FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Tribunal Case reference	:	**LON/00BK/LSC/2024/0125 (court)** **LON/00BK/LSC/2024/0351 (tribunal)**
Property	:	**Flat 17, 70-72 Westbourne Terrace, W2 6QA**
Applicant (Claimant)	:	**Paul Anthony Cleaver, represented by Amanda Gourley of counsel**
Respondent (Defendant)	:	**Judith Amaryllis Feuchtwanger, represented by Rebecca Catermole of counsel**
Type of application	:	**Service charges:** **A. Transfer from County Court** **B. Leaseholder's application**
Tribunal	:	**Judge Adrian Jack, Tribunal Member Marina Krisko FRICS**
Date of decision	:	**14th April 2025**

DECISION

Procedural and background

1. 70-72 Westbourne Terrace has been the subject of much litigation. Before us are two applications in respect of service charges. One (LON/00BK/LSC/2024/125) is a reference to the Tribunal from the County Court (claim number K9QZ5N5A), where Mr Cleaver, the Tribunal-appointed manager, seeks to recover £2,941.25 in interim service charges for the half year to 30th September 2022 from Ms Feuchtwanger, the tenant. (The service charge year runs to 31st March each year.) The other is an application dated 27th August 2024 issued by Ms Feuchtwanger for determination of the service charge due in 2021-22, 2022-23 and 2023-24 and the budgeted figures for 2024-25.

2. The block was built probably around 1900 or a little earlier. It has seventeen numbered flats and two flats lettered A and B, making a total of nineteen flats. We were not shown the Land Register for the block, so we do not know the details of the leases under which the various flats were held, but it looks as though most of the flats were originally granted under long leases around the 1970's.

3. The current position is that the freehold is held by Kolup Investments Ltd. In turn there is a long lease of the whole of the building held by the Chilworth Trust Ltd. At a date which is not in evidence, but predates 2014, management of the building was vested in an RTM company, 70-72 Westbourne Terrace Residents RTM Co Ltd.

4. We are told that within the next few days the tenants are going to purchase the long lease, but that does not affect the legal issues before us for determination.

5. Various tenants were directors of the RTM company over the years. Between 2016 and 2019, Ms Feuchtwanger was a director and her life partner, Mr McElroy, was the company secretary of the RTM company. There appear to have been various disputes between various of the tenants. We were not given full details of these.

6. In particular, however, there was a problem with heating and hot water in the building. Prior to 2014, there were two commercial boilers which were installed in order to provide all the flats with hot water and to provide all the flats and the common parts with heating. By 2014 the boiler providing the heating had completely failed and the boiler providing hot water was unable to service all the flats.

7. A decision appears to have been made not to replace the boilers. Instead various flat owners started to make their own arrangements for heating and hot water. The result is that by 2020 none of the flats had communal heating and only four or five flats had hot water from the communal system. Mr Cleaver says that substantial disputes had arisen, because some of the tenants had used monies held in the RTM company's reserve fund to fund the replacement heating and hot water systems in their own individual flats. Others of the tenants objected to this.

8. The dispute resulted in an application being made to this Tribunal for the appointment of Mr Cleaver as a manager. Mr Cleaver was appointed as manager by order of the Tribunal for the period of four years from 10th August 2020. That appointment was due to expire on 9th August 2024. There is, however, an application (LON/00BK/LAM/2024/0011) by three tenants to extend the management order for a further five years. That application is subject to a cross-application by another tenant (LON/00BK/LAM/2024/0029) to replace Mr Cleaver with a Mr Rivett. Both of these applications have been stayed pending determination of the current applications before us in respect of service charges.

Items in the Scott schedule

9. Pursuant to the Tribunal's directions, the parties prepared a Scott schedule. The figures in the schedule are figures for the block as a whole. Under the terms of her lease the tenant is obliged to contribute 5.058 per cent of the whole. In one budget prepared by Mr Cleaver, her contribution is shown as 5.060 per cent, but this is an error, albeit tiny. Further, under the budget the total contributions of all the tenants under the various leases adds up to 106.33 per cent for items to which the basement garage contributed and 104.33 per cent for items to which the basement garage does not contribute. There is no application to vary the service charge contributions to ensure that they sum to 100 per cent, so the amount payable by the tenant remains at 5.058 per cent.

