FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case references	**:**	CAM/00KF/LIS/2020/0007, CAM/00KF/LDC/2020/0020 & CAM/00KF/LSC/2020/0042
Property	**:**	Beaumont Court & Richmond House, Victoria Avenue, Southend on Sea SS2 6Eb
Applicants	**:**	Davey Thomason and Kenneth Andrew Carmichael (together with the lessees named in the schedule hereto
Applicant's Representative	**:**	Not represented
Respondent	**:**	Randal Watts London Limited
Respondent's Representative	**:**	Mathew McDermott of Counsel
Type of application	**:**	Application for the determination of liability to pay and reasonableness of service charges
Tribunal members	**:**	Mr Max Thorowgood and Ms Marina Krisko FRICS
Venue	**:**	On 14th & 15th September 2020 at Cambridge Magistrates Court and by CVP on 16th & 17th November 2020
Date of Decision	**:**	29 December 2020

DECISION

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1. The applications

1.1. By their application pursuant to s. 27A Landlord & Tenant Act 1985 dated 1st December 2019 Mr Thomason and his fellow Applicants (19 of whom have agreed that they should be represented by Mr Thomason and who have been designated lead Applicants) seek determinations as their liability to pay the service charges demanded of them by the Respondent landlord, Randal Watts London Limited, in respect of the years to 31st March 2019 and 31st March 2020. At various points reference has been made to the service charge budgets produced for the year to 31st March 2021 but the parties were agreed that we were not required to make any determinations in respect of those demands.

1.2. By his application dated 28th September 2020 Mr Carmichael also seeks a determination as to the same ultimate questions but in so doing raises clearly a matter which appeared tangentially from Mr Thomason's application, namely, whether various agreements entered into by RW in respect of those years of account were Qualifying Long Term Agreements to which the requirements in respect of consultation imposed by s. 20ZA Landlord & Tenant Act 1985 applied. If they were, it was common ground between the parties that the consultation requirements in respect of them had not been met, and by its application dated 10th September 2020 made in response to the tangential references in Mr Thomason's application, the Respondent sought a dispensation from the requirements to consult pursuant to s. 20ZA(1).

2. Background

2.1. Beaumont Court and Richmond House were constructed by Randall Watts Construction Limited on behalf of RW over the period between June 2015 and mid-2019.

2.2. Beaumont House comprises 228 private sector flats over 10 floors. Richmond House comprises 52 social housing flats over 7 floors. In addition there are 4 commercial units on the grounds floor of the development of which 3 are operative.

2.3. The 52 flats in Richmond House are let to Genesis Housing Association. Of the 228 private sector flats in Beaumont Court, 57 have been leased to Randall Watts South Ltd, a company associated with RW. The remaining 171 have been sold on long leases to independent private sector lessees. Some of the Applicants are owner occupiers. Others, like Mr Thomason who owns two flats, are investors.

2.4. The parties were agreed that the development was constructed to a high specification and that it was appropriate that the management of the premises should be calculated to maintain the development to a high standard. In particular, they were agreed that it was appropriate that the lessees/residents should have the benefit of a 24-hr concierge service.

2.5. RW began to market the leasehold interests in the development from about February 2018.

2.6. RW's appointment of Rylands Associates Limited ("Rylands) and the draft service charge accounts which it prepared formed a significant part of the marketing package. The Applicants based many of their arguments upon the fact that the service charges which they were asked to bear in the years under consideration were significantly greater than those which were set out in Rylands' Service Charge Estimate with which they were provided as part of the marketing package.

2.7. Unfortunately, as Mr Jason Watkinson explained on a number of occasions in his evidence, in late August/early September 2018 problems began to emerge with the service being provided by Rylands. At a meeting on 26th September 2018 Rylands explained that it had run out of money and that it needed to update its service charge estimate. Asked to provide detailed information in relation to those claims Rylands was unwilling to do so and withdrew its services. Shortly thereafter Rylands was placed into insolvent liquidation. Amongst its liability to its creditors was the sum of £20,000.00 which it had received from RW in respect of gas deposits payable by new lessees to RW on the grant of their leases.

2.8. Rylands failure placed RW in the difficult position of having to replace its managing agent urgently whilst being in the midst of trying to

complete sales of the flats. It therefore proceeded, in the course of October 2018, to invite tenders for the contract to manage the premises from Countrywide Estates Ltd, IV Property Management Ltd and Warwick Estates.

2.9. At a meeting of leaseholders on 21st November 2018 arranged by RW the leaseholders expressed their anger in respect of the poor/absence of management of the premises and blamed RW.

2.10. At some point, whether it was before during or after the meeting on 21st November 2018 is not entirely clear RW decided not to appoint any of the managing agents from which it invited tenders and to incorporate a new company of its own through which it would manage the development on an interim basis, at least. The Applicants point to the fact that B & R Property Management Ltd was incorporated on 22nd October 2018 as evidence of the fact that the decision to appoint it as the managing agent was taken at some point before that, i.e. before it 'purported', as the Applicants would say, to consult with them in relation to its appointment. Mr Watkinson in his witness statement, however, says that it was not until late December 2018/early January 2019 that B & R assumed responsibility for the management of the premises, although it was established in the course of his evidence that money was being paid by lessees into its account from 19th December 2018. Given that its service charge demands were payable within 28 days, it is reasonable to assume that they had been rendered some time before they were paid and that it is therefore more likely that it assumed control in or about the end of November 2018 or early December 2018. No formal written contract was ever granted to it by RW. Its appointment was oral only. It ceased managing the premises in October 2019 when IVPM were appointed. One of the difficulties which this creates is that B & R's appointment as managing agent straddles the two relevant years of account.

2.11. Whilst this was going on RW was still in the course of completing its construction of the development. It took some time before separate penthouse apartment in a separate part of Beaumont Court were

completed in mid-2019. One of the issues which we are asked to consider is whether the lessees' electricity bill increased in 18/19 on account of RW's use of their electrical supply for the purposes of this continued work.

2.12. The decision to appoint IVPM led to a further significant change, the appointment of Bundle to manage the provision of concierge, cleaning and handyman services which have previously been provided either by B&R directly in the case of concierge and handyman services and sub-contracted in the case of cleaning services.

3. Applicable law

3.1. The relevant provisions of the lease are as follows:

> "Tenant's Proportion" means a reasonable and proper proportion determined by the Landlord (acting reasonably and properly) as reasonable to charge to the Tenant in respect of each Accounting Period to which the statement referred to in paragraph 4.2 of schedule 3 relates having regard, amongst other things, to the floor area of the Property in relation to the total floor area of the Lettable Parts and to the user by the Tenant and other occupiers of the Building of the same"

This is relevant because the lessees challenge the division of costs between them and the commercial tenants all, or most, of whom are associated with the landlord.

3.2. The lessees covenanted by clause 3.2 to pay the sums demanded by the landlord in accordance with clauses 4 and 5 (namely the costs to the landlord of providing the services set out in Schedule 4 to the lease and insuring the buildings). The lessees also covenanted by clause 3.2.4 to pay the sum of £150.00 by way of a deposit relating to the initial commissioning of the communal hot water system. That sum has been referred to in these proceedings as the "Gas Deposit" its purpose was to fund the start-up costs associated with the provision of the communal

supply of hot water and heat to all the apartments within the development. The lessees use of hot water and heat was monitored on behalf of the landlord by a company called Switch2 which supplied the data recorded originally to the energy supplier and latterly to the management company for the purpose of billing the lessees.

