



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case reference : LON/00AH/LSC/2017/0098

Property : Flat 12A The Woodlands, London,
SE19 3EQ

Applicant : The Woodlands Beulah Hill Ltd
("WBHL")

Representative : W H Matthews & Co, solicitors

Appearances for Applicant: : (1) Mr J Demachkie, counsel
(2) Professor S Miller, Director of
The Woodlands Beulah Hill
Ltd
(3) Mr M Waters, Director of
Harrow Management Ltd
(4) Ms L Brown, solicitor

Respondents : (1) Mr Jesse Ndirangu Nderitu
(2) Mrs Mercy Zipporah Nderitu
("the tenants")

Representative : In Person

Appearances for Respondents: : Mr and Mrs Nderitu

Type of application : For the determination of the
reasonableness of and the liability
to pay a service charge

Tribunal members : (1) Judge Amran Vance
(2) Mr M Taylor, FRICS

Venue : 10 Alfred Place, London WC1E 7LR

Date of Hearing : 13 July 2017

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £1,450.60, demanded by the applicant on 28 December 2011, relating to anticipated costs of underpinning works, is payable by the respondents in full.
- (2) The respondents admitted in the underlying county court proceedings that out of the total sum of £14,387.60 claimed, £12,137 was payable by them. Before this tribunal they have admitted that the sum of £200 ground rent claimed was payable by them and asserted that this sum had, in fact, been paid. Taking into account our above determination, this leaves a balance of £600 which relates to contractual legal costs in respect of the county court claim and determination of that issue is remitted to the county court.
- (3) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985
- (4) Since the tribunal has no jurisdiction over county court costs, fees or interest, this matter should now be referred back to the Croydon County Court.

Background

- (5) The applicant seeks and following a transfer from the county court the tribunal is required to make a determination under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether service charges are payable.
- (6) Numbers appearing in square brackets below refer to the hearing bundle provided by the applicant.
- (7) The relevant legal provisions are set out in the second appendix to this decision.
- (8) The claim concerns Flat 12A The Woodlands, London, SE19 3EQ ("the Flat") for which the tenants are the long leaseholders. The Flat is located in a purpose-built development comprising 111 flats known as The Woodlands ("the Building") which was built in the 1930's. There are four wings to the Building namely the East Wing, East Central Wing, West Central Wing and the West Wing. The Flat is located in the East Wing of the Building.
- (9) WBHL is a not for profit company that was set up in 1994 to acquire the freehold of the Building. The shareholders of WBHL comprise long leasehold owners of flats in the Building. Professor Miller's evidence, unchallenged by the respondents, was that WBHL's main source of income is the service charge collected from the long leaseholders which totals about £200,000 per annum. Harrow Management Ltd ("Harrow") has been WBHL's managing agents since February 2007.

- (10) Mr and Mrs Nderitu occupied the Flat as tenants from 1996 until they purchased it in April 2007. They hold a long lease dated 18 December 1987 which was originally made between First Metropolitan Properties (Woodlands) Ltd and Peter Ernest Harris (“the Lease”). The terms of the Lease require the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.
- (11) Proceedings were issued in the county court under claim no. C8QZ3T9F and were transferred to this tribunal by order of District Judge Hay, sitting in the Croydon County Court, dated 11 January 2017 [21]. In the county court claim the landlord claimed a total sum of £14,387.60 together with costs.
- (12) An oral case management hearing (“CMH”) took place at the tribunal on 11 April 2017 involving Mr Demachkie of counsel and Ms Brown, solicitor for WBHL. Mr and Mrs Nderitu attended in person. At that hearing, it was established that the sum of £14,387.60 consisted of the following:

Ground Rent	£200	
Service Charge Arrears	£13,455.60	
Administration Charges	£132.00	
	-----	£13,787.60
Contractual Legal Costs		£600.00

		£14,387.60

- (13) In their admission and defence and counterclaim, filed in the county court claim [12-19], Mr and Mrs Nderitu admitted that £12,137 was payable by them (which sum included the administration charges of £132) but disputed liability for: (a) the contractual legal costs of £600; and (b) a sum of £1,450.60 (“the Disputed Sum”), demanded by WBHL on 28 December 2011, which relating to the estimated costs of underpinning works to the West Central Building. The Disputed Sum was included within the service charge arrears of £13,455.60 claimed by WBHL in the county court claim. As to the £200 ground rent, Mr and Mrs Nderitu maintained that the sum had already been paid.
- (14) At the CMH, all parties agreed, as did the tribunal, that liability for the £600 claimed for contractual legal costs were for the county court to determine.

