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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AZ/LSC/2013/0667**
Property	:	**28 Addington Grove, 73, 77, 91 and 93 Highclere Street, London SE26 4JU**
Applicant tenant	:	**Mr Andy Mclean (28 Addington), Ms Z Kalkawel and Ms A Mehmet (73 Highclere), Ms K Sawyer (77 Highclere), Ms S Blair (91 Highclere) and Mr E Tulah (93 Highclere)**
Representative	:	**In person**
Respondent landlord	:	**Lewisham Homes Ltd**
Representative	:	**Mr Michael Mullin of counsel, instructed by Ms Mandeep Sahota, the leasehold legal officer**
Type of Application	:	**Liability to pay service charges**
Tribunal Members	:	**Judge Adrian Jack, Professional Member Peter Roberts Dip Arch RIBA**
Date and venue of determination	:	**31st March and 1st April 2014 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**28th April 2014**

DECISION

Background and procedural

1. By an application dated 26th September 2013, Mr Mclean sought determination of his liability for major works carried out in 2012-13. Subsequently other tenants as set out above were added as parties.

2. The respondent is the housing arm of the London Borough of Lewisham. The tenants all hold under right-to-buy leases. They comprise a minority of the tenants in the blocks. The landlord is responsible for the cost of the works in issue for all the flats occupied by social tenants. The landlord had its own consultant, Mr Griggs MRICS of Bailey Garner as contract administrator, and its own clerk of works, to protect its interest against the claims of the contractor.

3. The Tribunal gave directions on 22nd October 2013. These included a direction for the preparation of a Scott Schedule. The tenants complied with this direction, but the landlord did not.

4. The Tribunal inspected the properties on the morning of 31st March 2014 in the presence of most of the tenants and the representatives and witnesses of the landlord.

5. The Tribunal subsequently held a hearing at 10 Alfred Place. Tenants from each of the flats appeared and spoke on their own behalves. The landlord was represented by Mr Mullin of counsel. Mr Hayden Schuitemaker, the landlord's lease consultation officer, and Mr Daniel Griggs, the supervising surveyor, gave evidence on the landlord's behalf.

INSPECTION

6. The Addington Grove building and the Highclere Street building are two of four similar blocks surrounding a central garden area. The four blocks comprise the estate. Each building is of solid brick construction and dates probably from the late 1940's or early 1950's. Each building is three stories high with a flat roof with a tank room on the top of each staircase. Each building has two staircases with two flats at each floor level. Thus there are six flats on each staircase and twelve flats in total in each block as a whole. Access to the tank room (which no longer has any water tanks) is obtained by a ladder through a ceiling hatch.

7. Each staircase has an entrance doorway on the ground-floor at the front and windows on the front of the upper floors. The back of the staircases is open. On each upper floor there is a hatch and chute through which rubbish can be put so as to drop down to the bin area on the ground floor. In all but one of the staircases we were shown the hatch which had existed on the ground floor had been removed, so that waste needed to be put in the bins direct through the doors to the bin store.

8. At the top of each staircase at the back, there is a canopy whose purpose is to prevent rain blowing onto the staircase. We deal with this below.

9. On each staircase the walls were newly decorated, but in places the paint had started to bubble or flake off. Again we deal with this below.

10. The windows, both on the common parts and in each flat, are all modern PVC installed about 10 to 15 years ago. No issues arise in respect of them, save that new windows with safety catches were installed in the windows in the common parts as part of the major works.

11. The cills under the windows were originally red tiles with crenulations underneath. As part of the major works, defective tiles were replaced with new red tiles. These new tiles were lipped instead of crenulated, however, the effect was not aesthetically displeasing and the new tiles were a good match for the old.

12. The tenants made substantial complaints about the quality of the repointing which had been carried out to the brickwork. We were shown some limited areas, particularly around the windows, where some remedial work would be required, but the defects liability period for the works had not expired and it is to be expected that these matters would be remedied as part of the ordinary fixing of defects. In our judgment the repointing generally was not of a very high standard, but it was of adequate quality. Apart from the limited areas we have mentioned, the repointing, which is extensive, is of reasonable contractual quality; there is no basis on which the landlord could properly require the contractor to carry out wholescale repointing of the two blocks.