3.3. So far as material, Schedule 4 provides as follows:

> 1.2 In performing its obligations with regard to the Services the Landlord is:
>
> 1.2.1 entitled in its discretion acting reasonably to employ managing agents, contractors or such other appropriate and properly qualified persons as the Landlord may from time to time consider appropriate; …
>
> 2.3 Cleaning and lighting the Common Parts as often as the Landlord from time to time deems reasonable
>
> 2.9 The costs of and incidental to the Landlord providing or procuring the District Water Heating System Provision or providing a suitable replacement system or systems
>
> 2.13 Employing as and when necessary and in the Landlord's absolute discretion the services of a concierge and/or other on site personnel
>
> 2.14 To retain such sum or sums (if any) as the Landlord and/or the managing agents shall from time to time certify to be appropriate or desirable to be retained in respect of any depreciation or other allowance or provision for future anticipated expenditure on or replacement of any installation equipment plant or apparatus of any part of the block and/or the Estate and the repair maintenance and decoration of the estate road and the block and /or the Estate facilities the car park and the depreciation of plant machinery heating hot water air conditioning lift and any other apparatus and fittings
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> 3.2 Employing managing agents:

3.2.1.to manage the Common Parts and to ensure that the Services are duly and proper1y provided;

3.2.2. as agents of the Landlord to collect and when necessary to take all lawful steps to enforce the payment of all rents and other monies (Including all service charges) from time to time reserved by the Landlord out of the various lettings from time to time comprised in the Estate; and

3.12. Costs and Charges

3.12.1. To pay to the Landlord:

3.12.1.1. all reasonable and proper costs, fees, charges, disbursements and expenses {including Without prejudice to the generality of the above those payable to counsel, solicitors and surveyors reasonably and property incurred by the Landlord in relation to or in contemplation of or reasonably incidental to every application made by the Tenant for a consent or licence required by the provisions of this lease whether such consent or licence is granted or refused (unless unlawfully) or proffered subject to any qualification or condition or whether the application is withdrawn; and

3.12.1.2. on an Indemnity basis all costs, fees, charges, disbursements and expenses (including without prejudice to the generality of the above those payable to counsel, solicitors and surveyors) reasonably and properly incurred by the Landlord in relation to or in contemplation of or reasonably incidental to the preparation and service of a notice under the Law of Property Act 1925 section 146 or incurred by reason of or In contemplation of proceedings under the Law of Property Act 1925 sections 146 or 147 notwithstanding that forfeiture is avoided otherwise than by relief granted by the court

3.13. Indemnify Landlord

To be responsible for and to keep the Landlord fully Indemnified against all damage, damages, losses, costs, expenses, actions, demands, proceedings, claims and liabilities made against or suffered or Incurred by the Landlord arising directly or indirectly out of:

3.13.1. any act omission or negligence of the Tenant or any persons at the Property expressly or impliedly with the Tenant's authority; or

3.13.2 any breach or non-observance by the Tenant of the covenants, conditions or other provisions of this lease or any of the matters to which this demise is subject.

4.2 **Written Account**

The Landlord must keep proper books of account in respect of the Landlord's Costs and as soon as reasonably practicable after the end of each Accounting Period prepare and submit to the Tenant a written account showing:

4.2.1. the amount of the Landlord's Coats during the Immediately preceding Accounting Period;

4.2.2. containing a summary of the items referred to in the account and audited by a chartered accountant or other person qualified for appointment as auditor of a company; and

4.2.3. a statement specifying the Service Charge for that Accounting Period.

4.4 Exclusions from Landlord's Costs

The Landlord's Costs shall not include:

4.4.1. The cost (howsoever incurred) of the initial construction, equipping, laying out and fitting out the Building or the Estate and the Initial provision of any items necessary to provide the Services including without prejudice to the generality of the foregoing close circuit television, cleaning equipment and clothing.

4.4.2. The cost of making good any defects In the Building or the Estate to the extent that they arise as a result of faulty materials workmanship or design in the initial construction of the Building or the Estate.

4.4.3. Any fees and expenses attributable to disputes not relating to Common Parts with other tenants or occupiers of the Building or the Estate or attributable to any action or proceedings relating to the Landlord's title to the Building or the Estate or a superior title.

...

4.4.6 The costs of making good any damage caused by any of the Insured Risks and acts of terrorism whether or not an Insured risk.

3.4. The Applicants raise a number of challenges to the various charges made on the basis that the sums claimed are not recoverable under the lease. Those challenges are based principally upon clause 4.4.1. and is to the effect that the costs of fitting out the buildings are not to be recoverable by way of service charge. These challenges do not give rise to any great difficulty in law.

3.5. The main burden of the Applicants' challenges however is on the basis that the sums claimed are not reasonable. The Tribunal's assessment of the reasonableness of service charges in respect of which liability has been incurred falls is to be considered under two heads: i) whether the costs have been reasonably incurred; and ii) whether the works or services delivered have been of a reasonable standard.

3.6. Although the lessees' challenges related initially (in part at least) to estimated or projected costs, by the time of the adjourned hearing final accounts had been prepared in respect of both the years with which we are concerned. We shall therefore address ourselves to the sums claimed in those final accounts.

3.7. Reasonableness is an objective standard. The first question is whether the process by which the landlord arrived at its decision to incur the costs in issue was a reasonable one. In this respect the primary questions are generally: whether to take a particular step or secure a particular outcome ? If so, how it is to be secured ? And finally, the period within which it is to be secured ? The second aspect of the matter is whether the sum charged is reasonable in light of the market evidence. Thus, it is clear that reasonableness does not require the landlord to choose the cheapest available option. Quite the reverse in fact, as the second criterion which concerns the quality of the services provided emphasises.

3.8. Save as regards the quality of the service delivered by B&R the question of the standard of the works or services provided was not substantially in issue in these proceedings. To the extent that the quality of services provided is not reasonable, recovery is limited to the charge which could reasonably have been made for the services which were delivered.

3.9. As an expert Tribunal we are entitled, bound even to use our professional knowledge and experience in determining issues of reasonableness. Where evidence has been led by the parties in relation to the questions of reasonableness and market price, we have had regard to that as the primary evidence upon which to base our conclusions. Where, however, as has largely been the case here, there is no comparable evidence we have relied upon our knowledge and experience in reaching our conclusions.

3.10. The final matter of law which we need to consider concerns the consultation requirements in respect of Qualifying Long Terms Agreements ("QLTA's"). The primary question in this regard is as to the definition of a QLTA. An agreement will be a QLTA if it is for a term of more than 12 months. The question whether the agreement is for a term of more than 12 months will depend on the answer to this question: is the agreement terminable (otherwise than for breach) before 12 months and one day have elapsed ? Thus, a rolling agreement for an indefinite period terminable upon less than 12 months' notice will not be for a term of more than 12 months because it is an agreement which is capable of being brought to an end by 12 months or less notice. It follows that we prefer the view of this matter expressed by HHJ Marshall QC in *Paddington Walk Management Limited v Governors of Peabody Trust* [2010] L & TR 6 to that of the Upper Tribunal in *Poynders Court v GLS Property Management Ltd* [2012] UKUT 339 having had regard to the doubts expressed about the latter decision in *Corvan (Properties) Ltd v Abdel-Mahmoud*[2017] UKUT 228. This approach seems to us to be consistent with the apparent purpose of the legislation, namely, to protect lessees from being bound into disadvantageous long-term agreements which they have no power to terminate without any prior consultation.

