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Case Nos: LC-2025-114

IN THE UPPER TRIBUNAL (LANDS CHAMBER)

AN APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

Ref: LON/00AG/LSC/2023/0289

Royal Courts of Justice, Strand, London, WC2A 2LL

24 November 2025

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LANDLORD AND TENANT - SERVICE CHARGES - interpretation of lease - whether landlord entitled to demand different payments on account each quarter – meaning of s.20 Landlord and Tenant Act 1985 - whether professional services are "works on a building" requiring consultation

BETWEEN:

IAN JONATHAN ROSE

Appellant

-and-

BRACKNELL GATE PROPERTIES LIMITED

Respondent

**Flat 22, Bracknell Gate,
Frognal Lane, London NW3 7EA**

**His Honour Judge Johns KC
Hearing date: 12 November 2025**

Mr Toby Vanhegan and Mr Salmaan Hassanally (on direct access) for the appellant
Mr William Skjøtt (instructed by JPC Law) for the respondent

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The following cases were referred to in this decision:

Arnold v Britton [2015] UKSC 36

Leonora Investment Company Limited v. Mott MacDonald Limited [2008] EWCA Civ 857

Southwark LBC v. Woelke [2013] UKUT 0349 (LC)

Southwark LBC v. Akhtar [2017] UKUT 0150 (LC)

Universities Superannuation Scheme Ltd v Marks & Spencer plc [1999] L&TR 237

Marionette Limited v Visible Information Packaged Systems Limited [2002] EWHC 2546 (Ch)

Phillips v Francis [2014] EWCA Civ 1395

R (PACCAR Inc) v Competition Appeal Tribunal [2023] UKSC 28

Daejan Investments Limited v Benson [2013] UKSC 14

23 Dollis Avenue (1998) Ltd v Vejdani [2016] UKUT 365 (LC)

Assethold Limited v Franco [2022] UKUT 285 (LC)

Introduction

1. This appeal concerns a disputed demand for an amount on account of service charge for major electrical works to Bracknell Gate, Frognal Lane, London NW3 7EA (**the Property**). It raises a question about the meaning of s.20 of the Landlord and Tenant Act 1985 (**the Act**) and a question of contractual interpretation. It is brought by the appellant tenant, Mr Ian Rose, against a decision of the First-tier Tribunal (**the FTT**) made (as revised on review) on 30 October 2024 that he was liable to pay the demand in the sum of £14,406.85 made on 23 December 2023 (**the December Demand**).

Background

2. The Property comprises three 1930s mansion blocks containing 25 flats. It is owned by the respondent landlord, Bracknell Gate Properties Limited (**BGPL**). Mr Rose is the tenant of Flat 22 demised by a long lease dated 20 June 1967 (**the Lease**).
3. The Lease includes a covenant to pay service charge, being a share of the expenses of the landlord as set out in the Third Schedule to the Lease. The detailed provisions for the calculation and payment of that service charge are found in clause 1 of the Lease.

“(a) The amount of the Service Charge shall be ascertained and certified by a certificate (hereinafter called ‘the certificate’) signed by the Landlord’s auditors or accountants or managing agents (at the discretion of the Landlord) annually and so soon after the end of the Landlord’s financial year as may be practicable and shall relate to such year in manner hereinafter mentioned

(b) The expression ‘The Landlord’s financial year’ shall mean the period from the Twenty Fourth day of June in each year to the Twenty fourth day of June of the next year or such other annual period as the Landlord may in its discretion from time to time determine as being that in which the accounts of the Landlord either generally or relating to Bracknell Gate shall be made up

(c) The certificate shall contain a summary of the Landlord’s said expenses and outgoings incurred by the Landlord during the Landlord’s financial year to which it relates together with a summary of the relevant details and figures forming the basis of the Service Charge and the certificate ... shall be conclusive evidence for the purposes hereof of the matters which it purports to certify