Service charge year 2021-22

Item 1: general building works

10. The total claimed under this item was £5,023, comprising a number of sub-heads.

11. The claimed figures for electricals and gate replacement were agreed. In dispute was the claim for £828 for "[a]ttend[ing] site to repair pier and cap as per estimate. Re secured cap to pier. Made good render to pier. Applied weathersheild masonary [*sic*] paint to pillar. Left clean and tidy." There was no issue as to quantum. The tenant disputed that the cap and pier was part of the land demised under the head lease. There is, however, no evidence that there is a separate lease of the parking area.

12. It was not entirely clear where the cap and pier was physically. Mr Cleaver showed a surprising ignorance of the building for a Tribunal-appointed manager. He thought it was part of the entrance portico, but photographs (particularly at p 374 of the bundle) suggest the piers were those between the vehicular access to the basement and the footpath and we find that this was on balance of probability where the work was done.

13. Para 5 of the recitals to the tenant's lease provides that:

> "'The Common Parts' shall mean all areas of the Building not specifically demised by this or any other lease including (but not by way of limitation) the service road steps entrance passage

> staircases landings and roof foundations lift and lift shaft pips [*sic*] wires cistern drain sewers ducts and other conducting media serving more than one flat."

14. In our judgment the reference to "service road" is sufficient to encompass the side of the road where we find the cap and pier to have been. We disallow nothing in respect of this.

15. Water staining was agreed.

16. As to render repair, the tenant disputed that any work to the common parts had been done to repair render. She relied on a report by Mr Rivett that there was deterioration in the block. Mr Cleaver explained that the only render in the block was on the common parts. We accept that evidence. Mr Rivett's report does not show no works were done We disallow nothing under this head.

17. The cost of a health and safety report was agreed.

18. We disallow nothing under this head.

Item 2: cleaning

19. This item was agreed at the £3,120 claimed.

Item 3: gutter cleaning

20. The issue here was in relation to damage cause to the tenant's flat by water ingress. We discuss this further below. After hearing submissions on this item, it was, however, apparent that gutter *cleaning* could not have caused the water ingress. The tenant consequently agreed the £270 claimed.

Item 4: pest control

21. The issue here was the tenant's assertion that four visits a year totalling £1,008 was excessive. She said that the block did not have any external area for rubbish bins. Tenants kept their rubbish in their flats and then disposed of it in bins provided by the local authority in an adjacent street. We accept that evidence. In our judgment, where there is no rubbish available for rodents, there is not a need for four pest control visits a year. In our judgment, a figure of £500 should be allowed under this head in each service charge year.

Item 5: gas

22. The amount claimed was £20,716.93. This was the most highly contested issue. The manager's case is:

> "The lease stipulates that all flats must contribute towards the upkeep of the communal system, and flat 17 is required to contribute accordingly. According to the lease, the communal

> system is designed to supply gas to all flats, including flat 17. Flat 17 unilaterally removed itself from the communal system without amending their lease. The system is structured in such a way that the removal of a single user does not reduce the overall costs. If flat 17 refuses to pay their share, the other flats are unfairly burdened with a higher contribution."

23. Clause 5(4) of the lease contains a landlord's covenant:

> "To use its best endeavours to provide and maintain at all reasonable hours an adequate supply of hot water to the Flat for domestic purposes and further to provide and maintain a hot water supply to the Central Heating System installed in the Flat during the period from the First day of October to Thirtieth day of April during every year of the term."

24. Para 13 of Schedule 3 defines the service charge to which the tenant must contribute as including:

> "The cost of supplying hot water for domestic purposes and to the central heating system in the Building and the costs of maintaining operating repairing and rewiring the door answering the phone and television aerials boilers and pipes for the provision of hot water and central heating in the Building."

25. In our judgment, the manager has not used his best endeavours to provide hot water. The management order made sorting out the boilers a major priority for the manager. We accept that he had no money to replace the two commercial boilers, which would have been a major undertaking. There was and is at least in the immediate future no prospect of the manager having monies made available to replace the boilers. In these circumstances, the obvious course would have been to seek a lease variation, so that all the flats had to provide their own heating and hot water. It is unclear why this was not done.

