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HM COURTS AND TRIBUNALS SERVICE

LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/24UD/LIS/2011/0070

Application: Sections 27A and 20C of the Landlord & Tenant Act 1985 as amended ('the 1985 Act')

Applicant/Leaseholder: Mrs Valerie Collis & Others

Respondent/Landlord: Childsbridge Properties Ltd

Building: 1-32 Kings Field, Bursledon, Southampton, SO31 8EN

Date of Application: 26 September 2011

Date of Hearing on Preliminary Issue and Directions: 27 March 2012

Date of Substantive Hearing: 17 September 2012

Venue: The Independent Tribunals Service, Barrack Block, Western Range, London Road, Southampton, SO15 2AH

Appearances for Applicant/Leaseholder: Mrs Valerie Collis, Mrs Shirley Smith, Mr Edward Cutler and Mr Frank Gizzi

Appearances for Respondent/Landlord: Mr S Boon of Eyre & Johnson, Managing Agents for the Respondent

Members of Tribunal: Mr N P Jutton BSc (Chairman), Mr P D Turner-Powell FRICS

Date of Tribunal's Reasons: 24 September 2012

1 **Introduction**

2 The Applicants apply under Section 27A to determine liability to pay and the reasonableness of buildings insurance premiums charged to them by the Respondent in relation to the Building, and for an Order pursuant to Section 20C of the 1985 Act that the Respondent's costs incurred in connection with these 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 Applicants.

3 At the hearing on 27 March 2012 it was agreed that the Tribunal was to address the reasonableness of the insurance premiums for the years ending 24 March 2004 to 24 March 2012 inclusive.

4 Further at the hearing on 27 March 2012, Mr Boon on behalf of the Respondent stated that in light of the provisions of a county court judgment dated 5 November 2004 that the Respondent could not and would not seek to recover costs incurred by the Respondent in relation to these proceedings.

5 **Documents**

6 The documents before the Tribunal were a bundle of documents, pages 1-142; references in these Reasons to page numbers are to page numbers in the bundle.

7 **The Inspection**

8 The Tribunal inspected the exterior of the Building on the morning of the hearing on 17 September 2012. None of the parties were present. The Building comprises 8 blocks each containing 4 maisonettes. Each block is of a brick elevation with concrete interlocking roof tiles which appear to have been built in the mid 1960s.

9 **The Law**

10 The statutory provisions primarily relevant to applications of this nature are to be found in Sections 18, 19, 27A and 20C of the Landlord and Tenant Act 1985 (The Act). They provide as follows:-

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.*

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 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 (1) *An application may be made to a leasehold valuation 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 a leasehold valuation 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*

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 leasehold valuation 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 –*

.....

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

(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.*

11 A copy of the lease, being the lease to No.12, appears at pages 1-14.

12 The relevant provisions are as follows:

a. *"TO HOLD ... PAYING by way of further or additional rent from time to time a proper proportion of the amount which the landlords may expend in effecting the insurance of the premises against loss or damage by fire accident storm and tempest or damage by aircraft or articles dropped therefrom or otherwise as hereinafter mentioned such*

last mentioned rent to be paid without any deduction on the half yearly day for payment of rent next ensuing after the expenditure thereof".

b. Clause 4 *"The tenant hereby covenants with the landlords as follows: (1) to pay the reserved rents on the days and in the manner aforesaid".*

c. Clause 7 *"The landlords hereby covenant with the Tenant as follows: (1) to insure and keep insured the said block of maisonettes and garages including the maisonette hereby demised and any building erected in connection with them during the term hereby granted against loss or damage by fire, accident, storm and tempest and damage by aircraft or articles dropped therefrom by means of a "Comprehensive" policy in an Insurance Office of repute to the full value thereof and to make all payments necessary for the above purpose within 10 days after the same shall respectively become payable and to produce to the tenant on demand the policy or policies of such insurance and the receipt for every such payment".*

13 **The Applicants' Case**

14 Mrs Collis on behalf of the Applicants referred to a number of insurance quotations which appeared at pages 84-122 inclusive. She explained that each quotation had been obtained from the commercial department of the insurance company shown in each case. She stated that the Applicants had been advised by insurance companies and brokers whom they had approached that there was no need to include insurance cover for terrorism.

15 Mrs Collis referred to a letter from Mr Frank Chalstrey of 14 Kings Field at page 134. With that was a form of insurance schedule dated 9 November 2006 for a property at 5 Petworth Court, Petworth Road, Haslemere, Surrey (pages 135-137). Mrs Collis said this had been put forward at the request of Mr Chalstrey by way of comparison. She accepted that it related to a different property to the

Building and that Haslemere was probably a more expensive area in which to insure a property.