(d) The expression ‘the expenses and outgoings incurred by the Landlord’ as hereinbefore used shall be deemed to include not only those expenses outgoings and other expenditure hereinbefore described which have been actually disbursed incurred or made by the Landlord during the year in question but also such reasonable part of all such expenses outgoings and other expenditure hereinbefore described which are of a periodically recurring nature (whether recurring by regular or irregular periods) whenever disbursed incurred or made and whether prior to the commencement of the said term or otherwise including a sum or sums of money by way of reasonable provision for anticipated expenditure in respect thereof as the Landlord or its accountants or managing agents (as the case may be) may in their discretion allocate to the year in question as being fair and reasonable in the circumstances

(e) The Tenant shall pay to the Landlord on the usual quarter days in every year such sum in advance and on account of the Service Charge as the Landlord or its accountants or managing agents (as the case may be) shall specify at their discretion to be a fair and reasonable interim payment

(f) As soon as practicable after the signature of the certificate the Landlord shall furnish to the Tenant an account of the Service Charge payable by the Tenant for the year in question due credit being given therein for all interim payments made by the Tenant in respect of the said year and upon the furnishing of such account showing such adjustment as may be appropriate there shall be paid by the Tenant to the Landlord on the quarter day next following the amount of the Service Charge as aforesaid or any balance found payable or there shall be allowed by the Landlord to the Tenant on such quarter day any amount which may have been overpaid by the Tenant by way of interim payment as the case may require.”

4. At least in most respects, the provisions are entirely conventional. There is to be a certificate each year of expenses incurred and forming part of the service charge, with the tenant’s share being payable following the year end, due credit to be given for sums paid on account of that year’s service charge. Each service charge year in this case ran from 24 June, there having been no change to that under the Lease. And I was told by Mr Skjøtt, appearing for BGPL, that there had indeed been earlier demands for advance service charge in June and September 2023 which did not include any sums for the major electrical works.
5. The December Demand was one of three issued that day. It was made, as spelled out on its face, as part of the service charge year from 24 June 2023. It was in respect of costs for the major electrical works. It was common ground before the FTT that the overall figure included sums for professional fees. Carbogno Ceneda Architects Ltd, £8,953. The Monalco Partnership, £12,438. Bawtrys, £6,620.39. A covering letter asked for payment to be made by 5 February 2024.
6. While there was (as the FTT found) statutory consultation in relation to the contract for the electrical works, it was agreed before the FTT that no statutory consultation had been followed in relation to the work of those professionals.
7. It appears from the decision of the FTT that Carbogno were engaged in the design of the electrical works, that Monalco prepared the specification used for the contract tender exercise, and that Bawtrys as managing agents dealt with the consultation process and liaison with the tendering contractors.
8. One of the other demands issued on 23 December 2023 was for the service charge excluding the major works. It was expressed to be for the period 25 December 2023 to 24 March 2024 and was in the sum of £1,627.54. The third demand of that day was expressed to be for a reserve fund and was in the sum of £11,882.69. It became common ground before the FTT that this third demand was not payable.

FTT Decision

9. The FTT decided that Mr Rose was liable to pay the December Demand. It rejected his argument that the December Demand was not made in accordance with clause 1(e) of the Lease, expressing its conclusion in this way at [77A]:
“... The respondent has complied with the requirements of the lease and additional words cannot be read into that requirement. The tribunal does not consider that the payment date of 5 February 2024 means that the demand is unlawful. Rather the tribunal

understands that date as a reasonable concession that a sensible period should be allowed for the payment of the interim demand”.

10. From the FTT’s outline of the parties’ cases for Mr Rose at [23A-C], it appears that, in referring to additional words, the FTT is addressing Mr Rose’s argument that clause 1(e) permits only a demand for service charge payable by equal instalments, not a one-off charge during the service charge year. BGPL had contended that would be to read words into the clause, contrary to the approach to construction of leases laid down in *Arnold v Britton* [2015] UKSC 36. Hanks Lisa.
11. The FTT also rejected Mr Rose’s case that the December Demand was unreasonable and that there had been a failure to follow the statutory consultation process. In doing so, it said that the work carried out by Carbogno and Monalco fell outside the consultation process as it did not relate to “building works” ([83(xiii)]). It reached a like conclusion in relation to the work of Bawtrys at [89].

