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/45UH/LSC/2009/0052**
Property:	**21 Shirley Close Worthing West Sussex BN14 9BA**
Applicants:	**Mr. and Mrs. Ramsey, Lisa Hook, Timothy Pettet, Paci Barbara, Amie Smithers, Mrs. Little**
Respondent:	**Alonaville Limited**
Appearances for the Applicants:	**Mrs. Ramsey**
Appearances for the Respondent:	**Mr Gaty managing Agent Mr Mandell FRICS**
Date of Inspection /Hearing	**21st July 2009**
Tribunal:	**Mr R T A Wilson LLB (Lawyer Chairman) Mr B Simms FRICSMCIArb (Valuer Member) Ms J Dalal (Lay Member)**
Date of the Tribunal's Decision:	**7th August 2009**

THE APPLICATION

The applications made in this matter are as follows;

1. For a determination pursuant to section 27A of the Act of the Applicants liability to pay service charge in respect of insurance premiums for the years 2002-2009 inclusive, and

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

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

DECISION IN SUMMARY

4. The Tribunal determines, for the reasons set out below, that the amounts charged by the Respondents for insurance in each of the years 2002-2009 inclusive were reasonably incurred and are payable in full.

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

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

JURISDICTION

Section 27A of the 1985 Act

7. 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.

8. 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

9. The Tribunal had a copy of the lease relating it to 21 Shirley Close, Worthing, West Sussex. The lease is dated 11th August 1988 and is for a term of 99 years from 24th June 1984. The initial annual rental is £50 rising to £100 after the first 25 years of the term.

10. By virtue of clause 6(A)(iii) of the lease the landlord is obliged to insure the building against loss or damage by fire lightning storm tempest flood, the escape of water explosion impact aircraft, or anything dropped therefrom, riot or civil commotion, and

such other reasonable risks and for such sums as the lessor shall in its absolute discretion think fit, including two years rent and all architects surveyors and other fees necessary in connection with the performance of this covenant in an insurance office of repute

11. By virtue of clause 4, the lessee covenants to pay the Maintenance Contribution, which is stated to be a proportion of the sums and categories of expenditure specified in the fourth schedule to the lease. The categories of expenditure include the insurance premiums incurred by the landlord in complying with its insurance covenant recited above

INSPECTION

12. The Tribunal inspected the property before the hearing. The property is contained within a development described in the lease of the subject property as 54 to 76 (even numbers) Shirley Drive and 1-12 and 14-29 Shirley Close as the same is comprised in Land Registry title number SX5832. The development comprises 10, two storey purpose built blocks of flats, plus associated garages. The Tribunal was told the development dated from the 1930s. The Tribunal briefly inspected the interior of flat 21, and was told that all the other flats in the development were similar in size. The Tribunal also walked around the exterior of the development and viewed each block, which were all of similar construction. The development is located in a residential area approximately 2 miles north of Worthing town centre on the south coast of England.

13. The interior configuration of each flat comprises of two bedrooms, reception room, kitchen, and bathroom and entrance foyer. The Tribunal was told that all of the flats have private gardens.

PRELIMINARIES / ISSUES IN DISPUTE.

14. The Tribunal had held a pretrial review of the case on the 24th April 2009 when it was established that the only issue in dispute apart from audit fees were the amount of insurance premiums charged by the Respondents in each of the years 2002-2009 inclusive.

15. Directions were given for the Applicants to file with the Tribunal and serve on the Respondent a statement of case setting out to their challenge and their reasons for doing so. The directions further provided for the Respondents to file with the Tribunal and serve their statement of reply on the Applicants with copies of all documents upon which they intended to rely.

16. At the hearing, it was established that the Respondents had failed to comply with the directions as they had failed to serve their reply or any of the documents on which they intended to rely upon the Applicants. As a result, the Applicants contended that she had not had sufficient time to obtain comparable insurance quotations. In the time available she had obtained only one preliminary quotation, which he had just received. She invited the Tribunal to accept this evidence out of time. The Tribunal directed that the Respondents first see this evidence and let the Tribunal know how much time they required to evaluate the contents. After a short while the Respondents indicated to the Tribunal that they did not require an adjournment of the hearing and were in a position to challenge the evidence without the need of further time. In these circumstances the

Tribunal decided to accept the documentation and invited Mrs. Ripley to present her case.

THE HEARING

17. Mrs. Ripley opened her case by informing the Tribunal that her sole concern consisted of the insurance premiums for the years 2002 to 2009 inclusive. She asserted in effect that this was a simple case of over charging.

18. In support of this contention, she produced a faxed letter from Anchor Insurance Services Ltd her brokers. Attached to this letter was an e mail from Katie Jeffryes to Adam Beasley of Anchor Insurance Services Limited stating the following

> *"I can confirm a quote as follows*
> *£3,679,944BDV*
> *Premium of £3,863.94 Inc ipt*
> *This has been quoted with AXA*
> *Should this be of interest to the client, please let me know and I will get docs issued.*
> *Thanks*
> *Katie"*

19. Mrs. Ramsey told the Tribunal that she had no time to obtain any other quotations, because in effect the Respondents had failed to comply with the directions. She contended that the Respondents had deliberately ignored the directions in an attempt to hamper her attempts to provide comparable quotations.

