9501

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AU/LSC/2013/0426**
Property	:	**Adams Place Estate, London N7 8QH**
Applicant	:	**London Borough of Islington**
Representative	:	**Ms Stephanie Smith of Counsel**
Respondent	:	**Mr David Salter, (25 Adams Place)** **Mr Shaheenziad & Ms Baudry, (40)** **Mr & Mrs Langston, (20)** **As lead cases**
Representative	:	**Ms Patricia Napier, Pro Bono Barrister**
Type of Application	:	**Ss.27A and 20C, Landlord and Tenant Act 1985**
Tribunal Members	:	**D Banfield FRICS** **Ms S Coughlin** **O Miller BSc**
Date and venue of hearing	:	**15 October 2013** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**11 November 2013**

DECISION

DECISION

- That the service charges as claimed are payable by the lessees.
- Not to make an order under section 20C of the Landlord and Tenant Act 1985
- The determination of the Tribunal in connection with these lead cases is binding on each of the parties in the related cases in relation to the common or related issues unless, within 28 days of this decision a party applies in writing for a direction that the decision is not binding.

Preliminary

1) The property to which this application relates comprises two blocks of four storey buildings comprising flats and maisonettes together with garages at ground floor level and with a boiler plant room providing heating to the residential units.

2) On 29 April 2013 the Applicant commenced work to replace the heating system at a cost of £496,849.32 inclusive of 11% fees.

3) The Applicant now seeks a determination under section 27A of the Landlord and Tenant Act 1985 as to whether service charges are payable.

4) The Respondent lessees seek and order for the limitation of the landlord's costs in the proceedings under section 20C of the Landlord and Tenant Act 1985.

5) At an oral pre-trial review held on 16 July 2013 the following issues to be determined were identified:

(i) whether the landlord had complied with the consultation requirements under section 20 of the 1985 Act.

(ii) whether the works are within the landlord's obligations under the lease/whether the cost of the works are payable by the leaseholder under the lease.

(iii) whether the estimated costs of the works are reasonable, in particular in relation to the nature of the works, the contract price and the supervision and management.

(iv) whether an order under section 20C of the 1985 Act should be made.

6) Following discussion with those present at the pre-trial review the tribunal directed that the applications relating to Mr Salter of 25 Adams Place, Mr Shaheenziad and Ms Baudry of 40 Adams Place and Mr and Mrs Langston of 20 Adams Place are designated lead cases and the remaining applications are designated related cases and are stayed.

7) It was directed that any respondent in a related case may apply to the Tribunal to be added as a lead case but no such application has been received.

8) The determination of the Tribunal in connection with the lead cases will be binding on each of the parties in the related cases in relation to the common or related issues unless, within 28 days of the determination of the applications, a party applies in writing for a direction that the decision is not binding.

The Issues

To whom does the heating system belong?

9) At the hearing Ms Smith, Counsel for the applicant referred to the lease, clause 3(3)(a) which states "*except as hereinafter provided to be maintained by the Council pursuant to Clause 7(5)hereof from time to time and at all times during the said term to repair maintain cleanse and keep in good and substantial repair all:- (9) radiators cisterns tanks boilers pipes wires conduits and drains and other things installed for the purposes of supplying or carrying hot and cold water gas and electricity exclusively to the demised premises.*

10) Ms Smith then referred to clause 7(5) whereby the council covenants to "*Except as provided in Clauses 3(3) and 8 hereof to repair clean improve redecorate and keep in good repair order and condition; (b) The .....gas and water pipes .....enjoyed or used by the Tenant in common with the lessees or occupiers of other dwellings in the building. (c) the boilers and heating and hot water apparatus (if any) serving the Building save and except heating and hot water apparatus (if any) as may be now or hereafter installed in the demised premises serving exclusively the demised premises and not comprising part of a general heating system serving any other part of the building*"

11) She then referred to Part 1 (a) of the Third Schedule in which the landlord's services relating to " Repairs, maintenance improvements

and redecorating" are set out; " *(ii) Periodically inspecting maintaining overhauling improving repairing and where necessary replacing the whole or any part of the heating and domestic water system (if any) serving the Building and the lifts lift shafts and machinery therein."*

