1782

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case References	:	**MAN/00CJ/LSC/2015/0099 & MAN00CJ/LDC/2016/0024**
Property	:	**44 Pink Lane, Newcastle upon Tyne NE1 5DY**
Applicant	:	**Miss Sarah Armstrong Kerr**
Representative	:	**(unrepresented)**
Respondent	:	**Places for People Homes Limited**
Representative	:	**Whiteheads Solicitors - s20ZA application**
Type of Application	:	**Landlord and Tenant Act 1985 - applications by the Applicant under s27A and s20C and by the Respondent under s20ZA**
Tribunal Members	:	**Judge S Moorhouse LLB** **Mr IR Harris BSc FRICS**
Date and venue of hearing/determination	:	**Hearing (s27A and s20C): 9 May 2016** **Paper determination (s20ZA): 11 January 2017** **Venue: Manorview House, Kings Manor, Newcastle upon Tyne NE1 6PA**
Date of Decision	:	**20 February 2017**

DECISION

DECISION

(i) The Respondent failed to consult with the Applicant in appointing its framework contractor and in commissioning works affecting 44 Pink Lane, Newcastle upon Tyne, failing to adhere to the requirements set out in Schedules 2 and 3 of the Service Charges (Consultation etc) (England) Regulations 2003.

(ii) Pursuant to Section 20ZA of the Landlord and Tenant Act 1985 the Tribunal makes a determination to dispense retrospectively with the requirement to consult with the Applicant on the matters referred to above.

(iii) The cost of work to the Block allocated to the Applicant of £15,666 is not reasonable or payable in its entirety and this is limited by the Tribunal pursuant to Sections 19 and 27A of the Landlord and Tenant Act 1985 to the amount of £13,209 of which £5,853 is met by the Applicant's reserve fund, £354 by the Applicant's 2014/15 reserve fund contribution and the balance of £7,002 is payable directly.

(iv) The request by the Applicant that the Tribunal make an Order that the Applicant's costs in the proceedings shall be paid by the Respondent is denied.

(v) The Tribunal makes an Order under Section 20C of the Landlord and Tenant Act 1985 that any costs incurred by the Respondent in respect of these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant for the current or any future service charge year.

REASONS

Property

1. The Applicant holds a leasehold interest in 44 Pink Lane, Newcastle upon Tyne NE1 5DY ('the Property') for a term expiring on 2 December 2115. The Property forms part of a block ('the Block') comprising 6 residential apartments (of which 44 and 46 Pink Lane are leasehold and the remainder social rent) together with ground floor commercial premises. Of the residential apartments 44 and 46 Pink Lane each have dedicated access whereas the remaining apartments are accessed via communal entrances in pairs.

2. The Block is terraced and forms part of the Respondent's wider Pink Lane/Clayton Street West development. The Applicant has lived at the Property but over the last 7 years she has lived at a different address in the Newcastle upon Tyne area and has let the Property to various tenants.

3. The lease under which the Applicant holds the Property provides for payment of a service charge which, insofar as charges relate to repairs and maintenance of the Block, is to be divided in accordance with the number of flats in the Block and payable in like proportions (i.e. one sixth shares).

Overview of Proceedings

4. Application under Section 27A of the Landlord and Tenant Act 1985 ('the Act') was made by the Applicant on 22 October 2015 ('the Section 27A Application'). The Applicant indicated her intention to make an additional application under Section 20C of the Act ('the Section 20C Application'). The Section 27A Application relates to (a) certain major works to which the Applicant has been asked to contribute by way of service charge, and (b) the Applicant's contribution via service charge to heating costs. The service charge year in question is stated to be the year ending 31 March 2015.

5. A Case Management Conference ('CMC') was held on 9 December 2015. This was attended by the Applicant and, on behalf of the Respondent by Mr Neil Russell (Contract Delivery Manager), Mr Steve Nichol (Housing Services Manager) and Mrs Amy Chadwick (Neighbourhood Officer).

6. At the CMC:

- the Section 27A Application was amended by agreement to include additionally the service charge year ending 31 March 2016;

- it was established that the parties hoped to resolve the issues concerning heating costs via the Respondent's complaints process;

- it was clarified that the major works formed part of a programme of works relating to the Respondent's Pink Lane/Clayton Street West development and gave rise to a one-off charge to the Applicant of £15,666 (calculated as one sixth of the 'actual' costs relating to the Block, including VAT and the Respondent's management fees) of which £9,454 had been invoiced directly to the Applicant, the balance having been covered by the Applicant's share of the reserve fund and by the Applicant's reserve fund contribution for the service charge year ending 31 March 2015; and

- it was clarified that an amount of £11,566.11 had previously been invoiced to the Applicant but that this amount was adjusted to £9,454 because part of the cost was reallocated as 'revenue cost' to be recovered via the routine monthly service charge.

7. Following the CMC Directions were issued. These included a direction to the Respondent to share with the Applicant, upon receipt, the First-tier Tribunal decision on a similar application relating to 46 Pink Lane. The parties were directed to consider whether agreement could be reached in the light of the 46 Pink Lane decision.

8. Within its decision concerning 46 Pink Lane (Ref: MAN/00CJ/LSC/2015/0031) the Tribunal considered the major works that are the subject of the present case and determined whether the equivalent charge of £15,666 levied upon the leaseholder of no. 46 (to be recovered via reserve fund, reserve fund contribution and direct payment) was reasonable and payable. In the context of no. 46 the Tribunal found that there had been a failure to adhere to a timescale within the consultation requirements for which retrospective dispensation was given. The Tribunal went on to make the following adjustments to the amount sought by the Respondent:

(1) The Tribunal reduced the amount sought as a consequence of its finding that costs had been incurred for 7 sash cord replacements (and associated work) within no. 46 but that only 1 had been undertaken - the Tribunal considered that this might be indicative of a wider quality issue but there was no evidence before the Tribunal that this was the case.

(2) A further reduction was made to reflect a finding that certain costs relating to timber doors related to the commercial units and were not rechargeable to the residential units.

(3) Finally, the Tribunal found that the costs of scaffolding allocated to the commercial units had been reallocated to the residential units within the Respondent's calculations and therefore made an adjustment to reverse this.

9. On 9 May 2016 the Tribunal inspected the Property and the Building and went on to hear the Section 27A Application in its entirety together with the Section 20C Application. The hearing was attended by the Applicant and, on the Respondent's behalf, by Mr S Nichol (Housing Services Manager), Mrs A Chadwick (Neighbourhood Officer) and Mrs S Dixon (Senior Quantity Surveyor).

10. At the hearing it was established that the issue concerning heating costs referred to in the Section 27A Application had been resolved between the parties but the parties had been unable to come to agreement on the issue of service charge liability for the major works. The Tribunal had the benefit of a Scott Schedule supported by the parties' statements of case.

