An Introduction to Service Charges
Your Team Today

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Agenda

Services
Types of service charges
Rent regimes
Legislation obligations of service charges
Section 20 consultation
Service charge challenges
Tricky issues
Q&A

Anthony Collins solicitors
Terminology

The Act – Landlord and Tenant Act 1985

The Consultation Regulations – The Service Charges (Consultation Requirements) (England) Regulations 2003

FTT – The First-tier Tribunal (Property Chamber)

UT – The Upper Tribunal (Lands Chamber)
Services
The Services

Obligation on landlord to provide services

and

Obligation on resident to pay for corresponding service charge

Look at particular completed agreement
The Services

Only service charges provided for by the occupancy agreement can be recovered

Service in the occupancy agreement must be provided

Caution with improvements

Statutory obligations on landlord
Wilcock v The Guinness Partnership

Facts

- Mr Wilcock held a weekly periodic assured tenancy of flat
- Service charge schedule provided list of services:
  - Garden maintenance
  - Lighting (stairways)
  - Landlords lighting external
- Fly tipping of waste in car park
- Guinness introduced bulk rubbish removal from car park from time to time
- Guinness sought to charge Mr Wilcock for costs through service charge
Wilcock v The Guinness Partnership

**Issue:** was cost of this service recoverable?

**FTT held:**
- Tenancy included a variable service charge provision & so landlord entitled to charge for services in addition to those listed
- Amounts reasonable

**UT held:**
- Variable service charge provision permitted variation of amount, not services on notice
- Services landlord obliged to provide & tenant obliged to pay for did not include bulk rubbish removal
Wilcock v The Guinness Partnership

UT held:

• Variable service charge provision permitted variation of amount, not services on notice

• Services landlord obliged to provide & tenant obliged to pay for did not include bulk rubbish removal
Introducing New Services

Secure tenancies

• Section 103
  • Consultation
  • Notice of variation
Introducing New Services

Assured tenancies
- Determined by tenancy
  - By agreement
    - Deed or agreement?
    - By unilateral variation
Consumer Rights Act 2015

Standard consumer contract

Unfair if causes significant imbalance in rights & obligations to detriment of consumer

Example: Enabling the trader to alter terms of contract unilaterally without valid reason specified
Peabody Trust v Reeve

"Altering the Agreement

5.(a) With the exception of any changes in Rent this Agreement may only be altered by the agreement in writing of both the Tenant and the Trust.

5.(b) The terms of this Agreement may be varied by the Trust by a notice of variation served on the Tenant and the provisions of section 103 of the Housing Act 1985 shall apply to this Agreement as if this tenancy were a secure tenancy provided that in no case shall the variations be such as to be properly regarded as creating a new tenancy."
Peabody Trust v Reeve

Judge held clause 5(a) prevailed

Obiter comments
• Clause 5(b) likely to be unfair
• Termination not real opinion for social housing tenant
• Comply with guidance
Curo Places Limited v Pimlett

Facts
• Mr Pimlett held a weekly periodic assured tenancy of bungalow within sheltered scheme
• In 2016 Curo consulted with residents about proposed change
• In 2017 Curo served notice of variation on Mr Pimlett to introduce grounds maintenance as a service under tenancy & corresponding service charge
• Before then, always provided service but not charged for it
Curo Places Limited v Pimlett

Did tenancy allow Curo to introduce grounds maintenance service under the tenancy agreement & charge?

