11839

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00BY/LSC/2014/0136**
Property	:	**Apartment 27 Waterside, 10 William Jessop Way, Liverpool L1 1DX**
Applicant	:	**Nicholas Clay**
Representative	:	**In person**
Respondent	:	**Half Tide Dock Limited**
Representative	:	**Ms L James, Davies Wallis Foyster and Trowers & Hamlins Solicitors**
Type of Application	:	**Landlord and Tenant Act 1985 sections 27A (1) and 20(c) ("the 1985 Act")**
Tribunal Members	:	**Judge G C Freeman** **Mr K K Kasambara MRICS Expert Valuer Member** **Mr L Bottomley**
Dates and venue of Hearings	:	**11 December 2015, 9 March 2016, and 21 June 2016** **Tribunal Service. Civil and Family Court, Vernon Street, Liverpool, L2 2BX**
Date of Decision	:	**5 July 2016**

DECISION ON APPLICATION UNDER S 27A(1) AND S 20C OF LANDLORD AND TENANT ACT 1985

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ORDER

The Service Charge for the Property for the each period in question is to be adjusted to take into account the following:-

The amount payable in respect of the Property to Lambert Smith Hampton for management fees or any other fees in respect of Waterside, 10 William Jessop Way, Liverpool is to be £100 per year for each service charge year by reason of the Respondent's failure to comply with section 20ZA of the 1985 Act.

The Tribunal finds that the reasonable expenses incurred under the Part 2 Service Charge attributable to the Property are to be one equal 64th part of the total of those expenses.

No part of the Respondent's costs incurred in connection with this Application are to be included in the service charge payable by the Applicant for the period which is the subject of the application.

No order for costs is made.

Preliminary

1. The Tribunal received applications dated 17 December 2014 from the Applicant for an order appointing a manager for Waterside, 10 William Jessop Way Liverpool L1 1DX and for the determination and liability to pay and reasonableness of service charges for the Property. The Applicant included in the latter application an application under section 20C of the 1985 Act. The years covered by the Application are 2011 to 2014 inclusive.

2. Directions were made by the Tribunal in both applications, dated 23 January 2015. The Respondent requested a case management conference which was held on 17 June 2015. The application to appoint a manager was heard on 11 December 2015 and the decision of the Tribunal was handed down orally on that date. The Tribunal indicated that the full reasons for its decision would be given at the end of the determination of the hearing relating to the service charges under section 27A of the 1985 Act. This is the Tribunal's decision on whether the service charge is reasonable and payable. It should be read in conjunction with the application to appoint a manager under Case Number **MAN/00BY/LAM/2014/0012**.

Inspection

3. The Tribunal inspected the Property on the morning of the hearing on 11 December 2015. The Applicant did not attend the inspection. A further inspection took place in the presence of the Applicant on 21 June 2016. The result of the inspection and a description of the Property is set out in the decision dated 11 December 2015. The Tribunal did not note any

substantial alteration in the layout or condition of the Property on inspection on 21 June 2016.

Background

4. The Property forms part of a former dock complex in the centre of Liverpool on which was built 122 self-contained residential apartments in the first decade of this century. The development consists of three blocks on eight floors. Block 1, nearest the Liver Building, consists of 34 apartments. Block 2 comprises 55 apartments and Block 3 comprises 33 apartments. There are 64 parking spaces. In order to accommodate these spaces, the ground and first floor levels of the Blocks consist of a "stacker" parking system enabling the parking of twelve cars in Block 1, fourteen cars under Block 2, and six cars under Block 3, by means of a lift operated by the relevant owner of a space. The remaining parking spaces are in bays, marked with studs set into the cobbles of the dock area.

5. The Applicant's apartment is within Block 1. His car parking space is within the stacker system to that Block.

Lease and Management Scheme

6. The Respondent produced a copy of the sub Underlease of the Property. It is dated 9 August 2010 and is made between the Respondent, (Half Tide Dock) Limited ("the Landlord"), of the first part, City Lofts Half Tide Dock Limited ("the Owner") of the second part and the Applicant and Kathleen Anne Mary Clay ("the Tenant") of the third part. The lease grants the term of years starting on 1 January 2007 and ending on 28 May 2146. It reserves an initial rent of £250 per year for the first twenty years of the term. Thereafter it is reviewed in accordance with the provisions of the Sixth Schedule.

