SOUTHERN LEASEHOLD VALUATION TRIBUNAL

CASE NUMBER CHI/43UG/LCI/2005/0002

-IN THE MATTER OF -

An Application Under Section 27A of
The Landlord and Tenant Act 1985

42A Glebe Road
Egham
Surrey
TW20 8BT

Tenants Application for the Determination
of Reasonableness of Service Charge
Demanded for the Years to
March 2004, 2005 and 2006

- APPLICANT -

Ms Marie Christina Bylina
(Tenant)

- RESPONDENT -

Sally Wright
(Landlord)

-TRIBUNAL -

Mr R Batho MA BSc LLB FRICS FCIArb
(CHAIRMAN)

DETERMINATION

Introduction

1. On 6th April 2005, Ms Marie Christina Bylina, the tenant of 42a Glebe Road Egham Surrey TW20 8BT, made an application to the Leasehold Valuation Tribunal for the determination of the reasonableness of service charge costs incurred in relation to insurance for the years to March 2004, 2005 and 2006.

2. On 22nd April 2005, John B Tarling MCMI, a member of the Panel appointed by the Lord Chancellor, gave notice under regulation 13(2) of the Leasehold Valuation Tribunals (Procedure)(England) Regulations 2003, as amended by regulation 5 of the Leasehold Valuation Tribunals (Procedure)(Amendment) (England) Regulations 2004 that the Tribunal intended to proceed to determine the matter without an oral hearing, and would do so unless a request for such a hearing was received from the respondent landlord before 27th May 2005. Mr Tarling also gave directions as to the submission of written evidence by the parties.

3. No application for a oral hearing was received from the respondent landlord and accordingly this matter has been dealt with on the basis of the parties' written representations only.

4. In making her application under Section 27a, the applicant also indicated that she wished to make an application under Section 20c of the Landlord and Tenant Act 1985, whereby the recovery of the landlord's costs through the service charge account might be limited. In his directions order of 22nd April 2005, Mr Tarling directed that the parties should make their written representations in respect of that application within 28 days of his order. No such representations have been made.

Background

5. The applicant holds the premises at 42a Glebe Road Egham Surrey under the terms of a lease dated 2nd March 2001 and made between the respondent on the one part and Keith Long and Kate Bax of the other, this lease having been assigned to her in November 2002.

6. By clause 4 of the lease

> "the landlord hereby covenants with the tenant as follows
> 4.1 At all times during the said term to insure and (unless the policy of insurance shall be vitiated by an act of neglect or default of the tenant) keep insured the Property and any building erected in connection with it during the said term against loss or damage by fire storm tempest and aircraft and such other risks as are usually included in a House Owners Comprehensive Policy including professional fees and two years loss of rent in an Insurance Office of repute to the full replacement value thereof and to make all payments necessary for the above purposes within seven days after the same shall respectively become payable to produce to the Tenant on demand the policy of insurance and the receipt for every such payment."

7. Correspondingly, under clause 2 of the lease

> "the tenant hereby covenants with the landlord as follows
> 2.1 to pay the rent herein reserved
> 2.1.1 on the days and in the manner aforesaid (without any deduction except as may be authorised by statute notwithstanding any contract to the contrary) 2.1.2 to pay throughout the said term and by way of additional rent one half of the total amount which in each year of the said term the landlord shall expend by way of premium in effecting and maintaining the insurance referred to in clause 4.1 hereof such additional rent to be paid forthwith on demand."

The Tenant's Case

8. The tenant's case is that the insurance premiums are excessive and that it would be possible to obtain cheaper insurance, either through the existing insurer or though an alternative. She accepts that the policy should be obtained through a reputable insurer, and says that she is happy to remain with the existing insurer. She makes no suggestion that the amount of the insurance is inappropriate. She says that she has experienced difficulty in obtaining a copy of the policy and other relevant documentation from her landlord.

9. With the reference to the amount of the premium, she produces a copy of the demand issued to her predecessors in title, Mr Keith Long and Ms Kate Bax, on 30th April 2002, which appears to show that the half share of the premium due from them from 2nd March 2001 to 1st March 2003 was £286.25. She also produces the demands issued to her, indicating that the premium for the period 2nd March 2003 to 1st March 2004 amounted to £299.72, but that this was subsequently amended, by way of a demand issued on 14th October 2003 indicating that the half share due from her for that period was actually £459.37.