Tenancy – Clause 2.10.1

“The Trust agrees to provide the Services (if any) listed in the Tenancy Agreement and for which you pay a service charge providing that, subject to consultation with tenants:

(i) the Trust may stop providing any of the Services if it reasonably believes it is no longer practicable to do so; or

(ii) provide the same service in a different way; or

(iii) it may provide extra Services if it believes this would be useful.”
Curo Places Limited v Pimlett

FTT

• Mr Pimlett argued grounds maintenance not an “extra” service as had always been provided
• Curo argued it was “extra” to those listed in tenancy & defined as “Services”
• FTT considered various documentation including Board Report
Curo Places Limited v Pimlett

Held:

• Grounds maintenance not an extra service because tenant previously benefited from it
• Curo could not rely on Clause 2.10.1 to add into service charge
• Costs not recoverable through service charge
Curo Places Limited v Pimlett

UT

• UT considered only tenancy agreement & understanding of parties at commencement of tenancy
• Upheld decision of FTT
Introducing New Services

Leases

- Lease terms
- Variation through Tribunal application
Types of Service Charge
Types

Variable

Fixed
Fixed or Variable?

Look at provisions of agreement

Not just label

Not necessarily what you do in practice
Section 18(1) – Variable Service Charge

“(a) which is payable directly or indirectly for services repairs or improvement maintenance or…management; and

(b) the whole or part of which varies or may vary according to the relevant cost.”
Variable Service Charge

Advantage: get to cover all of your costs

Disadvantage: legislative obligations to comply with
Fixed Service Charge

Increase by fixed amount or percentage

Linked to external index

(For assured periodic tenants only)
sections 13 & 14 Housing Act 1988

‘Hypothetical section 13’
Fixed Service Charge

Advantage: minimal administration input & no legislative obligations

Disadvantage: risk may not cover all of costs (but query level of risk for tenants)
Anchor Trust v Waby & Others

Lease – service charge provisions

• Landlord permitted to include allowance for management costs
• Allowance for first year of term
• Then increase annually by reference to RPI

Anchor took over as manager in 2005 & applied a different index to calculation
Anchor Trust v Waby & Others

FTT
- Amount should be recalculated using amount levied by Anchor in 2005
- Increased annually in accordance with RPI
- Anchor to repay overpaid sums

UT
- Held not a variable service charge therefore no jurisdiction
- Decision set aside

Anthony Collins solicitors
Rent Regimes

Rents 2020
• Direction
• Policy Statement
• Rent Standard

Social Rent
• Service charge outside regime
• Endeavour to keep changes to CPI + 1% limit
Rent Regimes

Affordable Rent

• 80% market rent inclusive of service charges
• But if less than formula rent – service charge on top
• CPI + 1% restriction applies total (i.e fixed service charge)
Legislative Requirements of Variable Service Charges
Importance

Governance and Financial Viability
Standard

“comply with all relevant law”
Section 19 - Reasonableness

“(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 provision 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.”
Reasonableness

Services/works
- To a reasonable standard

Costs
- Reasonably incurred
- Advance payments
Reasonableness

Reasonably incurred
• Not just reasonable
• Two part test:
  • Was the action taken by the landlord reasonable?
  • Were the costs incurred reasonable?
Reasonableness

To a reasonable standard
• A question of fact
• Demonstrating a process
• Expert evidence
Reasonableness

Historic neglect
• A question of delay
• Whether actual amount was reasonably incurred is the issue
• Not whether action or inaction was reasonable
• But can be other challenges
Daejan Properties Limited v Griffin [2014]

- Concrete walkway with corroded steel bars

- Leaseholders refused to pay as works should have been completed long before and delay had increases the cost: £300,000 total

Held

- Leaseholders liable as no evidence cost would have been reduced if remedied defect at the time
- Would need to have shown that cost would not have been incurred “but for” the failure of the landlord
(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.”
18 Month Rule

- Cannot charge 18 months after incurred *unless* already informed them of costs

- Section 20B notice
Westmark (Lettings) Ltd v Peddle

Local authority freeholder

Superior landlord

Westmark (Lettings) Ltd

Residential management company

Ms Peddle

Occupational leaseholders
Westmark (Lettings) Ltd v Peddle

Facts

• Freehold of development owned by local authority with obligations in relation to development
• Intermediate landlord above a residential management company
• Service charge costs of freeholder passed down leaseholder chain
• Occupational leaseholders challenged liability to pay service charges & applied to FTT
Westmark (Lettings) Ltd v Peddle