13. We went on the flat roof above Mr Mclean's top-floor flat. The landlord's team also attended but the tenants all preferred not to go onto the roof. The roof was laid with new materials, a 3 layer system of bitumen felt, and appeared to be in excellent condition. There was a down-pipe going through Mr Mclean's flat. There were also cables for a communal satellite reception system which appeared to have been newly laid on cable tray supports. The doors and locks in the tank room appeared to have been recently replaced.

14. We were shown the inside of Mr Mclean's flat, so as to be shown historic water penetration from the flat roof. However, he confirmed that there was no continuing problem since the new flat roof was laid.

15. On the parapet wall around the flat roof, concrete render had been applied which replaced, we were told, lead flashings. On Addington (but not on Highclere) the rendering had a line of discolouration. We were told that this was due to Mr Griggs requiring the contractors to put a bell mouth drip at the lower edge of the render. The discolouration, which was unattractive, was at the join of the two cements.

16. At the back of Addington there was a 1m high picket fence and at the side a dilapidated 1.8m panel fence.

17. Originally on each side of Highclere there were six pram sheds. Those on the side nearest Addington had been removed. This revealed a crack to the brickwork in the side of the block, which appeared to be fairly new and should be fixed as part of the defects during the defects liability period. At the front of the block there was a waste pipe which fed into a blocked drain. There was particularly marked water staining to the brickwork elevations, although both blocks suffered from some staining. The pram sheds on the other side of Highclere still had their original doors.

18. On the first floor between flats 77 and 79 the chute to the bins was coming away from the wall, but this would stand to be fixed in the defects liability period.

19. We were shown the WC by the front door of Flat 89. This showed extensive fungal growth on the walls. We could, however, not associate this with any external defect and in our judgment is most likely to be due to inadequate ventilation in that room causing condensation. Because the WC was a corner room, the two solid external brick walls were liable to be colder than in other rooms.

20. We were shown into Mr Tulah's flat 93 and taken onto the balcony. There was some cracking with poor repointing and rendering below the rendering over, but these matters would stand to be fixed during the defects liability period.

CONSULTATION

21. The major works were carried out pursuant to an order placed under the framework agreement entered into by the landlord with the Breyer Group plc. The consultation requirements for such contracts are governed by schedules 2 and 3 to the Service Charges (Consultation etc) (England) Regulations 2003.

22. Under schedule 2, there is a two stage process before a landlord can enter a long term agreement with a contractor. In the first stage the landlord is required to give notice of its intention to enter such an agreement and invite comments. It is common ground that the landlord's letters to tenants of 7th December 2009 (an example is at bundle 5/102) met the requirements of this first stage. The second stage is for the landlord to give notice of its proposal to enter a long term agreement. Again it is common ground that the letters of 8th October 2010 (example at bundle 5/121) met the requirements of the second stage.

23. The effect of entering a framework agreement is that the contractor agrees to carry works as directed by the landlord with the prices of individual items fixed in accordance with the tender and priced schedules accepted by the landlord. In the current case, the proposed

long term agreement was advertised in the Official Journal of the European Union and a tendering process was properly followed.

24. There is still some controversy over whether this method of contracting is ultimately cheaper than the traditional approach to tendering for individual projects. In particular the size of framework agreements means that only bigger contractors are in practice able realistically to tender. However, there is no doubt the tendering process for framework agreement can result in very competitive pricing. For example, the cost of replacing individual bricks in the current framework agreement is extremely low indeed. In the current case the tenants made no general attack on the landlord's decision to enter a framework agreement, so we do not consider this point further.

25. The tenants' complaint of failure to consult focussed exclusively on the third stage of the consultation. Under schedule 3 to the Regulations (which we set out in the annex below) the notice required to be given to the tenants is required solely to "describe, *in general terms,* the works proposed..." (our emphasis).

26. It is common ground that the landlord on 24th November 2011 sent each tenant a third stage notice. As part of this notice the landlord included the schedule of works applicable (as the case may be) to Addington and Highclere. The tenants' main complaint is that items on the list of final works were not on the original schedule of works.

27. In our judgment, this complaint is not made out. We can take as typical the issue on "Spot 135: Core samples to roof" on page 1 of the Scott Schedule for Addington. The tenants' case is: "Item was not listed on schedule of works. No consultation regarding this item took place which is required under the Commonhold and Leasehold Reform Act 2002 Section 151." (Section 151 inserted amendments to section 20 of the Landlord and Tenant Act 1985.)

