THE RESIDENTIAL PROPERTY TRUBUNAL SERVICE

THE SOUTHERN AREA RENT ASSESSMENT COMMITTEE AND LEASEHOLD VALUATION TRIBUNAL

STATEMENT OF REASONS FOR THE DECISION BY A COMMITTEE OF THE PANEL ON THE 1ST OCTOBER 2003

Case Number:	**CHI/43UL/NSP/2003/009**
Tribunal:-	
	Mr D Agnew, LLB, (Chairman) **Mr J H S Preston, JP FRICS** **Mr T W Sennett, MA FCIEH**
Property:	**Tudor Court, Old Station Way** **Godalming, Surrey**
Applicants:	**Mr D B Houghton and Mr G Marsh and Others**
First Respondent:	**Residents Management (No 55) Ltd**
Second Respondents:	**Mr and Mrs E A V Thompson**
Parties' representatives:	**Mr D M Lewis BSc MRICS for the Applicants and 1st Respondent** **Mr E A V Thompson LLB for the Second Respondents**
Inspection and Hearing Date:	**1st October 2003**

1. The Application

1.1 The Applicants are 9 of the 16 tenants who have long leases of one-bedroom flats arranged in two blocks of eight flats each, together known as Tudor Court, Old Station Way, Godalming, Surrey ("The Property").

1.2 The Lessor of the 16 flats is the First Respondent.

1.3 The Head Landlord is Mr and Mrs E A V Thompson, the Second Respondents, jointly.

1.4 The Applicants originally made an application under Section 19(2B) of the Landlord & Tenant Act 1985 ("the Act") for the Tribunal to consider whether insurance premiums "to be incurred" were reasonable.

1.5 After hearing representations from both Mr Lewis and Mr Thompson, the Tribunal was satisfied that the application, which is in respect of insurance premiums that had been incurred and paid by the Second Respondents in January 2002 and January 2003 respectively, should have been made under Section 19(2A) of the Act.

1.6 The Tribunal allowed Mr Lewis to submit a fresh application there and then and for the hearing to proceed on that basis. The Tribunal, having heard from Mr Thompson that he agreed that he would not be prejudiced by the amended application and that he too wished the matter to be disposed of without delay, agreed to proceed to hear the new application under Section 19(2A).

2. The leases

2.1 The headlease is dated 5th June 1986 and is between Premier Properties (Surrey) Limited (1) and Residents Management (No 55) Ltd (2).

2.2 The Second Respondents acquired the reversion in April 1990.

2.3 Clause 1 of the headlease provides, in addition to the ground rent: "SECONDLY by way of additional rent such gross sum or sums (disregarding any commission which may be deducted therefrom) which the lessor shall from time to time pay by way of premium in respect of insurance under its covenant in that behalf hereinafter contained such sum or sums to be paid on demand".

2.4 By Clause 3(ii) of the headlease the Lessor covenanted as follows:

"That subject to reimbursement by the tenant as aforesaid the Lessor will

(a) at all times during the term granted (unless such insurance shall be vitiated by any act or default of the Tenant) insure the property against loss of (sic) damage by fire to include two years' loss of rent Architects and Surveyors' fees storm lightning tempest flood civil aircraft and articles dropped therefrom including bursting pipes and overflowing of tanks and any other risks normally covered under a flat owner's policy to an amount equal to the full replacement value thereof and shall also take out and keep on foot a policy covering liability for injury to all persons on the Property and all

risks normally covered by Third Party Indemnity Insurance such Policy or Policies to be in the joint names of the Lessor and the Tenant with noting incorporated of all persons having any interest in the Property and to be in some office of repute to be determined by the Lessor and through the agency of the Lessor and the Lessor shall make all payments necessary for those purposes within seven days after the same become payable and shall produce to the Lessee on demand the Policy or Policies of such insurance and the receipt for every such payment .....".

