

Qualifying works - the return of common sense

Any housebuilder involved in the ownership and management of apartment blocks will be aware of the limits on residential services charges imposed by various laws, including the Landlord and Tenant Act 1985.

One of the trickiest provisions of this legislation relates to so called 'qualifying works'. 'Qualifying works' are essentially any works done to the building. If a landlord or management company wants to carry out any such works which will result in the contribution of any tenant being more than £250, then it must comply with the consultation requirements.

These consultation requirements are complicated and require the landlord to:

- i give notice of the qualifying works;
- i give its reasons for doing the works; and
- i consider observations and alternative recommendations from its tenants.

If the qualifying works would result in any tenant paying more than £250, and the landlord does not comply with the consultation requirements, then the contribution of each tenant is limited to £250. In other words, if the landlord fails to consult, then it will have to pay anything above the £250 contributions from the tenants itself, however much the works may have cost.

In some circumstances, the landlord can dispense with the consultation requirements, but this will probably involve an application to the First Tier Property Tribunal.

So when a landlord is contemplating undertaking 'qualifying works', he needs to work out whether those works will result in any tenant's contribution being more than £250. This is fairly easy when he wants to undertake one major set of building works. He can simply cost up the works and if they result in any tenant's contribution exceeding £250, then he must consult.

But what happens if the landlord then has to do additional works, or undertake emergency works, that he has not anticipated doing? Do all the works that he has undertaken in a service charge year count as one set of works, which triggers the consultation requirements as soon as they exceed the £250 per tenant contribution (this is known as the 'aggregating approach')? Or is each set of works counted as a different set of works, each with its own £250 per tenant ceiling (this is known as the 'sets approach')?

The distinction between the aggregating approach and the sets approach is extremely important for landlords, because if all works carried out in one year are counted as one set of works, then the consultation requirements will be triggered earlier. What's more, once the £250 per tenant ceiling has been exceeded, the landlord will have to consult on each subsequent set of works, however minor they are. Finally, there is the obvious problem that whilst the landlord may know at the beginning of the year what routine works he will need to undertake, he will not know what emergency works need doing, so how does he know that they will all add to more than £250 per tenant?

So it was with considerable consternation, and a degree of panic, that landlords and their agents greeted the decision in *Phillips and Goddard -v- Francis* [2012] EWHC 3650 (Ch.D) in December 2012, in which the High Court confirmed that the aggregating approach applies to qualifying works.

Luckily, common sense has now been restored and landlords do not need to panic any more. In its recent decision in *Francis -v- Phillips* [2014] EWCA Civ 1395, the Court of Appeal rejected the aggregating approach, and confirmed that the correct approach is the sets approach.



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It is worth remembering, however, that different works may still count as one 'set' if they are linked. The Court of Appeal gave useful guidance as to how to decide what a 'set' of works is, including the following factors:

1. the place at which the separate items of work are to be carried out;
2. whether the works are subject to the same contract;
3. whether they are to be done at the same time or different times; and
4. whether the items of work are different in character from each other or not.

If you would like to discuss any of the issues raised in this update, please contact:



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