11. The Applicant raised various challenges concerning the major works, including their extent, the necessity for some of the works and the reasonableness of the cost. The Applicant also contended that the Respondent failed to consult with her either on its decision to appoint Keepmoat Ltd as its contractor pursuant to a framework agreement or in relation to the commissioning of the works themselves.

12. In the course of the hearing a point of law arose, namely whether in conducting its consultation exercises pursuant to Section 20 of the Act the Respondent was required to serve consultation notices on the Applicant at the address of the Property or at the contact address given by the Applicant. Neither party was in a position to make a detailed submission on the issue at the hearing. Additionally, within the hearing the Tribunal admitted as evidence detailed information on costs brought along to the hearing by the Respondent. This was on the basis that the Applicant would be offered time to review the information fully and to make any comments the Applicant wished to make in the light of this. Following the hearing the Tribunal issued Further Directions to allow for written submissions on these matters.

13. Reconvening upon receipt of the parties' submissions the Tribunal reviewed these, continued its deliberations and, on 6 June 2016 issued Interim Decisions and a Stay of Proceedings. The Tribunal determined that the Respondent had failed to comply with the consultation requirements set out in Schedules 2 and 3 of the Service Charges (Consultation etc) (England) Regulations 2003. The Tribunal also made an Order under Section 20C of the Act at that stage.

14. The proceedings were stayed in order to ascertain whether the Respondent intended to make an application for dispensation under Section 20ZA of the Act and, if it did, to allow this to be determined.

15. On 10 October 2016 the Respondent made application for retrospective dispensation of consultation requirements pursuant to Section 20ZA of the Act ('the Section 20ZA Application'). Directions were issued, including a specific direction to include within submissions any comment the parties may wish to make on the relevance or application to the present case of the Judgment of the Supreme Court given on 6 March 2013 in *Daejan Investments Limited -v- Benson and others [2013] UKSC 14; 2013 WL 617390* ('*Daejan*'). Statements of case were filed and the Tribunal convened on 11 January 2017 to determine the Section 20ZA Application as a Paper Determination.

16. Determining that dispensation should be granted the Tribunal went on to conclude its deliberations on the Section 27A Application and to consider a request by the Applicant (included within her statement of case on the Section 20ZA Application) that the Respondent be ordered to pay the costs she has incurred in making the Section 27A Application and responding to the Section 20ZA Application.

17. The Tribunal's decisions on the Section 27A Application, the Section 20ZA Application, the Section 20C Application and the Applicant's request for an Order for costs, including the reasons for these decisions are set out in this document. These include the decisions and associated reasons published already in the form of Interim Decisions.

18. Prior to this document being finalised a draft was circulated to the parties inviting comments upon the accuracy of facts in view of the complexity of the submissions on the cost of works and the Tribunal's findings. In response to comments submitted by the Applicant the draft decision document was updated to provide additional clarification in some areas but the decisions remained unchanged.

Section 27A Application - Consultation

Submissions

19. The Respondent's submissions in response to the Section 27A Application describe a two-stage procurement process for the major works in question. First a national procurement process was undertaken in accordance with European Union requirements leading to the appointment of a contractor for each region under a framework agreement (more specifically a 'term partnering contract'). The Respondent submits that it conducted the consultation exercise specified in Schedule 2 of the Service Charges (Consultation etc) (England) Regulations 2003 ('the Regulations') prior to the regional framework agreements being entered into since these were 'Qualifying Long Term Agreements' within the meaning of the Regulations. The appointed contractor for the north east was Keepmoat Ltd.

20. Under the second stage of the procurement process the Respondent concluded an agreement with Keepmoat Ltd (pursuant to the terms of the framework agreement) for the carrying out of the works to the Building and neighbouring properties. The Respondent submits that it conducted the consultation exercise specified in Schedule 3 of the Regulations prior to concluding this agreement.

21. The Respondent submits that, pursuant to Schedule 3 of the Regulations, consultation letters dated 6 August 2014 were posted to the Applicant both at the address of the Property and at her home address. The Applicant submits that neither of these were received.

22. In support of its contention that its consultation letter was indeed served on the Applicant pursuant to Schedule 3 of the Regulations, at both addresses, the Respondent has submitted a print of the relevant information contained within the Respondent's 'Northgate' database together with printed copies of the two signed letters, each addressed to the Applicant, one addressed to her home address, the other to the Property.

23. The Respondent submits that, in issuing letters for the consultation exercise, the Northgate database was interrogated electronically for the relevant information, that the individual directing this chose to select both property addresses and contact addresses (where these differed), that once letters were printed and signed they were scanned so that electronic copies could be kept on the relevant leaseholder's (electronic) file, and that the signed paper copies were then sent by ordinary post to the addresses shown on the letters.

24. With regard to the earlier consultation pursuant to Schedule 2 of the Regulations, the Respondent submits that the consultation letters were issued to the Applicant, at both her home address and the address of the Property, on 22 May 2013 and on 28 February 2014. The Applicant submits that neither of these letters were received at either address.

25. The Respondent states that the Schedule 2 consultation letters were issued as part of a national exercise but that the relevant letters issued in the course of that exercise were not scanned and added to the (electronic) file the Respondent holds for the Applicant. The Respondent submits that the team issuing the letters did so by interrogating the same Northgate database and will have posted consultation letters both to the addresses of the relevant properties and (where different) to contact addresses.

26. In support of its submissions concerning the conduct of the Schedule 2 consultation exercise, the Respondent has included with its statement of case copies of letters dated 22 May 2013 and 28 February 2014 both signed but with no name or address for a recipient.

27. The Applicant makes the following overall comment on the consultation process within her written statement of case:

'One of the grounds for my application is that the Respondent has failed to carry out the consultation process that it is obliged to carry out pursuant to the terms of the Lease. Despite the fact that I served the Respondent with the appropriate notice to inform them that I was renting the property 7 years ago, having provided them with my correspondence address in writing and having asked that all correspondence was sent to my home address and having previously made a complaint about correspondence having been sent to the property in error, the Respondent's section 20 Notice must have been sent to the property if it was sent at all as I did not receive it.'

28. The Applicant submits that she would have known had any of the consultation letters been received at either address for the following reasons: At her home address these would have been opened by her personally. In relation to the Property address, the managing agents instruct tenants to pass on to them any letters addressed to the Applicant and the managing agents then pass these on. The Applicant submits that these arrangements work effectively and that she does indeed receive correspondence addressed to the Property. The Applicant submits that she would have recognised the importance of the letters had she seen them and would have acted on them.

