



# ISLINGTON

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Hogan Lovells International LLP  
DX LDE 57

09 July 2010

Dear Sirs

**Re: Redbrick Tenant Management Organisation  
Notice of Dispute – Cyclical Maintenance Allowances**

Thank you for your letter of the 8 July 2010.

I have been instructed by my clients, Homes for Islington, to respond to your client's Notice of Dispute as follows:

1. Payment of allowances will be restored immediately. The sums that have been withheld since the 1 May 2010 will be paid immediately. Late payment interest will not be paid.
2. No assurance will be given that the round of cyclical works will take place in 2012.

This had already been decided prior to the receipt of your letter of the 8 July 2010 and I indicated that I would take instructions on the issue of the allowances when we met on the 7 July 2010. Save for the issue of late payment interest the issue surrounding the withholding of allowances has been resolved.

In relation to the issue of the timing of cyclical maintenance works your clients suggest that these should take place in 2012. Where in the Modular Management Agreement ("MMA") is there an agreement that cyclical maintenance work should take place every 7 years? Chapter 2 Appendix 4 of the MMA says "on a cyclical basis (a minimum of every 7 years, resources permitting)". My clients would like to work to this ideal, but cannot commit to it if your client has withheld repayment of the cyclical maintenance funds.

As the dispute relating to the cyclical maintenance allowance remains outstanding we hereby serve formal notice of dispute pursuant to Chapter 6 clause 16.1 of the MMA. As required by the MMA the nature of the dispute and the action required to resolve the dispute are hereinafter set out.

### **Nature of Dispute**

From the inception of the MMA my clients (as agents for the Council) have paid to your client a monthly allowance for cyclical maintenance works. The Council carried out the works in 2005. The Council were undertaking significant major works on the estate under the Decent Homes Scheme, contractors were on the estate and scaffolding was in situ. The Council determined that the contractors should carry out the cyclical maintenance works on the basis that it would



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cost less for the works to be carried out whilst contractors were on site and scaffolding in situ. Whilst the Council did not receive approval from your client to carry out these works they did approach them in this regard, your clients procrastinated in providing a response until became too late and the Council had to make a decision whether or not to do the works. The Council consider that they made the sound economical decision and carried out the works. At no point before or during the works did your client ask for my client to cease works. Your client then said that they did not want the Council to do the works after the event. Your clients did not serve the Council with a Notice of Dispute in relation to the execution of the works. The Council have asked for your client to pay to them the sum which was in the account March 2005 (£78,832.00). Your client has refused to pay this or any other lesser sum in respect of the works that the Council have carried out.

The Council say that they are entitled to set-off the amount due to it from your client by way of equitable set-off against monthly allowances that are payable.

**Action required to resolve the dispute**

Arrange the immediate payment of £78,832.00 from the cyclical maintenance allowance account to the Council.

I note that there is a procedure within the MMA at Chapter 6 clause 16.4 and a similar clause at 16.12. It appears to me that it would be in both parties interest to have this matter resolved as quickly as possible. The Council would be willing to forgo the procedure set out within the MMA and make a joint application to an Arbitrator. I propose that the Council draft the application and send to your for your proposed amendments. If you are agreeable to this please let me know and I will instruct Counsel to draft the application.

My clients would like to again extend the invitation of a meeting to try to resolve this matter amicably and without the recourse to Arbitration.

Yours faithfully



Steve Inskip  
Commercial Litigation Manager  
Islington Council