10. The demand issued on 20th April 2004 seeks payment of a half share of the premium amounting to £492.47: this is actually described as relating to an insurance year running from 15th February 2004 to 14th February 2005, but the applicant raises no issue in relation to that apparent change in the insurance year and I therefore conclude that she does not treat this as being a matter in issue. In the absence of any evidence in respect of it, I make no further comment upon it.

11. At the time of making her application, the premium share for the year 2005 to 2006 was not known, but the documentation produced by the landlord refers to a share due from the applicant of £517.20.

12. The applicant says that the contributions being sought from her for the years in question are excessive, both in comparison with the contributions paid in previous years and in absolute terms. She has produced quotations from alternative insurers indicating significantly lower premiums, although without giving full details of the cover provided. The first alternative quotations which she obtained were rejected by the landlord as being inappropriate to a let property, but she has obtained others through a firm of brokers, which she says have been quoted as commercial policies.

13. One of these alternative quotations, subsequently withdrawn, was from Norwich Union, the existing insurers. Their premium quotation was £584.34 to provide cover of £209,213; Fortis Insurance quoted £412.30 for the same sum insured and a quotation was also received from NIG for £424.06 for cover of £210,000. Each quotation allowed for property owner's liability but there was some variation in the amounts of the excess.

The Landlord's Case

14. The landlord states that the property is insured under a multi-tenure policy which covers a number of properties that she owns: the documentation which she produces indicates that the policy covered six properties as at February 2004. She says that "no other leaseholders query their insurance premiums."

15. She argues that, by using the biggest insurance company there is, she gets "quality insurance at a decent price" and she draws particular attention to the fact that the property is in a designated Red Flood Plain Area, something which she says Norwich Union's premiums take account of, whilst other insurers may not. She says that this recognition of the flood risk has a significant bearing on the premium paid.

16. The respondent goes on to say that at one time she simply divided the total premium equally between the various properties that she owns, and then between the different flats in each property, but that when (in about 2003) she obtained a breakdown of the premium charged between the different properties, this showed the significant variations between them, demonstrating that the simple arithmetical division was inequitable, and so she revised the allocations. She produces a list dated October 2003 which indicates a total premium for five properties in the sum of £2,497.59, but £836.00 of this is shown as being the premium in respect of 42 Glebe Road.

17. She says that whilst other companies might be prepared to offer cheaper insurance for a short period, their premiums would likely to increase once they have secured the business, or at least once they have done flood risk assessments to the standard carried out by Norwich Union. She says that her broker advises her that

> "over the next few years he expects NIG (who provided one of the alternative quotations submitted by the applicant) and other insurers to catch up in this area (of flood risk assessment). When this has been done the likelihood is that many insurers will no longer be willing to insure properties based in this post code."

18. Further, she says that she has been advised that cover should remain with the same insurer

> "as if there is ever a subsidence or structural problem it can be awkward to resolve with a new insurer."

The Law

19. For the purposes of the Landlord and Tenant Act 1985, "service charge" is defined in section 18(1) as

"an amount payable by a tenant of dwelling as part of or in addition to the rent... which is payable, directly or indirectly, for services, repairs, maintenance, improvement or insurance or the landlord's cost of management, and the whole or part of which various or may vary according to the relevant costs."

20. The insurance premiums in dispute are therefore service charges within this definition, and so are "relevant costs" under the provisions of section 18(2). Under the provisions of section 19 of the Act, such 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 work, only if the services or works are of a reasonable standard; and the amount shall be limited accordingly."

21. The question at issue, therefore, is whether the insurance premiums have been reasonably incurred, or whether the landlord has acted reasonably in the placing of the particular insurance. Clearly, the landlord has an obligation to insure, but she must act in a reasonable manner in doing so.

Consideration

22. It is unfortunate that, despite the clearly expressed obligation contained in the lease, the respondent appears to have been so reluctant to produce copy policies and other documentation: it is to be hoped that there may be more open dealings in this respect in the future.

23. Whilst it appears from the documentation that has been produced that there may have been some misunderstanding over the premiums actually payable during the years 2001-2003, such that the sum of £286.25 referred to by the applicant did not relate to two years, but to one, it is clear that there has been a very significant increase thereafter, the actual premium due for 2003 -2004 being some 50% more than the landlord originally indicated.

