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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	LON/00/AP/LSC/2013/0623
Property	:	Flat 9 Malbury Court, Clarence Road, London N22 8PQ
Applicants	:	(1) Severina Dalgado (2) David Delgado ("the Tenants")
Representative	:	In person
Appearances for Applicant:		(1) Severina Dalgado (2) David Delgado (3) Mr P Tasker MRICS, surveyor
Respondent	:	Malbury Court Management Limited ("the Landlord)
Representative	:	Duncan Phillips Ltd (managing agents)
Appearances for Respondent:		(1) Ms J Kemp P.A. to Managing Director (2) Ms M Taylor, financial controller.
Type of Application	:	For the determination of the reasonableness of and the liability to pay

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		a service charge
Tribunal Members	:	(1) Mr A Vance, LLB (Hons) (Chair) (2) Mr C Gowman, MCIEH MCMI, BSc (3) Mr P Clabburn
Date and venue of Hearing	:	15th January 2014 10 Alfred Place, London WC1E 7LR
Date of Decision	:	20.02.14

DECISION

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Decision of the Tribunal

1. The tribunal makes the determinations as set out under the various headings in this Decision

2. The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

3. The tribunal determines that the Respondent shall pay the Applicant £315 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

Introduction

4. This is an application made under section 27A Landlord and Tenant Act 1985 ("the 1985 Act") for a determination of the Applicants' liability to pay service charge to the Respondent in respect of Flat 9 Malbury Court, Clarence Road, London N22 8PQ ("the Property").

5. The Applicants are the leasehold owners of the Property, a first floor two-bedroom flat within a three-storey modern purpose-built block. They purchased the Property in February 2006. The Property is part of a two-block residential development totalling 12 flats that together comprise "the Building" as defined in the lease of the Property.

6. The Respondent is the Applicants' landlord. Although the evidence from both parties was rather unclear it appears that lessees in the development have collectively enfranchised and purchased the freehold title of the Building which is now registered in the name of the Respondent, Malbury Court Management Limited. The Applicants' evidence was that two out of the 12 lessees did not have the benefit of a share of the freehold. The Respondent instructs Duncan Phillips as its managing agent.

7. The tribunal was informed by Ms Taylor that the chairman of Malbury Court Management Limited is Ms Goodman, a former resident who had carried on as chairman despite having moved abroad (although the applicants disputed that she was ever resident).

8. Numbers appearing in square brackets below refer to the hearing bundle unless stated otherwise.

9. The relevant legal provisions are set out in the Appendix to this decision.

The Lease

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10. The relevant lease is dated 31st March 1978 granted by Swordheath Properties to Janet Elaine Howard for a term of 99 years from 25.12.74.

11. The relevant provisions of the lease can be summarised as follows:

11.1. The Tenant covenants to pay by way of service charge a 1/12 proportion of the expenditure incurred by the Landlord in carrying out its obligations under clause 5(5) of the lease together with any other costs and expenses reasonably and properly incurred in connection with the Building including the cost of employing managing agents.

11.2. The Landlord's obligations as set out in clause 5(5) include maintaining and keeping in good and substantial repair and condition the main structure of the Building, its common parts and boundary walls and fences. They also include insuring the Building

11.3. Clause 3(9) contains a covenant by the Tenants to *"pay to the Lessors all costs charges and expenses including Solicitors' Counsels' and Surveyors' costs and fees at any time during the said term incurred by the Lessors in or in contemplation of any proceedings in respect of this Lease under Sections 146 and 147 of the Law of Property Act 1925.....including in particular all such costs charges and expenses of and incidental to the preparation and service of a notice under the said Sections and of and incidental to the inspection of the Demised Premises and the drawing up of Schedules of Dilapidations such costs charges and expenses as aforesaid to be payable notwithstanding that forfeiture is avoided otherwise than by relief granted by the Court"*

11.4. The service charge year is the period 1st January to the 31st December in each following year.

12. For the avoidance of doubt, where below the tribunal determines that a sum is payable by the Applicants, it means that the tribunal is satisfied that it is payable under the terms of the Applicants' lease as summarised in the paragraph above.

Directions

13. An oral pre-trial review took place on 08.10.13 at which the Applicants agreed to limit their application to the service charge years 2006/2007 up to and including the estimated charges for 2012/13. At the hearing service charge accounts were handed up for 2012/13 which provided actual figures for that year. Both parties agreed that the tribunal should base its decision on the figures stated in the accounts and therefore our determination for that year is based on the actual figures provided.

14. Directions were issued by the tribunal on the same day as the pre-trial review. These included a direction that the Respondent was to allow inspection at the offices of Duncan Phillips of the managing agents' contract and cleaning contracts/specification; relevant supporting invoices and copies of all statutory consultation notices under s.20 of the 1985 Act. The Tenants were directed to complete and serve a Scott schedule identifying the items and amounts in dispute together with the reasons for the dispute. The landlord was directed to respond to

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that schedule and to send to the Tenants copies of all other documents on which it intended to rely. Expert evidence was limited to one expert per side. The Tenants were responsible for preparation of the hearing bundle which should have contained copies of the relevant invoices in respect of the disputed costs.

Inspection

15. Neither party requested that the tribunal inspect the Property and the tribunal did not consider this to be necessary.

The Hearing

16. During the course of the hearing the representatives for the Applicant provided the tribunal with an additional document namely a photographic schedule taken by their surveyor, Mr Tasker.