26. The manager's case is that the tenant voluntarily removed herself from the communal system. We do not accept that. We accept the tenant's evidence that when she bought her flat in 2014 she was told by the then agents that she would have to instal her own system. This is inherently plausible, given the defects in the commercial boilers.

27. The facts of this case are very similar to those which were the subject of a decision by His Honour Judge David Hodge KC in *Saunderson v Cambridge Park Court Residents Association Ltd* [2018] UKUT 182 (LC). He considered that the tenant's liability was:

> "conditional on that heating being provided to the Flat, and that such continuing liability terminated when, through no fault on his part, the appellant disconnected the Flat from the communal heating system in response to the respondent ceasing to provide adequate heating to the Flat in and after 2008. This Tribunal also considers that the FTT ought to have considered the application

of section 19(1)(b) of the 1985 Act. Had it done so, it should have concluded that since 2008 heating had not been provided to the Flat to a reasonable standard; that this had led the appellant to disconnect the Flat from the communal heating system so that this service was no longer being provided at all, still less to a reasonable standard; and that, in consequence, the appellant was no longer liable to contribute to the cost of heating the Flat after the disconnection in 2014."

28. In our judgment for both these reasons, the tenant is not obliged to contribute to the cost of gas. We disallow this head.

29. We note that this is unsatisfactory from the point of view of the proper financing of the block. There is no basis that we can see for the four or five tenants who continue to enjoy communal hot water to have to pay more than the modest percentage which their individual leases provide for them to pay. If that is right the shortfall will not be recoverable from any of the other tenants in the block. The RTM company has now been struck off and it is difficult to see a legal basis for recovery against the Chilworth Trust Ltd. This underlines the need to vary the leases in the block. These practical considerations do not, however, in our judgment affect the legal conclusion we have drawn that Ms Feuchtwanger is not liable in respect of the gas.

Item 6: management fees

30. The management order provided for Mr Cleaver to recover management fees in the sum of £400 plus VAT in respect of each flat, a total of £9120 for the block. There was no provision for inflation adjustment. It is convenient to deal with all three years where the issue arises. In 2021-22, the management fees claimed total £10,640, a potential overcharge of £1,520; in 2022-23, £9,570, a potential overcharge of £450; and in 2023-24, £10,290, a potential overcharge of £1,170. The potential overcharges total £2,908.

31. Ms Gourley put the manager's case on the basis that £2,908 would represent about 10 hours of Mr Cleaver's time. Under the management order he was entitled to charge himself out at £250 an hour plus VAT. Para 13 of the order allowed him to charge his time "in connection with the Application". She did not rely on the time spent by Mr Cleaver in respect of the current applications, which she said would be a matter for future billing.

32. The difficulty in our judgment is that there is no evidence that the alleged overcharges are related to the time spent on the original application for the appointment of a manager. The time spent on that would have fallen due in 2020-21 (not one of the service charge years in fact before us). There is no reason for Mr Cleaver to seek to recover such monies in the subsequent three years. It may be that there is other work which Mr Cleaver did in these three years which are before us, but there is no

evidence what that would was, what he did and what time he spent on the relevant task.

33. We disallow the three overcharges in the total sum of £2,908.

Item 7: surveyor's fees £3,618

34. The sole issue here was the cost of an asbestos report in the sum of £558. The tenant's case is that the asbestos report was unnecessary because reports had already been obtained in 2007 and 2017. The manager's case was that the RTM company had given him minimal handover of reports and other documentation when he took over management. Without an asbestos report to show contractors, no workman would agree to go into the boiler room. He had, he said, no realistic option but to commission a further asbestos report.

35. Ms Feuchtwanger said that Mr McElroy would have handed the earlier reports over at the handover. Mr Cleaver disputed that. He said that Mr McElroy had been uncooperative. They had met, but Mr McElroy had made it clear that he was not representing the RTM company. (We note that he had by this time ceased to be company secretary.) There was no discussion of what works had been done, Mr Cleaver said. Instead Mr McElroy discussed his "wish list" of works to be done in the future.