24. It is nonetheless also clear from the documentation that the original premium allocation was calculated from the overall block policy premium in a way which, whilst administratively convenient to the landlord, gave an incorrect apportionment of costs between the original properties.

25. In these terms, the applicant and her predecessors were being under-charged for the insurance that was being provided. The figures produced by Norwich Union in October 2003 and February 2004, showing the breakdown of the premium as between the different properties, are obviously helpful in this respect, and have resulted in a more equitable allocation of costs, although one that has given rise to the present application.

26. Whilst it may be accepted, therefore, that the premiums under the block policy are now correctly allocated, that leaves the question of whether the block policy is the proper way of dealing with the insurance, or whether insuring the properties individually would produce cheaper premiums, or whether a different insurer might offer better terms. No direct evidence has been put forward on the possible comparison between individual and block policies, although the figures put forward by the applicant suggest that insuring the properties individually is likely to be cheaper.

27. The RICS Service Charge Residential Management Code recommends that, with respect to buildings insurance,

> "you should, in selecting the insurance company, have regard to your experience of that company's handling of claims in general terms as well as the premium being charged. You should also consider recommending an independent insurance broker in appropriate circumstances."

28. The respondent here has used a broker, and the Tribunal does not accept the tenant's claim that this will have made the insurance more expensive: as suggested by Norwich Union, when the respondent questioned them about the advice that they had given to the applicant, the applicant appears to have some misunderstanding of the broker's role.

29. Despite this use of a broker, however, there is no evidence of competitive quotations being sought on a year on year basis. The papers indicate a determination to insure with Norwich Union, on the basis that they are a big insurance company; that they are at the forefront of insurance companies in respect of their flood ratings; and that it is better to stay with them because, if ever there were a subsidence or structural problem, then it could be awkward to resolve with a new insurer.

30. The Tribunal does not accept this last argument: there is nothing to suggest that any claims have ever been made in respect of subsidence or structural problem with relation to this property, and no reason has been given to anticipate any such problems. Using that argument alone for declining to change insurer therefore seems to be unjustified, as does the argument that the other insurer's premiums may increase in the future when they carry out proper flood risk assessments.

31. The implication here is that these competitors have made no such assessments, and that accordingly their provision for possible flood claims is in some way inadequate, an implication which the Tribunal considers to be unreasonable.

32. For other insurers flood assessments to be a relevant issue it would seem necessary to show, not that their premiums were thereby reduced, but that they be unable or unwilling to meet any flood claims. No evidence to that effect has in fact been adduced.

33. The respondents argument also seems to ignore the fact that premiums may well vary from year to year in any event. The Tribunal does not see year on year change as an argument for changing insurers on an annual basis, and recognises that there may be merit in staying with the same insurer for a period of time, but that does not mean that there is no responsibility to seek competitive quotations from time to time.

34. That is what the applicant has sought to do. The earlier quotations which she obtained appear to have been rejected on the perfectly acceptable basis that they were not commercial policies, but the apparent rejection of Fortis, for example, on the basis they are

> "large in Belgium but no so big over here and deal only with a small amount of property insurance"

seems less well founded. Here again, concern is expressed about flood risk assessment and the possibility of future premium rises.

35. On consideration of the figures put forward by the applicant, the quotation which she obtained from Norwich Union is striking, since although at £584.34 it is the most expensive, it is for a sum of only slightly more than half the £1,034.40 which is actually being paid under the existing Norwich Union policy for the year 2005-06. Unfortunately, the documentation is confusing, in that it seems to imply that this quotation was subsequently withdrawn because

> "Norwich Union Direct does not provide cover for commercial properties and if she wanted such cover she would need to approach an insurance broker"

and yet the applicant did obtain the quotation in question from an insurance broker. The reason given to that broker for the quotation's subsequently being withdrawn, was that Norwich Union were already covering the property under an alternative policy. There is no suggestion that the policy would have been inadequate.

36. This suggests that significantly cheaper insurance should be available. Overall, the indications are that the respondent has declined to consider any alternatives to her existing insurance arrangements, when there is evidence to suggest that, if she had, she would have been able to obtain more favourable terms.

37. On the evidence which she has offered, she has done this simply because a new insurer's premiums may increase at some time in the future; because their premiums may take inadequate account of an identified flood risk (but not that they would not meet claims); and that there might be some argument if a claim were submitted in respect subsidence or structural problem, even though there is no evidence to suggest that such a claim might be likely. The Tribunal considers all of this to be unreasonable.

