12483

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AP/LSC/2017/0024**
Property	:	**8 Bolster Grove, Crescent Rise, Wood Green, London N22 7RY**
Applicant	:	**Miss Ruth E Frederick**
Representative	:	**In person**
Respondent	:	**London Borough of Haringey**
Representative	:	**Mr McDermott (Counsel)**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Judge Robert Latham, Mr Stephen Mason FRICS FCIArb Mr Paul Clabburn**
Hearing and Venue	:	**19 October 2017 at 10 Alfred Place, London WC1E 7LR**
Date of decision	:	**13 November 2017**

DECISION

Decision of the Tribunal

1. The Tribunal finds that the following service charges are payable and reasonable:

(i) £4,722.04 in respect of major electrical works (25 March 2017);

(ii) £592.90 in respect of day to day repairs for the Service Charge Year 2015/6;

(iii) £344.23 in respect of day to day repairs for the Service Charge Year 2014/5;

2. The Tribunal makes no order in respect of the refund of tribunal fees or under section 20(C) of the Landlord and Tenant Act 1985.

The Application

1. By an application dated 19 January 2017, the Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in the service charge years 2006/7; 2014/5; 2015/6 and the estimated accounts for 2016/7.

2. Directions have been given by the Tribunal on 17 February 2017, 13 April 2017 and 15 June 2017. On 15 June, Judge Latham gave Directions at a Case Management Hearing ("CMH") at which the Applicant was represented by Counsel instructed by Van der Pump and Sykes LLP, Solicitors.

3. Pursuant to these Directions:

(i) The Applicant, with the assistance of her Solicitor, prepared a Schedule setting out the service charge items that she disputes (at p.61). She also provided a witness statement (at p.36).

(ii) The Respondent has provided its response to the Schedule (at p.30). The Respondent has provided a witness statement from Michael Bester, its Leasehold Services Manager (at p.132).

(iii) On 7 September, Clinton Davis Pallis, Solicitors who were now acting for the Applicant, filed a Bundle of Documents. The Directions had required this to be filed by 1 September, but the Tribunal granted an extension of time as the Applicant had had a family bereavement.

4. The issues raised in the Schedule fall under three headings:

(i) Major Electrical Works for which the Applicant was invoiced in the sum of £4,722.04 on 25 March 2017 (at p.96).

(ii) Fifteen charges relating to the communal fencing and doors for the Service Charge Years 2014/5 and 2015/6.

(iii) An alleged service charge of £52.10 in respect of a replacement of a baluster on the communal stairs charged in 2014/5.

5. The relevant legal provisions are set out in the Appendix to this decision.

The Hearing

6. The Applicant appeared in person. The Respondent was represented by Mr McDermott, Counsel, instructed by the Respondent's Legal Department.

7. At the beginning of the hearing, the Applicant applied for Judge Latham to recuse himself. She stated that at the CMH on 15 June, he had stated that (i) he would be reserving the case to himself and (ii) if the matter came back, he would "chuck it out". She stated that she was not happy with the manner in which Judge Latham had spoken to her and considered him to be biased. She added that the Counsel who had represented her at the hearing had also shared her concerns.

8. The Tribunal was mindful of the principle that justice must not only be done, but must manifestly be seen to be done. We adjourned to consider the application. We perused the tribunal file. This confirmed that Judge Latham had not reserved the case to himself.

9. The Tribunal informed that Applicant that we were satisfied that there was no substance to her contentions. Had Judge Latham behaved in the way alleged, this would have been raised by either the Applicant's Counsel or her Solicitor. It had not been. The Applicant had raised no concerns until the start of the hearing. It would neither be in the interests of justice nor proportionate to adjourn the case to another tribunal. The Tribunal reminded the Applicant that it was a body of three members, all of whom would ensure that the hearing was fairly conducted and would have an equal role in any determination. The Tribunal adjourned the case for ten minutes before proceeding.