4. The matters in issue

4.1. Turning therefore the matters raised by the Applicants our conclusions are as follows.

4.2. ***Legal costs associated with the attempted recovery from Rylands of the Gas Deposits*** – Upon the grant of their leases the lessees were required to pay the Gas Deposit to the landlord. The landlord then paid those monies to Rylands which then became insolvent. The landlord incurred legal costs in an unsuccessful attempt to recover those monies from Rylands.

4.3. The lessees paid the Gas Deposits as they were required to do. At that point it became the landlord's responsibility to ensure that that those deposits were held safely and to recover them in the event that they were not. It is apparent from the provisions of the lease cited above that legal costs incurred in attempting to recover those costs do not fall within any of the various provisions of the lease for the recovery of costs by the landlord from the lessees. Accordingly, whether they were reasonably incurred or not, they are not recoverable under the terms of the lease.

4.4. **Insurance costs** – In the year 18/19 the cost of insuring the building was £104,445.00. In 19/20 it was £83,896.00. No explanation for that significant reduction in the premium has been offered and the Respondent's evidence in regard to it was fragmentary, at best, beyond the fact that it had instructed its broker, The Burley Group, to obtain insurance for the building. On the morning of the adjourned hearing the Respondent produced an email from The Burley Group dated 14th June 2019 which appeared to confirm that a commission in the sum of £19,742.10 (less sums due in respect of various claims) was paid to the Respondent. We assume, although there was no clear evidence on this point, that the commission was paid in respect of Beaumont Court and that it related to the policy of insurance placed in respect of the year 18/19. That commission equates to something in excess of 20% of the premium paid in that year. Again, no evidence was led by the Respondent as to the basis upon which that commission was payable to it. We

assume, given that it was instructing a broker to procure insurance on its behalf, that it did nothing other than answer any questions necessary to obtain the insurance. We also assume given the lack of any evidence to the contrary that the benefit of this commission was not shared with the lessees.

4.5. Mr Carmichael informed us that he worked in the insurance industry and evidently possessed considerable expert knowledge as to the commissions which are payable in respect of policies of this sort. He told us, however, that whilst he had attempted to obtain alternative quotes for the building those whom he had approached had declined to quote without considerably more detailed information than he was able to supply. He nevertheless contended that the sums claimed by the landlord were too high.

4.6. The position on the evidence before us is therefore highly unsatisfactory. Doing the best we can, using our expert knowledge, we consider that depending on claims history and so forth, the appropriate annual premium per unit for buildings of this type is in the region of £300.00 and we are fortified in that view by the fact that the premium for 19/20 equates almost precisely to that figure. It also does not seem to us that it is reasonable that the lessees should have to bear the cost of a premium in excess of 20% payable to the landlord for the cost of obtaining insurance for the buildings which is above the market rate (quite probably on account of the commission which it received). For these reasons, we consider that the premium of £83,896.00 claimed in respect of the year 19/20 is reasonable and recoverable but that the premium of £104,445.00 demanded in respect of the year 18/19 is not and that the recoverable sum should be reduced to the same amount as is claimed in respect of 19/20.

4.7. **E Car** – Although provision was made for this cost in the 19/20 accounts, it was common ground that these costs had not in fact been incurred and that it was not currently proposed that they should be incurred. The lessees objected to paying for what they contended was a 'fitting out' cost and as such not recoverable by way of service charge. The

grounds for that objection appear to us to be strong but since no sum is sought to be recovered on that account we can make no ruling on the point.

4.8. **CCTV** – The same may be said in respect of the £48,000.00 provision made in respect of CCTV which was also not incurred. We cannot therefore make any ruling in that regard.

4.9. **Cleaning costs** – We heard a considerable amount of evidence in respect of cleaning costs. In 18/19 cleaning costs were £11,713. In 19/20 they increased, under B&R's management, to £43,577.12. The landlord explained that in the first full year of account cleaning costs were low because it was still in the process of completing their construction of the premises and so the need for cleaning was less because carpets had not been laid, staircases and lifts were still being fitted and did not need to be cleaned. In the 19/20 year B&R retained MCG Cleaning Services to provide cleaning services. MCG charged for its services at the rate of £12.45 and were contracted to deliver 59 hours of cleaning per week. Mr Watkinson explained that by 19/20 the construction had been completed and the building was fully fitted out. It is admittedly a high-quality building and the landlord was intent on maintaining it as such. We did not understand the lessees to dispute that it was right and proper for it to do so. Mr Watkinson explained that there were extensive common parts which had to be cleaned: one substantial atrium with a stone floor which needed to be cleaned, 4 lifts, 4 main staircases accessing 11 floors, each floor had four corridors, the gym also needed to be cleaned. The lessees complain that the hours worked were excessive and evidenced that first by reference to the much lower charges incurred in the previous year and by the fact that the cleaning services which are now provided by Bundle call only for forty hours, albeit at a higher cost.

4.10. The lessees also contended that the increased cleaning costs were attributable in part to the fact that the landlord was using the cleaners to clean the flats let to Randall Watts South Ltd which it lets out through AirBNB. They were unable to produce any evidence in support of that contention and it was denied by the landlord. This allegation was of a

piece of with a number of allegations of sharp practice bordering on dishonesty made by the lessees against the landlord for which no substantial evidence beyond the fact of a connection between the landlord and the alleged beneficiary was adduced. We found that there was no substantial evidence to support any of these allegations and so reject this contention on the part of the lessees.

4.11. **Refuse chute unblocking** – The lessees challenge the charges made in 18/19 of £10,860.00 and in 19/20 of £10,720.00 in respect of refuse chute maintenance. Mr Watkinson explained that there had been significant problems in respect of the refuse chutes, particularly in respect of the initial period during which large numbers of lessees were moving into the buildings and were disposing of all manner of inappropriate things down the refuse chutes. Part of the problem in Beaumont Court was caused by the design of the chutes which had a swan neck at the third-floor level which had a tendency to get blocked. He said that he investigated the possibility of retaining the specialist chute installation and maintenance company, Hardalls, which had installed the chutes to do this work but that it had informed him that it would make a standard call out charge of £395.00 in addition to an hourly charge for two engineers' work and that it would require 48 hours' notice to attend. On that basis he had decided that it would be more cost and time efficient, given the frequently urgent need to unblock the chutes in order to avoid complaints and health and safety issues, to use Randall Watts employees to carry out the work. Records were produced to support the amount of work done and we are in no doubt that these charges were reasonably and properly incurred as a consequence of the way in which the chutes were being used by residents.

4.12. **Window cleaning** – The landlord retained JH Cleaning & Support to carry out window cleaning at the higher levels of the buildings. This was specialist work and we are in no doubt that the charges were reasonable. However, charges totalling £100.00 were also made in respect of the cleaning of the windows in the commercial units which it was accepted ought not to be borne by these lessees.

4.13. **Gym** – In the year 19/20 the landlord seeks to recover £11,172.00 which is the cost of leasing the equipment necessary to fit out the gym which is one of the facilities from which the residents of Beaumont Court are entitled to benefit under the terms of their leases. Claims are also made in respect of the insurance of that equipment and a television licence. It seems to us that the lessees were entitled to expect under the terms of their leases that the gym would be fully equipped by the landlord at the time of the grant or thereafter. Mr Watkinson explained that the landlord had taken the view that it would be more cost efficient for the equipment to be leased so that it could be easily replaced as and when it fell into disrepair. It was he suggested effectively akin to a maintenance contract which would enable the lessees to benefit from a fully equipped functional gym at all times.