2.5 The Tribunal was supplied with a copy of an underlease dated 17th November 1986 made between Residents Management (No 55) Limited (1), Premier Properties (Surrey) Limited (the Vendor) (2) and Marjorie Emily Louise Searle (3). The Tribunal was told that this underlease was typical of all the underleases of the various flats at Tudor Court.

2.6 By Clause 1 of the underlease there is reserved:

"AND SECONDLY a yearly sum (hereinafter called the insurance contribution) amounting to one-sixteenth of the sum or sums which the Lessor shall from time to time pay to the Vendor or its successor in title as Superior Lessor by way of premium for keeping the Property insured against loss or damage by fire and other risks under the covenant on the part of the Vendor in that behalf contained in the Lease such to be paid on demand".

3. The Property

3.1 The two small blocks of flats comprising Tudor Court were built in the 1980's. They are of two storeys and constructed of brick with a tiled roof. The windows are of stained wood and there is plastic guttering. They stand in a small garden and a tarmac parking area. The town centre of Goldaming is close by. The area is residential save that across the road from Tudor Court there is a builders' merchant's depot situated behind a wire mesh fence.

3.2 The Property was inspected from the outside by the Tribunal prior to the hearing. It appeared to be in good condition and there did not appear to the Tribunal to be anything which would suggest that insurance premiums for the Property would be unusually high.

4. The Hearing

4.1 Having accepted an amended application under Section 19(2A) of the Act and having decided to proceed with the hearing, the Tribunal dealt with some preliminary matters that were raised by Mr Thompson.

4.2 Mr Thompson pointed out that Mr Lewis was appearing on behalf of both the Applicants and the First Respondent and suggested that there was a conflict of interest between the two. The Tribunal acknowledged that there could be a conflict of interest between the Applicants and the First Respondent. The reality, however, was that the First Respondent simply passed on the liability to pay the insurance premium to the Applicants in toto and that although there is no privity of contract between them the real dispute is between the Applicants, who ultimately have to bear the cost of the insurance premium, and the Second Respondents who arrange the insurance. The Tribunal decided to allow Mr Lewis to continue to represent both the Applicants and the First Respondent, but would be alert to issues of conflict of interest should they arise.

4.3 The second preliminary point concerned the fact that on 20th November 2002 the issue of the reasonableness of insurance premium for the year 2002/3 had come before another Leasehold Valuation Tribunal. On that occasion the Applicant was Residents Management (No 55) Ltd and the Respondents were Mr and Mrs Thompson. On that occasion the Tribunal decided that it did not have jurisdiction to hear the application because the Applicant was not a tenant of a dwelling within Section 18 of the Act. However, in an attempt to be helpful to the parties that Tribunal decided to hear the evidence and to express an "informal opinion" as to whether the premium charged for 2002/3 was reasonably insured. It decided on the evidence and authorities before it that £900 would have been a reasonable figure and that the premium charged by the Head Landlord was excessive. As Mr Lewis in his submissions had not only referred to this earlier LVT informal opinion, but also had placed some reliance upon it and in places had referred to it as a decision of the Tribunal, Mr Thompson objected and submitted that it was only an informal opinion and was not binding. On this point the Tribunal made it clear that, whilst it noted the earlier Tribunal opinion, it would deal with the current application afresh. There was additional evidence and there were additional authorities before the Tribunal for its consideration. Consequently, the Tribunal would come to its own decision, unfettered by the informal opinion of the earlier Tribunal.

5. The Applicants' Evidence

5.1 Mr Lewis's case was as follows:-

(a) Prior to the renewal in January 2002, the Applicants and First Respondent had always paid insurance premiums on demand.

(b) For the year 2001-2 the insurance premium to Independent Insurance was £1,262.38.

(c) Independent Insurance ceased business in June 2001.

(d) A further premium was required to be paid by the Head Landlord to cover the period 22nd June 2001 to 18th January 2002 in the sum of £943.03 with Groupama Insurance Co Ltd. This was paid reluctantly as the First Respondent had obtained a "quotation" from NIG Skandia at £800, but the urgency of the situation led the First Respondent to pay.

