

5037

Northern Rent Assessment Panel

MAN/00CJ/LSC/2009/0097

**LEASEHOLD VALUATION TRIBUNAL**

**SECTIONS 27A AND 20C OF THE LANDLORD AND TENANT ACT 1985  
(AS AMENDED)**

**PROPERTY :** 3.10 Centralofts  
21 Waterloo Street  
Newcastle upon Tyne  
NE1 4AL

**APPLICANT:** Gary Chesterfield

**RESPONDENT:** London & Regional (Newcastle) Limited

**THE DECISION OF THE TRIBUNAL**

**Preliminary**

- A) On 19<sup>th</sup> September 2009 the Applicant applied pursuant to section 27A of the Landlord and Tenant Act 1985 ('the Act') for a determination as to the service charge for apartment 3.10 Centralofts ('the Apartment') for the years 2004, 2005, 2006, 2007, 2008 and 2009 and for an order under section 20C of the Act.
- B) The Apartment is situated in a block ('the Block') of apartments and commercial premises known as 21 Waterloo Street, Newcastle upon Tyne NE1 4AL
- C) Directions were made on 25th January 2010.
- D) The Application included the years 2004 and 2005 on the basis that the Respondent was seeking to recover the service charge from the Applicant for those years notwithstanding that he was not then the tenant of the Property. The Respondent subsequently waived its claim in respect of those years and the matter therefore proceeded in relation to the years 2006 2007, 2008 and 2009 only, though at the date of the hearing the service charge for 2009 had not been finalised.
- E) The lease containing the service charge provisions in issue ('the Lease') is dated 6<sup>th</sup> October 2004 and was made between the Respondent (1) and Lee West and Jane Roseanna Carr (2). There was no dispute that the Applicant was still the landlord and the Respondent one of the current tenants.
- F) The relevant sections of the Act are set out in the Schedule to this Decision.

**Inspection**

1. The Tribunal inspected the Apartment, the common parts of the Block and its setting generally on 10<sup>th</sup> May 2010, accompanied by the Applicant and the concierge of the Block.
2. The Block has six storeys and an underground car park. The Apartment is a corner apartment on the third floor. The Block has a reception entrance onto Waterloo Street for the apartments and another entrance onto the pedestrian square to the rear for the commercial units. The apartment entrance has an external code-operated admission system. Inside there is the concierge's station and letter boxes for each apartment and the management company.

From the reception area a lift ('the Ground Floor Lift') serves all floors and the basement car park. Stairs lead to a landing from which another lift ('the First Floor Lift') serves all the floors and the basement car park. On either side of that central core, carpeted corridors lead to the apartments on each level with fire escape stairs from each side corridor. The car park is accessed from a side road via entrance and exit code-controlled roller shutters. It has 84 spaces. Rubbish (both general and re-cyclable) is stored in and removed from this area which also houses a caretaker's store and electrical switch gear rooms apparatus. It has a number of fire escapes.

### **The Hearing**

3. A hearing was held at 11.30 am on 10th May 2010 at The Marriott Hotel, Gosforth, Newcastle upon Tyne. The Applicant attended in person. The Respondent was represented by Ms. Lois Greathead assisted by Ms. Lynne Brown both of Kingston Property Services, the Respondent's managing agents for the Block. Other than those named there were no witnesses on either side.

### **The Lease**

4. The Lease is for a term of 125 years from 1st January 2003 at a stepped yearly rent, initially of £125.00. It provides for a service charge comprising three elements; Group A relating to both the residential and commercial parts, Group B relating only to residential parts and a charge relating to car parking. In the case of Groups A and B, the proportion to be paid by each tenant is to be a reasonable proportion determined by the landlord acting reasonably. The parking proportion is the fraction which the parking space(s) allocated to the tenant under the Lease bears to the total number of parking spaces.
5. Paragraphs 1-10 of the 6<sup>th</sup> Schedule to the Lease (set out as Annex 1) contain the landlord's obligations in relation to the service charge. Paragraphs 10-12 of the Fourth Schedule (set out as Annex 2) contain the tenant's obligations in relation to the service charge. Clause 9 of the Lease has some supplementary provisions, the relevant ones being set out as Annex 3. The service charge year is the year commencing 1<sup>st</sup> January although provision is made for payment to be made in two instalments; on 1<sup>st</sup> January and 1<sup>st</sup> July in each year.