16 As to the other quotations obtained by the Applicants (at pages 84-122) Mrs Collis noted that some quotations referred to cover for a block of flats rather than a development of maisonettes in 8 different blocks but stated that she had spoken to the brokers in each case concerned and had been told for the purposes of producing a quotation, that the insurers would treat a block of flats in the same way as they would as a property comprising blocks of maisonettes such as the Building.

17 Mrs Collis accepted that the amount of the policy excesses would vary from insurance company to company.

18 Mrs Collis contended by reference to the quotations that the differential in the sums quoted to those which had been charged by the Respondent were quite considerable. She referred to a quotation from Higos Insurance Services Ltd at page 103-111 which she contended would equate to an insurance premium charge per property of around £98 per annum for the year ending March 2012 at most. That compared unfavourably with the figure demanded by the Respondent for the year ending March 2012 of £293.64 per property.

19 Mrs Collis accepted that a refund had been received against the premium paid for the year ending March 2012 of £62.50 per property.

20 Mrs Collis said that the insurance premium for the current year ending March 2013 was some £100 less than the previous year and that taken together with the refund received for the year ending March 2012 is £62.50 indicated that historically the premiums had been too high in the first place.

21 Mrs Collis said that each property at the building should not pay 1/32th of the total premium. They were of different sizes. Some were two bedroom and some were three bedroom maisonettes. It was unreasonable that every

property paid the same and that the smaller two bedroom property should pay less.

22 Mrs Collis did not accept, in response to a question from the Tribunal, that in those circumstances if the owners of two bedroom properties were to pay less that the owners of three bedroom properties would necessarily pay more.

23. Mrs Collis said the difficulty that the Applicants had in trying to obtain quotes for historic years was that the insurance companies would not produce quotes going back more than three years.

24 **The Respondent's Case**

25 Mr Boon on behalf of the Respondent referred to the Respondent's statement of case at pages 138-142 and asked if that could be taken as read.

26 With reference to the case of **Forcelux v Sweetman** (2001) 2 EGLR 173, Mr Boon said that it was not appropriate to embark upon the process which the Applicants had of producing quotations for insurance just in relation to the Building as that was not to compare like with like because the insurance arranged by the Respondent was in the form of a block policy covering a large number of properties.

27 Mr Boon contended that as in the case of Forcelux, the Applicants were in a different category to a commercial landlord. That as such, the quotes obtained by the Applicants were not on a like for like basis even if the cover may be comparable.

28 Mr Boon said that he appreciated that the Applicants had approached insurance brokers on the basis that the lessor was a commercial landlord but that the quotations obtained by the Applicants were not direct comparisons.

29 Mr Boon contended that the quotations obtained by the Applicants were snapshots in time. It was not appropriate to apply those quotations to periods in time to which they did not relate. For example, he suggested it was not

appropriate to point to a quotation obtained in February 2011 and say that was evidence of what premium might have been charged in 2004.

30 In the circumstances, Mr Boon submitted that the Applicants had produced no evidence in the form of comparables for the years ending March 2004 to March 2011.

31 He said that quotations obtained in February 2011 and March 2011 (which appeared at pages 98 and 103 respectively) if they could be regarded as comparable evidence at all (which he did not accept), could only be comparable evidence in relation to the period ending March 2012.

32 Similarly Mr Boon said that the quotation that appeared at page 84 which was obtained in April 2012 could only be regarded as a quotation in respect of the year ending March 2013.

33 Mr Boon said the same point applied to the quotes that appeared at pages 88, 93, 112 and 116.

34 As to the letter from Mr Chalstrey at page 134 and the final paragraph in that letter which makes reference to reductions in premiums of £191.37, Mr Boon explained that the reduction related to the year ending March 2013 and therefore was not relevant as far as this application was concerned.

35 That the insurance schedule attached to Mr Chalstrey's letter at page 135 was 'what it was'. It was an insurance schedule in relation to a different property, a property in Haslemere.

36 Mr Boon referred to the two quotations from Higos Insurance Services Ltd obtained by the Applicants which appear at pages 98 and 103. He stated that the Applicants' statement of case stated that a more realistic cost per property for the year ending March 2012 would be between £90 and £115. Mr Boon said that was not based on the evidence, it was as he put it, wishful thinking. It was not supported by any evidence. Further, it ignored the Applicants' own evidence. The Applicants were relying upon the Higos quote at page 103 whilst

ignoring that at page 98 which was for a substantially greater sum. Indeed if the premium stated by Higos at page 98 was divided by 32, that produced a figure per property of over £204. Even if one were to ignore, he contended, that the quotation was not on a like for like basis, it was not substantially different to the premium charged for the year ending March 2012.