10. When the hearing resumed, the Applicant stated that her Solicitor had only provided her with a bundle of the documents on the previous day. However, she was anxious for the hearing to proceed. It was agreed that the Respondent should present its case first so the landlord could explain why it contended that the service charges in dispute were

payable and reasonable and so that the Applicant could be taken through the Respondent's case. The evidence was taken slowly. Mr McDermott adduced evidence from Mr Besker. Throughout the hearing, the Applicant asked Mr Besker a number of questions.

11. When the Respondent had finished giving evidence, the Tribunal adjourned early for lunch so that the Applicant had further time and opportunity to prepare her case. The Tribunal also offered a number of short breaks, some of which the Applicant accepted; on other occasions, she stated that she wished to continue.

The Background

12. 8 Bolster Grove ("the Flat") is a four bedroom duplex flat on the second and third floors of a building known as 2-12 Bolster Grove. There is a photograph of the Building at p.41. There are six flats in the Building. The Estate at Bolster Grove consists of four similar buildings, two with six flats, one with eight and one with twelve. The Estate was constructed in the 1950s.

13. The Applicant acquired her leasehold interest on 3 March 2003 pursuant to the statutory Right to Buy, for a term of 125 years. By Clause 4(2), the tenant covenants to pay as a service charge, a "proportionate part of the reasonable expenses and outgoings" incurred by the landlord in the improvement, repair, maintenance, renewal and insurance of the Building and the Estate. The Third Schedule of the lease sets out the service charge items, Part 1 relating to the Building and Part 2 to the Estate.

14. The contribution made by each flat depends on the number of bedrooms plus one: (i) the Flat has 4 bedrooms + 1 = 5; (ii) the six flats in the Building have 19 bedrooms + 6 = 25; (iii) The Estate has a total of 101 bedrooms + 32 = 133. Thus the Applicant pays 5/25 (20%) of the Building costs and 5/133 (3.76%) of the Estate costs.

15. Schedule 4 of the lease sets out the provisions in respect of the service charge accounts. The financial year runs from 1 April to 31 March. As soon as is practical after the end of a financial year, the Respondent is obliged to issue a Certificate of the amount of the service charge payable for the year. For 2014/5, the Certificate is to be found at p.148, and the Service Charge Account at p.149; For 2015/6 at p.159 and 160.

16. Mr Besker explained that whilst the Respondent is obliged to provide a copy of the Certificate free of charge, it does charge for any request for a duplicate copy.

17. All repairs are charged against a schedule of rates. Mr Bester explained that the Respondent operates a "Key Leaseholder Scheme". Before

service charge accounts are prepared, the Respondent sends its tenants a Repairs Report, an example of which is at p.100-102. This affords a tenant an opportunity to challenge any repair item which is considered to be unreasonable. The Applicant has utilised this procedure to challenge service charges in respect of fencing and the staircase baluster (Issues 2 and 3).

18. The Applicant has complained that the Respondent had not correctly credited sums totalling £1,073.05 to her account. At [16] of his statement, Mr Bester explains how 17 payments paid between 19 October 2015 and 8 April 2016 totalling £1,073.05, had been paid into a "suspense account" as the Applicant had not correctly identified the invoices to which the payments related. These had now been credited to the Applicant's account.

19. The Tribunal was provided with a statement of account dated 3 March 2017 (at p.193-209). The Respondent operates a running account. These payments do not appear as a single credit, but are rather recorded against the date that the original payment was made. The Tribunal checked that all 17 payments had been credited to the account.

20. The Tribunal was referred to an e-mail sent by Ohioma Imoukhuede, the Respondent's Senior Income Recovery Officer, dated 14 April 2016. This reads

21. When this was explained to the Applicant, she accepted that this reduced charge was reasonable and withdrew her challenge.

22. When this was explained to the Applicant, she accepted that this reduced charge was reasonable and withdrew her challenge.

> "we have currently found £1,073.05 of payments which upon investigation we have been able to identify you have paid. These payments have cleared your Estimate 15/16 leaving £420.55 of unallocated payment on your account".

23. It is difficult to reconcile this unallocated payment of £420.55 with the statement of account at p.208. On 14 April 2016, this records a balance owing of £1,229.38. A service charge of £1,282.00 was debited on 1 April 2016. If this sum is excluded, there is a credit balance of £52.62. The unallocated sum of £420.44 does not appear in the account. The Respondent agreed to write to the Applicant within seven days explaining this apparent discrepancy.

