FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BG/LDC/2023/0184**
Property	**:**	**Flats 1-22, 9 Reardon Path, London E1W 2AN**
Applicant	**:**	**Plantview Ltd**
Representative	**:**	**The Resident Management Group Ltd**
Respondents	**:**	**Leaseholders of Flats 1-22, 9 Reardon Path**
Type of application	**:**	**Dispensation from statutory consultation requirements**
Tribunal	**:**	**Judge Nicol** **Mr R Waterhouse BSc LLM MA FRICS**
Date and venue of Hearing	**:**	**22nd January 2024** **10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**22nd January 2024**

DECISION

The Tribunal grants the Applicant dispensation under section 20ZA of the Landlord and Tenant Act 1985 from the statutory consultation requirements in relation to charges for cleaning and boiler maintenance for 2020-23.

Reasons

1. The Applicant is the freeholder of the subject property, 9 Reardon Path, London E1W 2AN, a building converted to residential use in 2019. The Residential Management Group (RMG) managed the property on their behalf until 9 Reardon Path RTM Co Ltd took over with effect from 20th October 2023. The Respondents are the lessees of the flats 1-22.

2. By a decision dated 30th January 2023 (LON/00BG/LSC/2022/0122), the Tribunal determined, amongst other things, the charges for

cleaning and the maintenance contract for the communal boilers were limited to £5,500 (£250 per lessee) for each year in dispute, 2020-23. In both cases, the reason was that the contracts were subject to consultation under section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003 but the Applicant had failed to consult the lessees.

3. The Applicant has now applied for dispensation from the statutory consultation requirements under section 20ZA of the Landlord and Tenant Act 1985. A face to face hearing was held on 22nd January 2024, attended by:

- Mr Marcelo Amodeo and Mrs Archi Minhas, both from RMG, representing the Applicant (Ms Minhas was late for the hearing due to train problems but the hearing continued in her absence with Mr Amodeo's consent.
- Ms Natalia Skvortsova, the lessee of Flat 21, representing the Respondents, as she had in the previous case.

4. The documents provided to the Tribunal for this case consisted of a bundle of 362 pages compiled by the Applicant.

The Law

5. Under section 20ZA(1), the Tribunal may dispense with the statutory consultation requirements if satisfied that it is reasonable to do so. The Supreme Court provided further guidance in *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854:

(a) Sections 19 to 20ZA of the Act are directed to ensuring that lessees of flats are not required to pay for unnecessary services or services which are provided to a defective standard or to pay more than they should for services which are necessary and provided to an acceptable standard. [42]

(b) On that basis, the Tribunal should focus on the extent to which lessees were prejudiced by any failure of the landlord to comply with the consultation requirements. [44]

(c) Where the extent, quality and cost of the works were unaffected by the landlord's failure to comply with the consultation requirements, an unconditional dispensation should normally be granted. [45]

(d) Dispensation should not be refused just because a landlord has breached the consultation requirements. Adherence to the requirements is a means to an end, not an end in itself, and the dispensing jurisdiction is not a punitive or exemplary exercise. The requirements leave untouched the fact that it is the landlord who decides what works need to be done, when they are to be done, who they are to be done by and what amount is to be paid for them. [46]

(e) The financial consequences to a landlord of not granting dispensation and the nature of the landlord are not relevant. [51]

(f) Sections 20 and 20ZA were not included for the purpose of transparency or accountability. [52]

(g) Whether or not to grant dispensation is not a binary choice as dispensation may be granted on terms. [54, 58, 59]

(h) The only prejudice of which a lessee may legitimately complain is that which they would not have suffered if the requirements had been fully complied with but which they would suffer if unconditional dispensation were granted. [65]

(i) Although the legal burden of establishing that dispensation should be granted is on the landlord, there is a factual burden on the lessees to show that prejudice has been incurred. [67]

(j) Given that the landlord has failed to comply with statutory requirements, the Tribunal should be sympathetic to the lessees. If the lessees raise a credible claim of prejudice, the Tribunal should look to the landlord to rebut it. Any reasonable costs incurred by the lessees in investigating this should be paid by the landlord as a condition of dispensation. [68]

(k) The lessees' complaint will normally be that they have not had the opportunity to make representations about the works proposed by the landlord, in which case the lessees should identify what they would have said if they had had the opportunity. [69]

Cleaning

6. The Respondents were dissatisfied with the quality of the cleaning service. When their RTM company took over the management of the property, they sought their own cleaners and came up with two quotes:

(a) Preclean Cleaning Services quoted £65 plus VAT for one weekly visit and an additional weekly visit to bring the communal bins back in after the usual local council visit. By the Tribunal's calculation, this produced an annual fee of £8,112 compared with £9,711.96 until November 2021 and £10,848 thereafter. Preclean said they would have quoted the same price if asked in 2021.