- (15) Although issues of ground rent, interest and costs are matters for the court, as a result of amendments made to the County Courts Act 1984, First-tier Tribunal judges are now also judges of the county court. This means that, in a suitable case, the tribunal can decide issues that would otherwise have to be separately decided in the county court; and should the tribunal do so, this might then result in savings in time, costs and resources. At the CMH the tribunal took the view that this would be an appropriate case for it to decide whether the ground rent included in the county court claim of £200 was payable by Mr and Mrs Nderitu.
- (16) However, at the hearing of the application Mr and Mrs Nderitu admitted that ground rent of £200 was payable by them. Their case was that it had, in fact, been paid. Given this admission, the tribunal has no jurisdiction to determine liability (see section 27A(4)(a) of the 1985 Act). For the benefit of the county court and the parties we record that at the hearing of this application WBHL confirmed that this sum of £200 had been paid by Mr and Mrs Nderitu in about June 2016, but that WBHL's position is that the sum is being held by Harrow without prejudice to its right to pursue forfeiture proceedings against Mr and Mrs Nderitu for other breaches of their lease and on the basis that holding this payment did not amount to waiver of its right to pursue such forfeiture proceedings. Whether that position is correct, as a matter of law, is not for this tribunal to determine.
- (17) The only issue for this tribunal to determine, therefore, is whether Mr and Mrs Nderitu are liable to pay the Disputed Sum.
- (18) Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

The Hearing

- (19) Mr and Mrs Nderitu represented themselves at the hearing. WBHL was represented by counsel, Mr Demachkie. We heard evidence from Professor Miller and Mr Waters, both of whom had provided witness statements in advance of the hearing. Mr and Mrs Nderitu had the opportunity to cross-examine both witnesses, and also gave oral evidence themselves, although they had not served any written witness statements in support of their case.
- (20) Immediately prior to the hearing Mr Demachkie provided us with a skeleton argument. The start of the hearing was delayed to allow the tribunal and Mr and Mrs Nderitu the opportunity to read that document. During the course of the hearing Mr and Mrs Nderitu provided colour copies of some of the photographs accompanying their statement of case. We allowed Mr and Mrs Nderitu to rely on these documents by way of evidence, no objection being made by Mr Demachkie.

The Applicant's Case

- (21) Mr Waters' evidence was that the Building is built on soft London Clay and has been subject to movement for many years. This has required three sets of underpinning works: (a) in 2000, to the South West Wing of the Building; (b) in 2002, to the East Wing; and (c) in 2011, to the West Central Wing. He also stated that a formal system of subsidence monitoring had been in place since the late 1990's.
- (22) In his witness statement Mr Waters states that the Disputed Sum was demanded in respect of the anticipated costs of the 2011 subsidence works and that the requisite statutory consultation notices under section 20 of the 1985 Act were sent by Harrow to Mr and Mrs Nderitu on 1 September 2011 (the Notice of Intention) [515] and on 13 October 2011 (Statement of Estimates) [516]. The cheapest of the estimates provided was from Abbey Pynford Foundation Systems ("Abbey") who quoted the sum of £106,955 plus VAT. On 28 December 2011, Harrow sent Mr and Mrs Nderitu a letter confirming that following completion of the consultation process it was proposed to engage Abbey to undertake the underpinning work, which was to be managed by Howard Ruse Associates. Accompanying the letter of 28 December 2011 was an invoice for the Disputed Sum.
- (23) Documents included in the hearing bundle indicate that Abbey were instructed to carry out the underpinning works on 3 August 2012 [356], a considerable time after completion of the statutory consultation process.
- (24) This delay appears to be due to the issues identified in Mr Waters witness statement namely that WBHL were unable to raise sufficient funds to commence the works through the service charge. In his statement he indicates that £161,016.60 was required to carry out the works, but only £78,300 had been raised by April 2012 and that the capital works/sinking fund was depleted. WBHL therefore obtained a loan to cover the shortfall, secured against the freehold of the Building. Two further loans were required because the project ran into problems when tree roots were discovered and, in total, the sum of £206,575 had to be borrowed to fund these works.
- (25) A certificate of practical completion for the 2011 underpinning works was issued by structural engineers Howard Ruse Associates on 11 August 2014 [354] and a certificate of structural adequacy for the West Central Rear Wing was issued on 12 May 2015 [355].
- (26) In their evidence, both Mr Waters and Professor Miller highlighted the reluctance of previous Directors of WBHL to take formal arrears recovery against leaseholders which had caused considerable financial difficulties. Mr Waters states that his written report to the AGM of WBHL on 24 February 2016 indicated that just over £200,000 was outstanding by way of service charge arrears, equivalent to an entire year's income. Professor Miller's evidence is that at that meeting it was

