonably incurred by the landlord:

Year ending 23 June 2005:	£236.48
Year ending 23 June 2006:	£255.15
Year ending 23 June 2007:	£267.91
Year ending 23 June 2008:	<u>£279.43</u>
Total:	£1,275.45

## **Section 20C**

Mr Saxby sought an order pursuant to Section 20C of the 1985 Act that the costs incurred by the landlord in connection with the proceedings before the tribunal should not be regarded as relevant costs to be taken into account in determining the amount of the service charge payable by the tenant. The Act provides that the Tribunal may make such order on the application as it considers just and equitable in the circumstances. As Mr Saxby has not succeeded on any aspect of this application, the tribunal declined to grant the order sought.

**Dated 25 September 2009**

**Ms J A Talbot  
Chairman**

A handwritten signature in black ink, appearing to read 'J Talbot', written in a cursive style.