### **The Issues**

6. With one exception the issues were to do with what the Applicant saw as failures of management bearing in mind the obligations of the landlord in the Lease. He had become so frustrated that the management did not deal with certain matters that he had refused to pay the service charge for the years 2008 and 2009. Those matters were:
  - a. The need for repair of a large dent and cracks in the walls of the stairwell on the second floor
  - b. A few weeks delay in 2009 in repairing the code lock on the door to the car park from the stair leading to it.
  - c. The need for painting the corridor walls after five years of use
  - d. The Ground Floor lift having been out of use since the summer of 2008 and if the fault was that of the installers they or the landlord should bear the cost of repair or renewal.
  - e. Breakdowns to the First Floor lift in 2009
  - f. A failure of the managing agents to respond to his complaints or negotiate a reduced charge.
7. Only in one case did the Applicant specifically question any element of the service charge. That was to do with bills for the use of taxis in 2006 and 2007.

8. What he was essentially saying was that the charge made for management services was not justified in the light of these matters.

#### **Matters agreed or not in dispute**

9. Kingston Property Services took over management of the Block in April 2009
10. The Applicant became tenant of the Apartment in 2006.
11. The walls of the core staircase were repaired and painted in January 2010 and it was intended to re-paint the corridor walls within the next year or so.
12. The Concierge's hours Monday to Friday were recently reduced from 15 hours to 9 hours, thus reducing costs.
13. In 2009 the lighting in the car park had been controlled by sensors instead of being permanently on and if that proved beneficial the lighting of the common parts of the rest of the Block would be similarly treated if the capital cost justified it.
14. There are 84 car parking spaces and a total of 83 residential units in the Block.
15. The parking service charge proportion allocated to each apartment having a parking space is  $1/84^{\text{th}}$  or 1.2%. The Group A proportion (which the management refers to as the *estate proportion*) is 0.88%. The Group B proportion is 1.04%. These proportions have been constant since the grant of the leases of the apartments.
16. About two years ago dissatisfaction with the then managing agents led to residents getting together and contemplating taking on themselves the management of the Block. This idea had been abandoned because it would be too expensive to achieve. There was no recognised tenants' association within the meaning of section 29 of the Act. Nevertheless the Respondent's agents did work informally with the residents and this had led to changes including the lighting system in the car park.

#### **The evidence**

17. The Applicant's evidence of the facts underlying his reasons for challenging the service charge was not disputed other than in relation to the taxi fares. The matter of the taxis is dealt with at paragraph 22 below.
18. As to the Ground Floor lift the Respondent's evidence was that, after a number of attempts to rectify its failure to operate, it had been discovered that it had been wrongly installed and that there was, in effect, an inherent defect. To put right that defect was estimated to cost £40,000 and the Respondent did not think it right to spend that sum and charge it back via the service charge. It had sought to claim under the NHBC insurance scheme but liability had been denied because the fault was mechanical and therefore not covered by that scheme. The Respondent was therefore in negotiation with the installer, seeking to have the defect put right by the installer or at his expense. If those negotiations failed resort might have to be had to Court action but it would prefer to avoid such a measure if possible.
19. As to the work to the central core walls, the Respondent denied the allegation of the Applicant that the work had been done only because of the Application and the pending hearing. Internal decoration and associated minor repair, in the absence of any direction in the Lease, was planned to be done on a five to seven year cycle. The Block in its present form, and therefore the decoration, was only six years old. To spread the financial load the decoration of the staircase core had been done in 2010 and the remainder of the internal decoration would be done in two stages in 2011.
20. The Respondent said that repairs to the First Floor Lift in 2009 had not been abnormal though it was recognised that both lifts being out of order at the same time did cause some difficulty and inconvenience. Similar considerations applied to the car park door lock.

21. Ms. Greathead said that it was not possible to comment on the reaction of the previous managing agents to the Applicant's complaints but it had been generally acknowledged that relations had improved since Kingston Property Services took over the management.
22. The Respondent's evidence about the taxi bills was that they represented the cost of a member of the then managing agents' staff being called out. Taxis were used because he did not drive and that the cost thus incurred was far less than would have been the case had contractors been called out. The Applicant was asked if he could suggest what cost should be allowed if the cost of the taxis was not but he was unable to do so.
23. Asked about the calculation of the management charge for each year, Ms. Greathead said it was arrived at by estimating what time would be spent by the various employees of the managing agents in relation to the management of the Block and its service charge. It was not calculated as a percentage of the total service charge excluding the cost of management nor on the basis of an amount per apartment.