agreed that arrears of service charges and ground rent should be pursued by the Directors of WBHL, which is what led to the claim issued against Mr and Mrs Nderitu.

- (27) As indicated in the final paragraph of Professor Miller's witness statement, WBHL's case was that the Disputed Sum was payable in accordance with the terms of the Lease, the sums had been properly demanded, the works were genuinely required, they were not a repeat of any previous works carried out to the Building and that the sums were payable in full by Mr and Mrs Nderitu.
- (28) At the end of the hearing we directed that WBHL send to Mr and Mrs Nderitu and to the tribunal a breakdown, with reference to the annual service charge accounts, as to the actual costs of the 2011 underpinning works together with supporting invoices. This was provided to the tribunal on 20 July 2017 and Mr and Mrs Nderitu provided written observations on response on 26 July 2017.
- (29) The breakdown and invoices provided by WBHL on 20 July 2017 indicate that Abbey was paid £10,800 following submission of an invoice dated 13 December 2012 for "preparatory and abortive works". No further invoices from Abbey have been supplied and what appears to have happened is that responsibility for carrying out the underpinning works was transferred to Underpin and Makegood Contracting Ltd ("Underpin and Makegood"). The breakdown of costs supplied by WBHL show that after the 13 December 2012 invoice, all future payments were made to Underpin and Makegood, Harrow, HJ Ruse Associates and Goddard Consulting LLP, health and safety consultants. The total sum expended for the 2011 underpinning works is shown on the breakdown as amounting to £253,567.79 with the final three invoices all dated 25 November 2014.

The Respondents' Case

- (30) Mr and Mrs Nderitu's case has not been easy to identify. At the CMH they appeared to be arguing that underpinning works were carried out in 2007 works to their part of the Building, that these had been carried out to an improper standard, resulting in cracking to their Flat and that as a result they have suffered loss and inconvenience for which they wished to pursue a set-off against the costs demanded in the Disputed Sum. They suggested that if the 2007 works had been carried out properly there would have been no need for the 2011 underpinning works. They also argued that if the Disputed Sum was payable by them, the cost should have been paid out of the Sinking Fund.
- (31) In their subsequent statement of case they corrected their reference at the CMH to works having been carried out in 2007. The correct date the underpinning took place was, they said, between 2000 and 2002.
- (32) During the course of the hearing of this application Mr and Mrs Nderitu confirmed that WBHL were entitled to incur the costs of the 2011 underpinning works under the terms of the Lease. They also

agreed, having been taken to the service charge accounts and the statement of the reserve fund account [513], that there were insufficient funds in the Sinking Fund to pay for the 2011 underpinning works. Their adjusted case in respect of the Disputed Costs was as follows:

- (a) the costs incurred were unreasonable in amount;
 - (b) the works were carried out to an inadequate standard;
 - (c) they were entitled to a set-off against the Disputed Costs because of WBHL's failure to comply with its obligations to keep in repair and to decorate the Building.
- (33) Their case as to the costs being unreasonable amount was based on alleged historic neglect. They referred to a report carried out by Howard Ruse Associates in June 2005 [462] in which it assessed the current stability of the Building and to paragraph 4.02 of that report which refers to minor cracking at the junction of the West Central Wing with the main building. Mr and Mrs Nderitu submitted that WBHL should have monitored this minor cracking and spotted earlier than it did that further works were needed. They suggested that its failure to do so had led to the final costs of the works being more expensive than they would have been if carried out at an earlier date. In support of that suggestion, they referred to paragraph 9 of Mr Waters' witness statement in which he refers to the previous managing agent, Mr Spoor having witnessed cracking in the Building in 2007 which, they contended should have been the trigger for the need for further underpinning works.
- (34) When asked what evidence they had that the 2011 underpinning works were carried out to an inadequate standard, Mr Nderitu acknowledged that there was no evidence of that to date. However, his concern was that problems might become apparent in the future because it was their belief that the 2002 underpinning works had not been carried out properly and that they had caused damage to their Flat for which they sought a set-off against the Disputed Sum.
- (35) They referred to photographs [485-490] that, they said, evidenced large cracks of between one inch and one and a half inches wide in their bedroom, living room, hallway, primarily running horizontally along the walls, just below ceiling level. They also asserted that their floor was sinking in the bedroom and hallway. Their case was that they first noticed minor cracks in their Flat in 2007 and immediately contacted their landlord at the time who contacted the managing agents. Mr and Mrs Nderitu say that despite drawing these problems in the Flat to Harrow's attention, including in a letter dated 10 April 2013 [439], no remedial action has been taken and the cracks are becoming worse. They have obtained a quote from a builder in the sum of £7,200 for repair works to their Flat including taking down and replacing ceilings which they say should be set-off against the Disputed Sum. They also

