

4th January 2017

<Tenant Name>
<Unit>
<ML Full Address>
<Post Code>

Dear <Salutation>,

Re: Alan Coates as Appointed Receiver Manager - Canary Riverside

I write as instructed by the appointed Manager for the above development to advise all lessees of the intention to undertake the renewal of the current electrical meter system at Canary Riverside, Canary Wharf, London, E14 as per the attached Notice of Intention.

We have a duty to tell you in advance of these works in accordance to the relevant Section 20 Landlord & Tenant Long Term Qualifying Agreement legislation as it is anticipated that the total ongoing annual contracted cost of the installation is in excess of £10D per annum for any one property.

Dispensation of the section 20 requirements have been applied for and I attach the directions and the application in full. This notice now provides a brief description of the proposed works and advises why the works are required.

There are only two organisations are currently familiar with the electrical supply, Energy Controls Ltd, which is currently responsible for supplying and maintaining meters and data readers on the development and Inenco, who were responsible for the procurement of the electricity supply and the calculation and submission of individual lessees' electricity invoices.

Since it is the hardware which is to be replaced, Energy Controls Ltd are the preferred contractor because they have the relevant expertise and direct experience at Canary Riverside. The brief is twofold to replace the individual meters to each unit or area where power take off occurs and to seek other non-metered end users to ensure as much of the costs incurred can be recovered appropriately by the installation of new meters.

Any Lessees' who oppose the above should do so by filling out and returning the enclosed form by no later than **Monday 23rd January 2017**, returning a copy to the tribunal and myself assisting the property manager for the estate along with a written statement in response to the process.

Continued/...P.T.O

Any Lessees' who do not oppose this process we will consider are happy for us to proceed.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'T. Booty', with a stylized flourish at the end.

Thomas Booty
Technical Services Administrator
thomas.booty@hmlandertons.com

enc Notice of Intention
cc Alan Coates

Date of Notice: 4th January 2017

To All Lessees of
Canary Riverside
Canary Wharf
London
E14

HML TECHNICAL SERVICES

Dear Sir/Madam,

Re: Alan Coates as Appointed Receiver Manager - Canary Riverside

**NOTICE UNDER S20 OF THE LANDLORD AND TENANT ACT 1985 (AS AMENDED BY S151 OF THE
COMMONHOLD AND LEASEHOLD REFORM ACT 2002)**

We write on behalf of Alan Coates to advise you of their intention to undertake the following works to the above development:

The renewal of the current electrical meter system

It has become apparent that the provision for measurement and re-charging of electricity at the development is defective because it does not allow for the accurate calculation and recovery of electricity costs.

Due to the urgent nature of these proposed works formal dispensation has been applied for.

Upon expiry of this Notice quotations will be obtained. Further details of the works will then be available at our offices; however, in summary the proposed works will include:

- The replacement of the current metering, control and measurement system
- The set up of a new billing system

Should you oppose the above proposal please can we ask that you fill out and return the enclosed form to the address provided by no later than **Monday 23rd January 2017**.

Yours faithfully,



Thomas Booty

Alan Coates for whom HML Andertons act as duly authorised agents.

Guidance Notes

Alan Coates reserves the right to decline the appointment of any nominated contractor who is not of sufficient financial standing and/or not considered able to carry out the works in a professional and competent manner and in compliance with all relevant Health and Safety legislation and/or is not able to provide the required insurance cover and valid tax exemption certificate where appropriate.

IN THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

Case reference:

ALAN COATES
(as manager appointed by the Tribunal)

Applicant

-and-

RESIDENTIAL LESSEES OF CANARY RIVERSIDE

Respondent

APPLICATION FOR DISPENSATION
PURSUANT TO S.20ZA LANDLORD & TENANT ACT 1985

1. This application relates to the provision of electricity at the development known as Canary Riverside, Westferry Circus, London E14 (the "development").
2. Mr Coates was appointed manager of the development under s.24 of the Landlord and Tenant 1987. He began his management on 01 October 2016. A copy of the management order made by the Tribunal is attached to this application marked "1".