12) Ms Smith said the liability for maintaining and if necessary replacing the heating system was clearly that of the landlord. The exception referred to in clause 7(5) allows for the situation where the lessee has installed a completely separate heating system and is not intended to cover what is in reality only part of the larger communal heating system. In support of this she referred to the Upper Tribunal decision of *Levitt v Camden LBC* UKUT 366 (LC) which she said contained almost identical wording and in which the Tribunal determined that the council could recover the cost of installing a new heating system. She acknowledged that individual staff members of the council may have given incorrect or misleading information as to where responsibility lay for the heating system but this did not alter the position as set out in the lease.

13) Ms Smith said that in considering whether there was any ambiguity in the respective obligations the time to judge was at the time of the contract i.e. when the lease was entered into and not as suggested by Miss Napier, when the lease was subsequently acquired. In support of this she cited the decision in *I C S Ltd v West Bromwich Building Society*. page 912 paragraph H *" Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge that would reasonably have been available to the parties in the situation in which they were at the time of the contract".* At the time the lease was entered into the property was newly built and with a communal heating system which was clearly a landlord's responsibility. However, in a lease of this length future eventualities such as the installation of an individual heating system needed to be catered for and this is exactly what these clauses permit. As is made clear in *Earl Cadogan v 27/29 Sloane Gardens Ltd.* it is only where ambiguity exists that the clause will be resolved against the landlord as proferror.

14) Referring to the "Homes for Islington Leaseholders' Guide to Major Works" in which on page 4 reference is made to the lessee's responsibility for maintaining "individual heating systems" she said the information could not be relied on. She pointed out the that the guide had not been produced by the council but "Homes for Islington" and as such it may not be binding on the Applicants. She also referred to the disclaimer on page 2 which said that it should not be relied upon in any dispute.

15) Miss Napier as pro bono barrister for the Respondents disagreed with the Applicant's construction of the lease and said that the

heating systems within the flat were the responsibility of the lessees. She said that the lease was unclear and that this was apparent from the advice that Mr Salter and others had received from the Applicant. She referred to the Homes for Islington guide referred to above which Mr Salter had consulted prior to his purchase of the property and which referred to individual heating systems as being the leaseholder's responsibility. She further referred to the email from Carole Voller, the Leasehold Officer for Homes for Islington dated 3 February 2011 in which she said that "individual cold water tanks are usually the responsibility of the leaseholder". The cumulative affect of this misleading advice demonstrated that the wording of the lease was unclear and should therefore be construed in favour of the lessee.

16) Referring to the Levitt case she said that the wording of the lessee's repairing obligation clauses were different in that with Levitt they specifically referred to *"the Landlord's fixtures and fittings sanitary apparatus and appurtenances"* whereas with the subject lease there was no mention of "Landlord's fixtures" As such they could not be said to be the same and Levitt should not be taken as guide to the construction of this lease. Referring to the ICS case she said that the time to judge whether ambiguity existed was at the *"time of the contract"* which she said was when Mr Salter had purchased the flat. She accepted that purchasers at different times may have received different information which could result in different liabilities.

17) Mr Salter added that the council still appeared to regard the pipes within his flat as his responsibility and cited occasions when he was told that moving central heating pipes in his kitchen was his responsibility. He also referred to the advice he had received from LEASE that the lease was *"open to interpretation"*.

18) In reply Ms Smith said that the relevant time to judge whether the lease was ambiguous was at he time it was entered into not at some later transaction. Extraneous documents or advice which post dated the lease could not have any bearing on its construction. She also noted that the LEASE advice was merely *"open to interpretation"* not ambiguous.

Decision

19) It seems clear that there has been some considerable confusion with both leaseholders and the landlord or their staff as to the responsibility for the heating and hot water system. Advice given by the leasehold officer and the Leaseholders' Guide referred to above is misleading at best and it is not surprising therefore that the lessees have taken the view that the installation within their flats is their responsibility. We do not find it an attractive proposition that the Guide is not binding on the council on the grounds that they didn't actually publish it and this suggestion is rejected. However, we

cannot accept that the construction of a lease can be affected by subsequent transactions such as an assignment and any ambiguity must be judged on the situation at the time the lease was granted. The provision of subsequent misleading information cannot be allowed to influence that judgement.