28. It is true that the schedule of works does not have an entry "Spot 135: Core sample to roof." However, it does have an entry "Spot 93: Provisional Sum of £43,000 per roof." As Mr Griggs explained, when the original schedule of works was drawn up, there was significant uncertainty as regards precisely what might need to be done, once scaffolding was erected and defects revealed. So, for example, in the current case, it was clear that the old flat roof had reached the end of its reasonable life. However, it was not until investigations, such as taking core samples, were carried out, that the precise extent of the works could be known.

29. The Tribunal accepts this evidence. If the core samples had, for example, revealed deterioration under the existing roof cover, then more extensive works would have been required. As it was, it was possible to lay the new roof covering (which included a fresh layer of insulation) on the top of the old covering. The protection for the tenants from a financial point of view was that the works (with a very

few exceptions) stood to be priced on the basis of the figures contained in the framework agreement.

30. In our judgment, with some exceptions which we note below, all the works come under the "general terms" of the third stage consultation. Once the scope of actual works were known the provisional sums were stripped out of the final account and the actual figures substituted, as is normal practice and completely acceptable.

31. The only matter on consultation is in relation to Highclere where the need for some additional works became apparent in the course of the contract. The landlord by letter of 11th September 2012 carried out a further supplemental consultation.

32. Apart from the "general description" point, no other criticism was made of the third stage consultation. In our judgment for the reasons given this was a proper consultation and the tenants' objections based on failure to consult are ill-founded.

SCOTT SCHEDULE

33. We now propose to go through the issues on the Scott Schedule, starting with **Addington**.

34. Spot 55 and Spot 71: concrete works: agreed at nil.

35. Spot 134 to Spot 156: the only issue taken by the tenants was consultation. For the reasons given we disallow nothing.

36. Spots 162 and 163: Concrete repairs £834.02 and £2,410.51: the tenants complained that this was done as part of the major works rather than as part of the ordinary annual service charge. In our judgment, there is nothing in this point. Once the works were done as part of the major works, it was perfectly acceptable to charge for them as part of the major works. It makes no difference to the cost that they are charged as part of the major works.

37. Spots 164 to 195: the only issue taken by the tenants was consultation. For the reasons given we disallow nothing.

38. Spot 196: Satellite dish: £2,016: the existing system provided access to Sky television through a two wire cable. The upgrade involved the installation of a three wire cable, which allowed Sky Plus to be received. Under the terms of the leases the landlord was entitled to upgrade the existing system, even though many of the tenants were indifferent to the upgrade. However, in our judgment the works are not (as the landlord submitted) covered by the general description of "roof works". No consultation was in consequence carried out and the amount payable by Mr Mclean is capped at £250.

39. Spot 206: Communal canopy £6,209.28: this was not a sum specified in the framework agreement. Instead the contractor obtained three

quotes from specialist subcontractors and chose the cheapest. The tenants' complaint in relation to this and the equivalent canopies on Highclere was that the canopy did not extend far enough, so that water could still be blown onto the open stairways in the common parts. The landlord agreed to examine this issue. Notwithstanding that, in our judgment that price is reasonable and the tenants do have some benefit from the canopy. In our judgment no deduction should be made and the landlord is entitled to recover in full.

40. Spots 238 to 245: Further works associated with the satellite dish: these are subject to the cap under Spot 196.

41. Spot 290: Repair metal bin chute doors £1,001.72: the tenants alleged that this work was not done. In our judgment work was done and accordingly we disallow nothing.

42. 6.2.1 to 6.7.6: various roof works: for the reasons given, these are all matters covered by the provisional sum for roof works and we disallow nothing.

43. 6.10.33 to 6.10.89: various chimney works: in our judgment these are all covered by the contingency sum. We accept Mr Griggs' evidence that the need for these works only became apparent in the course of the works. We disallow nothing.

44. 6.12.13: general repair and lead flashing £846.92 and £378.40: the tenants' complaint is that the item 6.12.13 appears twice. This is true but we accept the landlord's explanation that there were two separate items. Accordingly we disallow nothing.

45. 6.12.21 to 6.15.53: various roof items: for the reasons given, these are all matters covered by the provisional sum for roof works and we disallow nothing.

46. 6.12.57: repointing existing brickwork £3,103.71: the tenants complained of the quality of the repointing, but for the reasons given we have rejected that criticism. They also complain that the landlord jetted the old pointing with high pressure jets. As regards this allegation, the tribunal would not itself have recommended high pressure jetting, however, the results were in fact acceptable. Mr Griggs' evidence is that the jetting resulted in a much more comprehensive clearing of the old deteriorating pointing than would be achieved using more conventional methods. The effect of this is that new pointing could be inserted with long term benefits for the tenants in that it is likely no new pointing will be needed for many years.