Issue 1: The Major Electrical Works (£4,722.04)

24. The invoice for this item is dated 25 March 2017 and is at p.96. The sum demanded is £4,722.04. We refer to the works to which this relates

as the "major electrical works". The Applicant complains that the Respondent failed to comply with the statutory duties to consult. The Consultation Regulations are complex and the relevant parts are set out in the Appendix. At the beginning of the hearing, the Tribunal explained them to the Applicant.

25. In April 2016, the Respondent consulted the Applicant on two sets of major works:

(i) On 18 April 2016, the Respondent sent the Applicant a Notice of Intention to carry out external repairs and decorations in respect of 20 separate Buildings (at p.63-75). These works were to be executed under a Qualifying Long Term Agreement ("QLTA") and therefore the consultation requirements specified in Schedule 3 of the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the Consultation Regulations") applied. The total cost of these works was estimated at £53,300.44 in respect of which the Applicant would be liable for 20% (£10,660). The Respondent has not yet issued any invoice to its tenants in respect of these works. We were told that there were still some outstanding snagging items. The parties agreed that until an invoice is issued specifying the sum that the Applicant will be required to pay, there is nothing for this Tribunal to determine. This item is not included in the Schedule of issues in dispute.

(ii) On 27 April 2016, the Respondent sent the Applicant a Notice of Intention to carry out the major electrical works. The works are described as "the renewal of the rising & lateral electrical mains and landlord's services including installation of emergency lighting" (at p.76-77). These works were not to be executed under a QLTA. The consultation requirements are therefore to be found in Schedule 4, Part 2 of the Consultation Regulations.

26. There are two distinct consultation procedures which are relevant to this case:

(i) Schedule 3 relates to works which are to be executed under a QLTA. Because the Respondent had entered into a QLTA with the proposed contractor, Keepmoat, a tenant has no right to propose a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works. The Notice of Intention merely invites the tenant to make observations in writing in relation to the proposed works or the landlord's estimated expenditure. The Notice at p.63-75 complies with this. A landlord is required to have regard to any observations that are made and to respond to these.

(i) Schedule 4, Part 2 relates to works where there is no such QLTA. There is a four Stage process:

(a) Stage 1: Notice of Intention. The Notice must (i) describe the works; (ii) state the landlord's reasons for carrying out the works; (iii) invite observations in relation to the proposed works; and (iv) invite the tenant to propose a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works. The Notice at p.76-77 complies with these requirements.

(b) Stage 2: Estimates. The landlord must seek estimates. The Respondent obtained estimates from AJS and Purdy in the sums of £20,000 and £28,368 to which fees were added.

(c) Stage 3: Notice about Estimates. The landlord must (i) provide details of the estimates; (ii) summarise any observations received; (iii) include any nominee's estimate; (iv) state where the estimates may be inspected and (v) invite any observations on the estimates. The Notice at p.78-79 complies with these requirements. The Notice records that neither observations nor nominations were received.

(d) Stage 4: Notification of Reasons. If the landlord does not accept the lowest estimate, it must serve a statement of his reasons for awarding the contract. The Respondent contracted with AJS who had submitted the lowest estimate. The contract price, including fees, was £21,730.40.

27. The Applicant complains that the Respondent failed to comply with the statutory duty to consult. She avers that she sought to propose a person from whom the Respondent should obtain an estimate, but she was wrongly told that she was unable to do so. She relies upon her letter dated 29 April 2016 (at p.87) which she e-mailed to the Respondent on 4 May (p.89). On 12 May (at p.89) the Respondent replied stating that the Applicant could not propose a person from whom the Respondent should obtain an estimate as the works were being carried out under a QLTA. This e-mail was factually accurate in respect of the relevant consultation, but led to a misunderstanding in the mind of the Applicant who was unaware that there were two distinct procedures.