### **Consideration of the issues**

24. The Tribunal was satisfied that the Lease did provide for a service charge within the meaning of section 18 of the Act.
25. It noted that the Applicant had not been charged for anything that had not been done. It also noted that the concept of reasonableness was not only inherent in section 19 of the Act but also appears in the relevant provisions of the Lease. For instance the landlord has to act reasonably in setting the proportions for Groups A and B and the repair obligations in paragraphs 8 and 9 of the 6<sup>th</sup> Schedule are qualified by the word 'reasonable'. Thus the test to be applied to the allegations of the Applicant is whether the Respondent acted reasonably in all the circumstances of the case.
26. The Tribunal accepted the evidence given on behalf of the Respondent. Indeed it was not seriously called into question by the Applicant. His case was that the action or inaction on the part of the Respondent was such that there should be some reduction in the service charge he was called on to pay. He made no suggestion and presented no evidence that such reduction could be other than in relation to management charges. It was not suggested, nor could it properly be suggested, that the Respondent was not entitled by the Lease to make a management charge. The Lease clearly permits it to do so – see clause 9 (a)
27. The Tribunal therefore examined those charges for the relevant years and the basis on which they were calculated. It found that the method of setting those charges was normal and reasonable. As a further test it calculated the amount of the charge per unit which works out to be in the region of £105 per unit which is by current market standards very low. As a percentage of the overall service charge expenditure it is below 10%. There was therefore in the view of the Tribunal no ground for saying that the basis of charge was wrong.
28. Although there was no doubt some inconvenience to the tenants in having to wait for the car park door lock to be repaired and having the First Floor Lift out of action more than they might have wished especially when the only other lift was not working, the Tribunal could not say that the Respondent had behaved unreasonably. There was no evidence that the theoretical diminution in security posed by the door lock being out of order had in fact resulted in any actual breach of security and since the only access to the car park from outside was either by doors locked from the inside or by the roller shutters controlled by a code known only to the tenants, the chances of a significant breach of security were negligible.
29. On the particular question of the Ground Floor Lift the Tribunal found that in all the circumstances of the case the Respondent had acted both reasonably and responsibly.
30. The Lease does not specify how often internal decoration of the Block is to be carried out and the Tribunal found the policy of the Respondent in this regard to be both normal and

reasonable. To have carried out repairs to the second floor staircase wall in advance of planned decoration would not have been cost effective and would have resulted in the service charge being greater than necessary.

31. Although the former managing agents might perhaps have dealt with the Applicant's complaints in a more helpful way and given a more full explanation of why things were as they were, their approach could not give grounds for any reduction in the service charge.
32. It is noted that under the terms of the Lease the Applicant is jointly and severally liable to pay the service charge

### **The section 20C Application**

33. The grounds for this Application were essentially the same as those for the section 27A Application.
34. The case for the Respondent was also the same, namely that the Respondent had acted reasonably and that the Application was not justified. Ms. Greathead did however say that in any event the Respondent would not seek to charge its costs in connection with the proceedings to the Applicant's service charge.
35. Although the Tribunal appreciated his frustration because things were not done as and when he felt they should have been, the Applicant did not succeed and the Respondent had not been at fault in defending the Application or responding to Directions. It therefore did not consider that it was equitable to make any order under section 20C.
36. Although not making a determination on the point it did in any event appear to the Tribunal that the Lease did not permit the Respondent to charge the costs to the service charge where an application to the Tribunal was not made by the Respondent itself.

### **Determination on the section 27A Application**

37. For the reasons given at paragraphs 24 to 31 above, the Tribunal determines that the Applicant is liable to pay the service charges in respect of the Apartment for the years 2006, 2007, 2008 as certified by the accountants for the Respondent and that for 2009 in accordance with the demands on behalf of the Respondent dated 24<sup>th</sup> February and 1<sup>st</sup> July 2009. Any underpayment of the relevant sums is to be paid by the Applicant to the Respondent not later than 31<sup>st</sup> July 2010

### **Determination on the section 20A Application**

38. For the reasons given at paragraphs 33 to 35 above the Tribunal declines to make an order pursuant to section 20C of the Act.