7. The Respondent is a party to the lease and covenants in clause 4.2 to provide the services set out in the Fourth Schedule in return for the payment of a service charge by all flat owners. The Respondent has appointed Lambert Smith Hampton ("LSH") as managing agent for the development.

8. For the purposes of this decision, the relevant clauses in the Lease relating to payment of service charge are as follows:

   "1. INTERPRETATION

   ...

   "Car Park: those parts of the property designated for car parking"

   ...

*"**Tenants Part A Proportion**: means the fair and proper proportion of the Expenditure attributable to the Building excluding the cost attributable to the Car Park Provided That the Landlord shall have the right acting in the interests of good estate management to make fair and reasonable allowances in such calculation for the differences in the repairs services and facilities provided or supplied to the Premises or adopt such other method of calculation of the proportion of such sums attributable to the Premises as is fair and reasonable in the circumstances*

*"**Tenants Part B Proportion**: means the fair and proper proportion of that part of the Expenditure attributable to the Car Park Provided That the Landlord shall have the right acting in the interests of good estate management to make fair and reasonable allowances in such calculation for the differences in the insurance of or the repairs services and facilities provided or supplied in respect of the Car Parking Space or adopt such other method of calculation of the proportion of such sums attributable to the Car Parking Space as applicable as is fair and reasonable in the circumstances*

. . .

"3.1.3 to pay on demand to the Landlord as additional rent a fair and reasonable proportion (to be determined by the Landlord) of all sums due under clause 2 of the Headlease in respect of service charge"

9. Part A of the Fourth Schedule provides for the service charge year to run from 1 January to 31 December in each year and for proper records to be kept. Part B sets out the costs to be covered by the service charge. Part C sets out the Car Park Costs. Sub clause 6.3 of Part C includes the cost of *"inspecting repairing rebuilding redecorating cleaning or otherwise treating as reasonably necessary in keeping all parts . . . of the Car Park in good and substantial repair, order and condition and renewing and replacing all worn or damaged parts thereof"*

The Applicant's Case

10. Both parties submitted written statements of case which were copied to the parties. After the hearing had commenced the Applicant also made further applications to the Tribunal and attempted to introduce further allegations – see, for example, the undated "Applicant's Final Statement in Response to the Respondents Response" The Tribunal did not consider this because it had not been submitted in accordance with the Directions. The Applicant relied on numerous statements dated 5 December 2015 [ ].

11. The Applicant does not challenge the service charge payable to the head landlord. The Applicants case objecting to the reasonableness of the service charge payable under the sub Underlease can be summarised thus:

11.1 Business Investment.

11.2 Quality of Management by the Respondent and LSH.

11.3 Unfair and unreasonable management by the Respondent and LSH.

11.4 The capital value of Property has been adversely affected.

11.5 The appointment of LSH as managing agents constituted a Long Term Agreement requiring consultation within the meaning of section 20ZA above.

11.6 LSH's contractual arrangements with Livesey Contracting and Maintenance ("LCM") constituted a Long Term Agreement requiring consultation within the meaning of section 20ZA above.

11.7 The apportionment of the service charge between owners is unreasonable.

11.8 Overspend on service charge items in the relevant service charge years.

11.9 Grossly unfair and unreasonable increases in service charge for the relevant years.

11.10 Poor cost control of expenditure.

11.11 Failure to adhere to the Service Charge Residential Management Code issued by the Royal Institution of Chartered Surveyors (2nd Edition).

11.12 Non-compliance with the Companies Acts in relation to the conduct of the Respondent.

12. The precise details of the allegations are dealt with under "Discussion" below.

The Respondent's Case

13. The Respondent provided a statement, extensive copy invoices and, at the Case Management Conference held on 17 June, a Scott Schedule setting out the points raised in the Applicant's case and further comments (to that date) with the Respondent's replies. Helpfully, the Respondent's solicitor also provided a skeleton argument.

The Law

14. The relevant statute law is set out in the Appendix.

15. The Tribunal has to apply a three stage test to the matter referred to it under section 27A:-

15.1 Are the service charges recoverable under the terms of the Lease? This depends on common principles of construction, and interpretation of the Lease.

15.2 Are the service charges reasonably incurred and/or for services of a reasonable standard under section 19 of the Act?

15.3 Are there other statutory limitations on recoverability, for example consultation requirements of the Landlord and Tenant Act 1985 as amended?