(e) The insurance premium sought by the Second Respondents for the year 2002/3 was £1,625.91. (This was subsequently discovered to have been calculated incorrectly and was reduced to £1,583.71).

(f) Mr Lewis obtained "alternative quotations" from brokers J Nugent Debenham as follows:-

Norwich Union	£785.46
Avon Insurance Co	£1,155
Axa	£864.01
Flatsure	£736.31.

(g) Residents Management (No 55) Ltd applied to the Leasehold Valuation Tribunal to consider the reasonableness of the insurance premium sought for the year 2002/3 with the result as set out at paragraph 4.3 above.

(h) Following the Tribunal opinion dated 30 December 2002 the First Respondents sent a cheque for £900 to the Second Respondents in settlement of the demand for payment of insurance premium for 2002/3 but the cheque was returned. Mr Lewis pointed out to the Second Respondents at this time that the lease required the insurance to be taken out in the joint names of the First and Second Respondents whereas it was in fact taken out in the Second Respondents' name only.

(i) The Second Respondents through their broker sought a quotation for a stand alone policy in respect solely of Tudor Court as opposed to the existing block policy. The resulting figures were:

NIG	£1,178.19
Allianz Cornhill	£1,256.64
Sterling Insurance	£1,327.82

Mr Lewis submitted that these quotations showed that the premium sought by the Second Respondents was excessive and unreasonable. Although the Second Respondents offered to insure through NIG on a stand alone basis by letter dated 3rd

February 2003 this was made subject to 2 conditions: the first that it was accepted within 7 days and the second that the previous year's premium was paid in full. It was not possible, Mr Lewis claimed, to consult 16 sub-lessees within the 7 days' deadline and in any event the condition that the previous year's premium of £1,583.71 be paid in full was unacceptable in the light of the LVT's informal opinion.

(j) The insurance premium demand for 2003/4 by the Second Respondents was for £1,625.91. Alternative "quotations" obtained by Mr Lewis were as follows:

Norwich Union	£866.25 (via J Nugent Debenham); and
Norwich Union	£1,058.85 (via SPIRIT)

Again, Mr Lewis claimed that this proved that the Second Respondents' claim was excessive and unreasonable.

(k) Mr Lewis contended that the difference between the premium sought by the Second Respondents and the "quotations" obtained by him were caused by three factors:-

(i) that the Second Respondents were choosing to insure Tudor Court under a block policy with other properties in their portfolio with a less good claims record and that Tudor Court was therefore being penalised by having to subsidise the properties with poorer claims records ;

(ii) that the commission payable to the landlord under a block policy was greater than under a stand alone policy, and no details of that commission had been disclosed; and

(iii) that the global premium charged for the block policy was not apportioned having any regard to the different risks posed by the different properties in the portfolio.

(l) As the Second Respondents would not accept the informal opinion of the earlier Tribunal, the Applicants felt they had "no option" but to re-apply to a Leasehold Valuation Tribunal.

6. The Second Respondents' Case

6.1 Mr Thompson's case was as follows:

(a) Under the headlease he and his wife have responsibility for insuring Tudor Court. There is no restriction as to which company with whom to insure provided it is an insurance company of repute.

(b) The lease permits the Second Respondents to retain any commission received on the insurance and the lessee has to pay the gross premium to the Second Respondents. The commission is not required to be passed on to the First Respondent or to the Applicants in order to reduce the amount payable.

(c) Initially he and his wife had separate insurance policies for the 37 or so properties they then owned but it was difficult to administer and there was the risk of overlooking a renewal date when they were all different.

(d) They engaged Mr Carter of Wraysbury Commercial Insurance Services, to advise them on insurance matters. He advised them to take out a block policy and he agreed to handle the claims that arose under the policy.

(e) Every year Mr Carter goes to the market to re-broke the block policy. The Second Respondents meet with him when he has the results of this exercise to decide upon which quotation to accept.

(f) The Second Respondents are classified as "commercial landlords" by the insurance industry. Commercial landlords are charged a higher premium than owner/occupiers.