36. Mr McElroy did not give evidence, notwithstanding that he was the tenant's life partner. Nor did he provide a witness statement. We accept Mr Cleaver's evidence of what occurred.

37. In our judgment, the manager had no sensible alternative to the commissioning of a further asbestos report. We disallow nothing.

Item 8: building insurance £11,671.34

38. This was agreed.

Item 9: directors' and officers' insurance £237.26

39. The manager agreed not to demand this sum. Accordingly it is disallowed.

Item 10: internal works £47,495.14

40. The sole issue under this head was the management fee. The management order permitted the manager to charge up to 10 per cent as a fee on major works, such as these to the lift. The tenant said that it was wrong to permit the manager to charge the full 10 per cent, when the project was already underway when he was appointed as manager.

41. Mr Cleaver's evidence was that the documentation produced on the handover was minimal, so he was effectively having to start from scratch by instructing a lift consultancy. No work had commenced prior to his appointment. We accept this evidence. The entire work of supervision

in our judgment fell on Mr Cleaver and there is no basis for reducing his fees from 10 per cent.

42. We disallow nothing.

Service charge year 2022-23

Items 11, 12 and 13: general building works £5,711.30; cleaning £6,416; and access control £3,277.50

43. These items were agreed.

Items 14, 15 and 16: pest control; gas; and management fees

44. These are discussed above.

Item 17: building insurance £11,402.96

45. This was agreed.

Item 18: internal works £48,279.60

46. The sole issue on these was the management fee charged on the fire alarm work. The manager charged £2,347, whereas 10 per cent of the cost of the fire alarm work would have been £1,956, an alleged overcharge of £391.

47. Ms Gourley submitted that there would have been preliminary works and that no one had expressed unhappiness with the works. There is, however, no evidence about any preliminary works. In these circumstances, in our judgment there is no proper basis on which we can assume there were further works on which a 10 per cent fee could be based. We disallow £391.

Service charge year 2023-24

Item 19: building, heating and drain maintenance £1,644

48. The only item in dispute was an invoice at page 732 for £768 with the description "Replaced boiler pump following agreement with Property Manager. Restored hot water and heating to affected Flats." This raises the same issue as with the gas. For the same reason we disallow £768 under this head.

Item 20: gutter cleaning £1,200

49. The tenant's case is that this work was either not done or that it was not reasonable to do it. She said there was CCTV on the roof, so the state of the gutters could be checked easily. She complained that she had had a leak, but accepted that it was unclear whether the cause of the leak was the gutter or the roof.

50. Mr Cleaver's position was that it was better to be pro-active than re-active. We agree. The £1,200 represented three visits a year. In our judgment a four monthly inspection is reasonable. We disallow nothing.

Items 21 and 22: drainage £462 and access control £636

51. These were agreed.

Item 23: decorations £4,176.72

52. The tenant's case, as explained to us at the hearing (but not apparent from the Scott schedule), is that the need for redecoration arose from damage caused by the lift engineers. It was common ground that the lift engineers had had to break into the plasterwork as part of their work on the lift.

53. The tenant submitted that the engineers should have paid for these works. We disagree. There is no quote by the engineers for redecoration work. The breaking into the plasterwork was not misconduct by the engineers; it was part and parcel of the work for which they had been instructed. As such the redecoration was part of the cost of the lift work: it was a cost to be borne by the block, not by the engineers. We disallow nothing.

Items 24 and 25: gas and management services

54. These are as above.

Item 26: building insurance £17,268.78

55. This was agreed.

Budget 2024-25

56. A general point is taken by the tenant that no formal demand has been made for these sums. That is accepted on the manager's behalf. Thus we determine payability on the basis that a formal demand need be served before the sums we determine are reasonable are due. We emphasis that these are estimates only. The tenants have the right to question these again when the actuals are known

Item 27: plumbing £1,500

57. The tenant's objection to this was that it included a budgeted element for heating, which we have disallowed. In our judgment, however, the total figure of £1,500 is reasonable. We disallow nothing.