FTT

• Held occupational leaseholders were not liable for service charges pre 31 May 2014 as 18 months had passed from when costs incurred by the local authority & receipt of demand from their own landlord.
Westmark (Lettings) Ltd v Peddle

UT

• Appeal by intermediate landlord
• Allowed appeal
  • Costs incurred by intermediate landlord when served with demand from freeholder & became obliged to pay
    • Not when local authority incurred them
  • Successive 18 month time limits apply down the chain
Section 21B – Summary of Tenants Rights and Obligations

“(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.”
Section 21B

Service charges/administration charges

Prescribed form
  • Size 10 font

With every demand
Roberts v Countryside Residential (South West) Ltd

Landlord held a long lease of a mixed residential & commercial development

County Court
• Claim for sums (including service charges) due under lease for 2009 – 2015 inclusive
• Transferred to LVT for determination of disputed sums
Roberts v Countryside Residential (South West) Ltd

LVT

• Held all service charges claimed were payable & reasonable
• Refused to make an order under section 20C
Roberts v Countryside Residential (South West) Ltd

UT

- Leaseholder argued issues with compliance with statutory requirements

- Summary document was less than size 10 font. Welsh language summary did not come first & English language summary had numbering errors

- On demands ‘landlord’ was omitted as required by section 47

- Demand not clear between who was landlord & address for service so section 48 not complied with
Roberts v Countryside Residential (South West) Ltd

UT

• Dismissed the appeal
  • Looking at particular issues, notices were still “wholly valid” rather than “wholly invalid”
  • No prejudice to leaseholder
Section 21 – Summary of Relevant Costs

“(1) A tenant may require the landlord in writing to supply him with a written summary of the costs incurred –

(a) if the relevant accounts are made up for periods of twelve months, in the last such period ending not later than the date of the request, or

(b) if the accounts are not so made up, in the period of twelve months ending with date of the request,

and which are relevant costs in relation to the service charges payable or demanded as payable in that or any other period.
Section 21 – Summary of Relevant Costs

(2) If the tenant is represented by a recognised tenants’ association and he consents, the request may be made by the secretary of the association instead of by the tenant and may then be for the supply of the summary to the Secretary.

(3) A request is duly served on the landlord if it is served on -

   (a) an agent of the landlord named as such in the rent book or similar document, or

   (b) the person who receives the rent on behalf of the landlord;

and a person on whom a request is so served shall forward it as soon as may be to the landlord.

(4) The landlord shall comply with the request within one month of the request or within six months of the end of the period referred to in subsection 1 (a) or (b) whichever is the later.
Section 21 - Summary of Relevant Costs

(5) The summary shall state whether any of the costs relate to works in respect of which a grant has been or is to be paid under section 523 of the Housing Act 1985 (assistance for provision of separate service pipe for water supply) or any provision of Part 1 of the Housing Grants, Construction and Regeneration Act 1996 (grants, etc for renewal of private sector housing) or any corresponding earlier enactment and set out the costs in a way showing how they have been or will be reflected in demands for service charges and, in addition, shall summarise each of the following items, namely –
Section 21 - Summary of Relevant Costs

(a) any of the costs in respect of which no demand for payment was received by the landlord within the period referred to in subsection (1)(a) or (b).

(b) any of the costs in respect of which –
   (i) a demand for payment was so received, but
   (ii) no payment was made by the landlord within that period, and

(c) any of the costs in respect of which –
   (i) a demand for payment was so received, and
   (ii) payment was made by the landlord within that period,
and specify the aggregate of any amounts received by the landlord down to the end of that period on account of service charges in respect of relevant dwellings and still standing to the credit of the tenants of those dwellings at the end of that period.
Section 21 - Summary of Relevant Costs

(5A) In subsection (5) ‘relevant dwelling’ means a dwelling whose tenants is either –

(a) the person by or with the consent of whom the request was made, or

(b) a person whose obligations under the terms of his lease as regards contributing to relevant costs relate to the same costs as the corresponding obligation of the person mentioned in paragraph (a) above relate to.

