10769

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AZ/LSC/2015/0048, LON/00AZ/LEE/2015/0001, LON/00AZ/OCE/2015/0061**
Property	:	**25, 27 and 29 Gilmore Road, Lewisham, SE13 5AD**
Applicants	:	**Lisa Perrin (Flat 25A); Brian Bird (25B); Carre Wylder (25C); Kathleen Ireland (27A and 27B); Sylvanus Okoye (27C); Maria Mitkova (29A) Joanna Sharp (29B); Alexandra Booler (29C) and Jennifer Crisp (29D)**
Representative	:	**Roger Copeland, solicitor, (solely in respect of the enfranchisement issue) and Carre Wylder**
Respondent	:	**Gilbar Properties Ltd**
Representative	:	**Mr Mendelsohn, R.A.Management Ltd**
Type of application	:	**No fault right-to-manage, liability to pay service charges and a preliminary point on enfranchisement**
Tribunal member(s)	:	**Judge Adrian Jack, Valuer Member Michael Taylor FRICS, and Tribunal Member Alan Ring**
Date and venue of hearing	:	**1st and 2nd June 2015 at 10 Alfred Place, London WC1E 7LR**
Date of decision	:	**2nd June 2015**

DECISION

Determination

(a) The RTM application (LON/00AZ/LEE/2015/0001) **is marked as withdrawn on settlement.**

(b) On the preliminary point as to jurisdiction in the enfranchisement claim (LON/00AZ/OCE/2015/0061) **we hold that the Tribunal has no jurisdiction to entertain the claim.**

(c) On the service charge application (LON/00AZ/LSC/2015/0048) **we find that the sums set out in paragraph 42 hereof are payable.**

(d) We make no order in respect of the fees payable to the Tribunal and refuse to make an order under section 20C of the Landlord and Tenant Act 1985.

(e) If either party seeks any order in respect of costs, they should make such an application in writing to the Tribunal by 16th June 2015 (copying the same to the other side). The other side should make any submissions to the Tribunal by 30th June 2015, with any reply by 6th July 2015.

Background

1. There are three applications before the Tribunal involving 25, 27 and 29 Gilmore Road, London SE13 5AD:

(i) By one application, the applicant tenants seek a determination under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act) as to whether service charges are payable. The tenants also seek an order for the limitation of the landlord's costs in the proceedings under section 20C of the 1985 Act.

(ii) In application, LON/00AZ/LEE/2015/0001, 25 and 27 Gilmore Road RTM Company Ltd ("RMT Company") seek determinations under Part 2 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") in relation to the right to manage.

(iii) An application (LON/00AZ/OCE/2015/0061) under Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act") in respect of the right to collective enfranchisement. This matter was listed before us solely to determine whether the Tribunal had jurisdiction to determine the terms of enfranchisement. The landlord was asserting that the application was out of time.

There is a dispute in the County Court relating to ground rents, but this is not a matter for the Tribunal.

The property consists of three semi-detached houses of the Victorian era converted into ten flats.

The RTM clam

2. On 18 April 2013, the RTM Company was incorporated as a limited company. On 17 May 2013, the RTM Company served two Claim Notices under the 2002 Act seeking to acquire the right to manage respectively (i) 25 and 27 Gilmore Road; and (ii) 29 Gilmore Road with effect from 21 September 2013. The landlord did not serve any Counternotice.

3. On the first day of the hearing before us, the parties announced that they had reached agreement in respect of the RTM claim. They agreed that on 21 September 2013, the management of the bocks passed from R A Management Limited to the RMT Company. We therefore make no determination in respect of the claim and shall mark it as withdrawn.

The enfranchisement claim

4. On 10 June 2014, the tenants served a notice under Section 13 of the 1993 Act claiming the right to collective enfranchisement. The initial notice gave a date of 21st August 2014 by which time the landlord was to serve its counter-notice. The landlord reversioner served a counter-notice dated 12th August 2014 admitting the right to collective enfranchisement, but disputing the proposed purchase price of £58,000 and proposing an alternative figure of £99,857.

5. Before us, it was common ground that the counter-notice was served by recorded delivery and was signed for on 14th August 2014 on behalf of the tenants. The application to the Tribunal was issued on Tuesday 17th February 2015. On this basis the landlord submitted that the application was out of time.

