



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case reference** : **LON/00AW/LSC/2022/0196**

**HMCTS code (paper, video, audio)** : **Face to Face**

**Property** : **FLATS 4 & 6, 12 LEXHAM GARDENS,  
LONDON, W8 5JE**

**Applicant** : **12 Lexham Gardens RTM Company  
Limited**

**Representative** : **Khurshid Zaman**

**Respondent** : **Ms Elizabeth Ward**

**Representative** : **Mr Lee Dowling (counsel)**

**Type of application** : **For the determination of the liability to  
pay service charges under section 27A  
of the Landlord and Tenant Act 1985**

**Tribunal members** : **Mr A Harris LLM FRICS FCI Arb  
Ms S Phillips MRICS**

**Venue** : **7 March 2023 at 10.00 A at 10 Alfred  
Place, London WC1E 7LR**

**Date of decision** : **15 March 2023**

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**DECISION**

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## **Covid-19 pandemic: description of hearing**

This was a face to face hearing

## **Decisions of the tribunal**

- (1) The tribunal determines that the sum of £3419.29 is payable by the Respondent in respect of the service charges for the disputed works being the balance of 50% of the Respondents proportion of the cost of the major works totalling £6838.58.
- (2) The tribunal makes the determinations as set out under the various headings in this Decision
- (3) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 so that the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge

## **The application**

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Respondent in respect of the service charge year September 2020 to September 2021.

## **The hearing**

2. The Applicant was represented by Mr Kurshid Zaman, a Director of the RTM Company at the hearing and the Respondent was represented by Lee Dowling of Counsel.
3. This hearing was a re-listing of the case which had been previously decided on paper. The Respondent had requested a hearing and the paper determination has been set aside.
4. During the hearing the respondent wished to call a witness, Ms Browne. The tribunal enquired whether there was a witness statement and this was said to have been provided prior to the paper hearing described in the previous paragraph. The witness statement was not in the tribunal's papers for this hearing. The tribunal enquired of the Respondent what the evidence would show, and it was in support of evidence already given regarding the decision-making process of the RTM company. The witness is not an expert witness as to the quality of building work. After considering the matter the tribunal decided not to admit the evidence of the witness without a prior witness statement as this would be unfair

to the Applicant, particularly as they were not professionally represented.

### **The background**

5. The property which is the subject of this application is a town house converted to 10 self-contained flats. Each flat is sold on long lease and contains provisions for a service charge. Flats 4 and 6 are owned by the Respondent.
6. It was clear to the tribunal during the hearing there is a considerable history of dispute in the building. The freehold is owned by Littleheath Limited which has one vote on the RTM company. Four flats are owned by Worldwide Com which has four flats. The 5 votes are exercised together by Mr Zaman who holds a power of attorney.
7. Photographs of the building were provided in the hearing bundle. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute given the passage of time since the works were completed.

### **The leases**

8. Flat 4 is held on lease for a term of 125 years commencing on 24 June 1990. The service charge percentage is 10.66%.
9. Flat 6 is held on lease for a term of 125 years commencing on 24 June 1990 with a service charge percentage of 14.64%.
10. Both leases contain provisions for the landlord to maintain the exterior and common parts and to recover the cost through a service charge.

### **The issues**

11. At the start of the hearing the parties identified the relevant issues for determination as follows:
  - (i) The payability and reasonableness of service charges for the year to September 2021 relating to decoration and refurbishment works to the common parts.
  - (ii) Whether the works have been carried out to a proper standard.
  - (iii) In particular whether a consultation process had been properly carried out under section 20 of the Landlord and Tenant Act 1985 and under part 2 of schedule 4 of the Service Charges

(Consultation etc) (England) Regulations 2003 (the 2003 Regulations)

12. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

**Refurbishment works totalling £25,500**

13. The amount demanded from the Respondent was £2881.39 for flat 4 and £3957.19 for flat 6 totalling £6838.58 of which 50% has been paid totalling £3419.30. The Respondent made an agreement with the then managing agent that she would pay 50% initially and the balance on completion subject to being satisfied about the quality of the work. The balance has not been paid to date.

**The Works**

14. In October 2019 an action plan was prepared for 12 Lexham Gardens which included proposals for interior and exterior refurbishment in 3 stages. The anticipated costs were £25,000 for the interior works which is the only section of work before this tribunal. The minutes of the meeting approving the action plan were in evidence. A specification for works was prepared by an unknown party broken down into 5 sections, electrical, carpentry, internal decoration front porch decoration and carpet replacement.
15. The anticipated expenditure is over the consultation threshold under section 20 of the 1985 Act.
16. A notice of intention to carry out work was served on the leaseholders on 30 October 2020. Leaseholders were invited to make written observations on the scope of the work within 30 days of the date of the notice expiring on 3 December 2020. Leaseholders were invited to nominate contractors.
17. The Respondent nominated a contractor, Goodwood Contractors who provided an estimate. Estimates were also obtained from All In One Building who were said in evidence to be active in the area and from Earls Court Property Services, a company known to Mr Zaman and who had previously worked at the property.
18. The respective prices were

Goodwood Contractors	£44350.00
All In One Building	£29625.00

Earls Court Property Services      £25,500.00

19. A stage two notice under section 20 was issued on 27 January 2021 expiring on 26 February 2021. A query was raised over the VAT status of Earls Court Property Services due to loose wording in their estimate and it was subsequently confirmed that the company was not VAT registered and would not be charging VAT. The final invoice contained no VAT.
20. At a board meeting held on 28 April 2021 the directors of the RTM company resolved to appoint Earls Court Property Services to carry out the refurbishment works in accordance with their estimate. There were 7 votes in favour, 1 against, and the Respondent abstained.