Summary

3. It has become apparent that the provision for measurement and re-charging electricity at the development is defective because it does not allow for the accurate calculation and recovery of electricity costs.
4. In order to ensure accurate standing and consumption charges, the solution is:
 - a) To replace the metering, control and measurement system, and
 - b) To set up a new billing system.

5. It is therefore proposed to enter into a ten-year energy metering rental agreement with Energy Controls Ltd, under which new, rented meters and equipment will be installed throughout the development.
6. A copy of the proposed contract is annexed hereto marked "2".
7. The proposed agreement falls within the meaning of a "Qualifying Long Term Agreement" for the purposes of section 20ZA of the Landlord and Tenant Act 1985.
8. Accordingly, the provisions of section 20 and Schedule 1 of the Service Charges (Consultation Regulations) 2003/1987 apply.
9. This application is made without prejudice to any future submissions that Mr Coates may rely upon that charges demanded by him are not "service charges" for the purposes of section 18 of the Landlord and Tenant Act 1985.

Background and current position

10. The development is about seventeen years old.
11. The residential leases provide for the collection of the costs for electrical supply. Clause 6.1 of a sample residential lease provides that:

"The Tenant shall pay and indemnify the Landlord against all charges for the supply of ... electricity ... to the Premises."
12. Clause 24.2.13 provides that the landlord is required:

"To provide or arrange for the provision of electricity ... to the Building Common Parts... or as may be distribute to occupiers of the Building including so far as appropriate standby power generators and plant."
13. It would appear that the electricity supply at the development was designed with a view to the landlord deriving a profit from its supply.
14. Regulations relating to the resale of electricity have however changed since the date of construction. It is now unlawful to include a profit element in the provision of electricity to residential consumers.

Supply and commissioning of the system

15. The existing metering system was supplied by Advanced Energy Products Ltd ("AEP") to Drake & Scull facilities managers (now EMCOR) in 1999.
16. The system was not however commissioned at the time, because AEP went into liquidation soon after it was installed.
17. Thereafter Drake & Scull contacted the meter manufacturers, AMPY/Landis + Gyr, who engaged Energy Controls Ltd ("ECL") to commission the system.
18. In 2002, ECL tried to set up the data collection element of the metering system because it was not functioning.

The current system

19. Power enters the development at high voltage. It is then stepped down for use on the development at medium and low voltage.
20. There are four main fiscal meters. They feed single and three phase meters.
21. Three of the fiscal meters distribute power to the whole development except the hotel:
 - a) Individual consumption is measured by meters and billed accordingly, and
 - b) Power to the common parts is also drawn from those fiscal meters. That consumption is again measured by meters, and is billed through the service charge.
22. Some apartments have two meters paired by hardwired connections which are vulnerable to tampering. The duplication of meters may be the result of the installation of electricity feeds before the configuration of the apartments was finalised.
23. The fourth meter provides power solely for the hotel.

Collection of data

Single phase

24. The majority of the wired-in single phase meters feed data to "MainsTalk" units. Those units then feed that data to the utility server which measures consumption.

Three phase

25. However, the main three phase sub-meters transmit usage data via a pulse cable, which is again vulnerable to tampering, before being transmitted on by the MainsTalk unit to the utility server.

Reasons for renewing the system

26. There are three main reasons for replacing the current system.
27. Firstly, as currently set up, the system is not accurate or reliable enough for a development where energy consumption is high and accurate measurement is critically important.
28. Secondly, there are no reliable schematic drawings showing the layout of distribution points. Even in 2016 there is considerable uncertainty as to whether the correct amounts are being demanded because:
- a) The information about wiring may be inaccurate or incomplete, and
 - b) It is not clear whether all areas are being metered properly.
29. Thirdly, the meters have exceeded their ten-year accuracy certification period. For the last seven years it will therefore have been known that the number of meter defects was likely to increase, with attendant inaccuracies in data collection.
30. A large number of meters have already failed. That failure rate is likely to increase each year, mainly because:
- a) The data transmitters are malfunctioning;
 - b) Spare parts for the Mainstalk system are very hard to source, and
 - c) Technical support is no longer available for the Mainstalk system.