6. Mr Copeland, appearing for the tenants in respect of this issue, argued that, even if the counter-notice was signed for on 14th August 2014, the notional date for service was 48 hours later. He also argued that service by recorded delivery was invalid: only first class post sufficed. He cited no authority for this second proposition, which in our judgment is quite wrong. Section 21 of the Leasehold Reform, Housing and Urban Development Act 1993 requires various information to be provided in the counter-notice, but the only requirement in respect of service is that the "reversioner... shall give a counter-notice": see section 24(1). In our judgment, if the counter-notice is received that is good service.

7. As to Mr Copeland's first proposition, he said that this was provided for by the Law of Property (Miscellaneous Provisions) Act 1994, but he cited no section number. There is nothing of any relevance in this Act to any question of deemed service. It may be that Mr Copeland was thinking of provisions like Rule 6.14 of the Civil Procedure Rules, which

deems service to occur on the second business day after posting. However, there is nothing which corresponds to this in the 1994 Act, nor for that matter the 1993 Act.

8. Were Mr Copeland's first proposition correct, service would still have been deemed to have been served on 14th August 2014, because the counter-notice was posted on 12th August 2014.

9. Further, even if Mr Copeland were right that service is deemed to have been effected on 16th August 2014, that would still not assist the tenants, because the application was lodged with the Tribunal on 17th February 2015, more than six months after the date of service of the counter-notice: see section 24 of the 1993 Act. Monday 16th February 2015 was not a public holiday; the Tribunal was open. Accordingly the tenants cannot take advantage of the rule that time is extended over weekends to the next day on which the Tribunal is open.

10. In our judgment the application to the Tribunal is out of time and the Tribunal has no jurisdiction to entertain it.

11. The Tribunal notes that the leases in the current case all grant a term of 99 years from 24th June 1986. On 24th June 2015, the leases will have only 70 years to run, so the rules on marriage value will become relevant.

The service charge dispute

12. The applicants challenge the service charges for the period 1 January 2007 to 21 September 2013. The service charge year is the calendar year. The tribunal was told that all the tenants occupy their flats under similar leases. A sample lease was in evidence. In relation to external works, all the flat-owners contribute 9 per cent, save for Flats 25C and 27C, who pay 14 per cent each. The liabilities for internal works at No 25 are split 50-50 between Flats 25B and 25C. Similarly at No 27 internal works are split 50-50 between Flats 27B and 27C. At No 29 internal works are split with one third payable by each of Flats 29B, 29C and 29D.

13. At the pre-trial review on 19th February 2015 the tribunal identified the following issues to be determined:

- whether the works are within the landlord's obligations under the lease/whether the cost of works are payable by the leaseholder under the lease
- whether the costs are payable by reason of section 20B of the 1985 Act
- whether the costs of the works are reasonable, in particular in relation to the nature of the works, the contract price and the supervision and management fee

- whether an order under section 20C of the 1985 should be made
- whether an order for reimbursement of application/hearing fees should be made.

14. At the hearing before us, the tenants' case was presented by Ms Wylder. She is the tenant of Flat 25C, having completed her purchase of it in June 2011. Ms Wylder called no evidence from any other tenants and relied solely on her own submissions. In relation to pre-June 2011 matters, this was based solely on hearsay from other tenants, but the other tenants had not served witness statements. The landlord's case was presented by Mr Mendelsohn of R A Management Ltd, the former managing agents. He again called no evidence but made submissions based on his personal knowledge.

15. In the event, there was no dispute at the hearing that the service charges fell within the landlord's obligations under the lease and that in principle the works were payable by the leaseholder. Likewise no issue was pursued at the hearing in relation to section 20B of the 1985 Act. Accordingly the focus of the hearing was on the third question. The last two issues we consider separately after determining the substantive questions in relation to service charges.

16. After the commencement of the current proceedings, the landlord had audited accounts prepared by Melinek Fine LLP, chartered accountants. These are all dated 11th March 2015 and it was these which the Tribunal used in determining the application: see [0/R1-R7].

17. In each service charge year, there is a figure for buildings insurance. Mr Mendelsohn, the managing agent, who presented the landlord's case, explained that the landlord uses an independent broker, who regularly tests the market. This is born out by the fact that the landlord has changed insurer in the course of period with which we are concerned. The landlord insured some 500 properties under a block policy. It was necessary for the policy to cover all types of tenant who might occupy the property, including students and those on social security benefits.