20) At the time the lease was granted the blocks were newly built and had a centralised heating and hot water system served by a boiler room on site. The Third Schedule shows this to be the responsibility of the landlord. "*Periodically inspecting maintaining overhauling improving repairing and where necessary replacing the whole or any part of the heating and domestic water system (if any) serving the Building and the lifts lift shafts and machinery therein.*" Clause 3(3)(a) refers to the lessees obligation to repair items "*carrying hot and cold water gas and electricity exclusively to the demised premises.*" (The tribunal's underlining) In Clause 7(5) the council covenants to maintain the heating system "*save and except heating and hot water apparatus (if any) as may be now or hereafter installed in the demised premises serving exclusively the demised premises and not comprising part of a general heating system serving any other part of the building*"(The tribunal's underlining)

21) The tribunal accepts that at the time the lease was entered into the respective repairing obligations were sufficiently clear in that the common heating and hot water system was the responsibility of the landlord whereas any individual systems installed at some later date would be the lessees responsibility. Any information supplied after the date of the lease cannot be of relevance. We therefore determine that the works are within the landlord's obligations under the lease and that the cost of the works are payable by the leaseholder under the lease.

Are the works necessary and are the costs reasonable?

22) Ms Smith called Mr Alan Price, a Senior Mechanical Engineer employed by the Applicants and in charge of the capital works programme. He explained that the system comprised a centralised boiler system which circulated hot water to the two buildings through a two pipe system serving both radiators and the hot water cylinder in each flat. Cold water was from a separate rising main to galvanised tanks in each flat. Following a failure the boilers were replaced in 2007 but, other than routine maintenance no other works had been carried out. The system was installed in 1978 and some of the component parts are at the end of their life. In support of this he referred to an asset register which showed the 2 pipe heating system was estimated to have a life of 5-10 years when surveyed on 12 August 2009.

23) Mr Price also referred to the repairs history listing the works carried out between November 2010 and January 2013 indicating the number of breakdown callouts which peaked in 2011 and the

associated costs. He also referred to a number of photographs of corroded pipes and brought an example to the hearing.

24) In 2011 there had been a major failure of a riser causing damage to 3 flats which caused them to review the installation as a whole. The pipes were steel and had exceeded their expected life of 25 years as recommended by the Chartered Institute of Building Engineers. The cost of replacing the riser was £10,408.58 and, given that there were 12 risers in total the cost of their replacement would have been approx £125,000. Replacement on a piecemeal basis was not considered good practice and he therefore investigated the replacement of the whole system incorporating the latest industry recommendations.

25) The decision to replace the system was taken based on the information from the asset register, the repairs history and their professional knowledge and experience. He did not accept that an independent expert report was required as the council had sufficient expertise within their staff. Following a survey of the estate bidders were asked to make design recommendations following which 6 were invited to submit tenders. The design features required included a 4 pipe system, flat plate heat exchanger, new hot and cold cylinders, new radiators, an upgrade of the building management system and various valves sensors etc. The successful bidder was engineering Management Services Ltd at a quoted price of £447,612.

26) Mr Price confirmed that this was the second lowest tender but explained that the lower bid from Mitie did not fulfill all of the council's requirements. With regard to the 11% added for "management" He said this covered the consultation procedure, design and supervision including a clerk of works.

27) In answer to questions he said that it was impossible to judge how corroded a pipe was without destructive testing or when a failure occurred. Additional costs had not been incurred by failing to replace the whole system when the boilers were renewed in 2007 and the subsequent failure and replacement of a pump was not related and a simple maintenance item. He suggested that if the whole system had been replaced in 2007 there would have been accusations that it was premature. The addition of "flat plate heat exchangers" was a recent industry recommendation and was designed to prolong the life of the boilers.

28) Mr Price agreed that the survey carried out in March 2013 by Mr Tony Parkin, a mechanical engineer for the applicant was due to Mr Salter challenging the necessity of the work and did not form part of the decision making process.