Management of the system

31. The management of the system has been poor.
32. It is apparent that the approach has been mainly reactive:
- a) Some malfunctioning sub-meters have been replaced;
 - b) Mainstake connections have been partially replaced, and
 - c) Two data collection systems - "FOCUS" (for single phase supplies) and "EDASYS" (for three phase supplies) - have been grafted onto the current software. Unfortunately they cannot be relied upon to produce accurate readings when used with Mainstake.
33. This piecemeal approach has resulted in inconsistent and unstructured measuring of electricity consumption.
34. Some leaseholders are likely to have received disproportionately high and/or low electricity bills that cannot be attributed to lifestyle choices alone.
35. It is understood that where leaseholders have received bills that appeared incorrect, the approach has been either:
- a) To correct the bill so that it "feels" right, or
 - b) To estimate consumption.
36. Inenco, the electricity procurement and billing contractor at the development, has provided Mr Coates with a reconciliation report that shows a surplus of £142,000 for the year to June 2016.
37. That surplus has not yet been credited to the service charge account.

Risks of remedying defects in the current system

38. It is inadvisable to attempt to solve billing and defective metering issues on a piecemeal basis. There are so many related defects that solving one issue is likely to exacerbate others.

39. The only viable course of action in order to achieve financial transparency and to eradicate the ability to create a surplus is:

- a) To install new meters;
- b) To replace the metering and billing measurement systems with one compatible hardware and software package, and
- c) To link the charge for electricity to the amount charged by the utility supplier.

Financial process and review

40. All utility procurement fees, metering and billing costs for electricity use on the development are currently charged through the service charge account, although a distinction is made between individual and common usage.

41. The cost of reactive replacement of metering and control equipment is also a service charge cost, but that reactive replacement neither resolves the main billing issues, nor does it create any certainty that billing is accurate.

42. Mr Coates has been advised that, for the service charge year 2015-16:

- a) The electricity procurement and consumption costs totalled approximately £81,000, and
- b) The further total cost of replacing meters was in excess of £45,000.

The options

No change

43. One option is to continue the current ad hoc replacement of defective equipment at an annual budget of, say, £50,000.

44. That option would however merely keep pace with the current failure rate.

45. It would not resolve the system deficiencies where data collection is driven from and to non-compatible equipment.

The purchase option

46. A second option would be to purchase new equipment, which, as noted above, would have a life expectancy of ten years.
47. Mr Coates has costed this option, and the figures below are accurate so far as he is able to establish at this stage although, as with any project, they may increase once work began.
48. The total cost of purchasing and replacing all of the meters is in the region of £210,000 plus VAT:
- a) Each meter costs in the region of £350 plus VAT;
 - b) Replacement and upgrading the data collection equipment will cost in the region of £1,000 plus VAT per meter. At this stage it is estimated that there may be ten data collection controllers on the development.
49. Therefore with new, compliant and fully functioning equipment, a reserve provision of approximately £50,000 per year would be required in order to accumulate the funds necessary to replace the equipment every 10 years so as to ensure that it remains within the accuracy certification period.

The rental option

50. This is the preferred option, for the reasons set out below.
51. It is normal practice in utility provision for power to be provided with the meter maintenance and consumption costs charged through a standing charge.
52. The advent of ever-more electronic metering generally means that meters are generally rented out by the utility company on a long term agreement with a calibrated service level agreement and a replacement agreement when a defect is reported.
53. The proposal therefore for the development is to rent the meters on a daily standing charge with calibration and replacement agreements.

Cost

54. The standing charges will be fixed for a ten year period:
- a) Replacement single-phase meters for apartments, per location: £0.36 per day, and
 - b) Replacement three-phase meters for communal and commercial units, per meter: £0.50 per meter.
55. There is a data charge to facilitate the billing from the data collection equipment and to ensure the compatibility and reliable calibration with all equipment supplied. The data is cleaned, aggregated and presented in Excel format in CSV.
56. The charge is £0.10 per day per meter.
57. On a development of this size, here are likely to be locations to which electricity is supplied but neither measured or charged.
58. The charge for sourcing locations and outtakes to provide additional meters that are not on the current meter list will be £0.72 per day per meter. The daily rate for new location meters will be a rate to include the cost of the examination of the system.
59. The managing agent or receiver manager would apply a charge for the utility billing. Assuming that that is as defined in the payment and accounting section below, that charge would be £0.07 per day per meter.
60. In summary, a residential location would pay a standing charge of £0.53 plus VAT per day, or £193.45 plus VAT per year for personal consumption.
61. A charge of £25.00 plus VAT per bill would apply for intermediate billing on demand, as, for example, where tenancy changes occurred.
62. That is approximately the same amount as is currently being charged to the service charge. Or is it less?
63. It would however:
- a) Avoid the need to provide £50,000 per year by way of reserve contributions to replace failing plant on a reactive basis (the "no change" option), and

