

LEASEHOLD VALUATION TRIBUNAL

In the matter of: Paragraph 8 of the schedule to the Landlord & Tenant Act 1985

Decision of the Leasehold Valuation Tribunal

Case Number:	CHI/45UE/LCI/2005/0003
The Property:	1 -26 Sandown Court & Pumping Station Newbury Road Crawley West Sussex
The Applicants:	Melford Park Management Company Ltd
The Respondent:	FHL (Nominees) Limited
Date of the Application:	7th November 2005
Date of the Hearing:	1st February 2006
Date Decision issued:	10th February 2006
Members of the Tribunal:	Mr R.T.A.Wilson LL.B Chairman Mr. R. Wilkey FRICS

Introduction

1. This case concerns an Application to the Leasehold Valuation Tribunal under paragraph 8 of the Schedule to the Landlord and Tenant Act 1985 as amended (the 1985 Act) in which the Applicant leaseholders challenge their Landlords choice of insurer.
2. Paragraph 8 of the Schedule to the 1985 Act provides:-
 - (1) This paragraph applies where a tenancy of a dwelling requires the tenant to insure the dwelling with an insurer nominated by the landlord.
 - (2) The landlord or tenant may apply to a County Court or Leasehold Valuation Tribunal for a determination of whether –
 - (a) The insurance which is available from the nominated insurer for insuring the tenants dwelling is unsatisfactory in any respect, or

(b) the premiums payable in respect of any such insurance are excessive.

(3)

(4) On an application under this paragraph the court or tribunal may make –

(a) an order requiring the landlord to nominate such other insurer as is specified in the order, or

(b) an order requiring him to nominate another insurer who satisfies such requirements in relation to the insurance of the dwelling as are specified in the order.

3. The Applicant is Melford Park Management Company Ltd, the Management Company formed for the purposes of managing the estate known as 1-26 Southdown Court and Pumping Station, Newbury Road, Crawley, West Sussex. The Respondent is the freeholder FHL (Nominees) Limited.
4. Melford Park is an estate of 19 houses and a block of 26 flats. There is a pumping station for sewage, which serves the houses. The buildings insurance covers the flats and the pumping station for the houses and the renewal date is the first of June in each year.
5. Both the leases and the transfer of parts relating to the houses provide that the Management Company keeps the subject premises insured through such agency and insurance company as may be nominated by the lessor from time to time.
6. The Tribunal is told that up to and including 2003 the subject properties were insured via Melford Park Management Companies managing agents, CPM. In 2004 the freeholder called upon the Management Company to insure through an agency and company nominated by them as provided for in the leases.

Representations of the Parties

7. As noted above the substance of the applicants complaint is that, to adopt the wording of paragraph 8 (2) (b) of the Schedule to the 1985 Act, "the premiums payable in respect of the buildings insurance for the subject properties are excessive", and they make that complaint on the basis that comparable insurance cover can be obtained at a significantly lower cost than the current annual premium for the subject properties.
8. The submissions of the Respondent maybe summarized as follows:-

- (1) The terms of the leases provide for the insurance to be nominated by the freeholder.
 - (2) The Applicant has failed to produce a comparable policy to support their alleged quote as the terrorism cover has not been treated correctly.
 - (3) The Respondent argues that the Tribunal should strike out the application as the Management Company has failed to respond to the directions given.
 - (4) That whilst they may not have obtained the cheapest insurance in the market, the insurance is placed with a company that best suits the landlords business.
9. There is no dispute between the parties as to the appropriate sum to be insured and neither party has questioned the standing of either the current insurers or the insurers nominated by the Applicants. The question for determination therefore, is whether the current policy effected by the Respondent to provide insurance cover involves the payment of excessive premiums. On the one hand the Applicants argue that the question should be answered in the affirmative because comparable cover is available at a significantly lower cost. On the other hand, the Respondent argues that in all the circumstances its insurance arrangements are reasonable and that although cover is probably available at a lower cost, the premiums currently payable are not excessive and that their agent places the insurance with the Company that best suits the freeholders business.
10. The Applicants bundle contains a letter from their chartered surveyors Messrs Jordan & Cook which outlines the following comparisons:-

	Applicants Quote	Landlords Invoice
2004	£2,979.23	£4,406.42
2005	£3,767.99	£4,764.51

11. Messrs Jordan & Cook state that the quotations for 2004 & 2005 are from reputable insurers (Alliance Cornhill & Norwich Union) who quoted in full knowledge of the relevant facts. They claim it is not in their clients' best interest to pay a higher premium than necessary nor to insure with anything but a reputable insurer for the full reinstatement value. The Applicants bundle also contains a letter from their insurance brokers Warwick Davis (Insurance Consultants) Ltd in which they confirm that Norwich Union were in full receipt of the facts of the risk and were not aware of the current insurers premium at the time of quoting. The letter states that the premium had been

calculated according to Norwich Unions rating structure for the post code, be it considered high risk or otherwise.

12. The Tribunal are aware of the long line of reported cases in respect of the reasonability of insurance premiums made under Section 19 (2A) of the 1985 Act. These decisions support the view that a landlord is not obliged to accept the cheapest quotation provided the insurance is competitively obtained in accordance with market rates. However, the present case involves an Application under paragraph 8 (2) (b) of the Schedule to the 1985 Act. According to the wording of the 1985 Act the issues to be determined on an Application under the respective provisions are different. Under Section 19 of the 1985 Act the issue is whether cost incurred for the insurance was reasonably incurred, whereas under the latter provision the issue is whether the insurance premiums are excessive. Although the substance of the leaseholders complaint maybe similar in each case it must be questioned why parliament adopted the different formulation in the two provisions (both of which were inserted in the 1985 Act by the Housing Act 1996). In the view of this and other Tribunals, when making a determination under paragraph 8 (2) (b) of the Schedule to the 1985 Act it would be consistent with the wording of that paragraph for the Tribunal to attach greater weight to the impact of the cost on the leaseholder than to the reasonableness of the landlord in requiring insurance to be effected with a particular insurer.

Deliberations

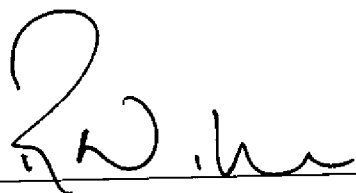
13. Firstly, although there is some conflicting evidence the Tribunal is satisfied that the policy offered by Norwich Union is comparable to the current Zurich policy both as to the risks in respect of which the subject properties would be insured and as to the terms of the insurance. Secondly the comparisons put forward by Messrs Jordan & Cook show that the landlords quote for the 2004 insurance was just over 47% higher than the Applicants quote whilst the 2005 figures show an increase of a little over 26%. Thirdly the Tribunal rejects the submission of the Respondents that the Applicants are or have been in material breach of the directions given in this case.
14. It is the opinion of the Tribunal that whilst the premium for the 2004 insurance was excessive, the premium for the current year under review namely 2005 whilst high is not excessive or unsatisfactory within the meaning of paragraph 8(2)(B) of the Schedule to the 1985 Act.
15. As noted above, on an Application under paragraph 8 of the Schedule to the 1985 Act, the Tribunal may make –

(a) an order requiring the landlord to nominate such other insurer as is specified in the order, or

(b) an order requiring him to nominate another insurer who satisfies such requirements in relation to the insurance of the dwelling as are specified in the order.

16. As the Tribunal finds that the current insurance, which is in place from the nominated insurer, is neither unsatisfactory nor excessive it makes no order.

Robert Wilson
Chairman

A handwritten signature in black ink, appearing to be 'RW', written over a horizontal line.

Date:

10th February 2006