(g) Insurance companies insist on full disclosure of the claims record of the person taking out insurance and therefore the claims record of the Second Respondents has to be declared for all their properties. This applies to quotations for both block policies and stand alone policies.

(h) The premium charged by the Insurance Company is apportioned between the properties in the portfolio on the basis of the proportion of the individual property's sum insured compared with the aggregate sum insured.

(i) The Applicant's and First Respondent's "quotations" were estimates rather than quotations and would have been subject to completion of proposal forms.

(j) These estimates are not like for like with the premiums actually paid by the Second Respondents and for which re-imbursement is sought because:

(i) they are for owner/occupiers and not commercial landlords;

(ii) they did not take into account the Second Respondents' claims record.

(k) With regard to claims record, the Second Respondents have, since the earlier LVT hearing, caused Mr Carter to carry out an audit of their claims record over the past 5 years. One property has been identified as being responsible for a higher incidence of claims than the other properties in the portfolio. This property has now been sold and therefore for 2004/5 and henceforth it will not have an adverse effect on the amount of the premium.

(l) For the year January 2002/3 quotations were obtained by Mr Carter for the block policy as follows:

Cornhill	£44,000
Groupama	£39,928
Zurich	£48,013

The lowest quotation, from Groupama, was accepted.

(m) For the year 2003/4 the following quotations were received:

NIG	£55,000
Norwich Union	£39,200
Axa	£47,040

Again, the cheapest, Norwich Union, was accepted.

(n) A quotation was obtained by Mr Carter for Tudor Court on a stand alone policy in the sums set out in paragraph 5.1(i) above. On 3rd February Mr Thompson wrote to Mr Lewis offering to insure through NIG at £1,178.19 on a stand alone policy provided that this was agreed within 7 days and the premium for the previous year was paid as sought in full. No substantive reply was received to that offer and as Norwich Union could not hold the cover any longer he paid the Norwich Union premium on the block policy to include Tudor Court.

(o) Mr and Mrs Thompson received commission of 15% of the block policy premium. They would not be entitled to any commission if the property were insured on a stand alone basis.

6.2 The Second Respondents called their insurance broker, Mr Jon Carter, who gave evidence as follows:-

(a) He is a partner with Wraysbury Commercial Insurance Services of Ripley, Surrey.

(b) He has worked in the insurance industry for 35 years and is a Member of the Chartered Insurance Institute, a Member of the General Insurance Standards Council, and an Institute Registered Insurance Broker.

(c) He has been the Second Respondents' insurance broker for 8 years.

(d) He recommended that the Second Respondents take out a block policy of insurance.

(e) He gave a history of the insurance arrangements for Tudor Court including the fact that he would go out into the market for quotations every year, meet with the Second Respondents and discuss which quotation to accept.

(f) He explained that in the case of block policies the insurers issue separate certificates of insurance in respect of each individual property and the insurers apportion the premium between the various properties based on the proportion of their respective building sums insured to the total buildings sum insured.

(g) The individual risks of the different properties are taken into account when arriving at the global premium for the block policy.

(h) He confirmed the quotations he received for both the 2002 and 2003 renewals as set out in paragraphs 6.1(c) and 6.1(m) above.

(i) He considered that the Applicants and First Respondent's evidence of possible premiums for comparable cover for the years 2002/3 and 2003/4 could not be considered like for like with the actual quotations he obtained for the Second Respondents because these were:

(i) in the sole name of the First Respondent on an owner/occupier basis which is not an option for the Second Respondents, who has to insure as a commercial landlord.

(ii) they took no account of the Second Respondents' claims record.

(j) In addition to the premium of £1,625.91 the Second Respondents have paid an additional premium of £54.98 in respect of terrorism cover.

(k) In February 2003 he obtained a quotation for Tudor Court to be insured by the Second Respondents on a stand alone basis. The results were as set out in paragraph 5.1(i) above. He was told to effect cover on a block policy basis to include Tudor Court, after the Norwich Union pressed for an answer as to whether this property was to be included in the block policy when there had been no substantive response to the Second respondents' offer to the First Respondent to insure on a stand alone basis with NIG.