## THE SCHEDULE

### Relevant Legislation

#### **Section 27A**

##### ***Liability to pay service charges: jurisdiction***

- (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.*

### **Section 18:**

#### ***Meaning of "service charge" and "relevant costs"***

- (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.*

### **Section 19**

#### ***Limitation of service charges: reasonableness***

(1) *Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -*  
*only to the extent that they are reasonably incurred; and*  
*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.*

### **Section 20C**

#### ***Limitation of Service charges – costs of proceedings***

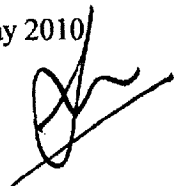
(1) *A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property*

*tribunal or leasehold valuation tribunal .....are not to regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant....*

(2) [omitted]

(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.*

Dated 14<sup>th</sup> May 2010/



Chairman of the Tribunal

# **ANNEX 1**

**Part of the sixth schedule to the Lease**



THE SIXTH SCHEDULE  
Landlord's Covenants

1. To pay to the appropriate authorities respectively responsible for collecting the same all rates taxes and outgoings in respect of any part or parts of the Block used in common by the owners or occupiers of more than one lettable unit in the Block or other buildings upon the Block including any imposed or becoming payable after the date hereof and whether or not of a novel nature
2. To maintain the accessways pathways and pavements forming part of the Block in good order and condition and to provide lighting therefor and to use such efforts to maintain any common service conduits in under or over the Block in a good state of repair and condition BUT nothing herein contained shall render the Landlord liable for maintenance of the said accessways pathways and pavements or conduits which shall have been adopted by or become vested in any national local or public authority or body or statutory undertaking
3. To use all reasonable efforts to keep the Common Parts of the Block neat and tidy and adequately lighted
4. To keep or cause to be kept proper books of account of all costs charges and expenses incurred by the Landlord in carrying out its obligations under this schedule or in otherwise managing and administering the Block and in each year during the Term to prepare a certificate of:
  - (a) the total amount of such costs charges and expenses for the period to which the certificate relates and
  - (b) the proportionate amount due from the Tenant to the Landlord under the provisions set out in the Fourth Schedule hereto after taking into account payments made in advance under the provisions set out in the same Schedule and to send a copy of the same to the Tenant
5. (a) To insure and keep insured in the name of the Landlord (or alternatively in such other name as the Landlord may specify) with the interests of the lessees for the time being of the flats comprising the Block and their respective mortgagees being noted if so requested (either generally or specifically at the discretion of the Landlord) in some office of repute through the agency of the Landlord or through such agency as the Landlord shall from time to time nominate (and the Landlord shall be entitled to retain any commission or other benefit it receives in respect of the same) the Block against loss or damage by fire or aircraft or things dropped from aircraft and storm and tempest and all other risks normally covered for standard premium by a comprehensive flat owners policy (including terrorism cover provided the same is reasonably available on reasonable terms) (and for the avoidance of doubt it is hereby confirmed that the Landlord shall be entitled to retain a proper commission in respect of arranging the same) in the aggregate amount of:
  - (i) the full costs of reinstating the Block and
  - (ii) the amount of two years' rent thereof to the Landlord
  - (iii) All architect surveyor and other professional fees

and also to insure against liability for personal injury occurring to any person AND such other risks as the Landlord may require (including but not limited to insuring against liability for personal injury or other injury occurring to any person) and to make all payments necessary for effecting and keeping on foot such insurances and if the Block or any part thereof shall be destroyed or rendered unfit for use by any of the insured risks during the Term then and so often as the same shall happen and so long as the policy or policies effected by the Landlord shall not have been vitiated or payment of the policy monies refused in whole or in part in consequence of some act or default by the Tenant or someone residing with or visiting the Tenant the rent hereby reserved or a fair proportion thereof according to the nature and extent of the damage sustained shall from the date of destruction or damage be suspended or abated until the Block shall again be rendered fit for use and in case of difference touching this provision the same shall be referred to arbitration by a single arbitrator in accordance with the provisions of the Arbitration Acts 1996 or any statutory modification or re-enactment thereof for the time being in force