(5B) The summary shall state whether any of the costs relate to works which are included in the external works specified in a group repair scheme, within the meaning of Chapter II of Part I of the Housing Grants, Construction and Regeneration Act 1996 or any corresponding earlier enactment, in which the landlord participated or is participating as an assisted participant.
Section 21 - Summary of Relevant Costs

(6) If the service charges in relation to which the costs are relevant costs as mentioned in subsection (1) are payable by the tenants of more than four dwellings, the summary shall be certified by a qualified accountant as –

(a) in his opinion a fair summary complying with the requirements of subsection (5) and

(b) being sufficiently supported by accounts, receipts and other documents which have been produced to him.”
Summary of Relevant Costs

Why is it important?

- Criminal offence under Section 25
  - Fine: maximum £2,500
  - Corporate and personally
Summary of Relevant Costs

- Request for written summary of costs incurred

- By
  - Tenant
  - Secretary of recognised tenants association with consent
Section 29(1) - Recognised Tenants’ Association

“A recognised tenants’ association is an association of qualifying tenants (whether with or without other tenants) which is recognised for the purposes of the provisions of this Act relating to service charges either –

(a) by a notice in writing given by the landlord to the secretary of the association, or

(b) by a certificate –

(i) in relation to dwellings in England, of the First-tier Tribunal; and

(ii) in relation to dwellings in Wales, of a member of the local rent assessment committee panel.”
Summary of Relevant Costs

• Request can be served on:
  • Landlord
  • Named agent
  • Party who receives rent on behalf of landlord
Summary of Relevant Costs

Which period?
• Accounting period
• 12 month accounting periods
  • The last one

Timescales for compliance
• Later of
  • 1 month of request
  • 6 months of end of accounting period
Summary of Relevant Costs

What does it need to include?

• Costs of works covered by specific grants and how they will be reflected in service charge demands

• Costs of works specified in group repair scheme

• Costs where no demand was received by the landlord
Summary of Relevant Costs

What does it need to include?

- Costs where demand, but no payment by landlord
- Costs where demand and landlord made payment
- Aggregate amount collected and in credit
Summary of Relevant Costs

Certification

- 4 or more dwellings
- Certifying
  - Fair summary complying with Section 21(5)
  - Sufficiently supported by accounts, receipts and other documents
- Qualified accountant
Section 28 - Qualified Accountant

“(1) The reference to a “qualified accountant” in section 21(6) (certification of summary of information about relevant costs) is to be a person who, in accordance with the following provisions, has the necessary qualification and is not disqualified from acting.

(2) A person has the necessary qualification if he is eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006.

[…]

(4) The following are disqualified from acting –

[…]

(b) an officer, employee or partner of the landlord or, where the landlord is a company, of an associated company;
Section 28 - Qualified Accountant

(c) a person who is a partner or employee of any such officer or employee.

d) an agent of the landlord who is a managing agent for any premises to which any of the costs covered by the summary in question relate;

e) an employee or partner of any such agent.

(5) For the purposes of subsection (4)(b) a company associated with a landlord company if it is (within the meaning of section 1159 of the Companies Act 2006) the landlord’s holding company, a subsidiary of the landlord or another subsidiary of the landlord’s holding company.

..."
Summary of Relevant Costs

Intermediate landlord
• Section 23(1)
• Intermediate landlord makes written request to its landlord
• Superior landlord has to comply
• Reasonable time to comply
Section 22 – Inspection of Documents

“(1) This section applies where a tenant, or the secretary of a recognised tenants' association, has obtained such a summary as is referred to in section 21(1) (summary of relevant costs), whether in pursuance of that section or otherwise.