(l) The inclusion of the First Respondent as a party to the insurance policy would not have had any affect on the amount of premium sought by the various insurance companies.

(m) His commission was in line with rates of commission for brokers generally.

7. The Law

7.1 Section 19(2A) of the Act states that:

"A tenant by whom, or a landlord to whom, a service charge is alleged to be payable may apply to a Leasehold Valuation Tribunal for a determination:

(a) Whether costs incurred for services, repairs, maintenance, insurance or management were reasonably incurred ....."

7.2 By Section 18(i) of the Act "service charge" means "an amount payable by a tenant of a building as part of or in addition to the rent:

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

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

7.3 By Section 19(1) of the Act:

"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".

7.4 In his representation to the Tribunal Mr Lewis referred to the following authorities:-

(1) The LVT decision in the case of *Mr B Bowen v. St Mary's Estates Ltd* 17th June 1988. He drew the Tribunal's attention to part of the decision which referred to an admission that "a landlord's block policy could cause some properties to be penalised: if an in-house block policy was to be considered and be acceptable it should be tested against and be competitive with quotations from outside insurance companies".

(2) *Marylands Estates Ltd v. Ayton Haddleton and Soknic*, again a decision of an LVT that the Lessor could only charge "reasonable premiums and be reasonably incurring them if the figure is not so far dramatically divorced from the market rate for insuring the subject property otherwise than under the Lessor's mixed bag of properties or his or his broker's excessive commission".

(3) The LVT case of *Mr M Watts v. Longmint Ltd* where it was considered that commission of 20% was "adequate remuneration for the duty to insure".

(4) The Court of Appeal case of *Havenridge Ltd v. Boston Dyers Ltd*. This was a case relied on by the Second Respondents (see later under paragraph 7) also. Mr Lewis distinguished that case from the subject case on the basis that:

(a) in the case of Tudor Court the Landlord arranged a block policy. The "market rate" for Tudor Court under such a policy would be different from what it would be under a stand alone policy;

(b) the premium for Tudor Court was apportioned on purely a building sum assured basis and that it was not therefore a normal business transaction as far as Tudor Court alone was concerned;

(c) the difference between the amount of insurance premium sought by the Second Respondents and the amount for which it was said insurance could be obtained demonstrated that the sum sought was well outside what could be regarded as the going rate.

7.5 In his representations Mr Thompson referred to the following authorities:-

(1) *Banda Property Holdings Ltd v. J S Darwen (Successors) Ltd* [1968] 2 All ER 305, a decision of Roskill J in the Queen's Bench Division of the High Court as authority for the position that a landlord has no implied duty to act reasonably in placing insurance so as not to impose an unnecessarily heavy burden on the lessee. Also on the same

point the Court of Appeal decision in *Berrycroft Management Co Ltd v. Sinclair Investments (Kensington) Ltd* [1997] 22 EG 141.

(2) *Havenbridge Ltd v. Boston Dyers Ltd* TLR 1st April 1994 as authority for the proposition that a lessor was not obliged to shop around for the lowest premiums and was entitled to be indemnified by the tenant provided that the transaction between landlord and the insurer was carried out in the ordinary course of business.

(3) The Lands Tribunal case of *Forcelux Ltd v. A V Sweetman and C Parker* of 27th April 2001 as authority for the proposition that Section 19(2A) of the Act is not concerned with whether the costs are reasonable but whether they are reasonably incurred. The question to be answered is not whether the expenditure ..... was necessarily the cheapest available but whether the charge that was made was reasonably incurred. Further, what has to be considered is first "whether the Landlord's actions were appropriate and properly effected in accordance with the requirements of the lease, the RICS code and the 1985 Act. Secondly, whether the amount charged was reasonable in the light of that evidence". Also, that where the insuring landlord is a commercial landlord in a different category to the tenants there is no like for like comparison of premium quotations.