4.14. We are satisfied that the lessees were entitled to expect that, in the first instance at least, the gym would be fully equipped at the cost of the landlord. The property was marketed a high-class building benefiting from a fully equipped gym. Thus far, the landlord has failed to provide that fully equipped gym and now seeks to load the cost of doing so onto the lessees. In our view that is not a permissible course for it to take. Clause 4.4.1. of the lease is clear that the initial cost of equipping the building is not to be recoverable by way of service charge. Therefore, until the landlord does fully equip the gym, no charges in respect of the leasing of gym equipment will be recoverable.

4.15. The same reasoning applies to the insurance of the gym equipment, although that may be a reasonable cost once equipment has been acquired. The cost of the television licence is properly recoverable.

4.16. It may be that having investigated the cost of a contract to maintain gym equipment provided by the landlord, the lessees will feel that a leasing contract is the way forward for the future but at present the essential condition of the initial provision of the gym equipment is yet to be fulfilled by the landlord.

4.17. **Accounting costs** – According to the service charge account for 18/19 the costs incurred in respect of accountancy services in that year were £1,363.00, although the invoice rendered by AML Benson on 11th October 2019 is in the sum of £1,135.00 plus VAT, i.e. £1,36**2**.00. We cannot see any reason why the sum of £1,135.00 ought not to be recoverable. We heard no evidence as to whether the landlord is registered for VAT and therefore entitled either to recover the VAT or not from the lessees.

4.18. The charge in respect of professional fees and accountancy in 19/20 however increased to £6,369.00. The reason for that appears to be that significant costs were incurred in the setting up of B&R and we refer in this regard to the invoices at pp. 665-670 and 672 (all pdf in the additional bundle) and p. 241 pdf in the original bundle. These show invoices in respect of payroll services, Company Secretarial services and company formation services related to B&R. These are internal costs of B&R, not costs which it is proper for the landlord to seek to recover by way of service charge.

4.19. The sums charged to the landlord by AML Benson in respect of the preparation of the service charge accounts for 19/20 was £1,170.00 plus VAT and that is the only amount which it is proper for the landlord to recover from the lessees in that year of account, assuming that the landlord is not registered for VAT and that it is therefore unable to recover any VAT .

4.20. **Void service charges** – This was a hotly contested matter of dispute between the parties. The lessees correctly contend and the landlord accepts that Randall Watts South Ltd, as the lessee of 57 of the properties in Beaumont House, is liable to pay the due proportion of the service charges attributable to those properties of which it is the lessee.

4.21. The landlord contends that it (or rather Randall Watts South Ltd) has paid those sums and it relies in support of that claim upon a letter from its accountant, Mr Andrew Axelsen of AML Benson dated 2nd July 2020 which is in the following terms:

"Dear Mark [i.e. Mr Mark Watts who is a director of the landlord]

I am writing to confirm, that I have reviewed the Bank Statements for the service charge account and I can confirm that *service charges have been paid by Randall Watts London Limited and its associated companies in respect of both void properties and those retained by those companies for the purposes of renting out.*

In total 6 invoices were raised

Service Charge year 1/4/18 to 31/3/19 Voids £16,349.86

Rental Properties £16,994.36

Service Charge year 1/4/19 to 31/3/20 -first 6 months

Voids £16,209.89

Rental Properties £32,688.93

Service Charge year 1/4/19 to 31/3/20 -second 6 months

Voids £755.78

Rental Properties £48,898.82" (Our emphasis)

4.22. The lessees contended that we should reject Mr Axelsen's letter as a truthful account of the position on the basis that he had been charged with some species of fraud in relation to Jubilee Line extension contracts in 2002. The precise nature of the charge and whether Mr Axelsen was ever convicted was not clear but we are prepared to accept that the same Andrew Axelsen was charged and prepared the letter to which we have referred. We note that Mr Andrew Axelsen is currently a chartered accountant and therefore assume that he must have been acquitted of the charges laid against him in 2002. Even if that is not the case, we would require much stronger evidence than the lessees have been able to adduce in order to find that Mr Axelsen, who (whatever he may previously have done) is currently and was at the material time a chartered accountant, had been guilty of some fraudulent intention in

preparing the letter to which we have referred as the lessees invite us to infer.

4.23. We are nevertheless concerned by the terms of Mr Axelsen's letter and the associated failures of disclosure on the part of the landlord for these reasons. Mr Axelsen refers to his having reviewed the bank statements for the service charge account, those statements have not been produced. Mr Axelsen also refers to 6 invoices having been rendered, those invoices have also not been produced. No explanation for those failures has been given. The landlord by its counsel Mr McDermott says, in effect, that Mr Axelsen's letter is sufficient; the landlord is under no obligation to do more. Finally, we note that Mr Axelsen, who is an accountant and ought therefore to be keenly attuned to such matters, states that Randall Watts London Ltd and its associated compan**ies** have paid the service charges. That statement of the position is significant in the sense that Randall Watts London Ltd **is** the landlord and it was only Randall Watts South Ltd which was liable in respect of the service charges. In light of the failures of disclosure on the part of the landlord the precise nature of the arrangements therefore remains obscure when it ought to be transparent. That is an unsatisfactory position but we are unable to see any linkage between that lack of transparency and the shortfall of £56,861.92 between the sums demanded by way of interim service charge in respect of 19/20 and the sum actually expended.

4.24. For these reasons we reject the lessees' contention that Randall Watts South Limited has failed to pay its due proportion of the service charge and/or that its liability has somehow been loaded onto them.

4.25. **Management, concierge and maintenance charges** – We take these matters together on the basis that, although they have been separated in the various estimates and accounts which have been produced, they have in practice been provided as a bundle first by Rylands, then by B&R and most recently by IVPM and Bundle.

4.26. Rylands' service charge estimate costed those services at £256,000.00. B&R's costs for the provision of the same services and cleaning was

£333,000.00. IVPM/Bundle's costs for the year 20/21 are estimated to be in the region of £350,000.00.

4.27. In retrospect it can be seen that Rylands' estimate was a gross under-estimate. No doubt the landlord did little if anything to persuade Rylands to increase its estimate in the period during which it was attempting to sell the flats but that in itself does not make Rylands' estimated service charge (and that is all it was) the benchmark for reasonableness.

4.28. The essential fact is, as Mr Watkinson pointed out, that the provision of 24 hr concierge services at £19.00 per hr is extremely expensive but the costs now cover security, maintenance, cleaning and gardening. Indeed, the lessees did not seek to challenge the concierge charges as such, they just wished to understand what was included within them.

4.29. In our view these costs are reasonable overall.

4.30. The concierge services are a simple factor of the number of hours worked.

4.31. As for the management fee the available comparables are: Rylands - £59,550; Countrywide - £59,550.00; IVPM (1st time round) - £66,222.00; Warwick Estates - £49,625; B&R £85,000.00; and IVPM (2nd time round) £72,520.00.

4.32. It is thus clear that B&R's management fee was the highest by a significant margin. However, we think it is correct to bear in mind the position in which the landlord found itself following the failure of Rylands. It was still in the midst of marketing the property as well as completing the construction phase. It needed to put arrangements in place urgently to pick up the pieces left by Rylands. It sought alternative tenders from Warwick Estates, Countrywide and IVPM but was not satisfied that any of those agents were properly equipped or applied themselves properly to the task in hand. It therefore felt that it was best placed to step in as an interim measure. There were inevitable start up costs associated with that decision and some of those, such as the accounting charges to which we have referred above were not properly

recoverable from the lessees. In our view, given the situation, the landlord's decision to appoint B&R was a reasonable decision.