29. The Applicant gave an example (which is not contended) in which the Respondent had been honouring the Applicant's request to send correspondence to her home address and not to the Property but then upon a member of staff leaving this was discontinued. The Applicant complained and the new member of staff then adhered to the previous arrangement. The Respondent explained at the hearing that within their system they had the option of generating additional letters addressed to contact addresses but they could not prevent letters being generated that were addressed to the relevant Property address. Meeting the Applicant's request to send correspondence only to her contact address meant in practice that local staff had to avoid releasing any letters generated by the system that were addressed to the Property.

30. The Applicant also stated that she first learned of the works and of her potential liability to contribute to the cost upon visiting the Property on 1 June 2015, her first visit in 7 years. She found correspondence from the Respondent addressed to her dated 21 May 2015 requesting a contribution of £9,450 for structural works. The Applicant states that this letter had not been sent to her home address. The Applicant submits that the induction carried out on the Respondent's behalf relating to the carrying out of works at the Property and arrangements for access were made directly with her tenant, thereby gaining access to the Property without the Applicant's consent.

31. The Applicant makes the point, relying on these various examples, that the Respondent's inability to send correspondence to the correct address or respect her rights as leaseholder casts doubt upon the Respondent's claim that it has complied with the consultation requirements.

32. Turning to the law, it is common ground that the various consultation requirements within the Regulations require the landlord to 'give notice in writing...' to 'each tenant...'.

33. The Respondent states within its written statement of case: *'the terms of the section 20 agreement stipulate that we serve notice on the address affected'.*

34. The Applicant states in the notes accompanying the application form she submitted to the Tribunal that service has to be effected by sending a document to the recipient's last known address.

35. Neither party was in a position to put forward detailed arguments on the relevant law at the hearing. The Tribunal drew the parties' attention to Section 196 of the Law of Property Act 1925 and Section 7 of the Interpretation Act 1978, the provisions of which are set out in the Appendix to this document. Following the hearing the Tribunal issued Further Directions allowing the parties a period of 10 days in which to make any comment they might wish to make on the law concerning the service of consultation notices.

36. In response to the Tribunal's Further Directions both parties submitted comments. These can be summarised as follows:

37. The Respondent states that the lease is silent on the issue of giving notice other than to require that notices should be in writing. The Respondent makes reference to Section 196(3) of the Law of Property Act 1925 and states *'Specifically in the case of notice served on a lessee or mortgagor the notice is to be affixed or left for him on the land or any house or building comprised in the lease or mortgage.'*

38. The Respondent then comments on Section 7 of the Interpretation Act 1978 stating that this applies when any Act gives authority for notice to be served by post even if the expression is 'give' or send' and stating: *'Service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered.'*

39. Additionally the Respondent cites the case *Calladine-Smith -v- Saveorder Ltd [2011] EWHC 2501 (Ch)* as authority that the addressee must prove that a letter was not delivered on the balance of probabilities as determined by the Court on consideration of all the evidence.

40. The Applicant comments first on the question of whether notice can be validly served if posted to the Applicant at the address of the Property. The Applicant contends that the requirement within Schedules 2 and 3 to the Regulations to '...give notice in writing... to each tenant...' is not achieved in the case of written notice served by ordinary post if the notice is sent to the address of the Property when an alternative address for contact purposes has been supplied and is clearly known to the Respondent.

41. The Applicant states that neither the Landlord and Tenant Act 1954 nor the Regulations specify which address the notice should be sent to and that since Section 7 of the Interpretation Act 1978 does not specify to which address a letter is to be posted this Act does not assist where the address of the property in question and the home address of the recipient differ.

42. The Applicant refers also to Section 196(3) of the Law of Property Act 1925 and submits that this provides a contrary intention to Section 7 of the Interpretation Act 1978, meaning that Section 7 would not apply to notices given in relation to property. The Applicant therefore contends that Section 196(3) of the Law of Property Act 1925 should apply and that notice to the property address in question would have had to be affixed or hand delivered at that address to have been effectively served.

43. The Applicant cites the case of *Levett-Dunn & Ors -v- NHS Property Services Limited [2016] EWHC 943 (ch)* as authority for her contention that as she nominated an alternative address to that specified in the lease, then that address should have been adopted for service. The Applicant has supplied a copy of the case report but has not explained why she considers that the case supports her assertion.

44. The Applicant states that the Regulations require that notice is given to the tenant and that this should be interpreted as meaning that notice should be given to her where she resides otherwise (given that the Respondent had known her home address since 2011 and she had expressly asked for no correspondence to be sent to her at the address of the Property) this would mean that notice was not being given to her.

45. The Applicant goes on to comment on the question of whether the requirement in Schedules 2 and 3 to the Regulations to '...give notice in writing to....each tenant...' can be achieved in the case of notice sent by ordinary post if the notice is sent to the home address of the leaseholder previously supplied for contact purposes. The Applicant contends that the requirement to give notice is <u>not</u> met in these circumstances.

46. The Applicant refers to Section 196(4) of the Law of Property Act 1925 and contends that consultation notices should not be deemed to have been served where they were neither delivered by hand nor sent by registered post.

Findings

47. The Tribunal considers first the relevance of Section 196 of the Law of Property Act 1925. Subsection (5) extends the provisions of Section 196 to notices required to be served by any instrument affecting property coming into affect after the commencement of the Act unless the contrary intention appears. The Tribunal finds that there is no such contrary intention within the Regulations or the Landlord and Tenant Act 1985, being the Act pursuant to which the Regulations are made, and as such the provisions of Section 196 are applicable to consultation notices provided for within the Regulations.

48. Subsection (3) of Section 196 provides for notice to be left at a property, or in some instances to be affixed at a property. Subsection (4) provides for service by registered letter. The methods of service envisaged by these subsections do not arise in the present case since the Respondent claims to have served the relevant notices in the ordinary course of post.

49. The Respondent seems to suggest that since it appears to be permissible under subsection (3) to leave notice at the address of a leasehold property, even though the leaseholder does not live there, it should therefore be permissible (relying on the provisions of the Interpretation Act 1978 Section 7) to alternatively serve notice to that address by post. The Applicant suggests an alternative interpretation, namely that the provisions of Section 196 should be interpreted as being exclusive, so that notices cannot be validly served unless they are served in compliance with subsection (3) or (4).

50. The Tribunal does not support either of these interpretations. Subsections (3) and (4) adopt the wording *'...shall be sufficiently served if....'*. These subsections offer a means by which a party required to serve notice in the circumstances encompassed within these subsections may do so, with the certainty that notice served in compliance with the relevant subsection is, by law, sufficiently served. The methods of service described in subsections (3) and (4) are not expressed to be the only options available in order to achieve effective service, nor does the language used within the subsections support such a view. If the subsections were intended to dictate the only permissible means of effecting service then this would disallow (amongst other means) personal service upon an individual, which in the Tribunal's view cannot be the intention.