- b) Avoid the need to accumulate sufficient reserve funds to renew all of the meters and data collection equipment every ten years (the "purchase option").

64. This third, rental option is a more cost effective and sustainable way of delivering the electricity to the development.

Utility supply billing and reporting

65. Currently there is no public reconciliation of the invoice and re-charge process through the service charge accounts. In short, there is a lack of transparency.

66. Mr Coates has inherited a position whereby the utility provider supplies quarterly bills to the landlord and requires payment within 14 days.

67. The landlord has paid that bill; re-charged each consumer for their personal use and/or re-charged sums to the service charge, and then collected the money.

68. This practice provides cash flow problems because the invoice must be paid before the money can be recovered from the lessees.

The proposal

The works

69. The proposal is to replace all the current meters and data collection equipment, a task which will take about three months to complete:

- a) The meters will be split into two types with differing rates depending on whether they are single-phase or three-phase supplies;
- b) The data collection system will be compatible with the meters, and
- c) All equipment will be accuracy-certified.

70. The project will also involve:

- a) A review of the whole development to ensure that accurate cost metering is applied to every part that is consuming electricity, and
- b) The installation of new meters in locations where omissions are discovered.

71. Once the new system is installed, billing information will be provided to the manager; the manager will be able to bill accurately and account for money received within the service charge accounting process.

Payments & accounting

72. It would appear that leaseholders are currently invoiced quarterly at least for their personal electricity consumption. There is no provision to pay in any other way.
73. It is proposed that a facility for monthly payments be applied. A consistent monthly payment, payable by standing order, will assist cash flow on both sides, and allow for settlement of the quarterly utility bill without borrowing.
74. The monthly amount payable will be calculated by creating an annual estimate and dividing it by twelve.
75. The annual figure will be derived from:
- a) An estimate based on each consumer's past and current costs, allowing for increases in electricity charges, and
 - b) The standing charge.
76. It may be necessary to amend the monthly payment after three months to reflect more accurate charges. At the end of each 12 month period the leaseholder will receive an annual statement of account.
77. The overall costs and billing information will be submitted as part of the service charge accounts annually. Electricity to individual flats will be presented as a total figure, as opposed to on an individual basis. Data protection and the integrity of individual consumption and payment will therefore be maintained.

Dispensation

78. There are no schematic drawings of the electricity supply at the development.
79. It is therefore not possible to go to the market, to present a contractor with schematic drawings and to ask for a specification for changing the meters and data collection points. A disproportionate amount of time and money would be required for a new contractor to familiarise itself with the system before any tender could be prepared.

80. Two organisations are however familiar with the electricity supply:

- a) Energy Controls Ltd, which is currently responsible for supplying and maintaining meters and data readers on the development, and
- b) Inenco, which is responsible for the procurement of the electricity supply, and has raised individual lessees' electricity invoices.

81. Since it is the hardware which is to be replaced, Energy Controls Ltd are the preferred contractor because they have the relevant expertise and experience.

82. Once the hardware has been replaced, Mr Coates will assume control and management of electricity invoicing, as would generally be the case, were a managing agent to be managing the development.

83. By taking electricity invoicing into his hands, Mr Coates further avoids data protection issues which may arise by his supplying Inenco with the names and addresses of all of the individuals who are liable to pay electricity charges.

Conclusion

84. The Tribunal is respectfully asked to grant Mr Coates dispensation from the requirement to consult.

Amanda Gourlay

STATEMENT OF TRUTH

I believe that the facts stated in this application are true.

Signed

Name: Angus Storar

Date 5 December 2016