18. Although the premiums and the rebuilding costs varied slightly over the years, the 2007 year can be taken as typical. The declared cost of rebuilding in that year was £1,163,283, however, the insurer automatically grossed that rebuilding figure up to £1,744,924. The premium was £3,914.90. The cost of insurance was £3.36 per £1,000 on the declared figure, but only £2.24 per £1,000 on the grossed up figure. £2.24 is probably the right figure to use for comparison purposes. It is well within the normal band of insurance premiums which the Tribunal sees. The Tribunal told the parties that this was their experience, so that the parties could comment. In the event Mr Mendelsohn agreed. Ms Wylder had no evidence to gainsay that. Even if the £3.36 figure was correct, it is well established that a landlord is

not obliged to take the cheapest quote. There are still substantial differences between insurers as to service and even solvency.

19. The tenants relied, in order to show that the policies were too expensive, solely on a policy which they obtained after taking over the building for which the premium was £1,660.74. The premium seems very cheap and may represent an introductory offer. However, in the absence of any contemporaneous evidence that the premiums being paid by the landlord were improperly obtained or unreasonably high and in the absence of any evidence from a broker or other expert that insurance could – and importantly should – have been obtained more cheaply in the period 2007-13, we find that no deduction should be made to the insurance premiums.

20. In 2007, £730 was spent on roof repair. No issue arose on this. The tenants accepted that the work had been done and the cost was reasonable.

21. There is, however, an additional charge of £73 in respect of "set up and administration". Mr Mendelsohn showed us the management agreement dated 31st January 2001 between his firm, R A Management Ltd and the landlord. It agreed terms as follows:

> "1. A 10% commission on Ground Rents collected.
>
> 2. Further administration and legal costs as appropriate incurred by us in the collection of Ground Rents, Service Charges and Insurance and any other property related costs. This will include expenditure incurred in the enforcement of covenants.
>
> 3. Annual Management Fees will be charged to you in relation to all property matters where you have standing covenants to fulfil. We will undertake this for you.
>
> 4. Where the level of management incur warrants extra charges, for example in the case of works or specialist services, a charge 5% to 20% (dependent on the materiality of the costs) of the actual or budgeted expenditure or a time based sum will be invoiced to you.
>
> a. Where projects or works are halted or aborted for any reason, our charges based on the percentage as noted in 4 above, will mirror the terms agreed with the appointed surveyors in relation to the rate at which they will charge for abortive fees.
>
> b. Should there be no tariff based agreement as at 4a, the level of abortive fees will have to be negotiated."

22. The sliding scale from 5 per cent to 20 per cent does not define in any detail when the higher or lower figure applies. As such it is somewhat unusual. However, in fact the way Mr Mendelsohn applied the scale

was not in our judgment unreasonable. For smaller works, he charged the larger figure, whilst for larger works he charged progressively less.

23. In our judgment £73 for setting up and administering the roof works is a reasonable figure. There was a need to instruct tradesfolk, obtain quotes, ensure the work was done satisfactorily and then organise the payment and accounting. Charging 10 per cent was permitted by the management agreement and the sum was in no way excessive. Accordingly we disallow nothing in respect of this element.

24. The annual management and administration charge in 2007 was £700, or £70 per flat. As we told the parties at the hearing, that was an extremely low management fee, particularly for London. It reflected the fact that the managing agent did little: it organised the building insurance and collected the ground rent and service charges. However, in order to do that the managing agents needed to have premises and to be available if there were emergencies. Ms Wylder adduced no evidence that the management charges were unreasonable. In our judgment they were very reasonable, even for the limited work done by the agent.

25. In subsequent years the annual management fee increases slightly. In 2012 the total was £1,050, or £105 per flat; and for the part year 2013 to 21st September £825, or £82.50 per flat. These figures are also in our judgment reasonable for the services provided.

26. The audit and accounting fee in this year and the subsequent years (a flat rate of £240 per annum) was conceded as reasonable.

27. In 2008 there is a figure for unblocking drains. This and the 5 per cent set up and administration charge were conceded by the tenants.

28. In 2009, the landlord employed a gardener to cut back shrubs at a cost of £170. This work was done at the request of the tenants. The sum was conceded by the tenants. Ms Wylder said that the 15 per cent set up and administration charge of the agent, amounting to £25.50, was excessive, when there was already a management agreement in place. We disagree. As we have set out, the annual charge under the management agreement was very low indeed. It was not unreasonable for the agent to charge for additional items, like arranging gardening. Charging 15 per cent on a small item like this is justified, because £25.50 is likely barely to cover the time expended by the agent.

