

27 July 2010

By special delivery

Islington Corporate Resources  
Legal Services Division  
DX 122230 Upper Islington

Attn. Steve Inskip

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D 020 7296 5198

Your ref SBI/HPM/38  
Our ref CM1ETAJ/TSTS/2277051  
Matter ref A0020/84489

Dear Sirs

**REDBRICK TENANT MANAGEMENT ORGANISATION LIMITED**

**NOTICE OF DISPUTE - CYCLICAL MAINTENANCE ALLOWANCES**

Thank you for your letter of 9 July 2010. Our client has referred the Notice of Dispute contained within that letter (the "Council's Notice") to a meeting of its Management Committee. Please treat this letter as our client's formal response to the Council's Notice.

**REPAYMENT OF THE WITHHELD ALLOWANCES**

We note the position set out at point 1 of your letter and would be grateful if you would confirm when these moneys have been transferred to our client. Your letter of 9 July 2010 refers to the sums that have been withheld since 1 May 2010. We are instructed that our client's allowances under the MMA have been withheld since 1 April 2010. We take it that this was merely a clerical error, but would again be grateful if you would confirm.

Our client has now been informed that the cyclical element of its allowances will continue to be withheld. This expressly contradicts the position set out in the Council's response to our Notice of Dispute, which specifies that "Payment of allowances will be restored immediately. The sums that have been withheld since the 1 May 2010 will be paid immediately." Our client expects payment of these sums in full, without deduction or set-off, in accordance with the express terms of the Council's response.

Chapter 4 clause 12.2 of the MMA provides that where any payment from the Council to the TMO is late the Council must pay interest on any late payment. We note that this has not been paid and that no reason for its non-payment has been given. The late payment interest amounts to £186.11 at 3.5% per annum being 3% above the Co-operative Bank base rate (the "Nominated Bank") at 9 July 2010 and continues at a daily rate of £3.45 until payment. Our client will expect payment of this sum in due course.

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## **COMPLETION OF THE CYCLICAL WORKS IN 2012**

As you note in your letter, chapter 2 appendix 4 of the MMA specifies that the Major Works are to take place "on a cyclical basis (a minimum of every 7 years, resources permitting)." As the previous round of works was, in effect, completed in 2005, the next round of works is scheduled for 2012 at the latest, provided there are sufficient resources available. Chapter 2 clause 6.5 reinforces the position set out in appendix 4, by imposing a duty on the Council not to unreasonably delay or withhold consent to the tendering or letting of contracts.

It appears that the question of whether the cyclical works are to be undertaken in 2012 is simply a matter of whether resources permit. Kindly therefore explain why your client considers the amount currently available may prove inadequate. Even if your client were entitled to be repaid the full sum demanded, £78,832.00, (which is denied), the sums in the cyclical maintenance account, £101,168.00, would still in our client's view be sufficient. It is not open to the Council to withhold its co-operation to those monies being used for cyclical works as a tactic to gain leverage in the arbitration.

## **RESPONSE TO THE COUNCIL'S NOTICE**

Your client's claim for repayment is denied in full as disclosing no legal basis for recovery. Your client has again failed to put its claim for repayment in any legal framework and should now do so.

We again refer you to our letters of 31 March and 14 May 2010 in which we stated that we did not consider that your client had any legal ground on which it was entitled to recover the sums now claimed. We still await a response to these letters.

In 2005 the Council acted unilaterally and against the wishes of our client. Our client expressly objected to the actions of the Council and cannot be said to have acquiesced purely on the basis that their protests were ignored.

In any case, the unilateral actions of the Council cannot effectively impose on our client an obligation to serve a Notice of Dispute in order to protect its position. Indeed, in the absence of any agreement for the completion of the works, there appeared to be effectively no dispute that the Council had no entitlement to carry out the works and was simply spending money that it had no ability to recover. It was not a justifiable use of the TMO's economic and management resources to seek to prevent the Council from carrying out works which it had chosen to do voluntarily, against the wishes of the TMO and in contravention of the MMA.

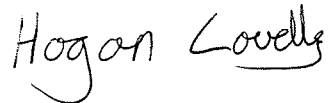
Notwithstanding the absence of any legal basis for the claim, your client has also failed to provide sufficient evidence to support the figures quoted. We note that the arbitration procedure provides for early disclosure of the documentary evidence on which the parties will seek to rely. In particular, the parties' statement of claim is required to be accompanied by copies of all documents on which the party seeks to rely in support of its case (para 10.2 of Appendix 2 to Chapter 6) and the arbitrator can order disclosure of documents (para 12). As your client is proposing to progress the matter swiftly through to arbitration, it is incumbent on them to provide the relevant documentation supporting the sum it purports to reclaim now, when it may assist the parties in evaluating their positions, rather than waiting until compelled to do so.

## **THE RESPONSE TO OUR CLIENT'S NOTICE OF DISPUTE**

Pursuant to clause 16.5 of chapter 6, we hereby give notice that our client does not consider your letter of 9 July 2010 to be a satisfactory response to our client's Notice of Dispute and requests that the matter be considered by the next meeting of the Council's Housing Committee, or in the absence of such a committee the Council's Executive Committee, which is required within 7 days of the meeting inform our client in writing of the Council's final response and the action (if any) the Council intends to take to resolve the dispute.

We note your client's position in respect of accelerating the arbitration process and our client would be content to waive the stages set out in clause 16.4 of chapter 6. However, our client is not willing to waive all of the procedural requirements set out in the MMA as our client considers that they provide the best opportunity for resolving the dispute without recourse to arbitration. As you will appreciate, having set out our position in open correspondence, our client is reluctant to go immediately into arbitration without a proper indication of your client's case and the evidence on which it proposes to rely.

Yours faithfully

A handwritten signature in cursive script that reads "Hogan Lovells". The signature is written in black ink and is positioned below the text "Yours faithfully".

CC RIU, Highbury House, 5 Highbury Crescent, London, N5 1RN Attn. TMO Liaison Officer  
(by special delivery, with enclosures)