

On behalf of: The Applicant  
Name of witness: O D Johnson  
Number of witness statement: First  
Exhibits: ODJ1 – ODJ2  
Date: 28 March 2024

**IN THE FIRST TIER TRIBUNAL PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**BETWEEN (1) Nehemiah United Churches Housing  
Association Limited**

**Applicant**

**and**

**(2) Various tenants**

**Respondents**

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**FIRST WITNESS STATEMENT OF ORLEN DALE JOHNSON**

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I, ORLEN DALE JOHNSON care of 1-3 Beacon Court, Birmingham Road, Great Barr, Birmingham, B43 6NN, will say as follows:-

1. I am employed as Financial Controller at Nehemiah United Churches Housing Association Limited (“Nehemiah”).
2. I am making this Statement to provide the Tribunal with additional information in respect of the Applicant’s application for the dispensation of all the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985 (“the 1985 Act”) and the Service Charges (Consultation Requirements) (England) Regulations 2003 (together, “the Consultation Requirements”) in respect of certain energy contracts. I am duly authorised to

make this statement on behalf of the Applicant.

3. The facts and matters set out in this statement are within my own knowledge unless otherwise stated and I believe them to be true. Where I refer to information supplied by others, the source of the information is identified; facts and matters derived from other sources are true to the best of my knowledge and belief.
4. Attached to this witness statement is a paginated bundle of exhibits marked "ODJ1 – ODJ2". All references to documents in this statement are to those exhibits.
5. The application concerns 522 tenants of the Applicant (the "Respondents") where the cost of energy for communal areas and/or through a heat network at their respective properties is recovered by way of a service charge. A list of the general location of the properties (by local council area) is exhibited as ODJ1.
6. On behalf of Nehemiah, I signed contracts to enter into the following 2 year deals for the supply of electricity and gas on the basis of the recommendations of the Applicant's brokers, The Monarch Partnership Ltd ("Monarch"):
  - a. In respect of Nehemiah's electricity supply needs:
    - i. An agreement dated 12 May 2022 between Nehemiah Housing Association (1) and EDF Energy Customers Limited (2), for a term of 2 years starting on 1 June 2022 (in respect of 44 Meter Point Administration Number (MPAN) locations); and
    - ii. An agreement dated 12 May 2022 between Nehemiah Housing Association (1) and EDF Energy Customers Limited (2), for a term of 2 years starting on 1 June 2022 (in respect of 4 Meter Point Administration Number (MPAN) locations),

together the “Electricity Contracts”; and

- b. In respect of Nehemiah’s gas supply needs, an agreement dated 27 October 2022 between Nehemiah United Churches Housing (1) and SEFE Energy Limited (2), for a term of 2 years starting on 1 December 2022 (the “Gas Contract”).

together, the “2 Year Contracts”.

7. I entered into these 2 Year Contracts on Nehemiah’s behalf in the interests of maintaining a low and stable cost base, and hence service charge for tenants.
8. It was necessary to act quickly to secure the pricing that was available during the periods in 2022 when Monarch was tendering for Nehemiah’s electricity and gas supply needs. On the basis of the information available at that time, and in conjunction with the guidance provided by Monarch, the lower prices that could be obtained by agreeing a 2 year deal clearly benefitted tenants.
9. Neither I nor the Applicant’s broker could have known for certain whether retendering again in 1 year might have resulted in any better prices being achieved at that time, compared to the fixed prices in place under the 2 Year Contracts.
10. Typically, in previous years, the Applicant has only sought deals that covered a 12-month period, not wanting to be tied into an arrangement where it was committed to a price point longer than necessary. In the past, the market has been quite stable and competitive, and the Applicant has been able to secure 12 month deals that were better on renewal or any increases were marginal. There was a marked increase in prices during the renewal cycle in 2021, but the advice from Monarch at that time was that the factors causing the increase were only likely to be temporary, and that prices should reduce as things became more stable.