28. The problem that the Applicant faces is that her letter relates to the consultation in respect of the external repairs and decorations. The letter is headed: "Reference 945 20004258 HO98 Externals". This is the reference on the Notice of Intention in respect of the external repairs and decorations. The Applicant also relies upon the objections raised by Christopher Junes, another resident, in a letter dated 19 May 2016 (at p.90). This letter relates to the external repairs and decorations and made representations in respect of the Respondent's estimated expenditure. The Schedule 3 Consultation Procedure entitled him to make such representations. On 8 June (at p.144), the landlord responded to these representations as required by the regulations.

29. The Tribunal is satisfied that the Respondent followed the correct consultation procedure in respect of the major electrical works. There is no evidence that either the Applicant or any other tenant made any observations in response to the Notice of Intention or any nomination of a person from whom an estimate should be sought. The Stage 3 Notice about Estimates records that no such observations or nomination was made.

30. In her evidence, the Applicant made a more general complaint about the works being unnecessary and at an unreasonable cost. She stated that she was being asked to pay excessive service charges as part of a strategy to drive her out of her home.

31. The Tribunal is satisfied that these works were required. The rising and lateral electrical mains dated back to the construction of the estate. The Tribunal is satisfied that the landlord was entitled to conclude that these installations were at the end of their useful life and needed renewal. The Respondent obtained two estimates and accepted the lower. AJS quoted £20,000, and Purdy quoted £28,368. Fees of £1,730.40 were added to AJS making a total of £21,730.40. The Tribunal is satisfied that this was reasonable for the scope of the works. The Applicant was liable for 20% of this, namely £4,346.08 + a management fee of £375.96 (see p.96-98). This management fee of 7.5% + £50) was specified in the Notice about Estimates (at p.78-79).

Issue 2: Communal Fencing and Doors

32. The service charge accounts for 2015/6 are at p.160. The Applicant was charged £592.90 in respect of "day-to-day repairs". The estimate had been £100. £182.16 related to repairs to the Estate (5/133 of £4,845.51) and £410.74 to the Building (1/5 of £2,053.7). Details of all the Estate repairs are to be found at p.161-2 and the Building repairs (at p.164). The Applicant challenges the following items:

> (i) Estate Repairs: (a) renew fence in chain link – Flat 22 (£8.68); (b) renew any fencing over 1m high (£6.43); (c) renew fence in chain link – Flat 22 (£20.30) (all at p.162); (d) broken fence – Flat 26 (£6.11); (e) renew any fencing over 1m high (£33.69); (f) renew any fencing over 1m high (£37.82); (g) renew any fencing over 1m high (£6.39) (all at p.161).
>
> (ii) Building Repairs: (h) repair UPVC door and/or renew fitting (£120.34); (i) renew lock to steel door (£51.64); (j) renew any fencing over 1m high (£226.02) (all at p.164).

33. The service charge accounts for 2014/5 are at p.149. The Applicant was charged £344.23 in respect of "day-to-day repairs". The estimate had been £100. £219.97 related to repairs to the Estate (5/133 of £5,821.21)

and £124.26 to the Building (1/5 of £621.28). Details of all the Estate repairs are to be found at p.152 and the Building repairs (at p.150). The Applicant challenges the following:

> Estate Repairs: (k) make safe fencing and provide specification for completion of work on second visit (£10.27); (l) make safe fencing and provide specification for completion of work on second visit – Flat 2 (£3.81); (m) make safe fencing and provide specification for completion of work on second visit – resecure 3 oak posts at rear of Flat 36 (£8.85); (n) renew any timber fencing over 1m high – Flat 30 (£10.93); (o) renew 12 mts fencing Bk garden – Flat 2 (£113.28) (all at p.152).

34. The Applicant raises a number of points in support of her argument that these service charges are unreasonable. In each of the service charge years, the expenditure on day to day repairs had exceeded the estimate of £100; the actual cost being £344.23 in 2014/5 and £592.90 in 2015/6. Secondly, excessive sums were spent on repairs to the fencing. She complains about the decision to replace 12 metres of fencing on 24 November 2014 at a cost of £3,013.24 (item "o"). On more than one occasion, the Applicant repeated her suggestion that she was being asked to pay excessive service charges as part of a strategy to drive her out of her home. She disputed that items of work for which she was being charged had been done.