17. The Respondents also provided copies of the following additional documents at the tribunal's request:

17.1. The Landlord's accounts and payment schedules for the service charge years ending 31.03.06 and 31.03.07.

17.2. Its accounts for the years ending 30.03.08; 31.03.09 and 31.03.10.

17.3. Its income and expenditure accounts for the years ending 31.03.11 and 31.03.12.

17.4. Its income and expenditure accounts (and a payment schedule) for the year ending 31.03.13.

17.5. Service charge demands covering the period 01.04.08 to 07.12.10.

17.6. Two estimates from East Herts Property Maintenance dated 01.10.11 and an invoice dated 06.11.11.

17.7. Invoice from A10 Property Maintenance dated 01.04.12.

17.8. Invoices from Duncan Phillips dated 11.05.06 and 25.05.06.

17.9. Letter from John Bays & Co. solicitors to Ms Dalgado dated 08.09.08.

18. Neither party objected to the other being allowed to rely on any of the additional documents provided. The tribunal allowed each party sufficient time to consider them and considered it just and equitable for them to be relied upon as evidence despite their late provision.

19. The hearing bundle contained a report from Mr Tasker dated 25.11.13 which he describes as being *"a report on the quality of materials and workmanship, the outstanding items and defects noted from my provisional findings."* On the first page of the report he specifically states that the report is not a building survey or an Expert Witness report. No witness statement from Mr Tasker was before the tribunal and he did not give oral expert evidence. He did, however, make oral representations on behalf of the Applicants.

Consultation Requirements: the agency agreement with Duncan Phillips

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The Applicants Case

20. The Applicants' position was that the agreement entered into between the Respondent and Duncan Phillips to manage the Building dated 19.04.06 **[82]** amounted to a long-term qualifying agreement ("QLTA") under the 1985 Act as it specified no term date and should therefore be regarded as lasting for more than 12-months. This meant that statutory consultation was necessary before it was entered into. As no such consultation had taken place, management fees should be limited to the statutory maximum allowable namely £100 per tenant for each year in dispute.

The Respondent's Case

21. The Respondent agreed that no statutory consultation had taken place. It appeared to consider this unnecessary because the continued appointment of Duncan Phillips as managing agents was voted on at the Respondent's AGM each year to which the Applicants and other tenants are invited **[118]**. They had been the managing agents since 02.01.96 and this is the procedure that has been followed since then.

22. *Decision and Reasons*

23. A QLTA is defined by s.20ZA(2) of the 1985 Act as *"an agreement entered into, by or on behalf of a landlord or superior landlord for a term of more than twelve months".*

24. If an agreement is a QLTA then s.20 of the 1985 Act operates to limit the relevant contributions of tenants to £100 each per year unless the consultation requirements set out in the Service Charges (Consultation) Regulations 2003 ("the 2003 Regulations") are complied with or a tribunal grants dispensation from those regulations. These regulations provide important statutory safeguards to tenants who are entitled to make observations on the proposed entry into a QLTA

25. The Tribunal considers that the agreement with Duncan Phillips is a QLTA. The agreement itself is silent as to its term save that it is specified that the agreement can be terminated by either party by the giving of three months written notice. In the tribunal's view, when construed as a whole, the agreement amounts to an indefinite agreement for the provision of services terminable on three months' notice.

26. The services to be provided include *"setting an estimated annual budget"* and *"preparing year end accounts and arranging for these to be audited"* as well as calling an annual meeting with lessees if appropriate. The fees payable are specified as being £160 plus VAT per flat which may be increased annually at the rate of inflation or 5% whichever is the greater. The agreement is similar in nature to that considered in ***Poynders Court v GLS Property Management [2012] UKUT 339 (LC)*** and, as in that case, this tribunal concludes that the clear intention is that services were to be provided by Duncan Phillips for a period of more than 12 months. The fact that these could be terminated on three months' notice has no bearing on the intended duration.

27. It is common ground between the parties that the statutory consultation requirements were not met. As such, we determine that the statutory cap of £100

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applies in respect of each service charge year in dispute. The sums payable by the Applicants are referred to further below.

Consultation Requirements: Qualifying Works

28. The Applicants also asserted that the Respondent's failure to comply with the statutory consultation requirements in respect of certain works carried out by the Respondent meant that the statutory cap of £250 applied in each of the service charge years where this issue arose.

2007/8 Service Charge Year

The Applicants' Case

29. The sum challenged concerned an invoice dated 24.01.07 from Lee Valley Building Services in the sum of £7,200 for breaking out and reinstating paths and steps to the entrances of both blocks **[101]**.

30. Ms Kemp informed us that these works were carried out in November 2007 but that the work was defective as the paths started cracking soon afterwards. The Respondent subsequently sued the contractor and obtained a county court judgment in its favour which is secured by way of a charging order.

31. Mr Tasker, on behalf of the Applicants, submitted that the Respondent's failure to obtain a specification for these works and to engage in a proper tendering process was the main reason why the cracking occurred. It meant that the contractor could decide for itself how to carry out the work as opposed to meeting a specification.

The Respondent's Case

32. Ms Kemp agreed that they would normally obtain a specification and that she did not know why one did not appear to have been obtained on this occasion. She agreed that no statutory consultation had taken place. Instead, three quotes were obtained from companies they had used before and these were sent to the chairman, Ms Goodman, who decided for herself which one to appoint to do the work.

Decision and Reasons

33. S.20 of the 1985 Act operates to limit the relevant contributions of tenants to £250 each in respect of qualifying works unless the consultation requirements set out in the 2003 Regulations are complied with or a tribunal grants dispensation from those regulations.