20. In cross examination she confirmed that in support of her request for the quotation mentioned above, she had provided her broker with all the insurance documents, that she had received from the Tribunal. These documents included a copy of the insurance policy maintained by the landlords, insurance schedules for each of the years in challenge, copies of service charge demands that she received and also the claims record. She maintained that her brokers had all the information that they needed, to provide a comparable quotation.

21. Mrs. Ramsey reiterated that over the years the landlords had been obstructive in providing any information regarding insurance, or repairs. When she had queried audit fees with them, it was finally established that there had been a wrong posting of the audit fee for 2008/09 as a result of which audit charges for another property had been wrongly debited to the accounts for this property. Mrs. Ramsey expressed the hope that the audit fees each of the other years in question would be credited back to the service charge account for the development.

THE RESPONDENTS CASE

22. Mr Mandell opened the case for the Respondents by informing the Tribunal that he intended to divide his submissions into 2 parts. Firstly, he would deal with how the total insurance premium was divided between the 40 units, in other words he would explain the percentages applied to each lessee. Secondly he would address the cost of the premiums.

23. In relation to percentages he reminded the Tribunal that there were 40 flats in total. 28 flats in Shirley Close, and 12 flats in Shirley Drive. The 28 flats in Shirley Close paid 71.27% of the total premium whereas the 12 flats in Shirley Drive paid 28.73% of the total premium. This split had been based on ratable values of all the flats in the development and for the last 20 years have been applied without challenge.

24. Mrs. Ramsey paid 3.48% of 71.27% of the total. 3.48% multiplied by 28 flats equated to a total of 97.44%. This left a deficit of 2.56%, which was apportioned to the garages on the development. He was not quite sure how this split had come about but he presumed that the apportionment to the garages was also based on their ratable value.

25. Mr. Mandell reminded the Tribunal that this apportionment of the total premium was strictly in accordance with the terms of the leases, which provided for apportionment of the service charge to be calculated by reference to ratable values.

26. As to the insurance premiums themselves, he stated that his clients were a large property holding corporate client, which owned a substantial number of properties in the UK, both commercial and residential. His clients had formed a close working relationship with their brokers Reich Insurance and they were retained to place insurance cover for the entire portfolio. In this way economies of scale could be achieved.

27. His brokers recommended AXA as being insurers of repute and of considerable size. The insurance had been placed with AXA for a number of years because they were keen to retain the business and gave extremely favourable terms.

28. Mr. Mandell confirmed that each year their brokers were instructed to go out to tender to ensure that the AXA remained competitive. Mr. Mandell was satisfied that the insurance premiums paid to AXA were competitive and he confirmed that neither the freehold company nor any of its subsidiaries or connected persons took any commission. In these circumstances he believed that the insurance was competitively obtained and therefore should be recoverable in full.

29. Mr. Mandell then told the Tribunal that he did not accept that the quotation put forward by Mrs. Ripley was a comparable quotation. There were a number of reasons for this;

    i) Firstly the sum insured was too low. The amount of cover quoted for was just under £3.7 million, which was considerably lower than the figure required bearing in mind the re-instatement cost assessment report, which the freeholders had obtained last year. This report had been obtained at the request of AXA and produced a base figure of £3.7 million. However, to this figure it was necessary to add 17.5% to allow for the effects of VAT. It was also necessary to make a further addition to allow for the expected inflation in building costs during the period of insurance and during a period until the reinstatement could be completed. When these two adjustments had been made the minimum cover required by the insurance company was just under £5.9 million.

    ii) Secondly, during cross examination, he had established that neither the Applicants broker nor the proposed insurers had conducted a comprehensive inspection of the properties. In these circumstances he was not satisfied that the quotation would stand up as and when a proposal form was submitted.

iii) Thirdly he suspected that the broker did not have the correct tenant profile and this would make a difference to the premium quoted.

iv) Finally, he questioned the validity of the e-mail itself. This was because the excess was stated to be £100, which was very low. In his opinion no insurers would nowadays look at claims, which were less than £300.

30. For all of these reasons he contended that the alternative quotation put forward by the applicant was not comparable and therefore should be discounted by the Tribunal.

31. He reminded the Tribunal that Mrs. Ripley had not challenged the percentage of premium attributed to each flat and in essence her complaint centered solely about the cost.

32. He contended that the Mrs. Ripley had led no credible evidence proving that the premiums paid by the landlord were unreasonable. In these circumstances 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.

ANALYSIS AND DETERMINATION

33. There is no dispute between the parties as to the standing of the insurers preferred by the Respondents. Neither have the Applicants led any evidence questioning the way in which the premium is apportioned between each lessee in the development. The question for determination therefore is whether the insurance effected by the Respondents over the challenged years has involved the payment of premiums which have been unreasonably incurred. On the one hand the Applicants argue that this question should be answered in the affirmative because, comparable cover is available at a significantly lower cost. On the other hand, the Respondent 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.