35. The Tribunal recognises the difficulties in estimating the likely cost of day to day repairs. An estimate of £100 seems low. However, an annual expenditure of £300 to £600 does not seem unreasonably high. Full details have been provided of each item. On 11 June 2015, the Applicant challenged item "o" under the Respondent's Key Leaseholder Scheme (p.106). She made this complaint in response to the Repairs Report at p.103. On 22 July, Michael Hooper, the Communal Repairs Monitoring Officer, responded stating that he had inspected the repair and was satisfied with the quality of the work. The Tribunal rejects the suggestion that the Respondent has been charging for work that has not been done

36. The Tribunal accepts that there have been a significant number of repairs to the fencing over a period of two years. However, this reflects the extent of the fencing around both this Building and the Estate. The Respondent has taken care to determine whether any item of expenditure should be charged to the Estate or any of the four Buildings on the Estate.

37. The Tribunal has considered the two repairs to the doors (items "h" and "j"). The Tribunal was told that item "h" relates to the front door into one of the flats and "j" the communal door into the Building. The Tribunal is satisfied that all these service charges are reasonable and payable.

Issue 3: Replacement of Baluster (£52.10)

38. The Applicant complains about a service charge of £52.10 in respect of the replacement of a baluster on the communal staircase to the Building. The basic cost of this repair had been £260.51. On 11 June 2015, the Applicant disputed this under the Respondent's Key Leaseholder Scheme (p.106). She suggested that it should have been covered by insurance. On 22 July, the Respondent agreed to reduce the cost of this repair from £260.51 to £62.18 (see p.105). Mr Hooper noted that this was not covered by insurance.

39. The reduced charge appears in the Service Charge Accounts for 2014/5 as a day to day repair for the Building (at p.149). Details of this repair are at p.150. A management fee of 25% was added to the basic repair cost of £62.18 giving a total of £77.72 in respect of which the Applicant's share was £15.54 (20%). When this was explained to the Applicant, she accepted that this reduced charge was reasonable and withdrew her challenge.

40. Had the adjustment not been made, the management fee of 25% would have been added to the basic repair cost of £260.51. The Applicant would have been liable for the sum of £65.12 (20% of £325.64).

Application under s.20C and refund of fees

41. At the end of the hearing, the Applicant made an application for a refund of the fees of £300 which she has paid in respect of her application. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal does not make any order.

42. In the application form, the Applicant applied for an order under section 20C of the 1985 Act. Although the landlord indicated that no costs would be passed through the service charge, for the avoidance of doubt, the Tribunal nonetheless determines that it would not be just and equitable to make such an order given the findings that we have reached.

43. Mr McDermott indicated that the Respondent was minded to make an application for costs under rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 on the grounds of the unreasonable conduct of the Applicant in bringing and/or conducting the proceedings. It is open to either party to make such an application within 28 days of receipt of this determination. The Tribunal reminded the Respondent of the decision of the Upper Tribunal in *Willow Court Management [2016] UKUT 290 (LC)* and the high threshold that must be met before a tribunal should make such an order. The Tribunal has used its case management powers to direct the

Applicant to particularise her case (see [26] of the UT's decision). The Applicant, with the assistance of legal advice, has prepared a schedule that particularises an arguable case. The mere fact that the application has failed is not evidence of unreasonable conduct (see [24]).

Judge Robert Latham

13 November 2017

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions 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 27A

(1) An application may be made to the appropriate 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 the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -

(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -

(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

The Service Charges (Consultation Requirements) (England) Regulations 2003

Schedule 3

CONSULTATION REQUIREMENTS FOR QUALIFYING WORKS UNDER QUALIFYING LONG TERM AGREEMENTS AND AGREEMENTS TO WHICH REGULATION 7(3) APPLIES

1. Notice of intention

(1) The landlord shall give notice in writing of his intention to carry out qualifying works– (a) to each tenant; and (b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall– (a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected; (b) state the landlord's reasons for considering it necessary to carry out the proposed works; (c) contain a statement of the total amount of the expenditure estimated by the landlord as

likely to be incurred by him on and in connection with the proposed works; (d) invite the making, in writing, of observations in relation to the proposed works or the landlord's estimated expenditure; (e) specify– (i) the address to which such observations may be sent; (ii) that they must be delivered within the relevant period; and (iii) the date on which the relevant period ends.