8. Consideration

8.1 The Tribunal considered the evidence and the authorities referred to by the parties.

8.2.1 The decision of the Lands Tribunal in the case of *Forcelux Ltd v. A V Sweetman and C Parker,* which is binding on the Tribunal, provided guidance as to how the issues in the instant case should be approached and determined.

8.2.2 The Tribunal had to consider whether the ways in which the landlord decided to discharge its insuring covenants were reasonable decisions; not whether the insurance could have been effected more cheaply nor whether it would have been reasonable for the landlord to take another course of action.

8.3.1 The Tribunal first considered whether it was appropriate for the Second Respondents to have insured by means of a block policy. There are advantages of a block policy to a landlord owning a number of properties. Administration is simpler than having to arrange (in this case) 37 separate policies and the danger of overlooking a renewal date is avoided. The concept of a block policy means that the better properties in insurance terms (ie those presenting the lower risk) are to some extent subsidising the higher risk properties. Set against this, however, are economies of scale whereby the owner could expect to pay a lower global

premium under a block policy than the aggregate of premiums for all the properties in the portfolio on a stand alone basis. Further, whilst it may be that in any one year a low risk property might pay more in premium than it would under a stand alone policy, due to the claims record of the other properties under the policy, it could also be the case that, in the event of a claim or a series of claims during the year, the particular property would benefit from the better claims record of the other properties under the block policy in subsequent years.

8.3.2 A block policy cannot per se be unreasonable, otherwise landlords would never be able to insure under them without the risk of being challenged under Section 19 of the Act.

8.3.3 On the other hand, a block policy could be unreasonable in certain circumstances and a landlord insuring in such a way will need to consider periodically whether or not a block policy is right for his portfolio. If one or more tenants are being unduly prejudiced then the landlord might well find that a Leasehold Valuation Tribunal would find the insurance premiums to have been unreasonably incurred in respect of the prejudiced properties. For example, where the landlord has only a very few properties with large disparity between the risks associated with each, a block policy would probably not be appropriate.

8.3.4 In this respect the Tribunal noted that the Second Respondents had instructed Mr Carter to undertake an audit of claims for the various properties in the portfolio over the past five years. Having identified one property with a larger than normal claims record, they had sold it. Mr Carter acknowledged that the poor claims record for this property could possibly have been recognised earlier and action taken. The Tribunal considered that it takes time for a pattern to be established and even if it had been identified earlier as a problem there was no certainty that the detrimental property could have been disposed of in time for either the 2002 or 2003 renewals.

8.3.5 The Tribunal finds that the Second Respondents were reasonable in their particular circumstances in insuring Tudor Court under a block policy.

8.4.1 Next, the Tribunal considered whether the Second Respondents had been reasonable in the way in which they had incurred the insurance premiums for 2002/3 and 2003/4.

8.4.2 In this respect the Second Respondents had taken advice from an experienced, qualified broker in Mr Carter. They had acted on his advice in insuring under a block policy. He had been required to test the market every year to ensure that the insurance that was effected was in tune with the industry norm. They met every year to discuss Mr Carter's findings and to decide together where to place the insurance. The Tribunal finds that the Second

Respondents acted reasonably in the way in which they went about selecting the insurance cover for the years in question.

8.5 Next, the Tribunal considered whether the Second Respondents were reasonable in the way the global block policy premium was apportioned between the properties in the portfolio. The Tribunal accepted the evidence of Mr Carter that it was the insurers who did the apportionments and that there was nothing the landlord could do to influence that.

8.6 The Tribunal further considered whether the placing of the insurance in the name of the Second Respondents with the interest of the First Respondent noted on the policy instead of being in the joint names of the First and Second Respondents would have made any difference to the amount of premium. The Tribunal accepted Mr Carter's evidence on this that it would not have made any difference.