37 That the figure for the year ending March 2012 of £231.14 per property (after the rebate had been taken into account) compared favourably with the said figure of £204.

38 In response to a question from the Tribunal, Mr Boon said he understood that the rebate for the year ending March 2012 had been prompted by the insurers considering the alternative quotes that had been obtained by the Applicants and which had been submitted to the insurers by the brokers.

39 Mr Boon did not agree that the amount payable per property should be apportioned by reference to the size of the property or the number of bedrooms. He referred to the wording in the lease (at page 4) which provided for the lessee to pay *"a proper proportion"* of the amount expended by the lessor in effecting insurance. In his submission a *"proper proportion"* was 1/32th. In Mr Boon's submission the words *"proper proportion"* do not have a technical meaning. It was in his view a general and vague term sufficient to cover a straightforward equal division of the insurance premium between the properties. Further that if it were the case that two bedroom properties paid less than three bedroom, then it followed that three bedroom properties would have to pay more.

40 As to the additional premium that was being demanded for terrorism cover, Mr Boon accepted that there was no direct reference to terrorism cover in the lease. He referred to clause 7(1) of the lease (page 9) which provided for the Respondent to insure the building *"against loss or damage by fire, accident, storm and tempest and damage by aircraft or articles dropped therefrom by*

means of a 'comprehensive' policy in an insurance office of repute ...". He submitted that the word *"comprehensive"* did not have a technical meaning. Given its ordinary meaning, it was in his view intended to cover every insured risk which might normally be expected to be covered including terrorism. Mr Boon made the point that the lease did not specify the need for cover for subsidence but nonetheless that had been covered and indeed had been subject to a successful insurance claim.

41 Mr Boon also referred to the wording in the lease at page 4 which provided for the lessee to pay by way of further or additional rent a proper proportion of the sums which the Respondent may expend in effecting insurance of the risks listed, *"... or otherwise as hereinafter mentioned ...".* In Mr Boon's submission those words were in effect a reference to clause 7(1) at page 9 to the term *"comprehensive".*

42 In response to questions from the Tribunal, Mr Boon explained why the Respondent insured the Building under the terms of a block policy. That the Respondent has a significant number of other properties, he believed around 12, and that in the circumstances for the purpose of administration a block policy was the appropriate method for a lessor to insure a portfolio of that size.

43 He explained that the block policy was arranged by an insurance intermediary which was FSA registered. That was a company called Newby Associates Ltd. That company gathered the particulars of the Respondent's properties in its portfolio and put those to insurance brokers who were currently a company called Residents Insurance Services. That the brokers then tested the insurance market before the policy was arranged. He accepted upon being questioned that there was no evidence before the Tribunal from the brokers to that effect.

44 Mr Cutler on behalf of the Applicants felt it was noteworthy that the insurance premium had reduced for the year ending March 2012 following a change of

brokers to Residents Insurance Services in place of the former brokers Jardine Lloyd Thompson. Mr Cutler suggested that perhaps that was an indication that Jardine Lloyd Thompson were not as good at their job as Residents Insurance Services.

45 Mr Boon said he did not know why the brokers had been changed.

46 The Respondent's case was that the lease did no more than require it to insure the property with an insurance office of repute. That is what the Respondent had done. That it had done so in the normal course of its business. That it had done so competitively at normal market rates albeit for a block policy. That the Respondent was not required to shop around for the lowest premium and it was sufficient for the Respondent to deal with just one underwriter. That there was no special feature of the transaction which took the Respondent outside of its normal course of business. That in the Respondents submission the question for the Tribunal to address was not was insurance obtained the cheapest available, but was the cost of insurance reasonably incurred?

47 **The Tribunal's Decision**

48 The Tribunal agrees with the Respondent that the relevant question that the Tribunal must ask itself by reference to Section 19 of the 1985 Act is not whether the cost of insurance was *"reasonable"* or the cheapest available, but whether the costs were *"reasonably incurred"*. (**Forcelux v Sweetman** (2001) 2 EGLR 173).