34. There is no doubt that these works amount to qualifying works which is defined in s.20ZA(2) as "works on a building or any other premises". As the cost of the work per tenant exceeded the £250 threshold the consultation procedures set out in the 2003 Regulations should have been followed.

35. There has been no attempt to do so. When questioned by the tribunal Ms Kemp confirmed that she was familiar with the requirements of the s.20 consultation procedure and that Duncan Phillips had followed that procedure in respect of other

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properties they manage. However, they had never done so in respect of this Building.

36. In the tribunal's view this is entirely unsatisfactory and a clear breach of the Respondent's statutory obligations. It is recognised that the Respondent is a company formed following collective enfranchisement and that the shareholders in the Respondent company are tenants in the Building. However, that arrangement does not exempt the Respondent from compliance with its statutory obligations. This is especially so if, as the tribunal was informed, two of the long lessees in the Building are not shareholders in the Respondent company and would not, therefore, be entitled to attend its AGM.

37. The tribunal determines that the Applicants' contribution to these works is limited to £250 and this is the sum that is payable by them.

2010/11 Service Charge Year

The Applicants' Case

38. The 2010/11 service charge accounts show the sum of £4,200 as payable in respect of decorations and carpets. The tribunal was not provided with copies of the relevant invoices. It was the Applicants' position that as the s.20 statutory consultation procedure had not been followed in respect of these works the £250 cap should apply. No challenge was being maintained in respect of the quality of the works carried out.

The Respondent's Case

39. It was agreed that no consultation had taken place. The Respondent's position was that no other residents had complained about these works and that redecoration and carpets were shown separately in the accounts.

Decision and Reasons

40. These costs shown as one items on the accounts. The Respondent did not argue that these works were not qualifying works nor that the costs concerned separate programmes of work and, therefore, that the s.20 threshold was not met. Even if that submission had been made the tribunal considers that it in light of the decision in ***Phillips v Francis [2012] EWHC 3650 (Ch D)*** it would, when assessing if the £250 threshold was met, have had to have regard to all the qualifying works carried out in the service charge year.

41. The tribunal determines that the Applicants' contribution to these works is limited to £250 and this is the sum that is payable by them.

2011/12 Service Charge Year

The Applicants' Case

42. The Applicants' challenge for this year concerned works carried out by two companies:

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42.1. A10 Property Maintenance at a cost of £2,995 for removal of rubbish from sheds as well as the sheds themselves and their concrete bases. Also included was the cost of rubbing down hoppers and down pipes and painting; and

42.2. East Herts Property Maintenance at a total cost of £3,750 for firstly rubbing down railings to the front of the building and painting (£550) as well as rubbing down and cleaning rust from the rear fire escapes, repairing as necessary and repainting (£3,200).

43. The Applicants position was that as there was no statutory consultation the costs should, once again, be limited to £250. In addition they considered some of these works were inappropriate. They considered the condition of the steps on the fire escapes were such that they needed replacing rather than patch repairs.

The Respondent's Case

44. Ms Taylor agreed that, once again, no statutory consultation had taken place. Instead, the works were discussed and approved at an AGM of the Respondent company at which tenants were present. She could not explain why, if all the works were discussed at one meeting, they were not all part of one external works programme as opposed to being carried out by two separate companies. However, in her view they should not be lumped together as one item.

Decision and Reasons

45. There was no satisfactory explanation from the Respondent as to why these works should be treated as separate programmes of work. Both companies appear to have carried out repainting to the blocks. In any event, in light of the decision in ***Phillips v Francis*** when assessing if the £250 threshold is met for the purposes of the statutory consultation requirements, this tribunal has to have regard to all the qualifying works carried out in the service charge year.

46. The Respondent should therefore have consulted in respect of both sets of works. It did not do so and, therefore, this tribunal determines that the Applicants total contribution to both sets of works is limited to £250. That sum is payable by the Applicants and is reasonable in amount given that the Applicants appear to accept that some of the works were reasonably required. There was, for example, no challenge to the need to clear and remove the sheds or to treat and paint the railings.

2012/13 Service Charge Year

The Applicants' Case

47. The costs being challenged concerned works carried out by the following:-

47.1. Chris Barnard for supplying and fixing two entrance doors and side panels (£2,900) - invoice date 16.06.12 **[114]**; and

47.2. Rentrifone Limited for works to the entryphone (£793.22) - invoice date 03.07.12 **[113]**; and

47.3. MET Property Maintenance Ltd for attending the premises to carry out works to porches and windows (£1,295) – invoice date 19.11.12 **[115]**.

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48. The Applicants' position was that these works were all in the same area and should be treated as one set of works. As there was no consultation the statutory maximum cap of £250 applies and their contribution should be limited accordingly. In addition, they submitted that if the consultation process had been followed it was likely that these works could have been done at a cheaper cost. They relied on an estimate produced by Mr Tasker **[79-81]**.

The Respondent's Case

49. Again, it was agreed that no statutory consultation took place. The Respondent's case was that the work carried out to the doors was done in July whereas that to the porches and windows was carried out in November and as such they were two separate sets of work meaning, we presumed, that they considered the £250 consultation threshold was not met.

Decision and Reasons

50. Once again, the tribunal was not satisfied, on the evidence presented, that these works should have been treated by the Respondent as separate programmes of work. The works to the front doors of the blocks and the entry phone system were carried out at around the same time and should, in our view have been regarded by the Respondent as one programme. As the total cost was over the statutory consultation threshold of £250 per tenant, the consultation procedures should have been followed.