The Appeal

12. Mr Rose has permission from the Tribunal, granted on 7 May 2025, to appeal on two grounds, Ground 3 and Ground 4. As set out in amended grounds of appeal, Ground 3 is that the FTT was wrong to decide that the professional fees were outside the consultation requirements and did not relate to building works. It is also said that the FTT gave no reasons for that conclusion. Ground 4 is that the FTT was wrong on its construction of clause 1(e) of the Lease. Permission was refused in relation to the other grounds of appeal which had been put forward.
13. It is convenient to take Ground 4 first. If the December Demand is not payable as a matter of contract, that provides the answer to the appeal overall.

Ground 4: Construction of the Lease

14. The rival constructions of clause 1(e) of the Lease as explained by counsel on the hearing of the appeal were these. For Mr Rose, it was submitted that clause 1(e) permitted one demand for a sum on account of service charge each service charge year, payment of which was to be made by instalments on the usual quarter days. For BGPL, it was argued that clause 1(e) permitted a different demand to be made each quarter. For every quarter day, the landlord could specify a new and further payment on account which the tenant was obliged to pay on that quarter day. Mr Skjott accepted that BGPL’s case that the December Demand was payable depended on that construction. If clause 1(e) operates instead as Mr Rose contends the December Demand was not made in accordance with the contract represented by clause 1 and so is not payable. That concession was, I consider, rightly made in light of a trio of cases referred to in argument: *Leonora Investment Company Limited v. Mott MacDonald Limited* [2008] EWCA Civ 857, *Southwark LBC v. Woelke* [2013] UKUT 0349 (LC) and *Southwark LBC v. Akhtar* [2017] UKUT 0150 (LC).
15. In my judgment, the true construction of clause 1(e) is that only one demand for a sum on account of service charge is permitted each service charge year, with that sum being payable by instalments on the usual quarter days. The FTT was therefore wrong in its decision on this point.

16. My reasons for preferring that construction are these.
17. The approach to construction in the context of leases was described in this way in *Arnold* at [15]:
- “When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean, to quote Lord Hoffmann in *Chartbrook Ltd v Persimmon Homes Ltd* [2009] AC 1101, para 14. And it does so by focussing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party’s intentions.”
- It should also be noted that Lord Neuberger made clear at [23] that he was “unconvinced by the notion that service charge clauses are to be subject to any special rule of interpretation.” The Supreme Court construed clause 3(2) of the leases under consideration as providing for fixed sums increasing annually by 10%; that being the clear meaning of the words used, and despite the alarming result. It disagreed with the lessees’ argument that “up to” should be read into the clause, with the annually increasing sum therefore providing only a ceiling for the service charge payable. That, said Lord Neuberger, would be to depart from the natural meaning and involve inserting words which are not there ([32]).
18. The starting point is the language of clause 1(e). It refers to payment of a “sum” singular. And to a “payment” singular. That is more likely to be a reference to a single annual sum rather than a different and fresh sum for each quarter day. First, there are no words in clause 1(e) signalling that there will be different sums payable each quarter, or that there will be multiple specifications of such sums during each year by the landlord. Had that been the intention the clause could easily have said that for each of the usual quarter days the landlord could specify in advance of that quarter day a sum to be paid in advance for that quarter. Second, clause 1(e) is in the context of service charge machinery which clearly operates on an annual cycle. Not a quarterly one. Each year there is to be a certificate and a balancing payment or credit. That context supports a sum being paid each year on account of that annual service charge.
19. The purpose of such clauses and commercial common sense points, in my judgment, in the same direction. One function of provisions for the advance payment of service charge is to allow leaseholders to budget for the year, as the Deputy President of the Tribunal noted in *Woelke* at [50]. BGPL’s construction would not fit that purpose.
20. I do not consider this involves reading words into clause 1(e). Or taking a special approach to service charge clauses. Rather, the reference to the usual quarter days can be read as governing how the annual sum is to be paid without the need for further words. And, as was said by the Deputy President in *Woelke* at [40], “The service charge provisions of leases are practical arrangements which should be interpreted and applied in a businesslike way. On the other hand, precisely because the payment of service charges is a matter of routine, a businesslike approach to construction is unlikely to

permit very much deviation from the relatively simple and readily understandable structure of annual accounting, regular payments on account and final balancing calculations with which residential leaseholders are very familiar.”