- (b) as often as any part of the Block is destroyed or damaged by fire or aircraft or things dropped from aircraft and storm and tempest or any other peril covered by the aforementioned insurance to apply the proceeds of the insurance received (other than in respect of loss of rent) towards the rebuilding or reinstatement of the Block
6. To repair to a good and tenantable state and condition the structure and the exterior and the Common Parts of the Block and all fixtures and fittings in the Common Parts and additions thereto (including lifts) when properly required (including any renewal and replacement of all worn or damaged parts) (damage by any of the insured risks excepted) but without prejudice to the rights of the Landlord to recover from the Tenant or any other person the amount or value of any loss or damage caused by the negligent or other wrongful act or default of the Tenant or such other person
7. To provide such facilities for the benefit of the Block as the Landlord may from time to time determine (acting reasonably)
8. If the expression "the Parking Space" is defined in clause 1 of this Lease (but only if it is so defined)
- (a) To use all reasonable efforts to keep the car parking spaces forming part of the Parking Area ("the Spaces") and all gates shutters ramps and accessways leading thereto and the security facilities thereof and all fixtures and fittings and facilities of the Parking Area in good and tenantable repair and cleaned (including the replacement of damaged and worn parts)
- (b) If and whenever the Landlord shall consider it necessary so to do install such equipment and facilities as it may deem appropriate for the better running management use and security of the Spaces
- (c) To effect such insurances in respect of the Parking Area as the Landlord may from time to time deem appropriate
- 9.
- (a) To use all reasonable endeavours to keep the Common Parts and all fixtures and fittings therein and all additions thereto which are used by residential Tenants within the Block only in good and tenantable repair and decorative condition (damage by insured risks excepted) but without prejudice to the right of the Landlord to recover from the Tenant or any other person the amount or value of any loss or damage caused by the negligent or other wrongful act or default of the Tenant or such other person and (insofar as may be appropriate) to provide lighting therefor
- (b) Without prejudice to the generality of the foregoing to use all reasonable endeavours to maintain any equipment and/or facilities which may from time to time be available for communal use by residential Tenants within the Block only and insofar as may be applicable to pay and discharge all or any rental or other payments (including maintenance payments) which may from time to time be payable in relation to any entry phone system installed in the Block or in respect of any lift and also any other such facilities in respect of which such payments shall from time to time become due whether such facilities are situated wholly or partly within the Common Parts of the Block or elsewhere within the Block
10. As and when properly called upon so to do to pay and discharge (to the relevant body) any and all costs charges and expenses payable by the owner and/or lessees of the Block in common with the owner(s) and/or lessees of other part(s) of the Block in respect of any and all common facilities provided for the benefit of the owner and/or lessees of the Block in common with the owners and/or lessees of other part(s) of the Block

# **ANNEX 2**

Part of the Fourth Schedule to the Lease

10. (a) To pay to and keep the Landlord indemnified against the Group A Service Charge Proportion of all costs charges and expenses which the Landlord shall incur in complying with the obligations set out in the Sixth Schedule hereto

(with the exception of Clause 8 thereof) or in doing any works or things to the Block and/or for the maintenance and/or improvement of the Block and/or any other costs charges or expenses which the Landlord designates as a Group A Service Charge Item BUT if in the reasonable opinion of the Landlord it shall be undesirable or unreasonable to calculate or apportion any such costs charges and expenses on the basis of the Group A Service Charge Proportion then the proportion shall be such part of such costs charges and expenses determined at the reasonable discretion of the Landlord

- (b) To pay to and keep the Landlord indemnified against the Parking Service Charge Proportion of all costs charges and expenses which the Landlord shall incur in complying with the obligations set out in Clause 8 of the Sixth Schedule and/or any other costs charges or expenses which the Landlord designates as a Parking Service Charge Item

- (c) To pay to and keep the Landlord indemnified against the Group B Service Charge Proportion of all costs charges and expenses which the Landlord shall incur in complying with the obligations set out in Clause 9 of the Sixth Schedule hereto and/or in doing any works or things to the parts of the Block used solely by the residential tenants and/or for the maintenance and/or improvement of the Block and/or any other costs charges or expenses which the Landlord designates as a Group B Service Charge Item but if in the reasonable opinion of the Landlord it shall be undesirable or unreasonable to calculate or apportion any such costs charges and expenses on the basis of the Group B Service Charge Proportion then the proportion shall be such part of such costs charges and expenses determined at the reasonable discretion of the Landlord

- (d) Notwithstanding anything herein contained the parties agree that if the Landlord shall consider that any part or parts of the costs charges and expenses which the Landlord shall incur as aforesaid shall be the subject of contributions from persons other than the lessees for the time being of the Block then the Landlord shall be entitled but not obliged to reduce the amount of the costs charges and expenses in question to which the Tenant is obliged to contribute by such sums as the Landlord shall in its absolute discretion consider reasonable rather than allocating the total amount of those costs charges and expenses and in this connection the Tenant acknowledges that the discretion conferred upon the Landlord under the provisions of this clause is an absolute discretion which shall be exercisable by the Landlord in such manner and upon such Terms and at such times as the Landlord shall consider appropriate