8.7 The Tribunal considered whether the quotations obtained by the Applicants and First Respondent for insurance for Tudor Court on a stand alone policy for 2002/3 and 2003/4 could properly be compared on a like for like basis with the quotations obtained by Mr Carter when considering with the Second Respondents the insurance to be placed for those years, including the cover which was actually effected. The Tribunal found that they were not like-for-like comparisons because the quotations obtained by Mr Lewis were on the basis of an owner/occupier effecting the cover and not a commercial landlord. Mr Lewis accepted that as he did not know what the Second Respondents' claims record was, this was not information that was taken into consideration by the companies he approached for quotations. The Tribunal accepted the evidence of Mr Carter that such a claims record would have to have been disclosed otherwise there was a risk that the insurers could have avoided the policy had a claim been made.

8.8 Of the quotations obtained by Mr Carter for the premiums for 2002/3 and 2003/4 the Second Respondents chose to insure with the company which gave the lowest quotation.

8.9 The Tribunal considered whether the additional premium for terrorism had been reasonably incurred. It accepted the evidence of Mr Carter that most building societies and other lenders were requiring this, even though the risk of terrorism in this part of Godalming might actually be slight. The events of 11th September 2001 in New York had made lenders nervous. In the light of this evidence the Tribunal considered that the relatively small sum for terrorism cover was reasonably incurred. If the sub-lessees as a whole indicate to the head landlord via the management company that they do not want or need such cover, no doubt this is something that the Second Respondents will take into account for next year.

8.10.1 Finally, the Tribunal considered whether it was unreasonable for the Second Respondents to have insured Tudor Court under the block policy for 2003/4 when it could have insured on a stand alone basis with NIG for £1,178.19, a saving of £447.72. This difference was substantially accounted for by the fact that the stand alone policy did not pay any commission to the landlord whereas the block policy did. It could be said that the Second Respondents did very little for that commission and it was a payment by the Applicants, ultimately, for which they received no benefit. As against this effecting the insurance does involve the head landlords in some time and effort, particularly if they discharge their function as required by the Forcelux case. Further, the commission of15% was not considered by the Tribunal as being excessive. The LVT case of *Mr M Watts v. Longmint Ltd* had found that commission of 20% was "adequate remuneration for the duty to insure". That case was not binding on the Tribunal in the instant case, but was an indication that 20% was not considered too high in that case. The Tribunal also considered that the benefits favouring a block policy would be reduced if individual properties were to begin to be excluded from the block policy. On balance the Tribunal considered that it was not unreasonable for the Second Respondents to have decided to insure under the block policy for 2003/4 when they received no definitive response from Mr Lewis to their offer contained in the letter of 3rd February 2003.

8.10.2 On that point the Tribunal considered that it was unfortunate that Mr Lewis had not tried to negotiate with the Second Respondents on this offer. It might have been possible for agreement to have been reached with regard to 2003/4 even if not for the previous year.

9. Decision

9.1 For the reasons set out in paragraphs 8.3.2 to 8.9.1 above the Tribunal decided that the ways the Second Respondents had decided to discharge their insuring covenants amounted to reasonable decisions.

9.2 Accordingly, the Tribunal found that the insurance premiums of £1,583.71 for the insurance year 2002/3 and £1,625.91 plus £54.98 for terrorism cover for the insurance year 2003/4 were reasonably incurred and are therefore recoverable by the Second Respondents from the First Respondent and, in turn, are recoverable by the First Respondent from the Applicants.

9.3 As a postscript the Tribunal members would like to add that they understand why the Applicants felt it necessary to refer this matter to a Leasehold Valuation Tribunal. They were no doubt encouraged by the informal opinion of the earlier Tribunal coupled with their own "quotations" to think that another Tribunal would reach a similar conclusion. This Tribunal took the view that, if the Second Respondents had provided the First Respondent and hence the Applicants, with more information on a voluntary basis, rather than relying strictly upon what they were obliged to provide under the lease, this application might have been

avoidable. Although it is not binding on the Second Respondents the Tribunal would encourage them to adopt the spirit of the RICS Management Code as far as the provision of information and consultation is concerned. Communication is evidently crucial if similar difficulties are to be avoided and the Tribunal hoped that all the parties will take these comments on board for the future.

Dated this 21st day of October 2003

Signed: .....

D Agnew

Chairman