Discussion

16. It was not disputed that the amount payable by the Applicant for the provisions of services within the Property is a variable service charge within the meaning of the Act and that the Tribunal had jurisdiction to consider the amount payable, to whom and by whom it should be paid and the reasonableness of the amount.

17. Turning to 15.2 above, in considering section 19 of the 1985 Act, the Tribunal must consider relevant costs in determining the amount of a service charge.

17.1 only to the extent that they are reasonably incurred; and

17.2 where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard.

18. In considering the above, the onus is on the Applicant to adduce evidence that the costs have not been reasonably incurred or the work or services are not of a reasonable standard. Having done so, the burden then shifts to the Respondent to prove otherwise.

19. In the light of the above the Tribunal considered the various points raised at paragraph 11 above.

Business Investment

20. The Applicant bought the Property as an investment to produce an income during his retirement. He alleges the capital value of this investment has been adversely affected by the excessive service charge. This point can be dealt with simply. The Tribunal has no jurisdiction to consider the capital value of the Property or how it may affect the amount of service charge payable.

Quality of Management

21. The Tribunal found that the Applicant did not adduce sufficient evidence to satisfy the Tribunal on the balance of probabilities that the services of management were not carried out or were not of a reasonable standard. Put simply, the Applicant made many allegations of poor service but produced no evidence in support of this contention. The cost of management does not necessarily mean the services provided were to an unreasonable standard.

Unfair and Unreasonable Management by LSH and LCM

22. This is essentially the same complaint as 21 above. The Tribunal dismissed it for the same reasons.

The Capital Value of Property has been Adversely Affected

23. This is essentially the same complaint as 20 above. The Tribunal dismissed it for the same reasons.

The appointment of LSH as managing agents constituted a Long Term Agreement requiring consultation within the meaning of section 20ZA above

24. There are limitations on the recovery of costs from tenants by way of service charges where a "qualifying long term agreement" ("QLTA") has been entered into, unless the landlord has complied with the certain consultation requirements or those requirements have been dispensed with – see section 20 of the 1985 Act.

25. A QLTA "means ... an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than 12 months" (section 20ZA(3) of the 1985 Act). Broadly, failure to go through the consultation procedure limits the maximum sum which may be recovered under the agreement to £100 per year.

26. The Tribunal examined an undated copy of the Management Agreement provided by the Respondent. The commencement date is stated to be 1 April 2011 and its expiry date is 31 March 2014, and is defined as the "Term" in Clause 1. Clause 2.1 states:-

"*2.1 The Client* [the Respondent] *appoints the Consultant* [LSH] *to provide the Services set out in Schedule 1 for the Term in return for the Fee set out in Schedule 2.*

"*2.2 Providing that no notice has been given in accordance with clause 9.1 the Consultant's appointment shall continue after the Expiry Date until terminated by either party in accordance with this Agreement*".

27. Curiously, clause 9.1 provides that either party may terminate the Consultant's appointment either before or after the expiration of the Term by not less than three months' notice in writing.

28. In support of his application under this head, the Applicant referred to the case of *Poynders Court Limited v GLS Property Management Limited* [2012 UKUT 339 LC UTLC Case Number: LRX/121/2011].

27. In response, the Respondent claimed that the agreement is not a QLTA by virtue of the right to terminate it on three months' notice under clause 9.1.

28. The Tribunal considered the decision of the Upper Tribunal in Poynders Court Limited. The facts of that case are similar to the present circumstances. In Poynders Court, however, there was no definition in the management agreement of the period during which it would run. It was alleged to be a "rolling contract" determinable on three months' notice. Unlike that case, there is a clear definition of the period for which it would run in the management agreement between the Respondent and LSH. It is three years. That is in excess of the period stipulated by the 1985 Act. Nevertheless the agreement under consideration by the Tribunal may be determined on three months' notice at any time. Is this a QLTA?

29. Following the decision in Poynders Court, the Tribunal had to consider and differentiate between *duration* and *termination*. HH Judge Nigel Gerald in Poynders stated: "*The section 20ZA definition is directed at the question of whether an agreement has been entered into for a term or duration of more than 12 months. That question is not answered by saying it can be terminated on three months' notice: it is not an agreement to provide the services for three months, but an agreement to provide them forever, or indefinitely, unless and until terminated by three months' prior notice*".