11. (a) To pay to the Landlord on the first day of January and of July in each year such sum as the Landlord shall estimate to be half of the amount prospectively payable by the Tenant under clause 10 of this Schedule (such sum being taken into account and credited against the amount eventually determined to be so payable) the first payment to be made on the execution hereof and to be the amount of the First Service Charge Payment to cover the period from the date hereof until that one of the payment dates next occurring after the date hereof and until such time as the said expenses shall be calculated or estimated each of the said half-yearly contributions shall be in the amount of the First Service Charge Payment NOTING THAT:-

- (i) Any sum received by the Landlord on the execution hereof or from time to time on account of any service charge proportions payable for a period after the date upon which such payment or payments is or are to be made shall be deemed to be held by the Landlord as bare trustee for the Tenant upon trust to utilise such sum towards the expenses to be incurred by the Landlord as aforesaid

(ii) Any sums due from the Tenant to the Landlord under the Terms of this clause shall be deemed to be sums due by way of additional rent and shall be recoverable by the Landlord as such and

(iii) In this Schedule the expression "all costs charges and expenses which the Landlord shall incur" (or words having a similar effect or meaning) shall include not only those costs charges and expenses which the Landlord shall have actually incurred or made during the year in question but also a reasonable sum on account of those items of expenditure which are of a periodically recurring nature (whether recurring by regular or irregular periods) whenever disbursed incurred or made and whether prior to the commencement of the Term or otherwise including a sum or sums of money by way of reasonable provision for anticipated expenditure in respect thereof as the Landlord may in its absolute discretion allocate to the year in question as being fair and reasonable in all the circumstances

(b) If in order to comply with any of the obligations of the Landlord contained in the Sixth Schedule hereto or if to carry out any other works or things for the improvement of the Block the Landlord must spend money in excess of those sums the Landlord shall then have collected from the Tenant and the other tenants of the Block (as the case may be) towards the cost of carrying out such obligations or works or things then the Tenant shall pay on demand such sums as shall represent a proportionate part (calculated in the manner aforesaid) of the money that will be required to be expended by the Landlord over and above the sums already received by the Landlord and such further amount shall be taken into account in calculating the amount of the service charge proportions pursuant to the provisions of whichever of the sub-clauses (a) and (b) of this clause is appropriate

(c) Any sum due from the Tenant to the Landlord under the provisions of this clause 11 (and clauses 10 and 12 of this Schedule) shall also be deemed to be due by way of additional rent and shall be recoverable by the Landlord as such

12. Within twenty-one days after receipt of a copy of the certification provided for in the Sixth Schedule hereto to pay to the Landlord the net amount (if any) appearing by such notice to be due to the Landlord from the Tenant