Determination

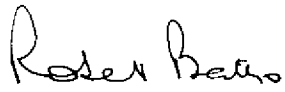
38. The quotations obtained by the applicant indicate that, for the present insurance year, it should have been possible to obtain insurance at a premium not exceeding the amount originally quoted to the brokers whom she approached by Norwich Union, that is say £584.34. The applicant would have been liable for one half of this sum, or £292.17, and the Tribunal determines that that is the maximum sum that it would be reasonable for the respondent to recover from her.

39. The premium payment sought by the respondent landlord for the year 2004-2005 was slightly over 95% of the premium for the 2005-2006 year, and the premium for 2003-2004 was just over 93% of the premium sought for 2004-2005. Applying these percentages to the sum that the Tribunal considers reasonable for the year 2005-2006 points to the conclusion that the amount reasonably recoverable for 2004-2005 would have been £278.20 and, for the year 2003-2004 £259.51. To the extent that sums in excess of those figures have been paid, they are considered to have been unreasonable, and they should accordingly be refunded.

40. The Tribunal recommends that, for future years, the respondent landlord should instruct her brokers to seek alternative quotations, both on the basis of multi-tenure policies and individual building policies, and select that which, whilst providing suitable cover "in an insurance office of repute to the full replacement value thereof" also offers the best terms to the tenant. It seems likely that a Tribunal asked to reassess the reasonableness of the insurance in the future would consider it unreasonable if the respondent had again declined to change insurers on the sole ground that dealing with any future subsidence claim might prove difficult; because their assessment of flood risk was less sophisticated; because they might not always be the most competitive; or because a multi-tenure policy was more convenient.

Section 20c Application

41. No representations have been received from either party in respect of the tenant's application for the limitation of the landlord's ability to recover costs under section 20c of the Landlord and Tenant Act 1985. The lease provides that the only sum recoverable by the landlord in respect of service charge is the tenant's share of the insurance premium. Accordingly there is no question of the landlord's costs in relation to this application being made being recoverable from the tenant, and no determination is made.



Robert Batho
MA BSc LLB FRICS FCIArb
(A member of the Panel Appointed by the Lord Chancellor)

11th August 2005

SOUTHERN LEASEHOLD VALUATION TRIBUNAL

CASE NUMBER CHI/43UG/LCI/2005/0002

-IN THE MATTER OF -

An Application Under Section 27A of
The Landlord and Tenant Act 1985

42A Glebe Road
Egham
Surrey
TW20 8BT

Tenants Application for the Determination
of Reasonableness of Service Charge
Demanded for the Years to
March 2004, 2005 and 2006

- APPLICANT -

Ms Marie Christina Bylina
(Tenant)

- RESPONDENT -

Sally Wright
(Landlord)

-TRIBUNAL -

Mr R Batho MA BSc LLB FRICS FCIArb
(CHAIRMAN)

DETERMINATION

Introduction

1. On 6th April 2005, Ms Marie Christina Bylina, the tenant of 42a Glebe Road Egham Surrey TW20 8BT, made an application to the Leasehold Valuation Tribunal for the determination of the reasonableness of service charge costs incurred in relation to insurance for the years to March 2004, 2005 and 2006.

2. On 22nd April 2005, John B Tarling MCMI, a member of the Panel appointed by the Lord Chancellor, gave notice under regulation 13(2) of the Leasehold Valuation Tribunals (Procedure)(England) Regulations 2003, as amended by regulation 5 of the Leasehold Valuation Tribunals (Procedure)(Amendment) (England) Regulations 2004 that the Tribunal intended to proceed to determine the matter without an oral hearing, and would do so unless a request for such a hearing was received from the respondent landlord before 27th May 2005. Mr Tarling also gave directions as to the submission of written evidence by the parties.

3. No application for a oral hearing was received from the respondent landlord and accordingly this matter has been dealt with on the basis of the parties' written representations only.

4. In making her application under Section 27a, the applicant also indicated that she wished to make an application under Section 20c of the Landlord and Tenant Act 1985, whereby the recovery of the landlord's costs through the service charge account might be limited. In his directions order of 22nd April 2005, Mr Tarling directed that the parties should make their written representations in respect of that application within 28 days of his order. No such representations have been made.

Background

5. The applicant holds the premises at 42a Glebe Road Egham Surrey under the terms of a lease dated 2nd March 2001 and made between the respondent on the one part and Keith Long and Kate Bax of the other, this lease having been assigned to her in November 2002.