seek compensation of £2,000 towards these costs together with additional compensation for the costs of accommodation whilst these works are carried out.

- (36) They also argued that paragraphs 2 and 3 of the 5th Schedule to the Lease (which deals with the purposes for which service charge can be applied) contain obligations on the landlord to decorate and repair the structure and common parts of the Building. They referred to photographs which they stated showed Mr Nderitu and neighbours cleaning steps leading up to the Building because, they said, WBHL were neglecting to clean this area. They also asserted that plaster was cracked and peeling in the communal hallway outside the entrance to their Flat and that the area needed redecoration. They considered they should be compensated for these failures by way of a set-off against the Disputed Sum.
- (37) In their response to the breakdown and invoices provided by WBHL on 20 July 2017, Mr and Mrs Nderitu expressed shock at the total cost of £253,567.79 incurred by WBHL for the 2011 underpinning works. They state that they understood that Abbey had been contracted to carry out these works and that WBHL should not have instructed Underpin and Makegood without engaging in further consultation with the long leaseholders. They state that they received no notification of the change in contractors or of any problems with the underpinning works and that instructing new contractors resulted in higher costs than originally estimated and which should have been the subject of consultation.

Decision and Reasons

- (38) We determine that the whole of the Disputed Sum is payable by Mr and Mrs Nderitu.
- (39) It is important to stress that what the tribunal is required to determine, following the transfer of the county court claim, is whether the Disputed Sum is payable, which includes whether or not that sum was reasonable in amount. The Disputed Sum concerns Mr and Mrs Nderitu's contribution towards the *estimated* costs for the 2011 underpinning works. The tribunal has no jurisdiction to determine if the *actual* costs of the 2011 underpinning works are payable by Mr and Mrs Nderitu because that is not an issue that has been transferred to us from the county court. We repeat that in the county court Mr and Mrs Nderitu admitted that all the service charge arrears claimed were payable by them with the exception of the Disputed Sum.
- (40) The county court claim was issued on 4 November 2016. There is no indication on the claim form as to how the service charge arrears of £13,455.60 claimed is broken down and what service charge years it relates to. It is possible that some, or all, of the actual costs of the 2011 underpinning works are included in that sum but whether or not that is the case is not ascertainable by us on the information provided.