# **ANNEX 3**

Part of Clause 9 of the Lease

9. FOR the sake of clarity the parties acknowledge that notwithstanding anything herein contained or implied:-

- (a) in the management of the Block and the performance of the obligations of the Landlord hereinafter set out the Landlord shall be entitled to employ or retain the services of any employee agent consultant service company contractor engineer or other advisers of whatever nature as the Landlord may require and the expenses incurred by the Landlord in connection therewith shall be deemed to be an expense incurred by the Landlord in respect of which the Tenant shall be liable to make an appropriate contribution under the provisions set out in the Fourth Schedule hereto
- (b) save to the extent that the same shall be prohibited by law and/or may be covered by any insurance effected by the Landlord (if at all) the Landlord shall be under no liability either to parties hereto or to any strangers to this Lease who may be permitted to enter upon the Block for accident happening or injuries sustained or for loss of or damage to goods or chattels in or on the Block or any part or parts thereof whether arising from the negligence of the Landlord or that of any servant or agent or independent contract of the Landlord or otherwise
- (c) the Landlord (here meaning London & Regional (Newcastle) Limited only) shall cease to be liable under any of the provisions herein contained or implied after they (the said London & Regional (Newcastle) Limited) shall have disposed of the reversion immediately expectant upon the Term of years hereby created (save in respect of any liability which may have arisen prior to the date of such disposal)
- (d) Unless otherwise specifically provided nothing herein shall impose any obligations on the Landlord to provide or install any system or service not in existence at the date hereof
- (e) Unless otherwise specifically provided nothing herein shall inhibit or in any way restrict or prevent the Landlord providing or installing any system or service not in existence at the date hereof for the purposes of good estate management of the Block and the maintenance of the Block as a block of residential flats and commercial units and for the avoidance of doubt and the sake of clarity the costs charges and expenses incurred by the Landlord in connection therewith shall be deemed to be an expense incurred by the Landlord in respect of which the Tenant shall be liable to make an appropriate contribution under the provisions set out in the Fourth Schedule hereto
- (f) Nothing herein contained or implied shall in any way prevent or restrict the Landlord from removing changing adding to or otherwise altering any system or service in existence at the date hereof for the purposes of good estate management of the Block and/or the maintenance of the Block as a block of residential flats and commercial units and for the avoidance of doubt and the sake of clarity the costs charges and expenses incurred by the Landlord in connection therewith shall be deemed to be an expense incurred by the Landlord in respect of which the Tenant shall be liable to make an appropriate contribution under the provisions set out in the Fourth Schedule hereto
- (g) Any notice in writing certificate or other document required or authorised to be given or served hereunder on the Tenant shall be sufficient although only addressed to the Tenant without his name and notwithstanding that any person to be affected thereby is absent under disability or unascertained and shall be sufficiently given or served if it is sent to the last known place of abode or business of the Tenant or is affixed or left at or on the Demised Premises (provided that in the event that it is affixed or left at or on the Demised

Premises it shall also be served upon the Solicitors notified in writing by the Tenant (if any) for service of such)

(h) The Landlord is entitled and authorised (but not obliged) to borrow money in order to comply with its obligations under the Sixth Schedule as and when it considers necessary provided that any such borrowing is on terms reasonably available in the open market from time to time at that time and for the avoidance of doubt and the sake of clarity the costs charges and expenses incurred by the Landlord in connection therewith (including but not limited to arrangement fees (if any) and interest) shall be deemed to be an expense incurred by the Landlord in respect of which the Tenant shall be liable to make an appropriate contribution under the provisions set out in the Fourth Schedule hereto

(i) The Landlord is (at its sole discretion) entitled and authorised (but not obliged) to rent an entry phone system for the Block (and any other equipment for the provision of any other facilities which in the reasonable opinion of the Landlord benefit the Block and/or the occupiers thereof) and the costs charges and expenses incurred by the Landlord in connection therewith (including but not limited to maintenance costs) shall be deemed to be an expense incurred by the Landlord in respect of which the Tenant shall be liable to make an appropriate contribution under the provisions set out in the Fourth Schedule hereto

(j) The Landlord is entitled to and authorised to (but is not obliged to) refer any service charge demands or the certification provided for in the Sixth Schedule to the Lands Tribunal or any other relevant tribunal or other court for the purposes of assessing the reasonableness (whether before or after the service charge demand has been levied or the certificate aforesaid has been finalised) and the costs charges and expenses incurred by the Landlord in connection therewith shall be deemed to be an expense incurred by the Landlord in respect of which the Tenant shall be liable to make an appropriate contribution under the provisions set out in the Fourth Schedule hereto

(k) If any damage occurs to the Demised Premises or to any other flat in the Block or to any parking spaces in the Parking Area or to any of the Common Parts of the Block (howsoever caused) for which the Landlord is obliged or required to contribute towards the repair (and which is not covered by any insurance then in existence) the costs charges and expenses incurred by the Landlord in connection therewith shall be deemed to be an expense incurred by the Landlord in respect of which the Tenant shall be liable to make an appropriate contribution under the provisions set out in the Fourth Schedule hereto

(l) In the event of the Landlord exercising the rights excepted and reserved in clause 6 of the Third Schedule hereto the Landlord shall be entitled (without prejudice to other rights in such regard herein contained) to vary the Service Charge Proportions or any of them by substituting for the percentage or percentages referred to in clause 1(a) hereof such percentage or percentages as shall in the reasonable opinion of the Landlord be appropriate having regard to any changes made as envisaged by such reservations

(m) Where an item of expenditure shall be incurred which shall fall to be treated as an item to which the Tenant is obligated to contribute towards under the provisions herein contained the Landlord acting reasonably shall be entitled to designate whether such an item of expenditure shall be treated as a Group A Service Charge Item and/or a Parking Service Charge Item