6. By clause 4 of the lease

> "the landlord hereby covenants with the tenant as follows
> 4.1 At all times during the said term to insure and (unless the policy of insurance shall be vitiated by an act of neglect or default of the tenant) keep insured the Property and any building erected in connection with it during the said term against loss or damage by fire storm tempest and aircraft and such other risks as are usually included in a House Owners Comprehensive Policy including professional fees and two years loss of rent in an Insurance Office of repute to the full replacement value thereof and to make all payments necessary for the above purposes within seven days after the same shall respectively become payable to produce to the Tenant on demand the policy of insurance and the receipt for every such payment."

7. Correspondingly, under clause 2 of the lease

> "the tenant hereby covenants with the landlord as follows
> 2.1 to pay the rent herein reserved
> 2.1.1 on the days and in the manner aforesaid (without any deduction except as may be authorised by statute notwithstanding any contract to the contrary) 2.1.2 to pay throughout the said term and by way of additional rent one half of the total amount which in each year of the said term the landlord shall expend by way of premium in effecting and maintaining the insurance referred to in clause 4.1 hereof such additional rent to be paid forthwith on demand."

The Tenant's Case

8. The tenant's case is that the insurance premiums are excessive and that it would be possible to obtain cheaper insurance, either through the existing insurer or though an alternative. She accepts that the policy should be obtained through a reputable insurer, and says that she is happy to remain with the existing insurer. She makes no suggestion that the amount of the insurance is inappropriate. She says that she has experienced difficulty in obtaining a copy of the policy and other relevant documentation from her landlord.

9. With the reference to the amount of the premium, she produces a copy of the demand issued to her predecessors in title, Mr Keith Long and Ms Kate Bax, on 30th April 2002, which appears to show that the half share of the premium due from them from 2nd March 2001 to 1st March 2003 was £286.25. She also produces the demands issued to her, indicating that the premium for the period 2nd March 2003 to 1st March 2004 amounted to £299.72, but that this was subsequently amended, by way of a demand issued on 14th October 2003 indicating that the half share due from her for that period was actually £459.37.

10. The demand issued on 20th April 2004 seeks payment of a half share of the premium amounting to £492.47: this is actually described as relating to an insurance year running from 15th February 2004 to 14th February 2005, but the applicant raises no issue in relation to that apparent change in the insurance year and I therefore conclude that she does not treat this as being a matter in issue. In the absence of any evidence in respect of it, I make no further comment upon it.

11. At the time of making her application, the premium share for the year 2005 to 2006 was not known, but the documentation produced by the landlord refers to a share due from the applicant of £517.20.

12. The applicant says that the contributions being sought from her for the years in question are excessive, both in comparison with the contributions paid in previous years and in absolute terms. She has produced quotations from alternative insurers indicating significantly lower premiums, although without giving full details of the cover provided. The first alternative quotations which she obtained were rejected by the landlord as being inappropriate to a let property, but she has obtained others through a firm of brokers, which she says have been quoted as commercial policies.

13. One of these alternative quotations, subsequently withdrawn, was from Norwich Union, the existing insurers. Their premium quotation was £584.34 to provide cover of £209,213; Fortis Insurance quoted £412.30 for the same sum insured and a quotation was also received from NIG for £424.06 for cover of £210,000. Each quotation allowed for property owner's liability but there was some variation in the amounts of the excess.

The Landlord's Case

14. The landlord states that the property is insured under a multi-tenure policy which covers a number of properties that she owns: the documentation which she produces indicates that the policy covered six properties as at February 2004. She says that "no other leaseholders query their insurance premiums."

15. She argues that, by using the biggest insurance company there is, she gets "quality insurance at a decent price" and she draws particular attention to the fact that the property is in a designated Red Flood Plain Area, something which she says Norwich Union's premiums take account of, whilst other insurers may not. She says that this recognition of the flood risk has a significant bearing on the premium paid.

16. The respondent goes on to say that at one time she simply divided the total premium equally between the various properties that she owns, and then between the different flats in each property, but that when (in about 2003) she obtained a breakdown of the premium charged between the different properties, this showed the significant variations between them, demonstrating that the simple arithmetical division was inequitable, and so she revised the allocations. She produces a list dated October 2003 which indicates a total premium for five properties in the sum of £2,497.59, but £836.00 of this is shown as being the premium in respect of 42 Glebe Road.