11. However, by the time the Applicant came to renew in 2022, the Ukraine conflict had started, and the nervousness around energy security appeared to be having a significant impact on global energy prices.
12. I started to track the electricity prices and get indicative offers towards the end of March 2022. I could see a large increase on the previous contract and 12 month deals were typically more expensive than 2 year deals.
13. By the middle of May 2022 the guidance from Monarch was that the Applicant needed to act quickly to lock into a suitable deal in respect of the electricity supply since the existing electricity contract ended on 31 May 2022. Off-contract prices would be significantly higher than the prices that were being offered in relation to new deals. However, each deal offered was only available for that day and sign off was required by 4.00pm. On 13 May 2022, the Applicant's executive team agreed to the Electricity Contracts with EDF Energy Customers Limited on the prices available on that day.
14. I therefore entered into the Electricity Contracts on behalf of the Applicant on the advice of Monarch, on the basis of the factors influencing the energy market at that time, and in the interests of obtaining the best deals available to keep prices low and stable for tenants.
15. The Gas Contract was renewed in October 2022, when again the market position showed steep price rises, and suppliers were reluctant to offer new business due to the security of gas supply on the wholesale market. I was aware that the Nord gas pipeline had recently been damaged and there were concerns about supply across Europe. The Ukraine conflict continued to cause a lot of turbulence in markets.
16. On 26 October 2022, the Applicant's executive team agreed to the Gas Contract with SEFE Energy Limited on the terms that were provided that day, and I therefore entered into the Gas Contract on behalf of the Applicant.

17. After my colleague, Bernadette Kennedy, Reporting Accountant at the Applicant, attended a sector briefing on service charges in June 2023, I became aware of the cap that applied to recovery of service charges in relation to the 2 Year Contracts in the absence of carrying out the Consultation Requirements, or obtaining a dispensation under section 20ZA of the 1985 Act. Although I was aware of the Consultation Requirements in relation to variable service charges, I had not considered this in relation to energy contracts, because it would be impractical to carry out any kind of meaningful consultation exercise in relation to such contracts, given the very small window within which competitive deals are made available. This was also a new consideration given that the Applicant had typically entered into 12-month energy deals previously.

18. After taking the matter to the Executive Committee, the Applicant subsequently obtained legal advice and assistance, and proceeded to make this application for a retrospective dispensation in relation to the 2 Year Contracts, under section 20ZA of the 1985 Act. Costs recovery in relation to the 2 Year Contracts would be severely limited if a cap of £100 per service charge payer per annum was applied, in the absence of applying for and successfully obtaining a dispensation from the Consultation Requirements. This would have a negative effect for the Applicant financially, which is a charitable community benefit society registered with the Financial Conduct Authority, which serves local communities across the West Midlands.

19. Given the number of Respondents, the tenancies and the leases (the "Occupancy Agreements") have not been produced but I can confirm in all cases:

- a. the service charge is variable as defined by section 18(1) of the 1985 Act; and
- b. the Occupancy Agreements give the Applicant the right to recover the service charge.


20. Again given the number of Respondents, in the interest of saving costs and subject to the Tribunal's agreement, the Applicant proposes to send one letter to the Respondents, a copy of which proposed text is exhibited as ODJ2, to:

- a. Inform them of the application;
- b. Advise them that a copy of the application and supporting documents are on our website (with personal details redacted);
- c. Inform them that if they would like to receive a hard copy of the application and supporting documents (with personal details redacted) then they can write to the Applicant's solicitors by post or by email, and they will send them a copy; and
- d. Advise them that the Applicant will add documents to their website as the application progresses, including the Tribunal's ultimate decision.

21. Given the numbers of Respondents concerned and the cost of mailing we do not contemplate any further mailings to tenants.

#### **STATEMENT OF TRUTH**

**I believe that the facts stated in this witness statement are true.**

**Signed**  \_\_\_\_\_

**Orlen Dale Johnson**

**Date** 28.03.2024

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**EXHIBIT ODJ1**

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**A list of the general location of the properties (by local authority area) the subject of an application for the dispensation of all the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985**

**Local Authority**

Birmingham City Council  
City of Wolverhampton Council  
Coventry City Council  
Dudley Metropolitan Borough Council  
Sandwell Metropolitan Borough Council  
Walsall Council



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**EXHIBIT ODJ2**

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## **Letter to be sent by the Applicant to all Respondents the subject of the Application**

### **Your communal energy supply**

We buy electricity and gas that are supplied to your building's communal areas (and/or the heat network that certain properties may be part of) - "communal energy" - directly from the energy market, so we and you get a better deal.