21. Standing back, BGPL’s construction represents a somewhat surprising result, certainly a deviation from the simple and conventional structure, which would require clear language to bring about. Mr Skjøtt submitted that the language of clause 1(e) is clear, as in *Arnold*. I disagree. The language in this clause is not of sufficient clarity to require such a reading.
22. He also submitted that the overall purpose of service charge clauses as explained in *Universities Superannuation Scheme Ltd v Marks & Spencer plc* [1999] L&TR 237 favoured BGPL’s construction. Reasonably incurred expenditure for the benefit of tenants should be recoverable from tenants, with each tenant paying a proper proportion. But that does not seem to me to help with this particular question of meaning. Either of the rival readings of clause 1(e) is consistent with that overall purpose. Both provide for payment on account, and the overall purpose is really fulfilled by the rest of the machinery which provides for recovery of incurred costs on a certificate each year.
23. It follows that the appeal is allowed. This Tribunal determines that the December Demand is not payable.

Ground 3: Statutory interpretation of the consultation requirements

24. The relevant provisions of the Act as amended, including by the Commonhold and Leasehold Reform Act 2002, are as follows:
 - “18.— Meaning of “service charge” and “relevant costs”.
 - (1) In the following provisions of this Act “service charge” means an amount payable by a tenant of a [dwelling] as part of or in addition to the rent—
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance [,improvements] or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
 - (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
 - (3) For this purpose—
 - (a) “costs” includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.
 - 19.— Limitation of service charges: 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.

...

20 Limitation of service charges: consultation requirements

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

(a) complied with in relation to the works or agreement, or

(b) dispensed with in relation to the works or agreement by (or on appeal from) [the appropriate tribunal]

(2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or

(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

20ZA Consultation requirements: supplementary

(1) Where an application is made to [the appropriate 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.

(2) In section 20 and this section—

“qualifying works” means works on a building or any other premises, and

“qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

(a) if it is an agreement of a description prescribed by the regulations, or

(b) in any circumstances so prescribed.

- (4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.
- (5) Regulations under subsection (4) may in particular include provision requiring the landlord—
 - (a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,
 - (b) to obtain estimates for proposed works or agreements,
 - (c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
 - (d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
 - (e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.
- (6) Regulations under section 20 or this section—
 - (a) may make provision generally or only in relation to specific cases, and
 - (b) may make different provision for different purposes.
- (7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

25. The Service Charges (Consultation Requirements) (England) Regulations SI 2003/1987 (**the Regulations**) were made under that primary legislation and came into force on the same date, 31 October 2003. The provisions of the Regulations material to this case are to be found in Part 2 of Schedule 4. They require at paragraph 1 a notice of the landlord’s “intention to carry out qualifying works”. By paragraph 1(2) & (3):
 - “(2) The notice shall—
 - (a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;
 - (b) state the landlord's reasons for considering it necessary to carry out the proposed works;
 - (c) invite the making, in writing, of observations in relation to the proposed works; and
 - (d) specify—
 - (i) the address to which such observations may be sent;
 - (ii) that they must be delivered within the relevant period; and
 - (iii) the date on which the relevant period ends.
 - (3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.”
26. The Regulations also place by paragraph 4 a duty on the landlord to try and obtain an estimate from a person nominated by a tenant or tenants’ association, to obtain estimates “for the carrying out of the proposed works”, and by paragraph 6 on entering into a contract “for the carrying out of qualifying works” to give notice of the reasons for awarding that contract if it was not to a nominated person or a person submitting the lowest estimate.
27. The FTT decided that the professional fees of Carbogno, Monalco and Bawtrys were not subject to the consultation requirements. They did not consider them to be “building works”. Or, to use the actual phrase in s.20ZA(2), “works on a building”.