51. Whilst subsection (3) does permit notice to be left or affixed at property comprised in a lease (irrespective of whether this is the leaseholder's address) it does not necessarily follow that notice sent in the ordinary course of post is effectively served if sent to that address. No authority has been submitted to support a contention that Section 196(3) of the Law of Property Act 1925 and Section 7 of the Interpretation Act 1978 can be combined in such a way. Certainly the wording of Section 196 does not support such a contention: whilst subsection (3) allows notice to be left or affixed at the property comprised in the lease or at the last known place of abode etc., subsection (4) (on the subject of service by registered post) offers only the option of service at the last known place of abode etc.. In other words, where service is effected by a method covered by Section 196 and the property comprised in the lease and the last known place of abode differ, it is only permissible to give notice at the property comprised in the lease if it is left at or affixed to the property.

52. In the Tribunal's view the starting point for determining the address for service is the wording within the Regulations. By way of context, the Regulations introduced new consultation requirements replacing the requirements previously set out in the old Section 20 of the Act. The previous requirements allowed consultation notices to be displayed in places where they were likely to come to the attention of all of the tenants (insofar as they were not represented by a recognised tenants' association). In contrast, the Regulations specifically require landlords to 'give notice in writing' to 'each tenant', and additionally to any recognised tenants' association. The Regulations therefore introduced a requirement for notice to be given to each individual tenant (irrespective of whether they are represented by a tenants association and with no provision for simply putting notices on display).

53. In the Tribunal's view the natural meaning of the words 'give notice in writing' to 'each tenant' might tend to suggest a personal form of service however there is nothing within the Regulations to prevent notice being given in the ordinary course of post and in the Tribunal's view this is permissible.

54. The provisions of Section 7 of the Interpretation Act 1978 are of relevance. Section 7 specifically addresses a situation in which legislation uses the word 'give' in the context of service of a document and clarifies that unless the contrary intention appears service is deemed to be effected by properly addressing pre-paying and posting a letter containing the document. The Interpretation Act 1978 is however silent on the issue of which address to use where the address of the property comprised in the lease and the last known place of abode differ.

55. The Tribunal finds that no compelling argument has been made to suggest that service by ordinary post to the property comprised in the lease would be sufficient to meet the requirement within the Regulations to 'give written notice' to the tenant. Whilst the Respondent seems to suggest that the provisions of Section 7 can be combined with the Law of Property Act 1925 Section 196 to permit service by ordinary post to the property comprised in the lease, the Tribunal rejects any such suggestion for the reasons already given.

56. Accordingly, having considered the arguments, the Tribunal determines that sending consultation notices to the Property in the ordinary course of post would not fulfil the obligation to 'give notice in writing' to the Applicant referred to within Schedules 2 and 3 of the Regulations, but that sending notices in the ordinary course of post to the Applicant's home address would fulfil this obligation. The case of Rita Akorita -v- 36 Gensing Road Limited heard in the Lands Tribunal before His Honour Judge Huskinson [2009] LRX/16/2008 supports this conclusion. It has been unnecessary for the Tribunal to rely on the Land Tribunal's decision and therefore unnecessary to delay these proceedings by issuing this to the parties for comment, it is mentioned here for reference purposes.

57. Having determined that the Applicant's home address should have been used for service of the various consultation notices by ordinary post, the Tribunal is required to consider whether service of each notice has in fact been effected.

58. Section 7 of the Interpretation Act 1978 is in two parts. First, it states that service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document. This first part is preceded by the words 'unless the contrary intention appears'. The Tribunal considers that these preceding words are intended to capture a situation in which the relevant legislation (in this case Section 20 of the Act and the Regulations made pursuant to Section 20) conflicts with Section 7. The Tribunal considers that in the present case there is no such conflict.

59. To establish that service has been effected therefore, under this first part of Section 7 it is necessary to establish that the letter containing the document in question (in this case consultation notice) has been properly addressed, pre-paid and posted. In the Tribunal's view it is for the party claiming to have served notice to meet the burden of proof here, and the standard of proof would in the absence of any contrary indication (of which there is none) be the civil one of 'balance of probabilities'.

60. The second part of Section 7 states '*unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post*'. This second part of Section 7 places the onus on the intended recipient to prove that a letter has not been delivered in the ordinary course of post. Again, in the absence of any contrary indication (of which there is none) the standard of proof is the civil one of 'balance of probabilities'.

61. In summary, and applying Section 7 to the present case, if the Respondent can prove (on the balance of probabilities) that a consultation notice was properly addressed, pre-paid and posted, the service is deemed to have been effected unless the Applicant can prove (on the balance of probabilities) that the consultation notice was not delivered in the ordinary course of post.

62. The case of *Calladine-Smith -v- Saveorder Ltd [2011] EWHC 2501 (Ch)* cited by the Respondent, Mr Justice Morgan supports the Tribunal's interpretation of Section 7. Within his decision Mr Justice Morgan states: '*The first part of Section 7 imposes the burden of proof on the sender of the letter not the addressee of the letter. It requires the sender to prove that the sender has properly addressed, prepaid and posted the letter. If the sender cannot do that, then the sender cannot rely on Section 7.*'

63. Applying Section 7 to the facts in the present case, the Respondent claims to have posted to the Applicant's home address consultation letters dated 22 May 2013 and 28 February 2014 pursuant to Schedule 2 of the Regulations (i.e. to consult on the proposed framework agreement) and a consultation letter dated 6 August 2014 pursuant to Schedule 3 of the Regulations (i.e. to consult on the contract for the works).

64. With regard to the Schedule 2 consultation the Respondent has shown that the Applicant's home address appears on the Respondent's Northgate database and has supplied copies of the standard letters used by the Respondent as part of the consultation process. The Tribunal also notes that within the Northgate database the Applicant's preference for correspondence to be sent only to her home address is recorded.

65. With regard to the Schedule 3 consultation the Respondent has shown that the Applicant's home address appears on the Respondent's Northgate database (which the Tribunal has noted includes a record of the Applicant's preferred address for correspondence), and has supplied a copy of a signed letter addressed to the Applicant at her home address.

66. With regard to each of the consultation exercises it is the Respondent's case that the consultation letters were sent by ordinary post to the Applicant's home address and in this respect they were placed in envelopes (properly addressed), pre-paid and placed in the post. There is no witness testimony or statement from any individual who claims to have placed the letters in 'window' or properly addressed envelopes, franked (or placed postage stamps on) the envelopes or placed them in the post in the course of the consultation exercises, or to have personally ensured that this occurred.