As we buy the communal energy directly from the energy market, if we enter into a deal that lasts longer than 365 days (a year), we can't comply with a consultation process set out in section 20 of the Landlord and Tenant Act 1985. You are likely to be aware that during 2021 and 2022 energy prices went through a period of highly unusual price fluctuations caused by world events that affected the supply of electricity and gas. In 2022, we entered into 2 year deals for communal energy, because they represented the best value for residents at that time. So, we have made an application to the First-tier Tribunal (Property Chamber) ("the Tribunal") for dispensation from those consultation requirements. You'll find on the back of this letter some frequently asked questions giving you more information.

To minimise costs, all future correspondence and documentation relating to our application (including copies of the application, the directions and decision of the Tribunal) will be displayed on our website (as we receive them and with personal details redacted); to view please go to [insert web address]

If you would like to receive a paper copy of our application with supporting documents and the directions, or have any questions about this letter, please contact our solicitors, Anthony Collins Solicitors LLP:

- by telephone on [insert specified phone number]
- by email at [insert specified email address]
- by post by writing to Anthony Collins Solicitors LLP at [insert specified address].

### **Frequently asked questions: communal energy**

#### **What is communal energy?**

Energy (gas and/or electricity) supplied to the areas that we light, heat and/or power outside of your front door is referred to as 'communal energy'. For example, lighting the stairs to your flat, or powering a door entry system.

#### **What is a heat network?**

It is likely that you will be aware if your property is part of a heat network, since it should have been explained to you at the start of your tenancy or lease. Heat networks supply heat from a central source to customers, via a network of underground pipes carrying hot water. The energy supplying that heat network may be charged to

individual properties using the service charge. If so, that energy is also part of the current application.

### **What is dispensation?**

We are required to consult with customers when entering any long-term agreement for services under section 20 of the Landlord and Tenant Act 1985 (the 'consultation process'). A dispensation in this instance is special permission, from the Tribunal, to pass on the costs that we have incurred in sourcing the communal energy under the 2 year deals to residents, without being subject to a cap, although the normal consultation process has not been followed.

### **What do I have to do now?**

This is communication to let you know that we're applying for dispensation in relation to the energy deals we have entered into on a long-term arrangement. You can find out more by visiting our website to read the application or contacting our solicitors as shown on the first page.

### **How can I trust you got the best deal?**

We worked with a broker, The Monarch Partnership Ltd ("Monarch"), who searched the whole energy market, locking in the best deal on the market at that time. We used the same arrangements to buy energy for our own head office. We want the best deal for all of us going forward, for years to come.

### **If it's a good deal has Nehemiah done this for their offices?**

We did. We included our head office.

### **Why didn't Nehemiah consult its customers?**

When we're trying to get the best energy deals for you, suppliers are only able to lock in the best available prices for a very short time (usually less than one working day). This short period meant it wasn't possible for us to consult with you using the normal Section 20 consultation process, before entering into the 2 year deals.

### **What if I don't agree with this dispensation?**

You can write to the Tribunal directly to make your own representations, which **must be received by the Tribunal by [insert date]**. Their address is "First-tier Tribunal (Property Chamber), Centre City Tower, 5-7 Hill Street, Birmingham, B5 4UU" and their email address is [rpmidland@justice.gov.uk](mailto:rpmidland@justice.gov.uk). Quote case reference [insert ref]. Do make sure any representations are received by the Tribunal in accordance with their directions (see our website or contact our solicitors by one of the methods shown on the first page of this letter to obtain a paper copy).

### **What if I don't want to change my home supplier?**

You don't have to. This application relates only to the communal energy supply, and does not change any existing arrangements you already have for the gas and/or electricity supplies in place within your home. If you're part of a heat network, this

application relates to the deals we have already entered into for the current energy supply to your home as well as to the other properties within the network.