28. In my judgment, the FTT was correct in that conclusion.
29. The question of statutory interpretation is whether “works on a building” refers only to the physical works, or extends also to professional services associated with those physical works.
30. That question was considered under an earlier form of the Act by Nicholas Warren QC (sitting as a Deputy Judge of the High Court) in *Marionette Limited v Visible Information Packaged Systems Limited* [2002] EWHC 2546 (Ch).
31. He set out the material terms of the Act as then in force at [93]:
- “20 (1) Where relevant costs incurred on the carrying out of any qualifying works exceed the limit specified in subsection (3) [now £50 x number of flats], the excess shall not be taken into account in determining the amount of a service charge unless the relevant requirements have been either –
- (a) complied with, or
 - (b) dispensed with by the court in accordance with subsection (9);
- and the amount payable shall be limited accordingly.
- (2) In subsection (1) “qualifying works,” in relation to a service charge, means works (whether on a building or on any other premises) to the costs of which the tenant by whom the service charge is payable may be required under the terms of his lease to contribute by the payment of such a charge.
- (3) The relevant requirements in relation to such of the tenants concerned as are not represented by a recognised tenants' association are –
- (a) At least two estimates for the works shall be obtained, one of them from a person wholly unconnected with the landlord.
 - (b) A notice accompanied by a copy of the estimates shall be given to each of those tenants...
 - (c) The notice shall describe the works to be carried out and invite observations on them and on the estimates
 - (d)
- (9) In proceedings relating to a service charge the court may, if satisfied that the landlord acted reasonably, dispense with all or any of the relevant requirements.”
32. The court was concerned with professional fees incurred in the supervision of the works and dealing with tenants’ queries and concerns during the works - see the judgment at [3](b) and [92]. The judge decided that those services were not “works on a building” and so not within the consultation requirements. His reasons are at [95] – [98] of his judgment.
- “95. For section 20 to apply, there must be ‘qualifying works’, a term itself defined in subsection (2) set out above. The definition shows that ‘works’ are contemplated as being effected ‘on’ a building or other premises; ‘works’ are, in my judgment, restricted to the physical works involved in repair or maintenance and the cost of those works is the charge made by the contractor carrying out those works for doing so. This is also very much the flavour given by subsection (4)(c) requiring a description of the works to be carried out to be given in the notice which has to be served on the tenants: that provision seems to me to be inapposite to cover professional services provided by an independent person as part of the works which need to be described.
96. Of course, the contractor's price will reflect all the work which needs to be done by him to complete a project and will no doubt reflect a proportion of his general overheads:

indeed, it may be that the contractor himself has to undertake some design work or to deal with building consents from local authorities. There can be no doubt, however, that the total contractual sum is a cost 'incurred on the carrying out of any qualifying works' within subsection (1). Nor can there be any doubt, to my mind, that the estimates 'for the works' required by subsection (4)(a) include the whole cost which the contractor estimates he will charge for delivery of the completed project.

97. The position in relation to a separate fee chargeable to the landlord, whether of a designer in preparing a project, or a professional supervising the execution of a project, is not so clear. Those professional fees are certainly incurred in relation to the works (being qualifying works) and it may well be correct, although it is unnecessary to decide, that these fees are 'incurred on the carrying out of any qualifying works' within subsection (1) especially in the case of supervisory fees incurred in relation to an actual project in contrast with design fees incurred in relation to a proposed project.

98. However, in my judgment, the services for which such fees are paid are not part of the works themselves as I have identified them. The works are the physical works which subsection (4)(c) requires to be described; and it is only in respect of those works that estimates are required to be provided by subsection (4)(a). It can no doubt be said that this approach fails to give effect to the obvious policy of the legislation which is (a) to let tenants know what it is going to cost them to have repairs carried out and (b) to give them the opportunity to object. I fully understand that objection to the construction which I think that the language of the section leads to; the answer, I think, is that tenants will readily recognise that repairs of any significant scope will be likely to require supervision and that relevant costs, to be recoverable, are subject to the 'reasonableness' provisions of section 19. Accordingly, I do not consider that there was any need for the notice served under section 20 to deal with the professional fees of Fredericks Hearl and Gray. I take the same view in relation to the charges of Paltridge."