67. It may be unrealistic to expect that anyone would recall such events in the context of a major consultation exercise undertaken nationally pursuant to Schedule 2. It seems more likely in the context of the Schedule 3 consultation, given the relatively small percentage of leaseholders within the overall development, that it might have been possible for someone to offer their personal recollection.

68. In the Tribunal's view, it would have been prudent in any event for the Respondent to have kept some form of record (perhaps signed or approved at the time by the member of staff issuing the consultation letters) to enable the Respondent to prove that each specific letter intended to be served by post was actually sent by pre-paid post to the intended address. As it is, no such record has been produced and the Respondent is seeking at least in part, to meet the burden of proof established by the first part of Section 7 of the Interpretation Act 1978 through mere assertion.

69. The Applicant has established to the satisfaction of the Tribunal that the Respondent has had difficulty in other instances in meeting her request that correspondence is addressed to her home address and not the Property. The Respondent has clarified that its systems are set up to generate letters addressed to the properties in the Respondent's ownership and that letters to contact addresses are generated additionally if that instruction or direction is given. Meeting the Applicant's request that correspondence is sent only to her home address requires that letters generated to the property address are disposed of prior to posting.

70. It is also appears to the Tribunal based on the Respondent's statement of case that the Respondent has been operating in the belief that consultation letters must be sent to the property comprised in the lease and the belief that the Respondent is not legally required to issue letters to contact addresses where these differ.

71. Dealing first with the Schedule 3 consultation, the Tribunal accepts that the Respondent's evidence that the letter dated 6 August 2014 addressed to the Applicant's home address existed, but the Tribunal is then left to infer that this was placed in a 'window' or properly addressed envelope, pre-paid and posted. The Tribunal is not prepared to make this inference in the circumstances of this case, in particular the historical failure to consistently correspond with the Applicant at the correct address and the apparent belief on the part of the Respondent that issuing the letter would have been unnecessary from a legal standpoint.

72. Turning to the Schedule 2 consultation, the Tribunal accepts that consultation letters dated 22 May 2013 and 28 February 2014 were issued as part of a national exercise, but the Tribunal is then left to infer that these included letters addressed to the Applicant at her home address and that such letters were placed in a 'window' or properly addressed envelope, pre-paid and posted. The Tribunal is not prepared to make this inference in the circumstances of this case, particularly those circumstances referred to in the preceding paragraph.

73. The Tribunal considers that, in relation to each of the consultation exercises, the Respondent has failed to prove on the balance of probabilities that the relevant consultation letters were properly addressed, pre-paid and posted within the meaning of section 7 of the Interpretation Act 1978.

74. The Respondent does not claim to have given notice to the Applicant within the consultation exercises by any other means (other than to post letters to the address of the Property which for the reasons already given would be insufficient to effect service).

75. Accordingly the Tribunal determines that the Respondent has failed to comply with the consultation requirements set out in Section 20 of the Act and the Regulations by failing, each time consultation notices were required to be given, to 'give notice to' the Applicant within the meaning of Schedule 2 and Schedule 3 of the Regulations.

Section 20ZA Application

Submissions

76. The Respondent included within its Statement of Case supporting the Section 20ZA Application the following:

- an assertion that the failure to comply with consultation requirements arises out of a technical, minor and excusable oversight and that accordingly any relevant prejudice suffered by the Applicant (if any at all) would be limited;

- details of numerous observations received from leaseholders/tenants in response to consultation relating to the quality, scope and costs of the works which were carried out including the detailed responses made and an assertion on the part of the Respondent that due regard was paid to the observations;

- clarification that 50% of the tender evaluation for contractors was based on quality;

- copies of a report dated 22 October 2012 undertaken prior to the works being carried out and of a post-inspection report dated 26 February 2016; and

- a statement that upon completion of outstanding items identified in the post-inspection report the Respondent considers the works to have been necessary and completed to an acceptable standard.

77. The Applicant included within her statement of case in response to the Section 20ZA Application the following:

- an assertion that the works were not necessary, that in all probability the cost of the works was unreasonable and that the Respondent has not shown the works to have been necessary or the costs to have been reasonable;

- the assertion that the absence of consultation denied her the opportunity to obtain her own survey or estimates to assess whether the work was necessary, and if it was, to assess whether the pricing was reasonable;

- reference to an over-reporting of (and therefore over-charging for) sash cord replacements to windows at the Property identified within the post-inspection report dated 26 February 2016 and an assertion that prior to the works to windows at the Property there had been no problem whatsoever with their condition;

- an assertion that the lack of information as to the location of the communal doors included in the works to the Block denied the Applicant the opportunity of assessing whether those works were necessary or reasonable;

- a submission that in *Daejan* Lord Neuberger states that when considering whether it is reasonable to grant dispensation regard should be had to whether the failure to comply was a serious failing or as a result of a technical, minor and excusable oversight and that Lord Neuberger also stated that the Tribunal should adopt a sympathetic approach to leaseholders and that where a tenant has shown a credible case of prejudice (which it is submitted has been done) then it is for the landlord to rebut this;

- comparisons between *Daejan* and the present case highlighting the different circumstances, including the total absence of consultation with the Applicant in the present case and an assertion that in the present case the works were not necessary;

- a statement that the Applicant disagrees with the Respondent's assertions that (1) the failure to consult arises out of a technical, minor and excusable oversight, that (2) the Applicant has not been prejudiced by the failure and that (3) the works were necessary and provided to an acceptable standard; and

- a request that the Respondent be ordered to pay the Applicant's costs.

Findings

78. *Daejan* is the leading case on the application of Section 20ZA of the Act. Lord Neuberger, who gave the majority judgment, said that Section 20ZA is part and parcel of a network of provisions (i.e. Sections 19-20ZA) which are directed to ensuring that tenants are not required to pay for (i) unnecessary services or services which are provided to a defective standard and (ii) to pay more than they should for services which are necessary and are provided to an acceptable standard. In determining the Section 20ZA Application the Tribunal is required to focus on the extent, if any, to which the Applicant was prejudiced in either respect by the failure of the Respondent to comply with the consultation requirements. Following the principles in *Daejan*, a failure to consult does not in itself infer prejudice.

79. The following extracts from Lord Neuberger's judgment are particularly relevant in the present case:

(At para 47) 'Furthermore it does not seem to be convenient or sensible to distinguish in this context, as the LVT, Upper Tribunal and Court of appeal all thought appropriate, between a 'serious failing' and a 'technical, minor or excusable oversight' save in relation to the prejudice it causes.'

(At para 49) 'I also consider that the distinction favoured in the tribunals below could lead to inappropriate outcomes. One can, for instance, easily conceive of a situation where a 'minor or excusable oversight' could cause severe prejudice, and one where a gross breach causes the tenants no prejudice.'