51. Furthermore, having regard to the decision in ***Phillips v Francis*** when assessing if the £250 threshold is met for the purposes of the statutory consultation requirements, this tribunal is of the view that it has to have regard to all the qualifying works carried out by the Respondent in the service charge year.

52. The Respondent should have therefore consulted in respect of all the works carried out. It did not do so and, therefore, this tribunal determines that the Applicants total contribution to all sets of works is limited to £250. That sum is payable by the Applicants and is reasonable in amount given that there was no challenge to the need for the works or the quality of the work carried out.

Additional challenges to service charge items

Repairs and Maintenance

53. The Applicants did not pursue their challenge to an invoice from Bradshaw Electrics dated 03.02.06. Nor did they pursue any other challenges under this head of expenditure for any other service charge years except for the following:

2006/2007 Service Charge Year

The Applicants' Case

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54. Two invoices from Duncan Phillips were in issue. One for £235 dated 25.05.06 refers to replacing a hopper at flat 7. The second, dated 11.05.06, refers to *"resolving a leaking overflow pipe in tank in loft above flat 8 and replacing defective hopper in flat 7"*.

55. The Applicants contended that there appeared to be duplication of work relating to replacing the hopper.

The Respondent's Case

56. Ms Kemp believed that the earlier invoice was likely to relate to identification of the source of the problem and the second to actual replacement of the hopper.

Decision and Reasons

57. We consider the sums in dispute to be payable by the Applicant and that the amount demanded is reasonable. We accept Ms Kemp's explanation and are of the view that it would have cost significantly more than £50 to replace a defective hopper.

2012/13 Service Charge Year

The Applicants' Case

58. The invoices totalling £3,150.64 at **[110-112]** are all from MET Property Maintenance Ltd and concern attendance in order to identify the sources of various leaks from one flat into another together with associated repair and redecoration works.

59. The Applicants dispute that the costs of these works were properly chargeable by way of a service charge as opposed to being the responsibility of the individual tenants under the terms of their lease.

The Respondent's Case

60. In its Statement of Case **[119]** the Respondent states that *"these issues are not carried out under the service charge but under the insurance cover"*. The evidence from Ms Kemp and Ms Taylor at the hearing was that insurance claims were submitted for the cost of work carried out and that the insurance company would subsequently repay the costs of the work less the appropriate excess.

Decision and Reasons

61. The tribunal was not clear from the evidence provided that these sums were, in fact, charged to the service charge account. The copy 2012/13 income and expenditure account provided by Ms Kemp at the hearing shows only the sum of £2,055 under the heading of repairs and maintenance. However, the payment schedule she also provided shows the sum of £3,150.60 being paid to MET on 11.02.13.

62. For the avoidance of doubt if, in fact, the sums have been charged to the service charge account then the tribunal determines that the first invoice in the sum of £375 is payable by the Applicants in their apportioned share and that the amount is reasonable. This is because it concerns attendance to trace the source of a water leak and, as such, would fall within the Respondent's duties in terms of maintenance of the Building.

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63. However, the remaining two invoices in the sum of £1,125.64 and £1,650 are not, in the tribunal's view, chargeable to the service charge account as, on the evidence available, they concern the carrying out of repairs and redecoration for which there was no evidence that these fell within the Respondent's repairing or maintenance covenant (as opposed to being the responsibility of the tenants of the flats concerned).

Gardening

The Applicants Case

64. The sums shown in the service charge accounts in respect of gardening are as follows:

2006/7	£1,622
2007/8	£1,410
2008/9	£1,995
2009/10	£1,187
2010/11	£656
2011/12	£1,820
2012/13	£1,656

65. However, these sums are not reflected in the Applicants Scott schedule which records £2,091.50 as in dispute for the 2007/8 service charge year and £2,751.39 for 2009/10. In the tribunal's view this disparity is likely to be due to the fact that the Applicants have prepared that schedule based on their inspection of invoices and payments made by the Respondent. However, the date of an invoice or the date that payment is made may relate to services provided in an earlier service charge year to the date of demand or payment. It is the service charge accounts that are the most reliable source of information as these should be prepared following reconciliation of the relevant documentation.

66. The Applicants asserted that the charges for all years were too high for the service provided.

The Respondent's Case

67. Ms Kemp informed the tribunal that between 2006 and May 2011 gardening services were provided by RJB Gardeners who were paid £35 per visit and who visited twice a month up to November and then once a month between November and January. Two gardeners would spend between an hour and 90 minutes on site. In May 2011 they changed contractors to Lloyds Cleaning Company who charged £61 per month with the same pattern of visits as RJB Gardeners.

68. The work carried out included cutting of lawns; weeding and maintaining hedges. The area of garden involved is about 150ft x 60ft.

Decision and Reasons

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69. The tribunal determines that the sums shown in the service charge accounts for the years 2006/7 to 2012/13 are payable by the Applicants and that the sums have been reasonably incurred.

70. Whilst the accounts show a considerable fluctuation in cost there is insufficient evidence to lead us to conclude that these costs are excessive. The garden area is substantial and the monthly contribution per tenant averages out at £10.26 per month. The highest cost of £1,995 for 2008/9 amounts to £13.85 per flat per month, a sum that is not excessive for the work in question.

