



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

**Case reference** : **LON/00AG/LDC/2018/0051**

**Property** : **Montagu House, 109-113 Whitfield Street, London W1T 4HJ**

**Applicant** : **Montagu House Freehold Limited**

**Representative** : **Reed Smith LLP (Peter Teare)**

**Respondents** : **The leaseholders as set out in the list attached to the application**

**Type of application** : **Application for dispensation under Section 20ZA Landlord and Tenant Act 1985**

**Tribunal members** : **Judge Pittaway  
Mr J Barlow FRICS**

**Date of decision** : **1 May 2018**

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**DECISION**

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## **Decisions of the tribunal**

1. The Tribunal determines that an order under section 20ZA of the Landlord and Tenant 1985 Act dispensing with the consultation requirements in relation to qualifying works shall be made in relation to instructing a specialist heating contractor to “powerflush” the communal heating and hot water system to remove a build-up of iron oxide sludge in the communal pipework.
2. The parties should be aware that this decision does not concern the issue of whether the service charge costs in relation to these works and costs are reasonable and payable and those costs may be the subject of a challenge under section 27A of the Landlord and Tenant Act 1985.

## **The application**

The applicant seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 (the “1985 Act”) from all/some of the consultation requirements imposed on the landlord by section 20 of the 1985 Act<sup>1</sup> to enable the applicant to engage a contractor to carry out works to the communal heating and hot water system to remedy the failures resulting from a build up of iron oxide sludge which is preventing the free flow of hot water from the communal boilers to the individual flats. It requested that the case be dealt with on the fast track, and also indicated that it would be content for the matter to be dealt with by way of a paper determination and without a hearing.

## **Background**

1. The tribunal issued directions on 16 March 2018 directing that the applicant landlord must by 23 March 2018:
  - send to each of the tenants either by hand delivery or first class post copies of the applicant’s application for dispensation and the tribunal’s directions; and
  - display a copy of the application and the directions in a prominent position in the common parts of the property; andconfirm to the tribunal in writing that this has been done.

The applicant landlord confirmed to the tribunal that it had done so by e mail on 23 March 2018.

2. The directions further directed that any tenant who opposed the application should do so by 3 April 2018 by completing the form of

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<sup>1</sup> See the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987)

reply attached to the directions and sending it to the tribunal and the landlord.

3. The tribunal received no objections from any tenant. By letter to the tribunal dated 12 April 2018 (enclosing the bundles required by the directions) the applicant's solicitors confirmed that they had received no objection from any tenant.
4. The only issue before the Tribunal is whether it should grant dispensation from all or any of the consultation requirements contained in section 20 of the 1985 Act.
5. The tribunal did not consider that an inspection was necessary.

### **The applicant's case**

The applicant's bundle contained an e mail report by Ridge and Partner's LLP dated 9 November recommending flushing the pipework to remove contamination. It also contained a summary of a survey carried out of the tenants which indicated that at least thirteen of the tenants had experienced problems with the communal heating/hot water system. It also contained three quotations for the work.

### **Reasons for the Tribunal's decision**

1. The tribunal has the jurisdiction to grant dispensation under section 20ZA of the 1985 Act "*if satisfied that it is reasonable to dispense with the requirements*".
2. In light of the report from Ridge and Partners LLP and the summary of the tenants' survey the tribunal considers that it is reasonable to dispense with the consultation requirements.

### **Application under s.20C**

There was no application for any order under section 20C before the tribunal.

**Name:** J Pittaway

**Date:** 1 May 2018

## **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).