29. In 2010 there is an item of £309.03 in respect of a garden gate. There is an invoice at [2/M21] dated 28th April 2010 for replacement of a gate in that sum. Ms Wylder said that the lock on the gate had been incorrectly installed. This pre-dated her involvement with the property. The problem seems eventually to have been rectified. In our judgment, the sum was reasonably incurred by the landlord. If there was a problem with the lock (and the evidence is solely hearsay), there is no evidence that the landlord should have been aware of that. There are, for example, no emails of complaint. Moreover the problem was

resolved. In these circumstances we disallow nothing. The management fee of 15 per cent on this item is, for the reasons already given, reasonable.

30. In 2011 there was an asbestos report for No 25 obtained at a cost of £229.13. This item was conceded by the tenants. The agent charged £45 for set up and administration. This is just under 20 per cent, but is justified in our judgment. This is the only internal item in this year.

31. In 2012 there is a figure of £1,915.50 for Japanese knotweed removal. This fee covered six years of spraying. In our judgment it was a long term agreement, but since the sums involved were less than £100 per flat per annum there was no need for the landlord to consult on it. (The landlord did not include £200 in the bill to the tenants which was paid in case the removal firm needed to spray a larger area.)

32. The tenants argued that it was not necessary to employ a specialist firm and that they, the tenants, were able to do the job of eradication with normal weed-killer. We disagree. Japanese knotweed is notoriously difficult to kill. A specialist firm is essential, because of its reoccurring nature. The sum agreed by the landlord is reasonable.

33. The agent sought to charge £425 as an administration fee for dealing with the removal of the Japanese knotweed. That would have been justified with the additional £200 on the cost. The landlord has not, however, sought to recover the £200. £425 is over 22 per cent of the cost. Mr Mendelsohn conceded that the £425 stood to be reduced to £383.10 (20 per cent of £1,915.50). 20 per cent is at the top range of fees which the agent could charge, but we accept that there was a lot of work for the agent in organising these works. Accordingly, save for the reduction of £41.90, we allow this item.

34. In 2012 the landlord started a consultation on major works, although the costs were only incurred in 2013. The preliminary work involved commissioning a survey report at a cost of £1,020, on which managing agent's fees of £51 or 5 per cent were charged, followed by a Stage 1 consultation under section 20 for which the agent sought to charge £420. The State 1 consultation comprised a letter dated 13th August 2012. After the consultation, a specification was drawn up and tenders from three builders obtained. The cheapest quote was from Barry Dodd Maintenance Ltd at £95,974 and (subject to an issue of service on Mr Bird) a Stage 2 notice was served on 16th April 2013 on all tenants.

35. Ms Wylder raised an issue regarding service on Mr Brian Bird. He was in fact the former husband of her sister. He purchased his flat (Flat 25B) on 1st February 2013. This was after the Stage 1 consultation but before the Stage 2 consultation. Ms Wylder conceded that the vendor's solicitors had told Mr Bird of the Stage 1 consultation in the course of preliminary enquiries for the purchase. As regards the Stage 2 consultation, she disputed that Mr Bird had been served. Mr Mendelsohn says that the Stage 2 consultation would have been sent to

him at the address which he gave on the notice of assignment, which was Flat 25B itself. Since Mr Bird had the flat for investment purposes and did not live there, it was likely, he submitted, and we agree, that the notice had not been received by him for that reason.

36. Be that as it may, however, once complaint was made, Mr Mendelsohn arranged for the documentation to be served on Mr Bird on 8th May 2013. He confirmed receipt in an email of 12th May 2013. Mr Mendelsohn gave Mr Bird a further month to propose a contractor. This was itself quite a substantial concession, because the other tenants had been informed of the quotations obtained from the three firms who quoted. Thus any nominee of Mr Bird would have been able to undercut the existing quotes.

37. Mr Bird did nominate a Mr Spreadbury, but he declined to quote. Apparently he was spending a lot of time in south-east Asia. After the expiry of the additional one month period given to Mr Bird the tenants did seek to obtain estimates from other firms. These were not firm quotations and were thus subject to change. However, since they were outside the period for nominating contractors, the landlord was entitled to disregard them.