Cleaning

The Applicants Case

71. The sums shown in the service charge accounts in respect of gardening are as follows:

2006/7	£1,428
2007/8	£1,715
2008/9	£1446
2009/10	£1,486
2010/11	£1,510
2011/12	£910
2012/13	£577

72. Whilst the Applicants referred to cleaning costs being in dispute in their application notice **[13]** cleaning costs are not specified as being in dispute in either of their two Scott Schedules at **[51]** and **[153]**. There is no specific challenge to the costs set out in their Statement of Case **[45]**.

73. At the hearing their contention was that the costs incurred were excessive and that given their belief that there was no electricity point in the communal areas they do not see how the cleaner could have vacuumed the areas in question.

The Respondent's Case

74. Ms Kemp's evidence was that Nina Dust carried out the cleaning between 2008 up to August 2012. She charged £67.40 per month for two visits **[107]**. She vacuumed the stairs in both blocks as well as dusting down the skirting boards and bannister areas. Whilst there were no complaints from tenants they did, eventually, replace her because spot checks had revealed that the standard of cleaning was not satisfactory. She was then replaced by Lloyds Cleaning Company who charge £18.85 per visit. They do the same work that she did and with the same frequency.

Decision and Reasons

75. Given the acknowledgment made by Ms Kemp that Ms Dust had not been performing the cleaning to the standard required and given the significant reduction in costs secured since her replacement by Lloyds Cleaning Company the evidence indicates that Ms Dust's charges were too high. Whilst some costs savings may have

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resulted from the economy of scale of having Lloyds Cleaning Company doing both cleaning and gardening, given the given fairly small size of the communal areas to be cleaned the tribunal determines that the amount that is payable by the Applicants and which is reasonable for them to pay is their apportioned share of £20.00 per visit up to the date that Lloyds Cleaning Company were appointed and thereafter the sum being paid to that company, namely, £18.85 per visit.

Insurance

The Applicants' Case

76. The Applicants challenged the costs incurred in respect of the following premiums:

2006/7 £3,528

2007/8 £4,027

2008/9 £4,478

77. This was on the basis that premiums dropped to £2,995 in 2009/10 which led them to believe that the costs incurred were excessive. They had obtained their own quotes of £1,191 and £1,445 **[85-100]**.

The Respondent's Case

78. Ms Kemp's evidence was that the costs savings reflected a change in broker and in insurer. They changed brokers as the new brokers had access to better deals. Those brokers then recommended a change in insurer to Sun Alliance.

79. As for the quotes obtained by the Applicants she considered these were not like for like quotes and did not take into account the significant claims history for the Building.

Decision and Reasons

80. The tribunal determines that the sums in dispute are payable by the Applicants in full (in their apportioned share) and that the sums have been reasonably incurred.

81. Even in the most expensive year, 2008/9 the total cost per flat equates to significantly less than £400 per annum. That is not a sum that the tribunal considers excessive for a development of this size. We accept Ms Kemp's evidence that they go to market each year **[135]** to secure the best deal and agree with her submission that the quotes obtained by the Applicants are of limited evidential value given that they are not like for like quotes; do not take into account claims history; and because we do not know if the policy terms and conditions are comparable. Changing broker and testing the market is clearly reasonable.

Management Fees

The Applicants Case

82. The sums shown in the service charge accounts in respect of management fees are as follows:

2006/7 £1,500

2007/8 £1,511

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2008/9	£1,600
2009/10	£1,287
2010/11	£2,007
2011/12	£2,145
2012/13	£2,145

83. The Applicants challenged all of these sums on the basis that the sums were unreasonable given the level of service provided.

The Respondent's Case

84. The Respondent's position was that they are reappointed following each AGM of the Respondent company and that the costs are reasonable.

Decision and Reasons

85. For the reasons stated above we consider that the agreement with Duncan Phillips is a QLTA and that because of the failure to follow the relevant statutory consultation requirements the sum that is payable by the Applicants is limited to £100 in respect of each service charge year in dispute.

86. If the statutory cap had not applied, we would, in any event, have made a substantial limitation to the amount that it was reasonable for the Applicants to pay towards management fees given wholesale non-compliance with the statutory consultation framework set out in s.20 of the 1985 Act as well as what appears to be the informal and not very transparent way in which management functions have been performed. This includes the lack of written specifications before instructing contractors to carry out works; the lack of specifications concerning the gardening and cleaning contracts; the lack of any evidence of a planned preventative maintenance programme for the Building.

Accounts and Professional Fees

87. The service charge accounts for the years 2007/8 to 2012/13 inclusive show the sum of £530 having been incurred under the heading of "Accounts/Companies House". No such heading appears in the 2006/7 accounts but it appears that these are reflected in the £295 sum stated as incurred for professional fees.

88. The Applicants assertion was that these were costs incurred by Duncan Phillips and are included as part of its management fee and not chargeable as a separate item of expenditure.

The Respondent's Case

89. The Respondent's position is that these appear as a separate item on the annual budget and that the sums were reasonable.

Decision and Reasons

90. Although the 2006/7 accounts appear to have been prepared by a firm of accountants this does not appear to be the case for subsequent years. Instead, the accounts have been prepared by Duncan Phillips.

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91. The tribunal agrees with the Applicants that the costs incurred in preparation of the annual accounts are included in Duncan Phillips management fee. The agreement between Duncan Phillips and the Respondent **[82]** states that the standard management service includes *"Keeping appropriate accounting records, including setting an estimated annual budget, issuing service charge demands.....preparing year end accounts and arranging for these to be audited by an independent firm of accountants."*

92. None of the accounts have been the subject of auditing (and nor does the lease appear to require this). Nor did the Respondent draw the tribunal's attention to any other provision of the lease that entitles it to recover these sums as a separate item.