4.33. The second aspect of the calculation is as to the quality of the services which B&R provided. In this respect we consider that it fell below the standard which it was reasonable for the lessees to expect. The landlord accepted that B&R was not [RICS compliant] agent and it was clearly apparent that Mr Watkinson and the landlord were not even aware of the RICS code. As a newly incorporated company created specifically for the purpose of intervening urgently in order to rescue the situation created by the failure of Rylands by the developer that is not entirely surprising. One example of the hand to mouth nature of the arrangements is the fact that the landlord did not even enter into a formal written agreement with B&R. We were told that it was retained simply on the basis of an oral understanding; we hesitate to describe it as a contract since the parties seem not to have applied their minds to that question. Nevertheless, the lessees were entitled to expect that management services would be provided to that standard.

4.34. In our view, the fact of these applications is attributable in part to B&R's failures to account transparently to the lessees for their management decision in respect of the buildings. That lack of transparency is illustrated by the fact that following the first two days of the hearing for which a bundle comprising more than 1,000 pages was produced, for the purposes of the second two days a further bundle comprising in excess of 1,400 pages was produced which consisted in large part of further disclosure given by the landlord.

4.35. That lack of appropriate transparency and clarity of communication has contributed to the atmosphere of extreme distrust which has pervaded these proceedings and which has contributed to the confused and in some respects unsatisfactory manner in which the landlord has dealt with them.

4.36. Another instance of that confusion/lack of transparency on the part of B&R concerns the next matter which we have to consider – its treatment

of the reserves of £12,000.00 paid by the lessees in both years of account. B&R appear to have treated those sums as a contingency fund upon which it was entitled to draw as it wished to meet unexpected costs as and when required rather than holding it separately as a cumulating fund to be applied as a means of mitigating the impact of future major expenditure.

4.37. In our view this is an appropriate case in which to reduce B&R's management fee to the amount which would have been payable in respect of the services which it did deliver. Doing the best we can, and making allowance for the difficult position in which the landlord found itself as explained in para 4.31 above, that sum is £70,000.00.

4.38. **Reserve fund** – As we have already said, B&R/the landlord did not deal appropriately with the £24,000.00 paid by the lessees towards the reserve fund. It is apparent that those monies have been applied to meet ordinary operating expenses rather than being accumulated as they should have been. The lessees seek an order that the landlord account fully for its dealing with those monies. That account has not been provided but we are nevertheless satisfied that those monies have been applied to meet costs properly chargeable to the lessees, at least to the extent set out herein. Accordingly, reinstatement of the reserve fund would lead simply to a greater shortfall than already exists between the monies demanded by way of interim service charge and the sums expended in providing the services required to be provided under the lease.

5. Specific challenges

5.1. In addition to those reasonableness challenges the lessees raise a number of specific challenges to invoices recently disclosed by the Respondent following the adjournment of the first two days of the hearing. For the most part the sums in question are small and so we take them shortly and by reference to page numbers of the additional bundle as we were directed to them.

5.2. **796** – The lessees object to paying for garden furniture for the roof garden, they say it is properly a fitting out cost. We do not accept that. The landlord explained that it was necessary to purchase this furniture because the lessees' furniture was too lightweight and was blowing off the roof.

5.3. **802** – This is an invoice rendered by Mr Watkinson's company in respect of an assessment of damage caused to the building by a refuse of removal lorry. The lessees say that this was an insured risk in respect of which the landlord was required by the terms of the lease to seek to recover any loss by way of a claim on the policy of insurance by reason of clause 4.4.6. of Schedule 4. There was no evidence that any such claim as made and so this sum is not recoverable save to the extent of the applicable excess which we were told was £250.00 in respect of each claim.

5.4. **803** – This is an invoice in respect of repairs to damage caused to a door by a break in. The sum is below the level of the excess but it is unclear whether this was the only cost related to this damage.

5.5. **804** - Again this invoice relates to a collision with a barrier in a sum below the level of the excess. Insofar as it relates to an incident in respect of which a larger claim could have been made it will only be recoverable if and to the extent that a claim has been made and rejected.

5.6. **805** – See 5.3 and 5.4 above.

5.7. **806** – It was the lessees' case that this damage related to damage caused by a Veolia rubbish lorry. We were told that no claim had been made on the insurance policy because the Police had declined to prosecute the driver. It was quite evident from the landlord's evidence that no serious thought had been given to the possibility of a claim either against Veolia or on the policy of insurance. For the latter reason at least there can be no recovery in respect of these costs unless and until a claim has been made and either rejected or paid only in part.

5.8. **808** – The landlord seeks to recover only the sum of £1,660.00. The lessees object on the basis that these were fitting out costs. We reject that

contention, the invoice makes it clear that these were works of repair and improvement. This sum is recoverable.

5.9. **811** – This is a claim for a cable reel in the sum of £34.99. This is not a recoverable cost.

5.10. **813** – This is a claim for a fan for the gym. The lessees object on the basis that this was an equipping cost. We agree.

5.11. **826-830** – We were told that each of these invoices related to different incidents. To the extent that they relate to insured losses and are in amounts above the level of the excess these sums are not recoverable.

5.12. **831** – This installation of exterior lighting. The lessees object that this is a fitting out cost. We agree.

5.13. **832** – This invoice relates to damage caused by a Veolia rubbish lorry and as such ought to have been the subject of a claim on the landlord's policy of insurance.

5.14. **843** – This invoice relates to the leasing of the gym equipment. As we have already said, we do not consider that these are sums which are recoverable by way of service charge by reason of 4.4.1.

5.15. **876** – This is an invoice in respect of the pigeon proofing of the car park undercroft. The lessees object that this is a fitting out cost. We do not agree. Mr Watkinson explained and we accept that the pigeon proofing was installed in response to complaints by the lessees.

5.16. **694, 695 & 823** – These invoices relate to works of repair to one of the boilers which provide the communal heating and hot water. One of the pumps failed and it was necessary to replace it. Given the sophistication of the system this was a complex task which required first a detailed diagnostic assessment by Mr Watkinson and then the retention of a specialist contractor R & H Building Services Ltd. We accept that both the sums invoiced by Mr Watkinson's company and thereafter the invoice rendered by R & H were reasonably incurred. The landlord accepted that it was not entitled, in addition, to render an invoice in the sum of £2,859.00 and we disallow that sum.

6. QLTA's

6.1. We have already expressed our conclusion as to the application of the regulations. It is also correct to note that the regulations only bite on contracts entailing the payment of sums exceeding £100.00 per lessee p.a..

6.2. By his application Mr Carmichael identified the following contracts as being ones on respect of which the landlord might have been required to consult:

6.2.1. The management agreement with Rylands;

6.2.2. The management agreement with B&R;

6.2.3. The management agreement initially entered into with IVPM; and

6.2.4. The agreement with Switch 2.

6.3. Of these, the Rylands contract provides at clause 2.2 that it was for an initial term of 12 months and that it would be terminable by either party giving not less than 2 months' notice, not less than 2 months before the expiry of the initial term. It was accordingly not for a fixed term in excess of 12 months.

6.4. The B&R contract was oral, at best, and was accordingly terminable upon reasonable notice at any time. Likewise, therefore, it was also not for a term in excess of 12 months.