30. Of course, in the present case we have the added complication of the Term, which is for a period in excess of twelve months. In the light of this the Tribunal decided that the management agreement is one to which section 20 of the 1985 Act applies. No evidence was produced that any consultation procedures had been entered into. The Tribunal therefore decided that the maximum sum recoverable by way of management charges from the Applicant is therefore £100 for each of the service charge years 2011 to 2014 inclusive.

LSH's contractual arrangements with Livesey Contracting and Maintenance ("LCM") constituted a Long Term Agreement requiring consultation within the meaning of section 20ZA above.

31. By the same token, the Applicant claims that the section applies to the contractual arrangements between LSH and LCM.

32. It was claimed on the part of LSH that LCM was a general contracting company employed by LSH to carry out work on their behalf to a number of properties managed by LSH. Section 20ZA(2) of the 1985 Act defines a QLTA as an agreement entered into by *or on behalf of* [emphasis added] the landlord or a superior landlord for a term of more than twelve months. No written agreement between LSH and LCM was produced to the Tribunal and no evidence of the contractual arrangements between the parties was produced.

33. In Poynders Court, the Appellant submitted that a rolling contract would embrace casual or routine contracts for the provision of utilities, cleaning services and such like, including repairs. Whether or not that is so would depend upon the wording and substance of any such contracts. That said, it would be surprising if such contracts would constitute a QLTA as such are usually *ad hoc,* casual contractual arrangements.

34. The Tribunal did not have sufficient evidence to conclude that there was a contractual arrangement between the parties which could have endured for a period longer than twelve months. Therefore they decided that such arrangements between LSH and LCM were not QLTA's within the meaning of the Act

The apportionment of the service charge between owners is unreasonable.

35. It will be seen from paragraph 8 above that there are two elements to the service charge, one for the apartment expenses ("Part A") and the other for the car park expenses ("Part B"). The apportionment of the service charge between the respective flats was based on the floor area of each flat as a proportion of the total floor area of the development. The relevant apportionments were produced to the Tribunal. Service charge can be apportioned in a number of ways – from the simplest – divided equally – to the most complicated – by reference to rateable value or floor area. No evidence was produced to the Tribunal that the actual apportionment was unreasonable and the Tribunal decided not to interfere with the apportionment of the "Part A" service charge.

36. Prior to LSH taking over management of the development, the Part B service charge element was divided between all owners of car parking spaces equally. This meant that the costs of maintaining the stacking car park machinery was borne between all owners of car parking spaces. It was evident from the inspection of the development that this machinery was open to vandalism. There was no method of barring entry to the development at the initial inspection and this situation still prevailed when inspected on 21 June 2016.

37. No member or Director of the Respondent participated in the case. No evidence was given that the Respondent had contemplated, let alone decided, to alter the apportionment of the car park service charge as it is entitled to do under the definition of the Part B service charge, provided

always that such revised apportionment is fair and reasonable. It appears that LSH have decided to alter this without consultation. The Tribunal consider that the Part B definition relates to all car parking spaces (see paragraph 9). Thus the owners of all car parking spaces should contribute equally to the repair and maintenance of the stacker system which forms part of the car park. The present apportionment of the service charge between owners of car parking spaces which makes owners of car parking spaces within stackers solely responsible for their repair is unreasonable.

Overspend on service charge items in the relevant service charge years

Grossly unfair and unreasonable increases in service charge for the relevant years

Poor cost control of expenditure

38. The Tribunal considered these items together because they involve similar allegations. No evidence, as opposed to allegations, of which there were plenty, was provided of any overspend on service charge items, unreasonable increases or poor cost control. The Tribunal decided that no adjustment to the service charge was justified on these grounds.

Failure to adhere to the Service Charge Residential Management Code issued by the Royal Institution of Chartered Surveyors (2nd Edition)

39. The Applicant quoted a number of examples where he alleged there was a breach of the RICS Code. Most of these related to complaints which have been dealt with above, for example, failure to consult on the management agreement with LSH being contrary to section 20ZA of the 1986 Act, being a failure to comply with paragraphs 3.2, 3.16, 3.18., and 7.5, of the Code.