29) In giving evidence Mr Parkin confirmed that there had been no duplication of work except the failed pump. He accepted that the new pipework was not being routed behind kitchen units but gave the assurance that any rerouting subsequently required would be done at no cost to the leaseholders. He said that it was not practical to re-use sections of pipework as contractors were reluctant to guarantee a mixture of old and new work and such sections would always be liable to failure. He also said that it would not be possible to only replace the risers as not all flats had isolation valves which made it very difficult to replace part only of the system.

30) When questioned as to why the low water pressure could not be cured at the same time he said that it was a feature of the design in that cold water tanks were situated inside the flats . To make an improvement the tanks would have to be moved onto the roof which was not practical. As to fitting a pressurised system they were difficult to maintain, had safety issues and were not council policy. On being told that the contractors were not lagging pipework Mr Parkin said that any defect would be picked up before the end of the contract.

31) Mr Salter questioned why in the absence of a detailed survey so many assumptions as to the work required were included in the tender. Mr Parkin referred to Contract Instruction 1 dated 6 June 2013 which omitted all of the various provisional sums and said that only those items actually required would be paid for.

32) In cross examination Mr Salter said that the omission of reference to replacement of heating system from the Assignment Information he received prior to his purchase in 2010 was unreasonable. He considered that the council's assets register should have prompted a reference being made although accepting that the council had made reference to not being bound by the information provided. He accepted that a failure could occur at any time but considered that the Council should have been more aware of the risks. he further thought that it would have been sufficient to replace the risers only.

33) He further pointed out that unlike the scenario in the Levitt case he had not been permitted to install a separate heating system which was his preferred option. He also said that he had provided evidence that lessees had been paying for their own repairs to tanks and pipes.

Decision

34) For the reasons we have heard, the Council decided to replace the whole of the system rather than part only in an effort to avoid the risk of future breakdowns. Whilst it may well have been possible to carry out a cheaper more limited scheme that is not the test that must be applied. For the Council to replace part only would run the risk of future failures which would be both inconvenient and costly. The council has to balance that risk with the larger cost of replacing the whole system. We cannot say which in the long run would be the

more cost effective option but we are satisfied that the decision taken by the Council was a reasonable one for them to take. We further take the view that it was reasonable for the Council's installation to be in accordance with latest industry guidelines including the 4 pipe system and flat plate heat exchangers .

35) There was no specific challenge to the placing of the contract with EMS Ltd other than the addition of the 11% management charge. We have heard what the charge covers and are satisfied that it comes within the range considered reasonable for such services. We therefore allow the sum claimed in full.

The consultation process

36) Ms Smith says that the consultation process has been carried out in accordance with S.20 of the Landlord and Tenant Act 1985 as amended and referred to the Notice of Intention dated 11th May 2012 and "Paragraph B Statement" dated 17th January in which details of the tenders received are given. Ms Smith said that all that was required under the regulations was that "due regard" should be given to any observations received.

37) Mr Salter said that whilst he had not responded to the first notice on 11 February 2013 he had emailed his initial observations following receipt of the second notice and followed up with a detailed letter on 15 February. A reply was sent by the Council on 8 March 2013 and this failed to answer all his queries and in any event was after the contract had been awarded. He therefore entered into further correspondence which resulted in the council's letter of 14 May in which his complaint regarding the delay to respond to his various queries was upheld and which provided answers to each of his outstanding questions.

38) The additional information contained in that letter still failed to satisfy his concerns particularly with regard to the lack of an independent survey and he therefore continued to withhold payment.

39) He said that if he had been aware of the likely expenditure he would never have purchased the flat. He had budgeted for about £7,000 for repairs but not for several years time. He considered that the provision of individual heating systems for each flat would be more efficient and cost effective and would save about £500 per year. He did not accept the council's arguments regarding sustainability and fuel poverty favouring a communal system and said that if the council were concerned with sustainability they should have installed heat meters in each flat to encourage more efficient use.

40) In cross examination Mr Salter accepted that he had bought into a communal system and that his calculation of a £500 saving was "rough and ready".

Decision

41) Notice of Intention was given on 11 May 2012. The Notice of Estimates was given on 17 January 2013 with observations invited by 16 February 2013. Observations were received from Mr Salter and responses made by the council.