6.5. The Switch 2 contract was for an initial term of 3 years but the sum payable under it in by each lessee was £99.00 p.a.. Therefore, the costs did not exceed the relevant amount and so the regulations did not apply.

6.6. The contract signed by B&R and IVPM to commence on 1st December 2019 was expressed to be for a term of three years and the sum payable

under it per lessee was in excess of the relevant amount. However, clause 8.1 provided as follows with regard to termination by notice:

> "Notwithstanding the provisions of clause 8.2 below, and without prejudice to any rights that have accrued under this agreement or any of its rights or remedies, either party may terminate this agreement without liability to the other on giving the other not less than three month's written notice *to ensure at a* date no later than the Term." (Our emphasis)

6.7. The meaning of the italicised words is obscure, to say the least. It seems to be clear that, "something has gone wrong with the language." What exactly has gone wrong with the language, however, is unclear. One obvious possibility is that it was the intention of the parties that the parties intended that the contract should only be terminable upon three months to expire at the end of the initial term of three years or each successive year thereafter. That construction is supported by the definition of the word "Term" which is as follows:

> "Term: three years commencing on the Commencement Date *and thereafter shall continue for additional complete years (less one day) until termination in accordance with Clause 8*." (Our emphasis)

The italicised words therefore suggest that it was the intention that the additional years at least should be complete years, less one day, and that any notice to terminate the agreement (otherwise than for cause) must terminate at the end of a period of the agreement.

6.8. Mr McDermott argued however that the words, "*a* date *no later* than the Term," which deal specifically with the right of termination by notice, suggest that the agreement was terminable without cause on 3 months' notice provided the notice expired on a date no later than the last day of the Term. Although we consider the construction we have proposed makes more business sense and indeed that it is the form more

commonly found in practice, we are just persuaded by Mr McDermott that it would not be right to ignore the words to which he draws attention even though something appears to have gone wrong with the wording of the earlier part of the phrasing of which they form part. For that reason, we conclude that the first IVPM contract was not one to which the regulations apply.

6.9. We note finally in this regard that the landlord was evidently concerned that we might not reach the conclusion which we have set out above because on 3rd July 2020 it entered into a new agreement with IVPM for a term of 5 months to 30th November 2020 and refused adamantly to disclose the first agreement to Mr Carmichael despite his repeated cogent requests for it to do so until it was ordered specifically to do so by the Tribunal's order of 14th October 2020. We regard it as unfortunate that the Respondent and its solicitors should have adopted that stance in respect of documents which ought manifestly to have been disclosed in these proceedings. We consider that this is a further instance of the lack of transparency on the part of the landlord which we have already criticised above.

7. Conclusions

7.1. It is not possible for us to quantify fully the effect of the decisions which we have set out above but we trust that our reasoning will be sufficient to enable the parties to finalise the sums due and owing in respect of the years of account with which we are concerned.

7.2. As regards the questions of the recovery by the landlord of its costs of these proceedings, to the extent (if any) that the landlord believes it may be entitled to recover those costs from the lessees under the lease, we will direct that written submissions be made and consider on the papers whether we should make an order in favour of the lessees pursuant to s. 20C Landlord & Tenant Act 1985. However, as we hope we have made clear in our various findings set out above, we would at present be

minded to make such an order if the landlord could demonstrate that it was entitled to recover the costs under the lease.

APPENDIX 1- RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.

APPENDIX 2

RELEVANT LEGISLATION

Enforcement of housing standards

5 Category 1 hazards: general duty to take enforcement action

(1) If a local housing authority consider that a category 1 hazard exists on any residential premises, they must take the appropriate enforcement action in relation to the hazard.

(2) In subsection (1) "the appropriate enforcement action" means whichever of the following courses of action is indicated by subsection (3) or (4)—

(a) serving an improvement notice under section 11;

(b) making a prohibition order under section 20;

(c) serving a hazard awareness notice under section 28;

(d) taking emergency remedial action under section 40;

(e) making an emergency prohibition order under section 43;

(f) making a demolition order under subsection (1) or (2) of section 265 of the Housing Act 1985 (c 68);

(g) declaring the area in which the premises concerned are situated to be a clearance area by virtue of section 289(2) of that Act.

(3) If only one course of action within subsection (2) is available to the authority in relation to the hazard, they must take that course of action.

(4) If two or more courses of action within subsection (2) are available to the authority in relation to the hazard, they must take the course of action which they consider to be the most appropriate of those available to them.

(5) The taking by the authority of a course of action within subsection (2) does not prevent subsection (1) from requiring them to take in relation to the same hazard—

(a) either the same course of action again or another such course of action, if they consider that the action taken by them so far has not proved satisfactory, or

(b) another such course of action, where the first course of action is that mentioned in subsection (2)(g) and their eventual decision under section 289(2F) of the Housing Act 1985 means that the premises concerned are not to be included in a clearance area.

(6) To determine whether a course of action mentioned in any of paragraphs (a) to (g) of subsection (2) is "available" to the authority in relation to the hazard, see the provision mentioned in that paragraph.

(7) Section 6 applies for the purposes of this section.

6 Category 1 hazards: how duty under section 5 operates in certain cases

(1) This section explains the effect of provisions contained in subsection (2) of section 5.

(2) In the case of paragraph (b) or (f) of that subsection, the reference to making an order such as is mentioned in that paragraph is to be read as a reference to making instead a determination under section 300(1) or (2) of the Housing Act 1985 (c 68) (power to purchase for temporary housing use) in a case where the authority consider the latter course of action to be the better alternative in the circumstances.

(3) In the case of paragraph (d) of that subsection, the authority may regard the taking of emergency remedial action under section 40 followed by the service of an improvement notice under section 11 as a single course of action.

(4) In the case of paragraph (e) of that subsection, the authority may regard the making of an emergency prohibition order under section 43 followed by the service of a prohibition order under section 20 as a single course of action.

(5) In the case of paragraph (g) of that subsection—

(a) any duty to take the course of action mentioned in that paragraph is subject to the operation of subsections (2B) to (4) and (5B) of section 289 of the Housing Act 1985 (procedural and other restrictions relating to slum clearance declarations); and

(b) that paragraph does not apply in a case where the authority have already declared the area in which the premises concerned are situated to be a clearance area in accordance with section 289, but the premises have been excluded by virtue of section 289(2F)(b).

7 Category 2 hazards: powers to take enforcement action

(1) The provisions mentioned in subsection (2) confer power on a local housing authority to take particular kinds of enforcement action in cases where they consider that a category 2 hazard exists on residential premises.

(2) The provisions are—

(a) section 12 (power to serve an improvement notice),

(b) section 21 (power to make a prohibition order),

(c) section 29 (power to serve a hazard awareness notice),

(d) section 265(3) and (4) of the Housing Act 1985 (power to make a demolition order), and

(e) section 289(2ZB) of that Act (power to make a slum clearance declaration).

(3) The taking by the authority of one of those kinds of enforcement action in relation to a particular category 2 hazard does not prevent them from taking either—

(a) the same kind of action again, or

(b) a different kind of enforcement action,

in relation to the hazard, where they consider that the action taken by them so far has not proved satisfactory.

8 Reasons for decision to take enforcement action

(1) This section applies where a local housing authority decide to take one of the kinds of enforcement action mentioned in section 5(2) or 7(2) ("the relevant action").

(2) The authority must prepare a statement of the reasons for their decision to take the relevant action.

(3) Those reasons must include the reasons why the authority decided to take the relevant action rather than any other kind (or kinds) of enforcement action available to them under the provisions mentioned in section 5(2) or 7(2).