(2) The tenant, or the secretary with the consent of the tenant, may within six months of obtaining the summary require the landlord in writing to afford him reasonable facilities -

(a) for inspecting the accounts, receipts and other documents supporting the summary, and

(b) for taking copies or extracts from them.

(3) A request under this section is duly served on the landlord if it is served on -

(a) an agent of the landlord named as such in the rent book or similar document, or

(b) the person who receives the rent on behalf of the landlord;
Section 22 – Inspection of Documents

and a person on whom a request is so served shall forward it as soon as may be to the landlord.

(4) The landlord shall make such facilities available to the tenant or secretary for a period of two months beginning not later than one month after the request is made.

(5) The landlord shall -

(a) where such facilities are for the inspection of any documents, make them so available free of charge;

(b) where such facilities are for the taking of copies or extracts, be entitled to make them so available on payment of such reasonable charge as he may determine.
Section 22 – Inspection of Documents

(6) The requirement imposed on the landlord by subsection (5)(a) to make any facilities available to a person free of charge shall not be construed as precluding the landlord from treating as part of his costs of management any costs incurred by him in connection with making those facilities so available.”
Inspection of Documents

What is the request?
• Reasonable facilities for:
  • Inspecting the accounts, receipts and other documents supporting summary
  • Taking copies or extracts of them.
Inspection of Documents

Request by
• Either
  • Tenant
  or
  • Secretary of recognised tenants association

and
• Received Section 21 summary
Section 22 Request

Timescales for request
• Within 6 months of obtaining summary

Timescale for compliance
• 1 month of request
• For 2 months
Section 22 Request

Can a landlord charge for complying with request?

• Not to tenant for making facilities available
  • But could through management charge
• Reasonable charges for copying
Section 22 Request

Intermediate landlord
• Section 23(2)
• Provide name and address of superior landlord
• Superior landlord has to comply
Section 20
Consultation
Terminology

Section 20 of the 1985 Act

The Consultation Regulations

Public Contracts Regulations 2015
"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 requirement have been either –

(a) Complied with in relation to the works or agreements, or

(b) Dispensed with in relation to the works or agreement by (or on appeal form) the appropriate tribunal."
“Qualifying Long Term Agreement” (QLTA)

An agreement over 12 months long

Cost per tenant/leaseholder £100 or above

Some exclusions

• For example with subsidiary
Corvan (Properties) Ltd v Abdel-Mahmoud

Block managed by a managing agent under a management agreement

• Clause of the management agreement stated that the contract period.
• “will be for a period of one year…and will continue thereafter until terminated upon three months notice”

Proceedings issued in the FTT for unpaid service charges including a contribution towards fees of managing agent
Corvan (Properties) Ltd v Abdel-Mahmoud

FTT
• Disallowed part of the service charges on the basis that the management agreement was an agreement for more than 12 months (i.e a QLTA)
• Section 20 should have been complied with
  • Had not

UT
• Dismissed landlord’s appeal
• 12 months represented only the start of the contract period
Corvan (Properties) Ltd v Abdel-Mahmoud

Court of Appeal

• Upheld decision of UT: contract was a QLTA
• Use of the word “will” introduced a mandatory requirement that the contract would continue beyond the initial 12 months without specifying how long
• Notice of termination would have no effect until after the 12 months period ended
• Term of contract was a period of 12 months plus an indefinite period, subject to 3 months termination right
“Qualifying Works” (QW)

Any works on a building

Relevant costs per individual £250 or above
CONSULTATION: PROCESS

OJEU Process

- QLTA Sch.2
- QW Sch.4 Part 1

Non-OJEU Process

- QLTA Sch.1
- QW Sch.4 Part 2

- Sch.3 – QW under a QTA
OJEU Procurement

Public Notice Required

Thresholds exceeded:
- Supplies/services: £181,302
- Works: £4,551,413

Type of procurement
- Full
- Light touch
Failure to consult

Service charges limited to £250 per leaseholder for QW and £100 per resident per year for costs incurred under a QLTA