Item 28: general building repairs £6,000

58. Mr Cleaver said the actual outturn has been about £8,000. In these circumstances we disallow nothing.

Item 29: gas

59. This is as before.

Item 30: management fee £11,060

60. The tenant says that the management fee permitted by the management order made by this Tribunal is for £9,120 (£400 per flat plus VAT). The manager argues that interim demands for management fees are permissible and that there will be a 10 per cent management fee charged on major works.

61. We note that "major works" are defined in the lease by reference to the need for a section 20 consultation. No such works are or were in contemplation in the 2024-25 service charge year, so there is no basis for demanding more than £9,120. We allow only £9,120 under this head.

Item 31: building insurance £19,305

62. This item was agreed.

The County Court claim

63. The County Court claim was for a half year's budgeted figure of £2,941.25 to 30th September 2022. The actual amount claimed has been overtaken by the final accounts and our determination of their payability above. Nonetheless, the sums in this claim have been referred to us and our determination is likely to be relevant to the incidence of costs in the County Court.

64. The tenant submits that the interim service charge demand was never certified by the landlord's auditor. "The Interim Payment" is defined in the recitals to the lease as meaning "such sum to be paid on account of the Service Charge in respect of each accounting period as the auditors of the lessor shall specify at their discretion to be fair and reasonable interim payment." This was not done, so no interim payment is due.

65. The manager submits that the relevant obligations of the tenant are contained in Schedule 5 to the lease, which provides, so far as material:

> "(4) The Total Service Cost shall be deemed to include also such reasonable part of all such expenses outgoings and other expenditure hereinbefore described which are of a periodically recurring or non recurring nature (whether recurring by regular or irregular periods) whenever disbursed including a sum or sums of money by way of reasonable provision for anticipated expenditure in respect whereof the Lessor may in its reasonable discretion allocate to the year in question as being fair and reasonable in the circumstances and also such sums as shall enable the Lessor at all times to maintain such reserve fund at is in its reasonable discretion considers reasonable in the best Interests of management of the property PROVIDED that the Lessee shall not be required to contribute towards the cost of works carried out prior to the date of this Lease

(5) The Lessee shall pay to the Lessor by way of Interim Payment such sum in advance and on account of the Service Charge as the Lessor shall specify at its reasonable discretion to be fair and reasonable interim payment such interim payments to be made on the days hereinbefore prescribed for payment of rent

66. The manager says that the sums claimed in the County Court were sums due under para 4 of Schedule 5. That in our judgment is sufficient to justify the claim without the manager having to comply with the certification requirements for an interim payment. The sums claimed easily fall within the manager's reasonable discretion. We disallow nothing and certify that the full amount of the County Court claim was recoverable when the claim was made.

Costs

67. We have a discretion as to the costs payable to the Tribunal. These comprise the application fee of £110 paid by the tenant in respect of her application to the Tribunal and the hearing fee of £220 paid by the manager in respect of the transfer from the County Court. (The tenant was not required to pay a hearing fee.)

68. In our judgment both sides have had a measure of success. In these circumstances we consider that the incidence of these costs should lie where they fall. We make no order for costs.

69. As to the application under section 20C of the 1985 Act and para 5A of the 2002 Act, the position is that the Tribunal will not lightly interfere with a landlord's, or here the manager's, rights. Given that there is no overall winner, in our judgment in the exercise of our discretion we should refuse to make a section 20C or para 5A order.

DECISION

(a) The individual items are allowed and disallowed as set out above.
(b) The Tribunal determines that the sums claimed in the County Court proceedings are reasonable in amount and are payable by the tenant.
(c) The Tribunal makes no order in respect of the costs payable to the Tribunal.
(d) The Tribunal refuses to make an order under section 20C of the 1985 Act or para 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 so as to prevent the recovery of the costs of these proceedings by the landlord from the tenants by way of service charge or administration charge.

Signed: Adrian Jack **Dated: 14th April 2025**

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).

SCHEDULE OF 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.]

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

SCHEDULE 4 PART 2

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

Notice of intention

1.—(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.

Inspection of description of proposed works

2.—(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.

Duty to have regard to observations in relation to proposed works

3. 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.

Estimates and response to observations

4.—(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.

Duty to have regard to observations in relation to estimates

5. 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.

Duty on entering into contract

6.—(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.