(4) A copy of the statement prepared under subsection (2) must accompany every notice, copy of a notice, or copy of an order which is served in accordance with—

(a) Part 1 of Schedule 1 to this Act (service of improvement notices etc),

(b) Part 1 of Schedule 2 to this Act (service of copies of prohibition orders etc), or

(c) section 268 of the Housing Act 1985 (service of copies of demolition orders),
in or in connection with the taking of the relevant action.

(5) In subsection (4)—

(a) the reference to Part 1 of Schedule 1 to this Act includes a reference to that Part as applied by section 28(7) or 29(7) (hazard awareness notices) or to section 40(7) (emergency remedial action); and

(b) the reference to Part 1 of Schedule 2 to this Act includes a reference to that Part as applied by section 43(4) (emergency prohibition orders).

(6) If the relevant action consists of declaring an area to be a clearance area, the statement prepared under subsection (2) must be published—

(a) as soon as possible after the relevant resolution is passed under section 289 of the Housing Act 1985, and
(b) in such manner as the authority consider appropriate.

9 Guidance about inspections and enforcement action

(1) The appropriate national authority may give guidance to local housing authorities about exercising—

(a) their functions under this Chapter in relation to the inspection of premises and the assessment of hazards,

(b) their functions under Chapter 2 of this Part in relation to improvement notices, prohibition orders or hazard awareness notices,

(c) their functions under Chapter 3 in relation to emergency remedial action and emergency prohibition orders, or

(d) their functions under Part 9 of the Housing Act 1985 (c 68) in relation to demolition orders and slum clearance.

(2) A local housing authority must have regard to any guidance for the time being given under this section.

(3) The appropriate national authority may give different guidance for different cases or descriptions of case or different purposes (including different guidance to different descriptions of local housing authority or to local housing authorities in different areas).

(4) Before giving guidance under this section, or revising guidance already given, the Secretary of State must lay a draft of the proposed guidance or alterations before each House of Parliament.

(5) The Secretary of State must not give or revise the guidance before the end of the period of 40 days beginning with the day on which the draft is laid before each House of Parliament (or, if copies are laid before each House of Parliament on different days, the later of those days).

(6) The Secretary of State must not proceed with the proposed guidance or alterations if, within the period of 40 days mentioned in subsection (5), either House resolves that the guidance or alterations be withdrawn.

(7) Subsection (6) is without prejudice to the possibility of laying a further draft of the guidance or alterations before each House of Parliament.

(8) In calculating the period of 40 days mentioned in subsection (5), no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

10 Consultation with fire and rescue authorities in certain cases

(1) This section applies where a local housing authority—

(a) are satisfied that a prescribed fire hazard exists in an HMO or in any common parts of a building containing one or more flats, and

(b) intend to take in relation to the hazard one of the kinds of enforcement action mentioned in section 5(2) or section 7(2).

(2) Before taking the enforcement action in question, the authority must consult the fire and rescue authority for the area in which the HMO or building is situated.

(3) In the case of any proposed emergency measures, the authority's duty under subsection (2) is a duty to consult that fire and rescue authority so far as it is practicable to do so before taking those measures.

(4) In this section—

"emergency measures" means emergency remedial action under section 40 or an emergency prohibition order under section 43;

"fire and rescue authority" means a fire and rescue authority under the Fire and Rescue Services Act 2004 (c 21);
"prescribed fire hazard" means a category 1 or 2 hazard which is prescribed as a fire hazard for the purposes of this section by regulations under section 2.

Chapter 2

Improvement Notices, Prohibition Orders and Hazard Awareness

Notices

Improvement notices
11 Improvement notices relating to category 1 hazards: duty of authority to serve notice
(1) If—

(a) the local housing authority are satisfied that a category 1 hazard exists on any residential premises, and

(b) no management order is in force in relation to the premises under Chapter 1 or 2 of Part 4,

serving an improvement notice under this section in respect of the hazard is a course of action available to the authority in relation to the hazard for the purposes of section 5 (category 1 hazards: general duty to take enforcement action).

(2) An improvement notice under this section is a notice requiring the person on whom it is served to take such remedial action in respect of the hazard concerned as is specified in the notice in accordance with subsections (3) to (5) and section 13.

(3) The notice may require remedial action to be taken in relation to the following premises—

(a) if the residential premises on which the hazard exists are a dwelling or HMO which is not a flat, it may require such action to be taken in relation to the dwelling or HMO;

(b) if those premises are one or more flats, it may require such action to be taken in relation to the building containing the flat or flats (or any part of the building) or any external common parts;

(c) if those premises are the common parts of a building containing one or more flats, it may require such action to be taken in relation to the building (or any part of the building) or any external common parts.

Paragraphs (b) and (c) are subject to subsection (4).

(4) The notice may not, by virtue of subsection (3)(b) or (c), require any remedial action to be taken in relation to any part of the building or its external common parts that is not included in any residential premises on which the hazard exists, unless the authority are satisfied—

(a) that the deficiency from which the hazard arises is situated there, and

(b) that it is necessary for the action to be so taken in order to protect the health or safety of any actual or potential occupiers of one or more of the flats.

(5) The remedial action required to be taken by the notice—

(a) must, as a minimum, be such as to ensure that the hazard ceases to be a category 1 hazard; but

(b) may extend beyond such action.

(6) An improvement notice under this section may relate to more than one category 1 hazard on the same premises or in the same building containing one or more flats.

(7) The operation of an improvement notice under this section may be suspended in accordance with section 14.

(8) In this Part "remedial action", in relation to a hazard, means action (whether in the form of carrying out works or otherwise) which, in the opinion of the local housing authority, will remove or reduce the hazard.

12 Improvement notices relating to category 2 hazards: power of authority to serve notice

(1) If—

(a) the local housing authority are satisfied that a category 2 hazard exists on any residential premises, and

(b) no management order is in force in relation to the premises under Chapter 1 or 2 of Part 4,

the authority may serve an improvement notice under this section in respect of the hazard.

(2) An improvement notice under this section is a notice requiring the person on whom it is served to take such remedial action in respect of the hazard concerned as is specified in the notice in accordance with subsection (3) and section 13.

(3) Subsections (3) and (4) of section 11 apply to an improvement notice under this section as they apply to one under that section.

(4) An improvement notice under this section may relate to more than one category 2 hazard on the same premises or in the same building containing one or more flats.

(5) An improvement notice under this section may be combined in one document with a notice under section 11 where they require remedial action to be taken in relation to the same premises.

(6) The operation of an improvement notice under this section may be suspended in accordance with section 14.

13 Contents of improvement notices

(1) An improvement notice under section 11 or 12 must comply with the following provisions of this section.

(2) The notice must specify, in relation to the hazard (or each of the hazards) to which it relates—

(a) whether the notice is served under section 11 or 12,

(b) the nature of the hazard and the residential premises on which it exists,

(c) the deficiency giving rise to the hazard,

(d) the premises in relation to which remedial action is to be taken in respect of the hazard and the nature of that remedial action,

(e) the date when the remedial action is to be started (see subsection (3)), and

(f) the period within which the remedial action is to be completed or the periods within which each part of it is to be completed.

(3) The notice may not require any remedial action to be started earlier than the 28th day after that on which the notice is served.

(4) The notice must contain information about—

(a) the right of appeal against the decision under Part 3 of Schedule 1, and

(b) the period within which an appeal may be made.