Where qualifying works are done under a QLTA the amount is £100 per year

This applies unless FTT dispenses with consultation requirement
Outline Process

Notice of intention

• Reasons – link back to occupancy agreements where relevant

Consideration of observations/responses
Outline Process

Tender

- OJEU process
- Internal process
- Nomination of contractors by residents
Outline Process

Second stage
• Information of price & rates etc
• Include or make available

Confirmation
Practical Points

Notices

• Send to every affected tenant and leaseholder who pays a variable service charge

• Correspondent & property addresses for leaseholders

• Send to recognised tenants association
Practical Points

Inspection
• Place and hours must be reasonable
• Make available free of charge
• Facilities for copying made available or if not provide copies of requested documents (free of charge)
Practical Points

Consultation

• 30 days from deemed service
• Account for time for service – 2 clear days when send by first class post
• Genuine
• Do not contract before consultation completed
Practical Points

Invitation to make observation – must specify:

• Address to which observations may be sent

• That they must be delivered within the relevant period

• Details of the relevant period – i.e. 30 days and specify end date
Practical Points

Connected parties

- If a party is an individual – the individual is a director or manager of landlord or a close relative of a director or manager of landlord

- If a party is a partnership – that any partner in the partnership is a director or manager of landlord or a close relative of a director or manager of landlord
Practical Points

Connected parties

• If a party is a company, that any director or manager of landlord is also a director or a manager of the party
Practical Points

Evidence

- Keep copies
- Ideally all notices
- All template notices & mail merge information

Contemporaneous evidence of sending

- Certificate of service
- Affidavit
Practical Points

Miscellaneous Points

• Small contracts
• Rules still apply even if just 1 person affected
• Risk of not consulting?
Practical Points

Collaborative procurement
• Advantages
• But issue where existing framework
QLTA - no OJEU

Schedule 1 of Regulations

Pre-tender

• Notice of Intention
  • Summary of what you are intending to do – either include or make available for inspection
  • Where and when details will be available for inspection (if applicable)
  • Why you are intending to enter the agreement and why are the works (if any) necessary – refer to occupancy agreement terms
• Invitation to make observations
• Invitations to suggest contractor
QLTA - no OJEU

Pre-tender

• Consultation period
• Landlord to consider any observations made
Tender stage

• Nominations received within 30 days?
  • Yes – Landlord to follow estimates procedure
  • No – Landlord to obtain estimates

• Estimates procedure
  • If single nomination from RTA – get quote
  • If single nomination from tenant – get quote
  • If more than one from tenants – get quote from most nominates, or if joint, just from one of those nominated
  • If more than one from tenants and RTA – get quote from one tenant nominee and one RTA nominee
QLTA - no OJEU

Landlord to prepare at least 2 proposals

• An unconnected party
• From one of the nominees (if any)
QLTA - no OJEU

Landlord’s proposal

• Proposed party’s name and address

• Any connection between Landlord and contractor

• Estimated costs
  • Individual’s relevant contribution
  • Total expenditure under agreement
  • Current unit cost or hourly or daily rate
QLTA - no OJEU

Landlord’s proposal
• Appointment of agent
  • Details of professional body or trade body
  • Code of practice or accreditation schemes for managing agents
• Provisions for variation of amounts payable
• Intended duration
• Summary of observation received and response to them
QLTA - no OJEU

Notice of Proposal

• Attach landlord’s proposal or make available for inspection
• Where and when details will be available for inspection (if applicable)
• Invitation for observations

30 day consultation

Landlord to have regard to any observations made

Anthony Collins solicitors
Award of Contract

• To lowest estimate or nominated party = no further action
• To neither the lowest estimate nor nominated person = Notice of Award of Contract within 21 days