(b) The RTM Co's managing agent, Prime Property Management, said they had another cleaner who would charge £78 for each weekly cleaning visit and an additional £58 for each visit to retrieve the communal visits. They also purported to charge for parking but Ms Skvortsova said this would be unnecessary. She did not know whether they charged VAT but, if they did, their annual fee would amount to £8,486.40 (without parking charges).

7. Ms Skvortsova accused RMG of not properly exploring the market, resulting in their not finding or using a cheaper alternative contractor. However, that is not the approach mandated by the Supreme Court. There is a number of problems with the Respondents' case:

(a) RMG changed contractors in November 2021 because the original contractor, Regional Contract Services Ltd, withdrew following

payment problems. The service charge account had cashflow issues due to lessees (one in particular) not paying their service charges. The replacement, Reef Cleaning Solutions, had to be appointed urgently. There was insufficient time for full market testing.

(b) Regional Contract Services Ltd had been providing 3 weekly cleaning visits. This means that they were better value for money than any of the other three contractors identified in this case.

(c) Reef Cleaning Solutions only provided one weekly cleaning visit, the same as the Respondents' alternatives. However, RMG informed them of the risk of non-payment due to the cashflow problems but they were still willing to provide a service, including a first visit for free.

(d) RMG sent an email to all lessees informing them of the change of cleaning contractor and the reasons for it and asking for comments. None of the lessees responded which rather suggests that, if this consultation had been carried out in strict accordance with the statutory requirements, there wouldn't have been any response then either.

(e) Mr Amodeo informed the Tribunal that, according to his researches, Preclean were a company but they were dissolved in 2017. A similarly titled company, with the same sole director, Mr Zak Chait, was formed in 2017 only to be dissolved too in 2020. At the time of the quote relied on by the Respondents, Preclean appears to have been simply a trading name for Mr Chait. This does not suggest Mr Chait was doing anything wrong but Mr Amodeo submitted that it would have been a good reason for rejecting Preclean as a possible cleaning contractor.

(f) As for the other contractor, details are scarce. It is not clear that their quote is precisely comparable or what would have happened if they had been nominated during a consultation process.

8. The evidence does not suggest that the Respondents would have replied to consultation if RMG had carried it out prior to the appointment of Reef Cleaning Solutions. The circumstances of the Respondents' alternative quotes do not provide a compelling case that they would have been found or nominated at the time nor, if they had, that it would have changed the outcome. On the basis of this material, the Tribunal cannot be satisfied that the Respondents were prejudiced by the Applicant's non-compliance with the statutory consultation requirements.

9. RMG had good reason to appoint Reef Cleaning Solutions without full compliance with the statutory consultation requirements, its being urgent and their being willing to accept the risks arising from the cashflow issues. Therefore, the Tribunal is satisfied that it is reasonable to dispense with the consultation requirements.

Boiler maintenance

10. Ms Skvortsova frankly admitted that she did not have any evidence to support an allegation that the Respondents suffered any prejudice by a lack of consultation in relation to the boiler maintenance contract.

11. The Respondents' real problem was that the arrangements for the provision of communal heating and hot water were sufficiently complex that they did not understand them. A company separate from RMG provided and charged for heating to each flat and the Respondents are concerned that their heating charges include an element for boiler maintenance so that there would be double-charging. However, at the time that any consultation would or should have been carried out in granting the contract to DMG Delta, the Respondents had yet to be charged anything for the heating – if any double-charging has happened, it occurred much later so that it is difficult to see that anyone would have raised the issue, let alone that it would have made any difference to the outcome.

12. If there is double-charging, the Respondents may still have a remedy in other proceedings. Mr Amodeo and Ms Minhas were certain that there isn't any. In any event, it is not relevant to the issues before the Tribunal. There is simply no basis for refusing dispensation from the consultation requirements in relation to the boiler maintenance contract.

Conclusion

13. The Tribunal's role in this application is limited to determining only if the statutory consultation requirements may be dispensed with. As stated in the Tribunal's directions, "This application does not concern the issue of whether any service charge costs will be reasonable or payable." The previous Tribunal had already held that the charges for cleaning and boiler maintenance were reasonable and chargeable, subject to the issue of consultation.

14. In the circumstances, the Tribunal has determined that it is reasonable to dispense with the statutory consultation requirements.

Name: Judge Nicol **Date:** 22nd January 2024

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).