34. We accept the Respondents submissions that they prefer, and in effect have a right, to place all their insurance via one insurance broker and that they are able to obtain favourable terms by giving repeated annual business to one insurance company.

35. The Tribunal also noted that each year the Respondents brokers carry out enquiries to satisfy themselves that AXA quote competitively.

36. The Tribunal also noted the Respondents submissions in respect of the alternative quotation put forward by the Applicants. This solitary quotation has only very recently been obtained by the Applicants and is contained in an e-mail with very little supporting information. However the Tribunal accepts that the failure on the part of the Respondents to comply with the directions and send copies of their documents to Mrs. Ripley has put her at a disadvantage and provides an explanation as to why she had only been able to obtain one alternative quotation.

37. However despite these shortcomings the Tribunal felt bound to accept the evidence of Mr Mandell that the quotation obtained by the Applicant was not comparable in so far as the amount insured was not sufficient. In coming to this conclusion the Tribunal had regard to the fact that on the advice of insurers a reinstatement cost assessment report was

obtained last year, which provided the basis on which to calculate the appropriate sum insured. The Tribunal also accepted the evidence of Mr. Mandell as to the adjustments that needed to be made to the base figure in the report. When applying these adjustments the appropriate figure amounted to approximately £5.9 million and not the reduced figure of £3.7 million. In the email adduced by Mrs. Ripley, the premium for £3.7 million cover is stated to be £3,863.94. As a rough guide, if one increases the cover on this quotation to the required level of £5.9 million the premium increases pro-rata to £6,161.00 which is broadly in line with the Respondents figure of £6,965.00.

38. Whilst the Tribunal could understand the Applicants frustration at the lack of communication by the Respondents, they were not persuaded that the premiums paid were unreasonable. The sum insured was supported by a recent reinstatement and cost assessment, and in the opinion of the Tribunal the premiums obtained were well within the range that the Tribunal would expect for a development of this kind. Indeed the premiums charged over the five year period have never exceeded £2 per £1000 of cover. Applying the Tribunal's collective knowledge and experience of the cost of insurance, the premiums under review at about £1.19 per £1,000 of cover are and always have been during the years in question at the lower end of what might be a range of premiums to be expected.

39. In arriving at its decision, the Tribunal bore in mind a line of similar cases, starting with *Berry Croft Management Company Limited and others v Sinclair Gardens (Kensington) Investments Ltd. 1977 EGLR 47.* In this case 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.

40. In this case we are satisfied that AXA are insurers of repute and we are also satisfied that the cover obtained by the landlords in each of the years under challenge was obtained in the open market and on reasonable rates. The Applicants led no evidence at all to challenge the premiums obtained in years 2002, 2003, 2004, 2005, 2006, 2007 and 2008 and in the absence of credible evidence in this respect the Tribunal is not minded to disturb the premiums charged by the Respondents in these years. For these reasons we determine that the insurance premiums for each of the years in question are recoverable, provided they have been lawfully demanded.

41. Mr Gaty the managing agent of the development was called to give evidence as to the manner in which the service charge for this development is demanded. His evidence proved to be less than satisfactory and was at times inaccurate, contradictory and unhelpful. When first shown a copy of a maintenance demand as contained in the Respondents bundle, Mr. Gaty confirmed that this was an accurate and complete copy of a service charge demand. The copy shown to him consisted of one page. When it was pointed out to him that the document did not contain the statutory information as required by Service Charges (Summary of Rights)(England) Regulations 2007, he contradicted his earlier evidence to say that the demands issued by his firm ran to two pages. A little later he changed his mind again and told the Tribunal that the demands ran to some 4 pages and contained all the necessary statutory information. However Mr. Gaty appeared vague as to what statute prescribed should be set out in demands. In these circumstances the Tribunal determines and that the insurance premiums for each of the

years in question will only become due as and when a demand containing all the statutory information is served on the Applicants.

SECTION 20C APPLICATION AND REIMBURSEMENT OF FEES

42. Both of these matters can be taken together as the Tribunal's considerations in relation to both 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.

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

44. However the Tribunal considered that the conduct of the Respondents had been less than exemplary. Mr. Gaty had held out to the Tribunal that his clients had fully complied with the directions when clearly they had not done so. The Respondents had failed to supply their statement of reply or their documents to the Applicants. As a result the Applicants were put at a disadvantage in obtaining alternative quotations. Further more the Tribunal considers that had the Respondents served their statement of reply on a timely basis, together with their documents, then it might have been the case that the Applicants would have been satisfied that the insurance premiums had been reasonably incurred and could have brought the proceedings to a halt. Instead they were left with having to seek alternative quotations very late in the day and by the time they received the Respondents written statement of reply there was in sufficient time for them to consider their position. The Tribunal was also concerned that the Respondents were not able to satisfy the Tribunal that they include the statutory information on service charge demands. 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 Act and it so orders. In effect this means that both parties will be responsible for their own costs.

45. 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.

Chairman _____

RTA Wilson LLB

Date 7th August 2009