Notice of Award Contractor

• Reasons for entering agreement included or available for inspection
• Where and when details will be available for inspection (if applicable)
• Summary of observations received and response to them
QLTA - OJEU

Schedule 2 of Regulations

Pre-tender

• Notice of Intention
  • As for QLTA no OJEU, but no opportunity to propose a contractor as via OJEU advert – state this
  • 30 day consultation
  • Landlord to consider any observations made
QLTA - OJEU

Tender

Landlord to prepare a proposal – just 1

Notice of Proposal

• As for QLTA no OJEU with extra obligation to include the reasons why estimated rates are not available at this time and a date by which expect to provide
30 day consultation

Landlord to consider any observations made and respond within 21 days

Within 21 days of receiving information to estimate costs, provide notice of the costs to tenants and recognised association
QW under a QLTA

Schedule 3 of the Regulations
• Will have already consulted on the QLTA

Notice of Intention
• Summary of works – include or make available for inspection
• Where and when details will be available for inspection (if applicable)
• Reasons why works are necessary
• Estimate of total expenditure by landlord
QW under a QLTA

30 day consultation period

Landlord to respond to observations in writing within 21 days
Schedule 4, Part 1 of Regulations

Notice of Intention

- Same as QLTA – OJEU except no need to state reasons for entering agreement

30 day consultation

Landlord to consider any observations made
Landlord to prepare a Contract Statement
• As with Landlord’s Proposal for QLTA - OJEU

Notice of Proposed Contract
• Attach Contract Statement or make available for inspection
• Where and when details will be available for inspection (if applicable)
• Opportunity to make observations

30 day consultation
Landlord to respond to any observations within 21 days

Within 21 days of receiving information to estimate costs, provide notice of the costs to tenants and recognised tenants association
REEDBASE LTD v FATTALL

Facts

- Freeholder and management company responsible for maintenance of the building
- Proposed works to the roof
- Carried out consultation with leaseholders in relation to works under section 20
- Notice of Intention described works and invited observations
- Second notice gave details of potential contractors
REEDBASE LTD v FATTALL

Facts

• Scope of proposed works changed leading to an estimated increase of approximately £30,000
  • Leaseholders made aware of changes
  • Freeholder did not re-consult on new specification
• Works were completed and costs demanded from leaseholders
REEDBASE LTD v FATTALL

Issue

• Leaseholders refused to pay more than £250 and submitted freeholder had breached:
  • Covenant to make good damage caused by:
    • Repair works by replacing roof tiles using new method of fixing that required more maintenance
    • Failing to water plants on terrace
  • Consultation Regulations by not repeating second stage consultation when the scope of works changed
REEDBASE LTD v FATTALL

County Court
• Ordered leaseholders to pay service charge in full

Anthony Collins solicitors
REEDBASE LTD v FATTALL

Court of Appeal

• Dismissed appeal

• Repair covenant
  • Freeholder had acted reasonably in restoring property where justified
  • Freeholder was entitled to replace items with something different if necessary
  • Freeholder had used new and good quality tiles – found to be sufficient
REEDBASE LTD v FATTALL

Court of Appeal

• Breach of Consultation Regulations
  • Leaseholders had received sufficient information about the changed scope of works at an early stage
  • The change of specification was minor
  • Leaseholders did not object to changed scope of works
  • Difference in cost was minimal compared to overall cost of works
QW – No OJEU

Schedule 4, Part 2 of Regulations

Pre-tender
• Notice of Intention
  • As QLTA – No OJEU except no need to state reasons for entering agreement

30 day consultation

Landlord to consider any observations made
QW – No OJEU

Nominations received within 30 days?
• Yes – Landlord to follow estimates procedure
• No – Landlord to obtain estimates

Estimates procedure
• As QLTA – No OJEU

Paragraph B Statement
• Set out at least 2 estimates
• Summary of observations received and response to them
QW – No OJEU

Make all estimates available for inspection

Send notice attaching paragraph B statement or make available for inspection
• Where and when statement will be available for inspection (if applicable)