93. As such, the tribunal determines that no sum is payable by the Applicants for this item for the service charge years 2007/8 to 2012/13 inclusive.

Bins

94. The sums shown in the service charge accounts in respect of bins are as follows:

2006/7	£47
2007/8	£800
2008/9	£652
2009/10	£978
2010/11	£1,193
2011/12	£794
2012/13	£942

The Applicants' Case

95. The Applicants contended that these costs should be included within the costs of cleaning.

The Respondent's Case

96. Ms Kemp explained that the costs related to the costs of hire of three large bins from the local authority and the costs paid to the local authority to empty them and to remove bulky items.

Decision and Reasons

97. The tribunal accepts Ms Kemp's explanation and considers these sums to be payable by the Applicants in their apportioned share and reasonable in amount.

Sundries

98. The Applicant had challenged the sums paid to Ms Goodman to cover the cost of her flights to attend the AGM or EGM's of the Respondent.

99. At the hearing Ms Kemp agreed that there was no provision under the lease to recover these costs and she conceded that they should and will be removed from the service charge account. The tribunal was informed that these amounted to the following:

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2007/8	£257.64
2008/9	£173 and £306
2009/10	£273.85
2010/11	£110.08
2011/12	£199
2012/13	£51.50

Legal Costs

The Applicants 'Case

100. The Applicants challenged the sum of £823 incurred in the 2008/9 service charge year. This comprised a fee paid to counsel for legal advice. The Applicants thought it related to advice about suing Lee Valley Building Services and that as the advice was only required because of the Respondent's default in not consulting and securing a proper specification of works, that the sum demanded was unreasonable.

The Respondent's Case

101. Ms Kemp explained that the costs actually related to advice in respect of alterations that it was said were carried out to the Property by the Applicants without the Respondent's consent and difficulties that they had had in obtaining access to the Property. No copy of the advice, or a summary of its contents appeared in the tribunal bundle.

Decision and Reasons

102. In the tribunal's determination the costs of this advice are not payable by the Applicants. Whilst clause 3(9) of the Applicants' lease contains a covenant by the Applicants to pay towards legal fees, this is specifically stated to relate to costs *"incurred by the Lessors in or in contemplation of any proceedings in respect of this Lease under Sections 146 and 147 of the Law of Property Act 1925...."*

103. It was common ground that no such proceedings were pursued and that no s.146 notice was served. At the hearing Ms Kemp handed up to the tribunal a copy of a letter from John Bays & Co solicitors dated 08.09.08 that refers to works being carried out in the Property without consent and a request to provide access to the Property. However, she conceded that there was no evidence before the tribunal to demonstrate that proceedings under sections 146 or 147 were contemplated. As such, whilst, in principle these costs might have been recoverable if there was evidence of contemplation of the Respondent serving a s.146 notice, none was before the tribunal.

104. On the available evidence it cannot be said that these legal costs were incurred in contemplation of or as incidental to the service of such a notice.

105. At the hearing the Applicants also mentioned legal costs of £511 incurred in the 2010/11 service charge year and £250 in the 2011/12 service charge year. However,

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as these had not been challenged by the Applicants prior to the hearing the tribunal considers the Respondent had not had sufficient notice that these sums were in issue and that it would be inequitable to allow the Applicants to amend their claim to include a challenge at such a late stage.

Section 20C Application

106. The Applicants sought an order under section 20C of the Landlord & Tenant Act 1985 Act that none of the costs of the Respondent incurred in connection with these proceedings should be regarded as relevant costs in determining the amount of service charge payable by the Applicants.

107. At the hearing Ms Kemp confirmed that no costs would be passed through the service charge save for the travelling costs of her and Ms Taylor attending the tribunal hearing. Given the degree to which the Applicants have succeeded in this application the tribunal considers it just and equitable to make an order under s.20C so that the Respondent may not pass *any* of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Reimbursement of Fees

108. The Applicants sought reimbursement of the fees paid in bringing this application. Having heard the submissions from the parties and taking into account the determinations above, the tribunal directs that the Respondent refund any fees paid by the Applicant.

Costs

109. The Applicants sought an order that the Respondent pay to them the costs incurred in respect of provision of Mr Tasker's report in the sum of £575 and the costs of his attendance at the tribunal hearing, also in the sum of £575.

110. Ms Kemp resisted such an order on the basis that they were not informed in advance that Mr Tasker would be attending and because the costs concerned were unreasonable.

Decision and Reasons

111. The tribunal has no general power to award costs against a losing party. Under Rule 13(1)(b) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 the tribunal may make an order against the Respondent in respect of costs if it has acted unreasonably in defending or conducting the proceedings.

112. The tribunal was concerned that the Respondent had not complied with the tribunal's direction made at the pre-trial review to include copies of all documents on which it intended to rely. A considerable number of documents were handed up on the day of the hearing and Duncan Phillips had clearly taken the view that there were too many copy invoices for it to include with the Respondent's Statement of Case **[117]**.

113. However, on balance, the tribunal is not satisfied that the Respondent has conducted itself unreasonably in these proceedings. Even if that was the case, an order in respect of Mr Tasker's costs would be inappropriate. Paragraph 10 of the

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directions of 08.10.13 allowed each party to rely on expert evidence. Mr Tasker, in his report, specifically states that the report is *not* to be regarded as expert evidence and therefore does not fall within the scope of paragraph 10.