47. 7.2.0 to 7.12.0: scaffolding £13,541.48, £1,013.59 and £225.54: Mr Mclean's complaint is that only he has been charged for scaffolding, whereas the tenants at Highclere have not been charged. The reason Highclere tenants have escaped a charge for scaffolding is that the contractor overlooked the need to put a figure for scaffolding in its quotation for Highclere. The landlord was successful in holding the

contractor to its quote for Highclere and the cost of the Highclere scaffolding was borne by the contractor itself. By contrast the contractor did include a figure for scaffolding in the Addington contract. The Tribunal sympathises with Mr Mclean feeling hard done by in not benefiting from the windfall gained by the Highclere tenants, but can see no legal basis on which Mr Mclean can resist the landlord's call for payment. Although the contracts for Addington, Highclere and another of the blocks, Sunnydene, were let as one, the pricing was by block and under the terms of the leases recharging by way of service charges was also by block. In our judgment Mr Mclean must pay his share of the scaffolding charges.

48. 8.2.0 to 8.21.0: various repointing items: as above, we disallow nothing.

49. 8.28.0 to 8.32.0: various cracks: we accept Mr Griggs' evidence that these matters only came to light after the scaffolding was erected. We disallow nothing.

50. 8.49.0 to 8.52.0: plant and stain removal: we accept that these works were done. It is true that the water staining was so ingrained that only very minor improvements could be made, but it was reasonable to try. We disallow nothing.

51. 8.62.0: lipped tiles: the tenants conceded this item.

52. 8.63.0 to 8.65.0: cills repair/replace etc: the Tribunal could see from its inspection that these works had been done. We disallow nothing.

53. 9.11.10: downwater pipe: the tenants conceded this item.

54. 9.12.5: prepare and redecorate wood fences and railings 1.5 – 20m high: Mr Griggs said that this was a misdescription and was in fact work to the metal part of the staircase. We accept that evidence and disallow nothing.

55. 9.12.7: prepare and redecorate fences, metal 1m high: as the previous item. We disallow nothing.

56. 11.1.0 to 11.15.0: various doors items relating to pram sheds: these come from the provisional sums in Spot 84 (which in turn comes out in the final account). 11.1.0 is in twice with different figures but we accept it is two separate items. We disallow nothing.

57. 16.4.7 and 16.13.1: various PVC window items: these were conceded by the tenants.

58. 17.1.0 to 18.4.2, artexing ceiling, applying anti-graffiti paint and removing asbestos: Mr Griggs said that the original wall covering of the common parts was asbestos-containing artex. At first an attempt (18.4.2) had been made to remove the original artex but after a week of labour (hence the cost) the results were poor and traces of asbestos

remained. It was thus decided to cover the walls with artex. The description of "ceiling" was, he said, a misdescription caused by the fact that artex on walls was not a separate figure in the framework agreement. Anti-graffiti paint incorporating Class O fire spread was to future-proof the blocks. The tenants said that they had been told this related to a communal room called the Ray Champion Room in Allwood Close, near but off the estate. On balance we prefer the evidence of Mr Griggs. The walls of the staircases were undoubtedly newly artexed and these are the only items in relation to them. There is some bubbling and flaking apparent, but the works are still within the defects liability period. We disallow nothing.

59. 013005: form or renew step £131.56: the landlord conceded this item.

60. 101903 to 318179: various: the only issue taken is on consultation. These sums are all from the contingency, Spot 84. We disallow nothing.

61. 324125 and 390901: doors and locks: These relate to the tank room doors. The doors and locks were new and we disallowing nothing.

62. 435119: sealer: Mr Griggs said this related to sealing the asbestos in the common parts. Our comments above apply. We disallow nothing.

63. 436619: staircase preparation: see out comments above on the staircase. We disallow nothing.

64. Turning now to **Highclere**, many of the comments above apply.

65. Spot 155: parapet wall: the tenants complain that some at least of these works were required as a result of youths in 2008 having stolen the lead from the roofs. The youths were convicted but the landlord failed to claim on the insurance; no compensation was paid by the youths. In our judgment the events of 2008 are irrelevant to the current claim. The major works were done and the parapet wall was properly charged as part of those works. We disallow nothing.