38. By this time, the tenants had decided to form their own right-to-management company, so no contract was ever let. This, however, allowed the surveyors who drew up the specification to charge an interim fee. This comprised 50 per cent of the standard rate of 11.5 per cent on the lowest quote. This is in our judgment reasonable. Moreover the tenants have benefited from the work on the specification, in that, as Ms Wylder candidly admitted, they had used the specification in carrying out the roof and guttering works.

39. The agent sought to recover 2.5 per cent (half of 5 per cent) on the same basis. If this sum stood on its own, we would have considered it too high, when added to the surveyor's fees. However, in our judgment we have to look at the contract between the landlord and the agent as a whole. It provided for the sliding scale of 5 to 20 per cent for most items and a fixed 5 per cent on works such as these. That contract was in our judgment reasonable when it was entered and is based on a "swings and roundabout" principle. Accordingly we disallow nothing.

40. There were further roof repairs, on which a set up and administration charge of 5 per cent was added. These items were conceded by the tenants.

41. There were two asbestos reports on Nos 27 and 29, to which the set up and administration charge of 5 per cent was added. Again these items were conceded by the tenants. They were the only internal items in this year.

42. Accordingly, we find the following amounts are due:

Year	Claimed (£)	Due (£)	Of which internal (£)
2007	5,657.90	5,657.90	nil
2008	5,731.78	5,731.78	nil
2009	4,078.82	4,078.82	nil
2010	6,202.36	6,202.36	nil
2011	4,956.69	4,956.69	374.13 (25B&C)
2012	7,033.74	6,991.84	nil
2013	14,854.11	14,854.11	491.40 (27B&C, 29B, C&D)

Payments made

43. Ms Wylder raised an issue as to whether payments made the tenants or on their behalves by their mortgagees had been properly accounted for. There were three flats where this was a live issue: 25C (her own flat), 27A (Ms Ireland's) and 29C (Ms Booler's). It is doubtful if the Tribunal has jurisdiction in respect of these matters, but *de bene esse* we heard the parties' submissions.

44. As regards her flat, all outstanding service charges were cleared by her vendor with a final payment credited on 15th June 2011. There appears to be no dispute about payments before her purchase. After her purchase, the only payment is one of £3,048.98 from Aldermore plc, her mortgagee. Whether Aldermore plc should have paid that sum is a matter between her and that company. It is not a matter for the Tribunal.

45. Ms Ireland complained that sums of £158.20 paid by cheque dated 24th February 2007 and £158.21 on 24th January 2008 in respect of Flat 27A had not been credited to her: see the cheque counterfoils at [1/B167]. In fact, however, these sums were credited to her, but on the Flat 27B account, the other flat which she owns in the block: see [0/R127]. Accordingly, there is nothing in that point either.

46. Lastly in respect of Ms Booler, it appears she bought her flat in March 2014. On completion her vendor paid all the outstanding service charges. There was a payment of £400 on 21st April 2015 from a firm of solicitors. There appears to be no dispute that no other payments were made by Ms Booler.

Costs

47. The Tribunal has a discretion as to the incidence of the fees payable to the Tribunal. These comprise an issue fee of £440 and a hearing fee of £190. In the light of the negligible success of the tenants, we make no

order for costs, which accordingly fall on the tenants. For the same reason we refuse to make an order under section 20C of the 1985 Act.

48. If there are any other costs orders sought, these should be made in writing in accordance with the directions given in the determination above.

Judge Adrian Jack
2nd June 2015

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.]

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Service Charges (Consultation Requirements) (England) Regulations 2003

Schedule 3

CONSULTATION REQUIREMENTS FOR QUALIFYING WORKS UNDER QUALIFYING LONG TERM AGREEMENTS AND AGREEMENTS TO WHICH REGULATION 7(3) APPLIES

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) contain a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred by him on and in connection with the proposed works;

(d) invite the making, in writing, of observations in relation to the proposed works or the landlord's estimated expenditure;

(e) 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.

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 and estimated expenditure

3. Where, within the relevant period, observations are made in relation to the proposed works or the landlord's estimated expenditure by any tenant or the recognised tenants' association, the landlord shall have regard to those observations.

Landlord's response to observations

4. Where the landlord receives observations to which (in accordance with paragraph 3) he is required to have regard, he shall, within 21 days of their receipt, by notice in writing to the person by whom the observations were made, state his response to the observations.