Have regard to observations

Notice of Award of Contract
• As per QLTA – No OJEU
Dispensation

Application under 20ZA
• From some or all of the requirements
• Application can be before or after costs incurred

Tribunal must be “satisfied it is reasonable to dispense with requirements”
Dispensation

Daejan Properties v Benson [2013]
• It’s all about reasonableness
• Quality and cost of works
• If both ok, grant dispensation

Dispensation and prejudice
• For service charge payers to show prejudice
• If ok, dispensation on terms
• Could cap amounts
Dispensation

Dispensation and Terms

• FTT could order:
  • Shortened consultation
  • Landlord cap reasonable costs
  • Landlord pay service charge payer’s reasonable costs
Tricky Issues
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.
Section 27A

(2) Subsection (1) applies whether or not any payment has been made.

…

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide a determination –

(a) In a particular manner, or

(b) On particular evidence,

of any question which may be subject of an application under subsection (1) or (3).”
Section 27A

Tribunal & Court?

Prospective or retrospective?

Litigants in person
Section 81 of the Housing Act 1996

“2(a) A landlord may not, in relation to premises let as a dwelling, exercise a right of re-entry or forfeiture for failure by a tenant to pay a service charge or administration charge unless —

(a) it is finally determined by (or on appeal from) the appropriate tribunal or by a court, or by an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, that the amount of the service charge or administration charge is payable by him, or

(b) the tenant has admitted that it is so payable.

...

(3) For the purposes of this section it is finally determined that the amount of a service charge or administration charge is payable —

(a) If a decision that it is payable is not appealed against or otherwise challenged, at the
Section 81 of the Housing Act 1996

end of the time for bringing an appeal or other challenge, or

(b) If such a decision is appealed against or otherwise challenged and not set aside in consequence of the appeal or other challenge, at the time specified in subsection (3A).

(3A) The time referred to in subsection (3)(b) is the time when the appeal or other challenge is disposed of—

(a) by the determination of the appeal or other challenge and the expiry of the time for bringing a subsequent appeal (if any), or

(b) by its being abandoned or otherwise ceasing to have effect.

...

(5A) Any order of a court to give effect to a determination of the appropriate tribunal shall be treated as a determination by the court for the purposes of this section.”
Stemp v 6 Ladbroke Gardens Management Ltd

Facts
• Ladbroke Gardens (freeholder) undertook major works
• Demanded £37,000 through service charges
• Stemp (leaseholder) refused amount
• FTT decision that Stemp liable to pay
• In between issue of proceedings & FTT decision, further service charge demands

Issue
• Was freeholder entitled to forfeit lease?
Stemp v 6 Ladbroke Gardens Management Ltd

FTT

• Stemp argued
  • Right to forfeit had arisen when they refused to pay
  • Waived by subsequent demands

• Ladbroke Gardens argued
  • Could not waive breach until Section 81 satisfied

• Held
  • No waiver
  • Could exercise right to forfeit
Stemp v 6 Ladbroke Gardens Management Ltd

UT
- **Held** freeholder had waived breach
  - Knew there was a breach of lease entitling it to forfeit when Stemp failed to pay
  - Chose to waive
Additional Contractual Requirements

Know your tenancy & lease terms

Potential additional contractual requirements

• Accounts – common for leases
• Certification
• When surplus/deficit after year end applies & how
• Information
Framework Agreements

A QLTA

Existing agreements

- Take a risk
- Dispensation
- Shopping list
Management Charges

Based on costs v percentage

Duplication
Planning Ahead

Sinking funds

• Collection
• Use
Tenants v Leaseholders

Expectations

Shared Owners

Policies & Procedures

Litigants in person
NHF Together with Tenants

Charter

• Right to be listened to & have view heard on decisions that affect services
• Collective right to influence decisions that affect services
• Information they need to make informed decisions & hold to account