

# Professional advice

■ This week, service charges, security contingency planning and lease forfeiture

**QUESTION:** I am a tenant in a multi-let office building and have just received a large service charge claim for a replacement passenger lift. I suspect the landlord is upgrading the property in preparation for sale. Can I challenge this?



NEIL GILBERT, ASSOCIATE AT TUFFIN FERRABY TAYLOR, RESPONDS

YES. DEPENDING ON THE WORDING OF THE LEASE covenants, the landlord may need to prove that replacement is the only financially viable option. You must check the wording of the service charge provisions and you can request evidence from your landlord.

This case covers an instance where a component might be at the end of its industry-recognised life span, but where repair will suffice. Tenants are also protected under the 'reasonableness' test – substantial claims are irrecoverable unless proportionate with the length of the tenant's interest in the property.

Landlords of multi-let commercial properties need to retain control of the common parts, machinery plants and external areas, and aim to recover costs through service charges. Such elements may present huge financial burdens to tenants, particularly where plants are reaching the end of their economic lives.

As an example, in the case of *Fluor Daniel Properties v Shortland Investments* (2001), the landlord was seeking to recover the cost of replacing the air-conditioning system.

Tenants received a claim of more than £2m, on the basis that the system was at the end of its forecasted life span, and that the wording of the service charge clause allowed the landlord to recover the 'reasonable cost' of works to maintain or improve the building's services.

The tenants took the landlord to court and were successful in stopping the service charge claim. This was on the grounds that the existing clause presupposed malfunction, physical damage or deterioration. The judge also said that the standard of work should relate to what tenants could reasonably be expected to pay given the short period to the end of the term.