17. She says that whilst other companies might be prepared to offer cheaper insurance for a short period, their premiums would likely to increase once they have secured the business, or at least once they have done flood risk assessments to the standard carried out by Norwich Union. She says that her broker advises her that

> "over the next few years he expects NIG (who provided one of the alternative quotations submitted by the applicant) and other insurers to catch up in this area (of flood risk assessment). When this has been done the likelihood is that many insurers will no longer be willing to insure properties based in this post code."

18. Further, she says that she has been advised that cover should remain with the same insurer

> "as if there is ever a subsidence or structural problem it can be awkward to resolve with a new insurer."

The Law

19. For the purposes of the Landlord and Tenant Act 1985, "service charge" is defined in section 18(1) as

"an amount payable by a tenant of dwelling as part of or in addition to the rent... which is payable, directly or indirectly, for services, repairs, maintenance, improvement or insurance or the landlord's cost of management, and the whole or part of which various or may vary according to the relevant costs."

20. The insurance premiums in dispute are therefore service charges within this definition, and so are "relevant costs" under the provisions of section 18(2). Under the provisions of section 19 of the Act, such 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 work, only if the services or works are of a reasonable standard; and the amount shall be limited accordingly."

21. The question at issue, therefore, is whether the insurance premiums have been reasonably incurred, or whether the landlord has acted reasonably in the placing of the particular insurance. Clearly, the landlord has an obligation to insure, but she must act in a reasonable manner in doing so.

Consideration

22. It is unfortunate that, despite the clearly expressed obligation contained in the lease, the respondent appears to have been so reluctant to produce copy policies and other documentation: it is to be hoped that there may be more open dealings in this respect in the future.

23. Whilst it appears from the documentation that has been produced that there may have been some misunderstanding over the premiums actually payable during the years 2001-2003, such that the sum of £286.25 referred to by the applicant did not relate to two years, but to one, it is clear that there has been a very significant increase thereafter, the actual premium due for 2003 -2004 being some 50% more than the landlord originally indicated.

24. It is nonetheless also clear from the documentation that the original premium allocation was calculated from the overall block policy premium in a way which, whilst administratively convenient to the landlord, gave an incorrect apportionment of costs between the original properties.

25. In these terms, the applicant and her predecessors were being under-charged for the insurance that was being provided. The figures produced by Norwich Union in October 2003 and February 2004, showing the breakdown of the premium as between the different properties, are obviously helpful in this respect, and have resulted in a more equitable allocation of costs, although one that has given rise to the present application.

26. Whilst it may be accepted, therefore, that the premiums under the block policy are now correctly allocated, that leaves the question of whether the block policy is the proper way of dealing with the insurance, or whether insuring the properties individually would produce cheaper premiums, or whether a different insurer might offer better terms. No direct evidence has been put forward on the possible comparison between individual and block policies, although the figures put forward by the applicant suggest that insuring the properties individually is likely to be cheaper.

27. The RICS Service Charge Residential Management Code recommends that, with respect to buildings insurance,

> "you should, in selecting the insurance company, have regard to your experience of that company's handling of claims in general terms as well as the premium being charged. You should also consider recommending an independent insurance broker in appropriate circumstances."

28. The respondent here has used a broker, and the Tribunal does not accept the tenant's claim that this will have made the insurance more expensive: as suggested by Norwich Union, when the respondent questioned them about the advice that they had given to the applicant, the applicant appears to have some misunderstanding of the broker's role.

29. Despite this use of a broker, however, there is no evidence of competitive quotations being sought on a year on year basis. The papers indicate a determination to insure with Norwich Union, on the basis that they are a big insurance company; that they are at the forefront of insurance companies in respect of their flood ratings; and that it is better to stay with them because, if ever there were a subsidence or structural problem, then it could be awkward to resolve with a new insurer.

30. The Tribunal does not accept this last argument: there is nothing to suggest that any claims have ever been made in respect of subsidence or structural problem with relation to this property, and no reason has been given to anticipate any such problems. Using that argument alone for declining to change insurer therefore seems to be unjustified, as does the argument that the other insurer's premiums may increase in the future when they carry out proper flood risk assessments.

31. The implication here is that these competitors have made no such assessments, and that accordingly their provision for possible flood claims is in some way inadequate, an implication which the Tribunal considers to be unreasonable.