33. I agree with that analysis, which applies with equal force to the amended statutory provisions, and would add two points to it.
34. One, workability is another part of the process of statutory interpretation. That can be seen in relation to these provisions from the decision in *Phillips v Francis* [2014] EWCA Civ 1395. The Court of Appeal had to consider the argument that the correct approach to s.20 was to aggregate all works in any given year (without division into separate sets of qualifying works) so that the landlord had to consult on all items of work once the aggregate for that year passed the threshold value. In rejecting that argument, Lord Dyson MR explained at [26] and subsequent paragraphs that "... it is not a sensible approach and gives rise to serious practical problems." Mr Rose's construction of s.20 would also bring serious practical problems. If the work of professionals associated with building works also required consultation, there would be a risk of a multiplicity of consultations in relation to a single project making the process unwieldy. So, depending on the level of fees, there could, for example, be a requirement for a consultation on the professional design works, followed by a consultation about the fees for the specification for tenders, followed by a consultation for the work of supervising the contractor. All this to be done in addition to a consultation for the physical works. Plus, on Mr Rose's case, a consultation on the work of carrying out those consultation exercises. It is also worth remembering that tenants will ultimately bear the costs of consultations as such costs will form part of the service charge. This approach would significantly increase that costs burden on them.

35. While it might be said that consultation for supervision work could be carried out as part of a consultation on the physical works, so that this workability point is a less powerful objection to supervision fees, the terms of the Regulations seem to me to point against including supervision fees in such a consultation. They contemplate a tenant or tenants' association nominating a person and the landlord then trying to obtain an estimate from one such person nominated. But the supervising professional and the building contractor will be different persons. There is also the point, made by the judge in *Marionette*, that the language of describing the works to be carried out has the flavour of physical works. As does the provision for a description to be made available for inspection. In any event, on the basis of the description of services given in the decision of the FTT, the professional fees in issue in this case did not include supervision fees.
36. I should make clear I do consider that the Regulations are a proper aid to interpretation of the statute in this case. They came into force at the same time as the related amended provisions of the Act and can be seen as one single statutory scheme and so can properly be taken into account in accordance with the approach to statutory interpretation explained by the Supreme Court in *R (PACCAR Inc) v Competition Appeal Tribunal* [2023] UKSC 28 at [44] – [45].
37. Two, now that the true statutory purpose of the consultation requirements has been explained, the case for the FTT's reading of them, being consistent with that of the judge in *Marionette*, is stronger than at the time of *Marionette*. It is now apparent that this interpretation of the provisions does not, as Nicholas Warren QC thought, go against the policy of the legislation. The purpose of the legislation and the need to consult is set out in the judgment of Lord Neuberger PSC in *Daejan Investments Limited v Benson* [2013] UKSC 14 where, in a case dealing with the power to dispense with consultation under s.20ZA(1), the Supreme Court explained that the purpose of ss.20 & 20ZA of the Act is to reinforce and give effect to s.19(1) of the Act.
- “It seems clear that sections 19 to 20ZA are directed towards ensuring tenants of flats are not required (i) to pay for 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.” [42]
- “I do not agree with the courts below in so far as they support the proposition that sections 20 and 20ZA were included for the purpose of ‘transparency and accountability’, if by that it is intended to add anything new to the two purposes identified in section 19(1)(a) and (b)... I consider that there are no grounds for treating the obligations in sections 20 and 20ZA as doing any more than providing practical support for the two purposes identified in section 19(1).” [52]
38. Mr Hassanally, appearing for Mr Rose, suggested that the law had moved on since *Marionette*. In particular, that case did not, he argued, fit with the sets approach to qualifying works explained in *Phillips*. He relied in particular on the judgment of Lord Dyson MR at [36], arguing that the key issue was how closely associated the professional works were with the physical works. But I do not consider that paragraph offers any real support for Mr Rose's case. What was said was this:
- “It is not in issue that the question of what a single set of qualifying works comprises is one of fact. It is a multi-factorial question the answer to which should be determined in a commonsense way taking into account all relevant circumstances. Relevant factors are likely to include (i) where the items of work are to be carried out (whether they are contiguous to or physically far removed from each other); (ii) whether they are the