114. Whilst the Applicants were, of course, entitled to obtain a report from Mr Tasker and to bring him to the tribunal hearing to assist them that does not mean that the costs incurred can be recovered from the Respondent by way of penal costs. Mr Tasker's report was not of significant value to the tribunal in determining the issues in dispute in these proceedings. It provided a helpful description of the Property and Building but most of its contents relate to their current condition. This application was concerned primarily with lack statutory consultation and challenges to specific items of service charge expenditure, none of which required the provision of a report from Mr Tasker and certainly did not require his attendance at the tribunal hearing. The tribunal therefore makes no order in respect of costs against the Respondent.

Concluding Remarks - Dispensation

115. During the course of the hearing the tribunal informed the parties that it was open to the Respondent to apply for dispensation from the consultation requirements (in respect of the agency agreement with Duncan Phillips and the qualifying works referred to above) in the event that the tribunal found that it had not complied with the relevant statutory requirements.

116. Ms Kemp and Ms Taylor informed the tribunal that they were not in a position to make such an application at the hearing. It remains open to the Respondent to do so in light of this decision.

Name: Amran Vance **Date: 04.03.14**

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Annex

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18 - Meaning of "service charge" and "relevant costs"

(1) In the following provisions of this Act "service charge" means an amount payable by a Tenant of a dwelling as part of or in addition to the rent –

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the Landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the Landlord, or a superior Landlord, in connection with the matters for which the service charge is payable

.

(3) For this purpose -

(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19 – Limitation of service charges: reasonableness

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

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Section 20C Limitation of service charges: costs of proceedings

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal or the First-tier Tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—

[.....]

(ba) in the case of proceedings before the First-tier Tribunal, to the tribunal;

[.....]

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

20ZA Consultation requirements: supplementary

(1) Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

(2) In section 20 and this section—

"qualifying works" means works on a building or any other premises, and

"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

(a) if it is an agreement of a description prescribed by the regulations, or

(b) in any circumstances so prescribed.

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(4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord—

(a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,

(b) to obtain estimates for proposed works or agreements,

(c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,

(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and

(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6) Regulations under section 20 or this section—

(a) may make provision generally or only in relation to specific cases, and

(b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Section 27A – Liability to pay service charges: jurisdiction

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to –

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

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(3) An application may also be made to the appropriate tribunal tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -

(a) the person by whom it would be payable,

(b) the person to whom it would be payable,

(c) the amount which would be payable,

(d) the date at or by which it would be payable, and

(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -

(a) has been agreed or admitted by the Tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

[.....]

Service Charges (Consultation Requirements) (England) Regulations 2003.

SCHEDULE 1

CONSULTATION REQUIREMENTS FOR QUALIFYING LONG TERM AGREEMENTS OTHER THAN THOSE FOR WHICH PUBLIC NOTICE IS REQUIRED

Regulation 5(1)

Notice of intention

1

(1) The landlord shall give notice in writing of his intention to enter into the agreement--

(a) to each tenant; and

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(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall--

(a) describe, in general terms, the relevant matters or specify the place and hours at which a description of the relevant matters may be inspected;

(b) state the landlord's reasons for considering it necessary to enter into the agreement;

(c) where the relevant matters consist of or include qualifying works, state the landlord's reasons for considering it necessary to carry out those works;

(d) invite the making, in writing, of observations in relation to the proposed agreement; and

(e) specify--

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate in respect of the relevant matters.

Inspection of description of relevant matters

2

(1) Where a notice under paragraph 1 specifies a place and hours for inspection--

(a) the place and hours so specified must be reasonable; and

(b) a description of the relevant matters must be available for inspection, free of charge, at that place and during those hours.

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

Duty to have regard to observations in relation to proposed agreement

3

Where, within the relevant period, observations are made in relation to the proposed agreement by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

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Estimates

4

(1) Where, within the relevant period, a single nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.

(2) Where, within the relevant period, a single nomination is made by only one of the tenants (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.

(3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate--

(a) from the person who received the most nominations; or

(b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or

(c) in any other case, from any nominated person.

(4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate--

(a) from at least one person nominated by a tenant; and

(b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).

Preparation of landlord's proposals

5

(1) The landlord shall prepare, in accordance with the following provisions of this paragraph, at least two proposals in respect of the relevant matters.

(2) At least one of the proposals must propose that goods or services are provided, or works are carried out (as the case may be), by a person wholly unconnected with the landlord.

(3) Where an estimate has been obtained from a nominated person, the landlord must prepare a proposal based on that estimate.

(4) Each proposal shall contain a statement of the relevant matters.

(5) Each proposal shall contain a statement, as regards each party to the proposed agreement other than the landlord--

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(a) of the party's name and address; and

(b) of any connection (apart from the proposed agreement) between the party and the landlord.

(6) For the purposes of sub-paragraphs (2) and (5)(b), it shall be assumed that there is a connection between a party (as the case may be) and the landlord--

(a) where the landlord is a company, if the party is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(b) where the landlord is a company, and the party is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(c) where both the landlord and the party are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;

(d) where the party is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or

(e) where the party is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.

(7) Where, as regards each tenant's unit of occupation and the relevant matters, it is reasonably practicable for the landlord to estimate the relevant contribution attributable to the relevant matters to which the proposed agreement relates, each proposal shall contain a statement of that estimated contribution.