32. For other insurers flood assessments to be a relevant issue it would seem necessary to show, not that their premiums were thereby reduced, but that they be unable or unwilling to meet any flood claims. No evidence to that effect has in fact been adduced.

33. The respondents argument also seems to ignore the fact that premiums may well vary from year to year in any event. The Tribunal does not see year on year change as an argument for changing insurers on an annual basis, and recognises that there may be merit in staying with the same insurer for a period of time, but that does not mean that there is no responsibility to seek competitive quotations from time to time.

34. That is what the applicant has sought to do. The earlier quotations which she obtained appear to have been rejected on the perfectly acceptable basis that they were not commercial policies, but the apparent rejection of Fortis, for example, on the basis they are

> "large in Belgium but no so big over here and deal only with a small amount of property insurance"

seems less well founded. Here again, concern is expressed about flood risk assessment and the possibility of future premium rises.

35. On consideration of the figures put forward by the applicant, the quotation which she obtained from Norwich Union is striking, since although at £584.34 it is the most expensive, it is for a sum of only slightly more than half the £1,034.40 which is actually being paid under the existing Norwich Union policy for the year 2005-06. Unfortunately, the documentation is confusing, in that it seems to imply that this quotation was subsequently withdrawn because

> "Norwich Union Direct does not provide cover for commercial properties and if she wanted such cover she would need to approach an insurance broker"

and yet the applicant did obtain the quotation in question from an insurance broker. The reason given to that broker for the quotation's subsequently being withdrawn, was that Norwich Union were already covering the property under an alternative policy. There is no suggestion that the policy would have been inadequate.

36. This suggests that significantly cheaper insurance should be available. Overall, the indications are that the respondent has declined to consider any alternatives to her existing insurance arrangements, when there is evidence to suggest that, if she had, she would have been able to obtain more favourable terms.

37. On the evidence which she has offered, she has done this simply because a new insurer's premiums may increase at some time in the future; because their premiums may take inadequate account of an identified flood risk (but not that they would not meet claims); and that there might be some argument if a claim were submitted in respect subsidence or structural problem, even though there is no evidence to suggest that such a claim might be likely. The Tribunal considers all of this to be unreasonable.

Determination

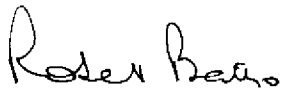
38. The quotations obtained by the applicant indicate that, for the present insurance year, it should have been possible to obtain insurance at a premium not exceeding the amount originally quoted to the brokers whom she approached by Norwich Union, that is say £584.34. The applicant would have been liable for one half of this sum, or £292.17, and the Tribunal determines that that is the maximum sum that it would be reasonable for the respondent to recover from her.

39. The premium payment sought by the respondent landlord for the year 2004-2005 was slightly over 95% of the premium for the 2005-2006 year, and the premium for 2003-2004 was just over 93% of the premium sought for 2004-2005. Applying these percentages to the sum that the Tribunal considers reasonable for the year 2005-2006 points to the conclusion that the amount reasonably recoverable for 2004-2005 would have been £278.20 and, for the year 2003-2004 £259.51. To the extent that sums in excess of those figures have been paid, they are considered to have been unreasonable, and they should accordingly be refunded.

40. The Tribunal recommends that, for future years, the respondent landlord should instruct her brokers to seek alternative quotations, both on the basis of multi-tenure policies and individual building policies, and select that which, whilst providing suitable cover "in an insurance office of repute to the full replacement value thereof" also offers the best terms to the tenant. It seems likely that a Tribunal asked to reassess the reasonableness of the insurance in the future would consider it unreasonable if the respondent had again declined to change insurers on the sole ground that dealing with any future subsidence claim might prove difficult; because their assessment of flood risk was less sophisticated; because they might not always be the most competitive; or because a multi-tenure policy was more convenient.

Section 20c Application

41. No representations have been received from either party in respect of the tenant's application for the limitation of the landlord's ability to recover costs under section 20c of the Landlord and Tenant Act 1985. The lease provides that the only sum recoverable by the landlord in respect of service charge is the tenant's share of the insurance premium. Accordingly there is no question of the landlord's costs in relation to this application being made being recoverable from the tenant, and no determination is made.



Robert Batho
MA BSc LLB FRICS FCIArb
(A member of the Panel Appointed by the Lord Chancellor)

11th August 2005