66. Spots 156 to 180: various concrete and cracks issues: only the failure to consult is relied upon. We disallow nothing.

67. Spot 206: canopy: as above, we disallow nothing.

68. Spots 238 and 242: satellite cables etc: as above, we disallow nothing.

69. Spot 292, bin chute repairs: as above, we disallow nothing.

70. 6.5.39: leadwork item in bill twice: the same figure of £189.20 is entered twice on page 328 of the bundle. Mr Griggs' explanation was speculative. On balance of probabilities we disallow one set of costs.

71. 6.9.13 to 6.9.29: various downpipe matters: Mr Griggs said these matters only came to light in the course of the works and the sums

came out of the provisional sums. We accept that evidence and disallow nothing.

72. 6.10.63: chimney pots: as above. We disallow nothing.

73. 6.12.13: lead flashings: the tenants complain firstly about this being part of the 2008 thefts and secondly of double-counting. We reject the first objection: see above. As regards the second, there are two entries on page 329, one for 32 items, the other for 14 items. The corresponding figure for Addington is only 32. In the absence of any adequate explanation from the landlord we disallow £378.40 (14 x £27.03).

74. 6.12.21: general repair, lead outlet: the tenants conceded this.

75. 6.12.34: general repair, take down satellite dish: the landlord conceded this.

76. 6.12.42 and 6.12.53: general repair, screed and asphalt: the tenants conceded these items.

77. 6.12.57: repointing: as above, we disallow nothing.

78. 6.12.58: rebuild wall at roof level: the work was done. We disallow nothing.

79. 6.12.61: renew doors on roof: Mr Griggs and Mr Schuitemaker thought this must have been picked up on survey. The tenants say this would have been fixed after the 2008 thefts of lead. We prefer the landlord's evidence; the tenants had no reason to inspect the doors and would in any event have difficulty accessing the ladder (which was locked securely). We disallow nothing.

80. 7.2.0: scaffolding: nothing was charged for this by the landlord.

81. 7.12.0 and 7.18.9: tower scaffold and hoist: this was conceded by the landlord.

82. 8.19.0 to 8.63.0: various masonry and crack repairs: as on Addington. We disallow nothing.

83. 8.65: cill: as on Addington. We disallow nothing.

84. 9.11.10: roof edge, downwater pipe: as on Addington. We disallow nothing.

85. 9.13.6: preparation and redecoration of gates £130.64: the tenants say they cannot identify these gates. Nor could the landlord, which indicated they would need to contact the contractors. In the absence of evidence of the work done, we disallow this item.

86. 11.1.0 to 11.15.0: doors to flats: the landlord conceded this item.

87. 16.4.7 and 16.13.1: PVC windows: as on Addington. We disallow nothing.

88. 17.10.1 to 18.4.2: artexing etc: as on Addington. We disallow nothing.

89. 101103 to 103303: bricks etc: as on Addington. We disallow nothing.

90. 217019 and 217027: felt to roof: as on Addington. We disallow nothing.

91. 318179: window repairs, re-masticing: the tenants conceded this item.

92. 318201 to 391703: door frame work and locks: the landlord thought the doors were probably the front doors, the cleaners' cupboards and the tank room doors. The clerk of works approved these items and on balance of probability we accept these items and disallow nothing.

93. 435119 to 436619: common parts redecoration: as on Addington. We disallow nothing.

94. 438009 and 438017: doors: these relate to the roof. As on Addington, we disallow nothing.

95. 460461: hedge removal: this was conceded by the landlord.

COSTS

96. The only issue as to costs is in relation to the fees payable to the Tribunal. These comprise £440 for the application and £190 for the hearing, a total of £630.

97. The tenants have succeeded on some items, but lost on the majority of items. A mere numerical count is, however, misleading, because the largest number of items was challenged solely on one basis, namely the alleged absence of consultation. The discrete issue of consultation did not take the Tribunal very long, whereas the other items in the Scott Schedule took the bulk of the hearing. On these other items the tenants had a comparatively larger degree of success.

98. In our judgment the landlord should reimburse the tenants £200 in respect of the fees payable to the Tribunal.

DECISION

(a) The Tribunal determines that the amounts due in respect of the major works are as set out above.

(b) The Tribunal orders that the respondent landlord do pay the tenants £200 in respect of the fees payable

to the Tribunal within 21 days of the date of this decision.

Name: Adrian Jack **Date:** 28th April 2014

Appendix of relevant 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.