(8) Where--

(a) it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (7); and

(b) it is reasonably practicable for the landlord to estimate, as regards the building or other premises to which the proposed agreement relates, the total amount of his expenditure under the proposed agreement,

each proposal shall contain a statement of that estimated expenditure.

(9) Where--

(a) it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (7) or (8)(b); and

(b) it is reasonably practicable for the landlord to ascertain the current unit cost or hourly or daily rate applicable to the relevant matters,

each proposal shall contain a statement of that cost or rate.

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(10) Where the relevant matters comprise or include the proposed appointment by the landlord of an agent to discharge any of the landlord's obligations to the tenants which relate to the management by him of premises to which the agreement relates, each proposal shall contain a statement--

(a) that the person whose appointment is proposed--

(i) is or, as the case may be, is not, a member of a professional body or trade association; and

(ii) subscribes or, as the case may be, does not subscribe, to any code of practice or voluntary accreditation scheme relevant to the functions of managing agents; and

(b) if the person is a member of a professional body trade association, of the name of the body or association.

(11) Each proposal shall contain a statement as to the provisions (if any) for variation of any amount specified in, or to be determined under, the proposed agreement.

(12) Each proposal shall contain a statement of the intended duration of the proposed agreement.

(13) Where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, each proposal shall contain a statement summarising the observations and setting out the landlord's response to them.

Notification of landlord's proposals

6

(1) The landlord shall give notice in writing of proposals prepared under paragraph 5--

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall--

(a) be accompanied by a copy of each proposal or specify the place and hours at which the proposals may be inspected;

(b) invite the making, in writing, of observations in relation to the proposals; and

(c) specify--

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

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(3) Paragraph 2 shall apply to proposals made available for inspection under this paragraph as it applies to a description of the relevant matters made available for inspection under that paragraph.

Duty to have regard to observations in relation to proposals

7

Where, within the relevant period, observations are made in relation to the landlord's proposals by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

Duty on entering into agreement

8

(1) Subject to sub-paragraph (2), where the landlord enters into an agreement relating to relevant matters, he shall, within 21 days of entering into the agreement, by notice in writing to each tenant and the recognised tenants' association (if any)--

(a) state his reasons for making that agreement or specify the place and hours at which a statement of those reasons may be inspected; and

(b) where he has received observations to which (in accordance with paragraph 7) he is required to have regard, summarise the observations and respond to them or specify the place and hours at which that summary and response may be inspected.

(2) The requirements of sub-paragraph (1) do not apply where the person with whom the agreement is made is a nominated person or submitted the lowest estimate.

(3) Paragraph 2 shall apply to a statement, summary and response made available for inspection under this paragraph as it applies to a description of the relevant matters made available for inspection under that paragraph.

Schedule 4

Part 2

Consultation Requirements for Qualifying Works for Which Public Notice is Not Required

Notice of intention

8

(1) The landlord shall give notice in writing of his intention to carry out qualifying works--

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(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall--

(a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;

(b) state the landlord's reasons for considering it necessary to carry out the proposed works;

(c) invite the making, in writing, of observations in relation to the proposed works; and

(d) specify--

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

Inspection of description of proposed works

9

(1) Where a notice under paragraph 1 specifies a place and hours for inspection--

(a) the place and hours so specified must be reasonable; and

(b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

Duty to have regard to observations in relation to proposed works

10

Where, within the relevant period, observations are made, in relation to the proposed works by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

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Estimates and response to observations

11

(1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.

(2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.

(3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate--

(a) from the person who received the most nominations; or

(b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or

(c) in any other case, from any nominated person.

(4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate--

(a) from at least one person nominated by a tenant; and

(b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).

(5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)--

(a) obtain estimates for the carrying out of the proposed works;

(b) supply, free of charge, a statement ("the paragraph (b) statement") setting out--

(i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and

(ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and

(c) make all of the estimates available for inspection.

(6) At least one of the estimates must be that of a person wholly unconnected with the landlord.

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(7) For the purpose of paragraph (6), it shall be assumed that there is a connection between a person and the landlord--

(a) where the landlord is a company, if the person is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(b) where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;

(d) where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or

(e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.

(8) Where the landlord has obtained an estimate from a nominated person, that estimate must be one of those to which the paragraph (b) statement relates.

(9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by--

(a) each tenant; and

(b) the secretary of the recognised tenants' association (if any).

(10) The landlord shall, by notice in writing to each tenant and the association (if any)--

(a) specify the place and hours at which the estimates may be inspected;

(b) invite the making, in writing, of observations in relation to those estimates;

(c) specify--

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(11) Paragraph 2 shall apply to estimates made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

Duty to have regard to observations in relation to estimates

12

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Where, within the relevant period, observations are made in relation to the estimates by a recognised tenants' association or, as the case may be, any tenant, the landlord shall have regard to those observations.

Duty on entering into contract

13

(1) Subject to sub-paragraph (2), where the landlord enters into a contract for the carrying out of qualifying works, he shall, within 21 days of entering into the contract, by notice in writing to each tenant and the recognised tenants' association (if any)--

(a) state his reasons for awarding the contract or specify the place and hours at which a statement of those reasons may be inspected; and

(b) there he received observations to which (in accordance with paragraph 5) he was required to have regard, summarise the observations and set out his response to them.

(2) The requirements of sub-paragraph (1) do not apply where the person with whom the contract is made is a nominated person or submitted the lowest estimate.

(3) Paragraph 2 shall apply to a statement made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

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