40. To the extent that allegations of breaches are not covered above, paragraphs 3.9, and 13.2 relate to defects and the peace and comfort of tenants. Paragraph 3.9 states that repairs should be carried out promptly. The Tribunal were disappointed to note that on the inspection on 21 June 2016, the entrance security remained the same. However no costs included in the service charge for the periods in question relate directly to the replacement of the entrance bollards, so no adjustment to the service charge in this respect is necessary.

41. Paragraph 8.7 relates to the preparation of budgets. The Tribunal were not satisfied on the evidence before them that the budgets had not been prepared in accordance with the Code. In any event, the Tribunal deals with actual expenditure when considering the service charge payable. Their accuracy or otherwise should not affect the actual amount payable.

42. The Tribunal did not find there was a breach of Paragraphs 12.1, or 20.4 The Managing Agent is clearly LSH as evidenced by the management agreement referred to above.

Non-compliance with the Companies Acts in relation to the conduct of the Respondent.

43. These matters are fully dealt with in the Decision at **MAN/00BY/LAM/2014/0012.** They are not relevant to the consideration of the service charge and the Tribunal makes no further comment.

Section 20C of the 1985 Act

44. Some leases allow a landlord to recover costs incurred in connection with proceedings before the First-tier Tribunal (Lands Chamber) as part of the service charge. The Applicant made an application under s20C of the Act to disallow the costs incurred by the Respondent of the application in calculating service charge payable for the Property, subject, of course, to such costs being properly recoverable under the provisions of the Lease.

45. The Respondent claims that the making of such an order against a residents owned management company having no assets could force the Company into insolvency. The Tribunal disagreed. An order under the section means that the costs cannot be recovered against the Applicant. It does not prevent the recovery of such costs by way of service charge from other members of the Respondent.

46. The Tribunal noted that the Applicant had largely been successful in his application. That being the case, the Tribunal decided it was just and equitable to make an order under the section appropriately.

Costs

47. The Respondent contends that the lease entitles it to recover costs in connection with the case. The case of *Conway v Jam Factory Freehold Limited 2013 UKUT 0592 (LC)* was cited in support, where it was decided that the landlord's legal costs of defending an action under section 24 of the 1987 Act were incurred "in the management of the building", and thus recoverable by way of service charge.

48. There is no provision in the Lease for the Applicant to pay the Respondent's costs in any proceedings brought against the Respondent other than the usual covenant to pay the costs of an incidental to the service of a notice under section 146 of the Law of Property Act 1925, notwithstanding that forfeiture is avoided "unless a competent court orders otherwise". No allegation of a breach of section 146 has been made, nor that a notice under the section was contemplated. The only way such costs may be recovered is by way of service charge.

49. There is now a general right to recover costs in Tribunal proceedings by virtue of section 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Prior to the introduction of these Rules the Tribunal's capacity to make an order to pay costs was limited. The Tribunal noted that the Applicant had largely succeeded in his application. In the circumstances the Tribunal decided it would not be reasonable to make an order for costs.

Appendix

The Law

Section 18 of the Landlord and Tenant Act 1985 ("the 1985 Act") provides:

(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 provides that

(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 provision 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.

Section 27A provides that

(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 date at or by which it is payable, and
- (d) the manner in which it is payable.

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

(3) ....

(4) No application under subsection (1)...may be made in respect of a matter which –

(a) has been agreed by the tenant........

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

No guidance is given in the 1985 Act as to the meaning of the words "reasonably incurred". Some assistance can be found in the authorities and decisions of the Courts and the Lands Tribunal.

In *Veena v S A Cheong* [2003] 1 EGLR 175 Mr Peter Clarke comprehensively reviewed the authorities at page 182 letters E to L inclusive. He concluded that the word "reasonableness" should be read in its general sense and given a broad common sense meaning [letter K].

The Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987) ("the Regulations").

Consultation – Qualifying Works for which Public Notice is not required

Schedule 4 Part 2

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

(a) to each tenant; and

(b) ......

(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

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 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

3. 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.

Estimates and response to observations

4.— (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.

(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

5. 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

6.—(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.

Section 20C provides that

(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 or the First-tier Tribunal (Property Chamber) 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-

(a) in the case of court proceedings to the court before which the proceedings are taking place, or, if the application is made after the proceedings are concluded, to the county court.

(b) in the case of proceedings before a First-tier Tribunal (Property Chamber) to the Tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded to any First-tier Tribunal (Property Chamber).

(c) ....

(d) ....

(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.