(5) In this Part of this Act "specified premises", in relation to an improvement notice, means premises specified in the notice, in accordance with subsection (2)(d), as premises in relation to which remedial action is to be taken in respect of the hazard.

14 Suspension of improvement notices

(1) An improvement notice may provide for the operation of the notice to be suspended until a time, or the occurrence of an event, specified in the notice.

(2) The time so specified may, in particular, be the time when a person of a particular description begins, or ceases, to occupy any premises.

(3) The event so specified may, in particular, be a notified breach of an undertaking accepted by the local housing authority for the purposes of this section from the person on whom the notice is served.

(4) In subsection (3) a "notified breach", in relation to such an undertaking, means an act or omission by the person on whom the notice is served—

(a) which the local housing authority consider to be a breach of the undertaking, and

(b) which is notified to that person in accordance with the terms of the undertaking.

(5) If an improvement notice does provide for the operation of the notice to be suspended under this section—

(a) any periods specified in the notice under section 13 are to be fixed by reference to the day when the suspension ends, and

(b) in subsection (3) of that section the reference to the 28th day after that on which the notice is served is to be read as referring to the 21st day after that on which the suspension ends.

15 Operation of improvement notices

(1) This section deals with the time when an improvement notice becomes operative.

(2) The general rule is that an improvement notice becomes operative at the end of the period of 21 days beginning with the day on which it is served under Part 1 of Schedule 1 (which is the period for appealing against the notice under Part 3 of that Schedule).

(3) The general rule is subject to subsection (4) (suspended notices) and subsection (5) (appeals).

(4) If the notice is suspended under section 14, the notice becomes operative at the time when the suspension ends.

This is subject to subsection (5).

(5) If an appeal against the notice is made under Part 3 of Schedule 1, the notice does not become operative until such time (if any) as is the operative time for the purposes of this subsection under paragraph 19 of that Schedule (time when notice is confirmed on appeal, period for further appeal expires or suspension ends).

(6) If no appeal against an improvement notice is made under that Part of that Schedule within the period for appealing against it, the notice is final and conclusive as to matters which could have been raised on an appeal.

16 Revocation and variation of improvement notices

(1) The local housing authority must revoke an improvement notice if they are satisfied that the requirements of the notice have been complied with.

(2) The local housing authority may revoke an improvement notice if—

(a) in the case of a notice served under section 11, they consider that there are any special circumstances making it appropriate to revoke the notice; or

(b) in the case of a notice served under section 12, they consider that it is appropriate to revoke the notice.

(3) Where an improvement notice relates to a number of hazards—

(a) subsection (1) is to be read as applying separately in relation to each of those hazards, and

(b) if, as a result, the authority are required to revoke only part of the notice, they may vary the remainder as they consider appropriate.

(4) The local housing authority may vary an improvement notice—

(a) with the agreement of the person on whom the notice was served, or

(b) in the case of a notice whose operation is suspended, so as to alter the time or events by reference to which the suspension is to come to an end.

(5) A revocation under this section comes into force at the time when it is made.

(6) If it is made with the agreement of the person on whom the improvement notice was served, a variation under this section comes into force at the time when it is made.

(7) Otherwise a variation under this section does not come into force until such time (if any) as is the operative time for the purposes of this subsection under paragraph 20 of Schedule 1 (time when period for appealing expires without an appeal being made or when decision to vary is confirmed on appeal).

(8) The power to revoke or vary an improvement notice under this section is exercisable by the authority either—

(a) on an application made by the person on whom the improvement notice was served, or

(b) on the authority's own initiative.

17 Review of suspended improvement notices

(1) The local housing authority may at any time review an improvement notice whose operation is suspended.

(2) The local housing authority must review an improvement notice whose operation is suspended not later than one year after the date of service of the notice and at subsequent intervals of not more than one year.

(3) Copies of the authority's decision on a review under this section must be served—

(a) on the person on whom the improvement notice was served, and

(b) on every other person on whom a copy of the notice was required to be served.

18 Service of improvement notices etc and related appeals

Schedule 1 (which deals with the service of improvement notices, and notices relating to their revocation or variation, and with related appeals) has effect.

Schedule 1

Part 3 Appeals Relating to Improvement Notices

Appeal against improvement notice

10

(1) The person on whom an improvement notice is served may appeal to [the appropriate tribunal] against the notice.

(2) Paragraphs 11 and 12 set out two specific grounds on which an appeal may be made under this paragraph, but they do not affect the generality of sub-paragraph (1).

Appeal against decision relating to variation or revocation of improvement notice

13

(1) The relevant person may appeal to [the appropriate tribunal] against—

(a) a decision by the local housing authority to vary an improvement notice, or

(b) a decision by the authority to refuse to revoke or vary an improvement notice.

(2) In sub-paragraph (1) "the relevant person" means—

(a) in relation to a decision within paragraph (a) of that provision, the person on whom the notice was served;

(b) in relation to a decision within paragraph (b) of that provision, the person who applied for the revocation or variation.

Time limit for appeal

14

(1) Any appeal under paragraph 10 must be made within the period of 21 days beginning with the date on which the improvement notice was served in accordance with Part 1 of this Schedule.

(2) Any appeal under paragraph 13 must be made within the period of 28 days beginning with the date specified in the notice under paragraph 6 or 8 as the date on which the decision concerned was made.

(3) [The appropriate tribunal] may allow an appeal to be made to it after the end of the period mentioned in sub-paragraph (1) or (2) if it is satisfied that there is a good reason for the failure to appeal before the end of that period (and for any delay since then in applying for permission to appeal out of time).

Powers of . . . tribunal on appeal under paragraph 10

15

(1) This paragraph applies to an appeal to [the appropriate tribunal] under paragraph 10.

(2) The appeal—

(a) is to be by way of a re-hearing, but

(b) may be determined having regard to matters of which the authority were unaware.

(3) The tribunal may by order confirm, quash or vary the improvement notice.

(4) Paragraphs 16 and 17 make special provision in connection with the grounds of appeal set out in paragraphs 11 and 12.

Powers of . . . tribunal on appeal under paragraph 13

18

(1) This paragraph applies to an appeal to [the appropriate tribunal] under paragraph 13.

(2) Paragraph 15(2) applies to such an appeal as it applies to an appeal under paragraph 10.

(3) The tribunal may by order confirm, reverse or vary the decision of the local housing authority.

(4) If the appeal is against a decision of the authority to refuse to revoke an improvement notice, the tribunal may make an order revoking the notice as from a date specified in the order.

"The operative time" for the purposes of section 15(5)

19

(1) This paragraph defines "the operative time" for the purposes of section 15(5) (operation of improvement notices).

(2) If an appeal is made under paragraph 10 against an improvement notice which is not suspended, and a decision on the appeal is given which confirms the notice, "the operative time" is as follows—

(a) if the period within which an appeal to the [Upper Tribunal] may be brought expires without such an appeal having been brought, "the operative time" is the end of that period;

(b) if an appeal to the [Upper Tribunal] is brought, "the operative time" is the time when a decision is given on the appeal which confirms the notice.

(3) If an appeal is made under paragraph 10 against an improvement notice which is suspended, and a decision is given on the appeal which confirms the notice, "the operative time" is as follows—

(a) the time that would be the operative time under sub-paragraph (2) if the notice were not suspended, or

(b) if later, the time when the suspension ends.

(4) For the purposes of sub-paragraph (2) or (3)—

(a) the withdrawal of an appeal has the same effect as a decision which confirms the notice, and

(b) references to a decision which confirms the notice are to a decision which confirms it with or without variation.