(At para 50) 'In their respective judgments, the LVT, the Upper Tribunal and the Court of Appeal also emphasised the importance of real prejudice to the tenants flowing from the landlord's breach of the Requirements, and in that they were right.'

(At para 67) 'As to the contention that my conclusion would place an unfair burden on tenants where the LVT is considering prejudice, it is true that, while the legal burden of proof would be, and would remain throughout, on the landlord, the factual burden of identifying some relevant prejudice that they would or might have suffered would be on the tenants. However, given that the landlord will have failed to comply with the Requirements, the landlord can scarcely complain if the LVT views the tenants' arguments sympathetically, for instance by resolving in their favour any doubts as to whether the works would have cost less (or, for instance, that some of the works would not have carried out or would have been carried out in a different way), if the tenants had been given a proper opportunity to make their points. As Lord Sumption said during the argument, if the tenants show that, because of the landlord's non-compliance with the Requirements, they were unable to make a reasonable point which, if adopted, would have been likely to have reduced the costs of the works or have resulted in some other advantage, the LVT would be likely to proceed on the assumption that the point would have been accepted by the landlord. Further, the more egregious the landlord's failure, the more readily an LVT would be likely to accept that the tenants had suffered prejudice.'

(At para 68) '...the LVT should not be too ready to deprive the tenants of the costs of investigating relevant prejudice, or seeking to establish that they would suffer such prejudice. This does not mean that the LVT should uncritically accept any suggested prejudice, however far-fetched, or that the tenants and their advisors should have carte blanche in recovering their costs of investigating, or seeking to establish prejudice. But, once the tenants have shown a credible case for prejudice, the LVT should look to the landlord to rebut it. '

(At para 69) ' ....Accordingly it does not appear onerous to suggest that the tenants have an obligation to identify what they would have said, given that their complaint is that they have been deprived of the opportunity to say it. Indeed, in most cases they will be better off, as, knowing how the works have progressed, they will have the added benefit and wisdom of hindsight to assist them before the LVT, and they are likely to have their costs of consulting a surveyor and/or a solicitor paid by the landlord.'

80. In the present case the Applicant asserts that had she been consulted she would have inspected the detailed proposals, obtained her own survey and estimates and this would have enabled her to demonstrate to the Respondent that the works were not required and the costs were unreasonable. At the end of the hearing of the Section 27A Application, the Tribunal did ask the Applicant whether it would assist to adjourn the proceedings to allow her to obtain alternative estimates based on the information that was before the Tribunal, however this opportunity was declined due to personal circumstances preventing the Applicant from committing the necessary time.

81. Concerns around the process for appointing a contractor, value for money, quality, price and recharging were raised by other leaseholders/tenants in the overall development at Pink Lane/Clayton Street West in the course of the consultation exercise. These concerns related to overall principles and not to individual prices or aspects of the proposed works. The Respondent offered detailed responses to the questions raised but the overall approach to procuring and delivering the works was maintained.

82. Applying *Daejan* to the present circumstances, the Tribunal views the failure to consult with the Applicant in either consultation exercise as a 'serious failing', not a 'technical, minor or excusable oversight'. Even so, this is not in itself a reason to refuse dispensation - the seriousness of the failure to consult is only relevant in relation to the prejudice caused.

83. Lord Neuberger promotes an approach sympathetic to the leaseholder - given that the landlord has failed to comply with consultation requirements - particularly where (as in the present case) the failure to comply is serious. It is appropriate therefore to infer that had the Applicant been consulted she would have actively participated in the consultation processes and to consider whether there is a 'reasonable point' that the Applicant might have contributed which, had it been adopted, would have been likely to reduce the cost of the works or result in some other advantage. It would also then be reasonable to infer that any such point would have been adopted.

84. Lord Neuberger also suggests that it would not be too onerous to expect tenants to identify what specific points they would have raised in the context of the consultation exercise, indicating that the cost of involving a surveyor in doing so would be likely to be recoverable.

85. Applying *Daejan,* whilst it is appropriate to make certain inferences in the Applicant's favour, it would be reasonable to expect the Applicant, once she was in possession of details of the works and their cost to:

- identify or (if she was unable to do so personally) commission others to identify what she would have said within the consultation exercise; and

- be able to challenge the necessity for, or the cost of, the works;

raising a reasonable point which (with all the inferences suggested by Lord Neuberger) would have caused the Respondent to reduce the cost of the works or would have achieved some other advantage.

86. The Applicant has not identified such a point. Communal doors to the social rented units and windows to the Property are specifically mentioned by the Applicant. However there has been no specific challenge to the cost of the communal doors (or identification of any alternative option that might have been pursued) and the over-reporting identified by the Respondent with regard to sash replacements concerns the calculation of the 'actual' costs on which the service charge demands are based, not the consultation over the programme of works.

87. The Applicant has failed to identify any credible case for prejudice that she has suffered and, as previously mentioned, under *Daejan* the failure for the Respondent to consult with the Applicant does not itself constitute prejudice.

88. Accordingly the Tribunal grants dispensation to the Respondent in respect of the failure to consult with the Applicant under Schedule 2 of the Regulations in appointing a framework contractor and under Schedule 3 in commissioning the works.

89. Within the Applicant's response to the Section 20ZA Application the Applicant asks that the Respondent be ordered to pay the costs she has had to incur in opposing the Section 20ZA Application and bringing her own application. No particulars of the costs are given.

90. In *Daejan* Lord Neuberger refers (at paras 59-61) to the limited powers of First-tier Tribunals to award costs and states that in his view this does not preclude a tribunal from imposing, as a condition for dispensing with consultation requirements, a term that the landlord pays the costs incurred by the tenants in resisting the landlord's application for such dispensation. Lord Neuberger states that the condition would be a term on which the tribunal granted the statutory indulgence of dispensation - the tribunal would order the landlord to pay the tenants' costs on the grounds that it would not consider it 'reasonable' to dispense with consultation requirements unless such a term was imposed. At paragraphs 68 and 69 of the decision in *Daejan* (set out earlier) it is envisaged by Lord Neuberger that tenants may incur costs in investigating or seeking to establish prejudice and surveyors and solicitors costs are referred to.

91. In the present case no condition concerning the payment of the Applicant's costs is attached to the Tribunal's decision to grant dispensation since the Applicant does not appear to have incurred surveyors or legal costs and any costs incurred by the Applicant in submitting a written statement for consideration by the Tribunal in making its Paper Determination are expected to be minimal. An opportunity offered by the Tribunal to take the time to conduct a retrospective investigation (which appears to be the sort of exercise that Lord Neuberger envisaged) was declined owing to circumstances at that time. The question of whether an order for costs should be made on any other basis is considered later.