2. Inspection of Description of Proposed Works

(1) Where a notice under paragraph 1 specifies a place and hours for inspection– (a) the place and hours so specified must be reasonable; and (b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

3. Duty to have regard to observations in relation to proposed works and estimated expenditure

Where, within the relevant period, observations are made in relation to the proposed works or the landlord's estimated expenditure by any tenant or the recognised tenants' association, the landlord shall have regard to those observations.

4. Landlord's response to observations

Where the landlord receives observations to which (in accordance with paragraph 3) he is required to have regard, he shall, within 21 days of their receipt, by notice in writing to the person by whom the observations were made, state his response to the observations.

Schedule 4, Part 2

CONSULTATION REQUIREMENTS FOR QUALIFYING WORKS FOR WHICH PUBLIC NOTICE IS NOT REQUIRED

1. Notice of intention

(1) The landlord shall give notice in writing of his intention to carry out qualifying works– (a) to each tenant; and (b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall– (a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected; (b) state the landlord's reasons for considering it necessary to carry out the proposed works; (c) invite the making, in writing, of observations in relation to the proposed works; and (d) specify– (i) the address to which such observations may be sent; (ii) that they must be delivered within the relevant period; and (iii) the date on which the relevant period ends. (3) The notice shall also invite each tenant and the

association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

2. Inspection of description of proposed works

(1) Where a notice under paragraph 1 specifies a place and hours for inspection– (a) the place and hours so specified must be reasonable; and (b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

3. Duty to have regard to observations in relation to proposed works

Where, within the relevant period, observations are made, in relation to the proposed works by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

4. Estimates and response to observations

(1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.

(2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.

(3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate– (a) from the person who received the most nominations; or (b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or (c) in any other case, from any nominated person.

(4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate– (a) from at least one person nominated by a tenant; and (b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).

(5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)– (a) obtain estimates for the carrying out of the proposed works; (b) supply, free of charge, a statement ("the paragraph (b)

statement") setting out– (i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and (ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and (c) make all of the estimates available for inspection.

(6) At least one of the estimates must be that of a person wholly unconnected with the landlord.

(7) For the purpose of paragraph (6), it shall be assumed that there is a connection between a person and the landlord– (a) where the landlord is a company, if the person is, or is to be, a director or manager of the company or is a close relative of any such director or manager; (b) where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager; (c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company; (d) where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or (e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.

(8) Where the landlord has obtained an estimate from a nominated person, that estimate must be one of those to which the paragraph (b) statement relates.

(9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by– (a) each tenant; and (b) the secretary of the recognised tenants' association (if any).

(10) The landlord shall, by notice in writing to each tenant and the association (if any)– (a) specify the place and hours at which the estimates may be inspected; (b) invite the making, in writing, of observations in relation to those estimates; (c) specify– (i) the address to which such observations may be sent; (ii) that they must be delivered within the relevant period; and (iii) the date on which the relevant period ends.

(11) Paragraph 2 shall apply to estimates made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

5. Duty to have regard to observations in relation to estimates

Where, within the relevant period, observations are made in relation to the estimates by a recognised tenants' association or, as the case may be, any tenant, the landlord shall have regard to those observations.

6. Duty on entering into contract

(1) Subject to sub-paragraph (2), where the landlord enters into a contract for the carrying out of qualifying works, he shall, within 21 days of entering into the contract, by notice in writing to each tenant and the recognised tenants' association (if any)– (a) state his reasons for awarding the contract or specify the place and hours at which a statement of those reasons may be inspected; and (b) there he received observations to which (in accordance with paragraph 5) he was required to have regard, summarise the observations and set out his response to them.

(2) The requirements of sub-paragraph (1) do not apply where the person with whom the contract is made is a nominated person or submitted the lowest estimate.

(3) Paragraph 2 shall apply to a statement made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.