42) The regulations require that "due regard" is had to any observations made and from the council's replies we are satisfied that such regard had occurred. There is nothing in the Act that requires the council to alter their proposals following receipt of observations or indeed to respond to those observations. The contract was not placed until some time after the expiry of the observation period and we are satisfied that the requirements of S.20 Landlord and Tenant Act 1985 have been met.

Costs

43) The respondent has made an application for an order under section 20C of the Landlord and Tenant Act 1985. Ms Napier says that they have been "dragged here against their will" and that it cannot be right that the landlord should then be able to put their costs on the service charge.

44) Ms Smith referred to the Notes of Pre-Commencement Meeting for the communal heating works at Adams Place held on 24 April 2013 at which it was reported that leaseholders were disputing the works and were intending to apply to the LVT. The decision was therefore taken that as a reference to the LVT was inevitable it would be better to make a single application themselves rather than face multiple applications from lessees. It was only due to the lessees objections that such an application had to be made.

45) We accept that the council were obliged to make this application due to the objections being made by the lessees. We further accept that these objections sprang from a genuine misunderstanding of the terms of the lease brought on in part at least by the misinformation given to lessees by the council or their representatives. Both sides considered that their cases were correct and in the end it is the council who have wholly succeeded. In these circumstances we decline to make the order sought.

D Banfield FRICS 11 November 2013

Appendix of 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.

The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

Lead Cases

23.- (1) This rule applies if -
(a) two or more cases have been started before the Tribunal;
(b) in each such case the Tribunal has not made a decision disposing of the proceedings; and
(c) the cases give rise to common or related issues.
(2) the Tribunal may direct that one or more such cases be specified as a lead case, and stay the other cases ("the related cases").
(3) The Tribunal must send a copy of any direction given under paragraph (2) to each party in a lead case and in the related cases.
(4) A party in a related case referred to in paragraph (3) may apply for the related case to be substituted as the lead case (or added as a lead case) within 28 days after the date of receipt of notification from the Tribunal of a direction made under paragraph (2).
(5) Where the Tribunal makes a decision in a lead case or cases in respect of the common or related issues-
(a) the Tribunal must send a copy of the decision to each party in each of the related cases; and
(b) subject to paragraph (6), the decision will be binding on each of those parties in relation to the common or related issues.
(6) Within 28 days after the date on which the Tribunal sent a copy of the decision to a party under paragraph (5)(a), that party may apply in writing for a direction that the decision is not binding on the parties to a particular related case.
(7) The Tribunal must give directions in respect of cases which are stayed under paragraph (2), providing for the disposal of or further directions in those cases.
(8) If a lead case is withdrawn before the Tribunal makes a decision in respect of the common or related issues, the tribunal must give a direction as to -
(a) whether another case or other cases are to be specified as a lead case or lead cases; and
(b) whether any direction affecting the related cases should be set aside or amended.

Subsequent applications related to a lead case

24.- (1) This rule applies where a decision has been given in a lead case in accordance with rule 23 and a subsequent application is made which includes any of the common or related issues.

(2) The Tribunal may send written notice to the parties to the subsequent application of-

(a) the matters which it appears to the Tribunal are the common or related issues in the subsequent application and the previously decided lead case;

(b) the decision recorded in respect of the common or related issues in the lead case;

(c) the Tribunal's proposal to record its decision on the common or related issues in the subsequent application in materially identical terms to the decision in the lead case;

(d) the date (being not less than 21 days after the date the notice was sent) by which any objection to this proposal must be received by the Tribunal; and

(e) a requirement that any objection must include the grounds on which it is made.

(3) Where no objection is received on or before the date specified in the notice-

(a) the Tribunal need not determine the matters mentioned in paragraph (2)(a); and

(b) the decision of the Tribunal in respect of the common or related issues in the lead case must be recorded as the decision of the Tribunal in respect of the common or related issues in the subsequent application.

(4) Where an objection is delivered to the Tribunal's proposal on or before the date specified in the notice the Tribunal must determine the application in accordance with the other provisions of these Rules.