92. In response to an invitation by the Tribunal to comment upon the accuracy of facts within the Tribunal's draft decision the Applicant provided details of costs incurred along with a submission that the grant of dispensation should be conditional upon the payment of costs. The costs identified comprise tribunal fees together with 3 days lost earnings (2 for hearings and 1 for preparation) and 2 days childcare costs.

93. In response to the Applicant's comments the Tribunal has included within its decision document (above) the reasons why it did not attach the condition the Applicant seeks. The costs identified by the Applicant appear to relate primarily to the Section 27A Application and therefore there are no inaccuracies in the facts upon which the Tribunal has relied that might cause the Tribunal to review its draft decision.

Section 27A Application - Reasonable and Payable

Submissions

94. The Applicant raises various challenges concerning the major works, including their extent, the necessity for some of the works and the reasonableness of the cost. The principle points raised by the Applicant are summarised as follows:

- The Respondent should have surveyed the Block more frequently - it should not have been possible for such a large service charge to arise without warning, exceeding the balance built up in the reserve fund.

- In addition to the failure to consult, there has been a lack of information available from the Respondent that has prevented the Applicant from obtaining an alternative survey or estimates.

- The Respondent has failed to inform the Applicant as to the whereabouts of the communal doors replaced as part of the works to the Block.

- Access to the Property to carry out works to windows was taken by arrangement with the Applicant's tenant and without the Applicant's knowledge.

- The Respondent has failed to demonstrate that the works were required or that the costs are reasonable - in the context of the Section 20ZA Application the Respondent states that the works are unnecessary and that in all probability the costs are unreasonable.

95. The Respondent states that the programme of work arose following complaints concerning window frames being received in relation to other parts of the Pink Lane/Clayton Street West development. A report was prepared on 22 October 2012 identifying the overall scope of the work and these were described more fully (insofar as they affect Pink Lane) within the consultation letters (copies of which were submitted with the Respondent's statement of case) and later within e-mail correspondence with the Applicant.

96. The cost of works to the Block are stated to include: scaffolding; repainting and refurbishment of windows; repairs to roof and chimneys; redecoration of fascia and soffit boards at eaves level; cast iron gutter repairs and bitumen lining; replacement guttering to rear; replacement of 2 x communal door sets to rear including door entry panels/handsets; cleaning and redecoration to canopies following scaffolding dismantling. Some of these (artstone, inspection of chimney and works to gutters/downpipes) are handled as 'revenue' amounts and excluded from the one-off charge of £15,666.

97. The Respondent states that its databases hold dates when elements are expected to need replacement and that they take this into account alongside repairs data to identify schemes in need of major investment programmes. The Respondent carries out a 10% sample post-inspection of works and in the future would change this to include 100% of leasehold properties. The Respondent considers that value for money has been achieved by procuring a major works contractor acquired through European tender to demonstrate an open approach.

98. The Respondent asserts that the replacement communal door sets to the rear of the building were required owing to persistent attempts to break in to the previous doors, each event causing damage. These are chargeable to the Applicant under the terms of the lease even thought they serve the four social rented units.

99. The Respondent identifies in its post-inspection report dated 26 February 2016 that the window repairs at the Property have been over reported and are incomplete. The report identifies that the contractor returns list the Property as having been subject of 7 sash cord replacements whereas on inspection 3 are noted to have been replaced and 1 is broken. The Respondent states that the contractor will return at its own expense to repair the broken sash cord, ease and free up windows, make good some areas of decoration and fix a broken window pane once access can be arranged (at the Applicant's convenience).

100. The Applicant states that the window-pane was broken by the Respondent's contractor and that she paid to have the windows opened. The Applicant states that she had a survey report undertaken in respect of the property at her time of purchase which was satisfactory. The Applicant also commented (in the context of the Section 20ZA Application) that there had been no problem whatsoever with the windows at the Property.

Findings

101. Section 19 of the Act (set out in the Appendix) applies a test of reasonableness to costs sought to be recovered via service charge - relevant costs must be reasonably incurred and the works must be to a reasonable standard.

102. The programme of works in this case gives rise to a charge, in relation to the Block, of £93,996, inclusive of VAT and the Respondent's management charge. One sixth of this, £15,666, is allocated to the Property, to be recovered against the reserve fund and the Applicant's 2014/15 reserve fund contribution with the balance being invoiced directly.

103. The Applicant contends that the works as a whole were unnecessary. The Respondent states that they were based on an initial survey and that the scope of the works was then developed and described as part of the consultation exercise. The Tribunal notes that the scope of the works was also summarised in subsequent e-mail correspondence with the Applicant.

104. The Tribunal has considerable sympathy with the Applicant, having determined that she was not included in the consultation exercise. The Applicant was denied the opportunity to conduct her own survey to determine for herself whether she considered the works to be necessary. The Applicant has asserted that her own survey report at her time of purchase was satisfactory and also that the windows at the Property were in a satisfactory condition prior to the works being carried out. However the Applicant's purchase was many years ago and the Applicant has stated that her visit to the Property on 1 June 2015 was her first in 7 years - this post-dated the works and suggests that her first-hand knowledge of the condition of the Property was limited.

105. The Tribunal notes from the lease of the Property that the Respondent is required to paint window frames every 5 years and it appears to the Tribunal, having heard the representations of the parties, that this was overdue. Re-painting therefore appears to be 'necessary' in any event as a lease requirement.

106. With regard to the reasonableness of costs, the Tribunal is mindful that the Applicant was denied the opportunity to obtain alternative estimates in the context of the consultation exercise and that some of the Respondent's information on costs was produced as late as the hearing itself. The Tribunal did, at the end of the hearing, ask the Applicant whether an adjournment of proceedings to allow her to obtain alternative estimates based on the information that was before the Tribunal would assist, but this opportunity was declined (due to personal circumstances).

107. On the specific issue of the communal doors to the rear of the Block, the Respondent contends that these needed to be replaced as a consequence of persistent attempts to break in, each causing damage. The Applicant states that she was denied the opportunity to challenge these costs because she was only informed of the location of the doors during the Tribunal's inspection. The Applicant is therefore unable to offer any evidence to challenge whether the new doors were necessary or whether a less secure door type would have sufficed. The Applicant declined the opportunity to obtain alternative estimates following the hearing.

108. On the issue of window repairs the Respondent's own post-inspection report identifies that the contractor has over-reported. The Respondent's position is that of the 7 sash cord replacements recorded, 3 were carried out and 1 more is required. This accords with the Tribunal's own observations at inspection.