- (41) Mr and Mrs Nderitu are quite correct to point out that the actual costs incurred, which appears to be at least £253,567.79, is much greater than the sum that was originally estimated by Abbey of £161,016.60. They may well have the right to challenge the payability and reasonableness of the *actual* costs of the 2011 underpinning works by making an application to this tribunal although the answer to that question may depend on whether the actual costs were included within the sum of £12,137 that they admitted was owed in the county court claim.
- (42) There may also be considerable force in Mr and Mrs Nderitu's argument that if WBHL wished to switch contractor from Abbey to Underpin and Makegood that this should have been the subject of further statutory consultation. The question of whether the works carried out by Abbey and Underpin and Makegood should be treated as a single set of works, or one or more sets of works, is not clear from the documents before us, or from the evidence tendered by WBHL. If the works carried out by Underpin and Makegood were carried out under a separate contract and were wider in nature and extent to the works on which the leaseholders were consulted, than it is possible that they were a separate set of qualifying works, as defined by section 20ZA(2) of the 1985 Act, for which, because the relevant contribution of any tenant was more than £250, separate consultation was required.
- (43) However, this is not a question that we are required to determine and nor would it be appropriate for us to do so given that our jurisdiction is limited to determining whether the Disputed Sum is payable by Mr and Mrs Nderitu.
- (44) In our view, there is no evidence at all to suggest that the Disputed Sum, as demanded from Mr and Mrs Nderitu towards the estimated costs of the 2011 underpinning works, was unreasonable in amount. When it provided disclosure, in accordance with the tribunal's directions, WBHL provided Mr and Mrs Nderitu with copies of a price schedule, form of tender, invitations to tender and responses received from three contractors, including Abbey. None of the costs estimated by Abbey are the subject of a specific challenge by Mr and Mrs Nderitu and there is no evidence to suggest that the costs budgeted for by WBHL were excessive or unreasonable in amount.
- (45) In any event, there any evidence to support Mr and Mrs Nderitu's argument based on historic neglect. Whilst at paragraph 4.02 of the Howard Ruse Associates report it is recorded that there is minor crack damage at the junction of the west central wing and the main building it goes on to say that this "*remains generally in the condition reported in February 2003, with no evidence of further movements*". At paragraph 3.01 it is stated that this minor cracking "*is not sufficiently significant to justify underpinning at this stage*".
- (46) The conclusion reached at paragraph 4.01 of the report is that "*there is no current evidence of any significant subsidence movements having*

occurred to the Mansion Block since the partial underpinning works completed in 2002 and our previous assessment report in February 2003. Accordingly, there is no current requirement for further stabilisation works, or underpinning, to the building". We do not accept that the report indicates a need for remedial works to take place. Nor can anything useful be read into the reference at paragraph 9 of Mr Waters witness statement. Whilst Mr Spoor is said to have witnessed cracks in the Building prior in 2007 there is nothing to indicate where those cracks were located and no evidence that he was referring to the West Central Block and that this should have caused WBHL to carry out further underpinning works to this area. In any event, there is no evidence to support the suggestion that the works would have been cheaper if carried out in 2007 than in 2011.

- (47) The question of whether the 2011 works were carried out to an inadequate standard is not a question relevant to whether the estimated sum demanded from Mr and Mrs Nderitu was reasonable in amount. In any event, Mr Nderitu admitted that there was no evidence before us to support this submission or his speculative suggestion that defects might become apparent in the future.
- (48) Turning to the suggestion that Mr and Mrs Nderitu are entitled to a set-off against the Disputed Costs, we agree with Mr Demachkie's submission that we do not have jurisdiction to determine this issue. We only have jurisdiction to determine whether a set-off should be awarded for breach of covenant by a landlord where the set-off would constitute a defence to a service charge forming part of a s.27A application (see *Continental Property Ventures v White* [2006] 1 EGLR 85). The Disputed Sum relates solely to the estimated costs of the 2011 underpinning works. Mr and Mrs Nderitu have admitted that all of the other service charges included in the county court claim form are payable by them. The issues they have raised in support of their claim for a set-off do not relate to the estimated costs of the 2011 underpinning works or, indeed to those works at all, and, therefore, cannot be raised as a defence to the Disputed Costs.
- (49) If Mr and Mrs Nderitu wish to seek to pursue a counterclaim when this matter is returned by the tribunal to the county court on the basis that WBHL are in breach of its obligations under the Lease then they may seek permission from the county court to do so. However, we consider they would be well advised to seek legal advice before embarking upon such a course of action. They may wish to ask the case officer dealing with this case at the tribunal for a copy of the tribunal's leaflet setting out details of organisations that may be able to provide free legal advice in landlord and tenant disputes.

Application under s.20C

- (50) At the end of the hearing, Mr and Mrs Nderitu made an application for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the

determinations above, the tribunal determines that it would not be just and equitable for an order to be made. Mr and Mrs Nderitu have not succeeded on any of the arguments they presented to the tribunal. The applicant is a lessee-owned company that is dependent on its income from service charges to perform its functions. In all the circumstances, we see no reason to restrict its ability to recover the legal costs it has incurred before this tribunal through the service charge.

The next steps

- (51) The tribunal has no jurisdiction over county court costs, fees or interest. This matter should now be returned to the Croydon County Court.

Amran Vance

10 August 2017

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

Landlord and Tenant Act 1985

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 a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,

- (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (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) a leasehold valuation tribunal.
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the

proceedings are concluded, to any residential property tribunal;

- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

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

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) where 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.