subject of the same contract; (iii) whether they are to be done at more or less the same time or at different times; and (iv) whether the items of work are different in character from, or have no connection with, each other. I emphasise that this is not intended to be an exhaustive list of factors which are likely to be relevant. Ultimately, it will be a question of fact and degree. Robert Walker LJ said that, on the facts in Martin's case, the fact that all the works were the subject of one contract was a factor which decisively pointed to the conclusion that there was a single set of works in that case. It seems to me that the judge must have had in mind such an approach when he said at para 362 that he had considered 'the nature, extent and timing of the works as undertaken and proposed to be undertaken'".

39. What is in view is the relation between different items of physical works. Not a relation between physical works and professional services. That is seen most obviously in the first of the factors referred to, being "where the items of work are to be carried out (whether they are contiguous to or physically far removed from each other)". Accordingly, if anything, the decision underlines the rightness of BGPL's reading of the statutory provisions. They are concerned with physical works.
40. Towards the end of the hearing and in reply, Mr Hassanally said that he pressed this ground of appeal only in relation to the fees of Carbogno. But, for the reasons I have given, all the professional fees are outside the scope of the consultation requirements on their true interpretation.
41. It was also argued for Mr Rose that the professional fees were "relevant costs incurred on carrying out the works" for the purposes of s.20(6) of the Act. But that argument does not, in my judgment, address the correct question, which is whether the professional services are "works on a building". In that regard, what the consultation requirements apply to is not the costs but the works. S.20(1) begins, "Where this section applies to any qualifying works ...". And that subsection serves to limit tenant's contributions "unless the consultation requirements have been either – (a) complied with in relation to the works ...", or dispensed with. The professional services not being building works, the consultation requirements do not apply to them. Whether the fees for those services are part of the costs referred to in s.20 seems to me a different question, and may have a different answer. That also seems to have been the view of the judge in *Marionette* at [97].
42. For all those reasons, the FTT was not in error in deciding that the consultation requirements did not apply to the professional fees of Carbogno, Monalco, and Bawtrys.
43. Nor do I consider that the FTT failed to give adequate reasons. The adequacy of reasons given must depend, in some measure, on the nature of the point being decided. Questions of statutory interpretation are, in the end, matters of impression, often turning on particular language used. While doing so shortly, the FTT gave adequate reasons in this case by identifying the particular language of the provisions on which the question turned, namely "building works" (which must be shorthand for "works on a building"), and by making clear its impression that that did not describe these professional services.
44. It follows that the appeal would not have succeeded on Ground 3.

45. Had I taken a different view on the two questions raised by the appeal, there would have been further issues to consider. BGPL wished to argue that it had consulted on the professional fees. Thought would need to have been given as to whether it could now make that argument and have the case remitted to the FTT for determination given the apparent concession on this point before the FTT. There would also have been a question as to whether the potential application of the decision of this Tribunal in *23 Dollis Avenue (1998) Ltd v Vejdani* [2016] UKUT 365 (LC) should be explored. In that regard, the arguments on the appeal (and it seems before the FTT) proceeded on the footing that a failure to meet any applicable consultation requirements represented a bar to recovery, absent dispensation. But this Tribunal decided in *Vejdani* at [33] that the consultation requirements do not apply to advance service charge; a decision followed in *Assethold Limited v Franco* [2022] UKUT 285 (LC). As it is, these questions do not arise and the appeal is allowed on Ground 4.

Section 20C, Landlord and Tenant Act 1985

46. In granting permission to appeal, the Tribunal made clear that if the appeal succeeded on Ground 3 or Ground 4 then the FTT's refusal of an order under s.20C of the Act (costs of proceedings not to be relevant costs for the purposes of service charge) would need to be reconsidered. Mr Rose sought that reconsideration, having read this decision in draft. The Tribunal will make a decision on this on paper having regard to any written submissions sent to the Tribunal and the other side by 4pm 8 December 2025.

His Honour Judge Johns KC

24 November 2025

Right of appeal

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.