49 In addressing that question, the Tribunal must ask itself whether the Respondent is seeking to recover from the Applicants a figure in excess of the premium which it agreed to pay in the ordinary course of business between itself and the insurers. Were the Respondent's actions in arranging insurance through a block policy appropriate and properly effected in accordance with the terms of the lease? If the rates charged appear high in comparison with other rates available on a like for like basis in the insurance market at the time, was

there evidence of a special feature of the transaction which took it outside of the Respondents normal course of business? (**Havenridge Ltd v Boston Dyers Ltd** (1994) 49 EGLR 111 and **Berrycroft Management Co Ltd v Sinclair Gardens Investments (Kensington) Ltd** (1997) 1 EGLR 47)

50 The Tribunal was satisfied that it was reasonable for a lessor who has a portfolio of around 12 properties, to arrange insurance by means of a block policy. The lease requires the Respondent to insure in an insurance office of repute (clause 7(1)).

51 The Tribunal was satisfied that the Respondent's block policy was competitively obtained through the offices of its insurance brokers, although it would have preferred to have heard from the brokers.

52 There was no evidence before the Tribunal that there was a special feature of the arrangements made by the Respondent for insurance which took the transaction outside of its normal course of business.

53 Further, the Tribunal accepts the Respondent's submission that the quotes obtained by the Applicants were not on a like for like basis. That although the cover contained in the quotes may have been comparable (at least for the year ending March 2012) the Applicants were in a different category to a commercial landlord and as such a direct comparison with the Respondent's block policy was not appropriate.

54 The Tribunal does not accept the Respondent's submission that the lease allows the Respondent to recover the cost of additional insurance premiums in respect of terrorism cover from the Applicants. There is no direct reference to terrorism cover in the lease. Mr Boon submits that the use of the term *"comprehensive"* at clause 7(1) of the lease is sufficient to allow the Respondent to include cover for terrorism in the policy that it arranges and that further, that such wording is in effect incorporated into the tenant's covenant to

contribute by reason of the wording which appears at page 4 (*or otherwise as hereinafter mentioned*).

55 There is no definition of the term *"comprehensive"* in the lease. There was no evidence before the Tribunal that the term *"comprehensive"* included or would normally include cover in respect of terrorism.

56 Further, had the draftsman of the lease intended to include terrorism as an insured risk, then he could have provided so or alternatively added to the list of insured risks words such as *"or such other risks as the landlords shall from time to time reasonably deem it prudent to insure"*, or similar wording.

57 That the Respondent's practice of dividing the total insurance premium for the Building equally between each property so that each lessee paid 1/32th of the total was not unreasonable. That although some properties may comprise three bedrooms and others two bedrooms, such an approach was not inequitable. That if the Respondent were to apportion the amount to be paid by each lessee by reference to the number of bedrooms or the size of each property, that may lead to a marginal reduction in the amount paid in respect of two bedroomed properties but there would be a corresponding marginal increase in the amount paid in respect of three bedroomed properties.

58 **Section 20C Application**

59 The Respondent confirmed at the hearing on 27 March 2012 that it would not seek to recover the costs that it incurred in relation to these proceedings from the Applicants by way of service charges. Further, there is in the view of the Tribunal no provision in the lease which would allow in any event the Respondent to recover such fees or costs from the Applicants. In the circumstances, the Tribunal determines that all or any of the costs incurred by the Respondent in connection with these 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 Applicants.

60 **Summary of the Tribunal's Findings**

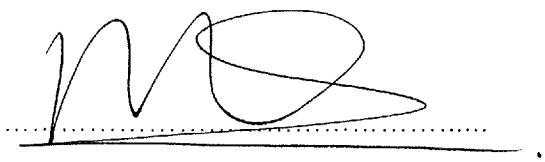
61 Save for the element of insurance premium relating to cover for terrorism, that the insurance premiums demanded by the Respondent for the years ending 24 March 2004 to 24 March 2012 inclusive were reasonably incurred and of a reasonable amount and are therefore payable by the Applicants.

62 The sums are:

Year ending 24 March 2004	£8,675.88
Year ending 24 March 2005	£9,044.61
Year ending 24 March 2006	£9,406.39
Year ending 24 March 2007	£9,806.16
Year ending 24 March 2008	£10,335.69
Year ending 24 March 2009	£10,749.12
Year ending 24 March 2010	£9,874.86
Year ending 24 March 2011	£9,874.86
Year ending 24 March 2012	£7,058.28

63 That all or any of the costs incurred by the Respondent in connection with these 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 Applicants.

Dated the 24th day of September 2012



N P Jutton (Chairman)

A Member of the Tribunal appointed by the Lord Chancellor