109. In the First-tier Tribunal decision concerning the other leasehold apartment in the Block, 46 Pink Lane, it was determined that there had been over-reporting also in that 7 sash cords were reported to have been replaced at no. 46 but only 1 replacement had been required and undertaken.

110. In the 46 Pink Lane case an adjustment was made to the service charge payable by the leaseholder to reflect the over-reporting of sash cord replacements at no. 46. The First-tier decision concerning 46 Pink Lane found that additional adjustments were appropriate because certain scaffolding costs and costs relating to timber doors related to commercial units.

111. The figures presented to the Tribunal in the present case do not include any of the adjustments made by the First-tier Tribunal in relation to no. 46. The figure of £15,666 claimed by the Respondent (via reserve fund, reserve fund contribution and direct payment) in the present case is the amount claimed from the leaseholder of no.46 prior to adjustment. It represents one-sixth of the total costs of £93,996 attributable to the Block (and not designated as 'revenue'), based on a total cost of £72,306 plus VAT and a management fee of 10% of the VAT exclusive amount. The Respondent's overall summary of costs in the present case continues to list 'rear timber doors' within the headline calculation.

112. The Tribunal finds that adjustments to reflect the over-reporting of sash cord replacements at both no. 44 and no. 46 and to reflect the inclusion of costs for scaffolding and rear timber doors that should be allocated to commercial units are appropriate in the present case.

113. A total of 18 sash cord replacements (and associated works) are included in the costs whereas only 9 were required (6 of the reported replacements having been unnecessary at no. 46 and 3 at no. 44). In the 46 Pink Lane case it was identified that a cost increase of £16,347.92 (excusive of VAT and management fee) related entirely to works to windows and it was considered that the increase must relate largely to sash cord replacements and associated works. It was considered reasonable to adjust proportionately for the over-reporting. This ignored there being other elements such as window catch replacements but also disregarded the provision for works to windows that had been included in cost estimates. The Tribunal considers that it is reasonable to adopt the same methodology in the present case.

114. The adjustment for sash cord replacement therefore reduces the cost of works (exclusive of VAT and management fees) by 50% (i.e. 9/18) of £16,347.92, a reduction of £8173.96.

115. The other adjustments, as per the 46 Pink Lane case, are a reduction of £594.97 in relation to rear timber doors and a reduction of £2,569.24 in relation to scaffolding. In each case the reductions are to the costs for the Block exclusive of VAT and management fees.

116. The adjusted contribution is calculated as follows: Total costs reduce from £72,306.37 by a total of £11,338.17 to £60,968.20. With VAT and management fee (of 10% on the VAT excusive sum) this comes to £79,258.66. The one sixth share chargeable to the leaseholder of the Property comes to £13,209.

117. The Respondent clarified at the CMC that the reserve fund contribution would be £5,853 and that the Applicant's reserve fund contribution for 2014/15 was £354, and that both amounts would be applied towards the Applicant's share of the cost of works. This leaves an amount to be claimed from the Applicant direct of £7002.

118. The Tribunal makes no adjustment for the outstanding items identified within the Respondent's post-inspection report that were to be completed within the Property once access is available at the Applicant's convenience and which were still pending at the time of the hearing. These items were reasonable and necessary and the Respondent confirmed the contractor would undertake them at its own expense.

119. Save for the adjustments made by the Tribunal above, in the absence of any contrary evidence being adduced by the Applicant, the Tribunal finds that the programme of works was necessary and that the costs were reasonable.

Costs

120. Within the Applicant's response to the Section 20ZA Application the Applicant asks that the Respondent be ordered to pay the costs she has had to incur in opposing the Respondent's application and bringing her application. The Tribunal decided not to attach a condition concerning the payment of the Applicant's costs to its grant of dispensation of consultation requirements. Rule 13(1)(b) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 allows a Tribunal to make an order in respect of costs if a person has acted unreasonably in bringing, defending or conducting proceedings.

121. Since the Tribunal has granted dispensation in the section 20ZA Application and, has determined in the Section 27A Application that the service charge is payable in part, the Tribunal does not find that the Respondent has acted unreasonably by bringing or defending the proceedings. The Applicant has been critical that the Respondent should have provided more detailed information earlier in the proceedings in response to Directions whilst the Respondent indicated that, in view of the volume of paperwork, they were seeking to respond more specifically to what the Tribunal required. The Tribunal considers that both parties have acted professionally throughout and there is no conduct to be complained of that would approach the threshold of being 'unreasonable' within the meaning of the Procedure Rules.

122. The Tribunal therefore makes no Order for costs under Rule 13.

123. An application under Section 20C of the Landlord and Tenant Act 1985 was made by the Applicant at the time of the Section 27A Application. With the agreement of the Respondent the Tribunal makes an Order under Section 20C that any costs incurred by the Respondent in respect of these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant for the current or any future service charge year.

Appendix

Extracts from Statute

Section 196, Law of Property Act 1925

196 Regulations respecting notices

(1) Any notice required or authorised to be served or to be given by this Act shall be in writing.

(2) Any notice required or authorised by this Act to be served on a lessee or mortgagor shall be sufficient, although only addressed to the lessee or mortgagor by that designation, without his name, or generally to the persons interested, without any name, and notwithstanding that any person to be affected by the notice is absent, under disability, unborn or unascertained.

(3) Any notice required or authorised by this Act to be served shall be sufficiently served if it is left at the last-known place of abode or business in the United Kingdom of the lessee, lessor, mortgagee, mortgagor, or other person to be served, or, in case of a notice required or authorised to be served on a lessee or mortgagor, is affixed or left for him on the land or any house or building comprised in the lease or mortgage, or, in case of a mining lease, is left for the lessee at the office or counting-house of the mine.

(4) Any notice required or authorised by this Act to be served shall also be sufficiently served, if it is sent by post in a registered letter addressed to the lessee, lessor, mortgagee, mortgagor, or other person to be served, by name, at the aforesaid place of abode or business, office, or counting-house, and if that letter is not returned [by the postal operator (within the meaning of the Postal Services Act 2000) concerned] undelivered; and that service shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered.

(5) the provisions of this section shall extend to notices required to be served by any instrument affecting property executed or coming into operation after the commencement of this Act unless a contrary intention appears.

(6) This section does not apply to notices served in proceedings in the court.

Section 7, Interpretation Act 1978

Where an Act authorises or requires any document to be served by post (whether the expression 'serve' or the expression 'give' or 'send' or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Landlord and Tenant Act 1985

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 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 adjustments shall be made by repayment, reduction or subsequent charges or otherwise.

Section 20

(Subsections (1) and (2):)

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either -
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) a 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 under the agreement.

Section 20ZA

(Subsection (1))

(1) Where an application is made to a tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

Section 27A

(Subsections (1) and (2))

(1) An application may be made to a 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.