### **Section 20 consultation**

21. Mr Zaman for the Applicant gave evidence as to the carrying out of the consultation and how the 3 contractors from whom estimates were obtained were chosen as recorded in the preceding paragraphs. The Applicant considers that the consultation was properly carried out prior to the board of the RTM company resolving to appoint Earls Court Property Services.
22. Mr Zaman stated that he knew Mr Bangash, the principal of Earls Court Property Services and confirmed that in the past he had used an address associated with the Bangash family as a correspondence address.
23. The Respondent believes that the proper processes not been carried out. In response to the part 1 notice the Respondent proposed GW Design and Build Limited t/a Goodwood Contractors to carry out the works.
24. The Respondent claims that the Applicant was required to obtain estimates from a number of contractors as well as any contractors recommended by the leaseholders to include at least one of the estimates from a contractor unconnected with the Applicant. The Respondent states the Applicant did not comply with these requirements.
25. The Respondent states that the Applicant did not comply with the requirements of paragraph 4(5) of part 2 of the 2003 Regulations
26. Following receipt of the estimate from Earls Court Property Services dated 28 October 2020 the Applicant was required to serve a further notice to the leaseholders setting out the estimates, identifying the

proposed contractor, identifying any connection between the Applicant and the proposed contractor, with a summary of the leaseholder's observations and a statement of the Applicant's response and invite written observations, stating where they should be sent and by when (after a period of at least 30 days).

27. If the Applicant accepted one of the estimates, it was required to inform the leaseholders within 21 days, giving reasons, or stating where and when such reasons may be inspected. The Respondent did not receive notice of any reasons for awarding the contract to Earls Court Property Services. The Applicant is under a duty to state in writing the reasons for awarding the contract.
28. The vote of the RTM board was invalid as Mr Zaman did not disclose a conflict of interest. The memorandum and articles of association of the company were not in evidence.

### **The tribunal's decision and reasons**

29. The tribunal determines that the section 20 consultation has been properly carried out. The Respondent is running together the requirements of stage I and stage II notices and misquoting the requirements of paragraph 6 of the 2003 Regulations. The requirements for the 2<sup>nd</sup> notice, referred to in the regulations as the paragraph (b) statement are that the landlord must provide a statement setting out as regards at least 2 of the estimates the amount specified in the estimate as the estimated cost of the works and where the landlord has received observations in response to stage I notice to which a summary of the observations and his response to them and make all of the estimates available for inspection. All of the estimates were available to the RTM company board at its meeting appointing the successful contractor. The Respondent was in attendance and abstained from the vote.
30. Under paragraph 4(6) of the regulations at least one estimate must be from a person wholly unconnected with the landlord. Two of the estimates complied with that including the contractor nominated by the Respondent.
31. There was no evidence before the tribunal of a connection between the RTM company and Mr Zaman of the type set out in paragraph 4(7) of the 2003 Regulations. The claim of a conflict of interest was not established.
32. Under paragraph 6 of the 2003 Regulations, where the estimate accepted is the lowest estimate no reasons need to be given for the appointment of the contractor. Earls Court Property Services submitted the lowest tender.

### **Standard of the works**

33. The Applicant considers that the work was completed to a proper standard. Photographic evidence was submitted. The Applicant also stated that video evidence was submitted. However the tribunal was unable to view this. Included in the evidence is an email from Thereza Macnamara dated 15 June 2021 to the then managing agent and copied to other leaseholders confirming the paintwork looks fine apart from some paint on glass above the front door. In particular it states the porch looks nice and the rest of the building now looks worse in comparison.
34. Also included is an email from the Respondent dated 19 August 2022 attacking the quality of the work.
35. Also included is an email dated 26 May 2021 from Paul Rodriguez, the then managing agent stating that redecoration works were going well and asking for comments on the choice of carpet. It also mentions additional works to hide electric cables with a cost not to exceed £2000. It is not clear if this work was ever done. The final account dated 25 June 2021 appears to show that a charge of £2000 was included but this does not appear to have been charged to the Respondent.
36. The Respondent criticises the standard of work. The Respondent considers that the schedule of works included preparation and painting of the street level railings outside flat 1. These railings were not painted. In reply the Applicant stated that these railings were not included in the contract which referred to the porch railings only.
37. The Respondent stated that the works have been inspected by GW Design and Build Limited who prepared an email stating that decoration work was done to a below-average standard and that the preparation of surfaces was inadequate. It was also a missed opportunity by the Applicant to improve the electrics during the works.
38. A further criticism is that the multitude of surface mounted cables should have been removed from the wall and bundled together to form one neat cable run. Light switches were not upgraded to backlit switches and low position of plugs means they do not comply with current regulations and these should have been repositioned as part of the proposed works.

### **The tribunal's decision**

39. The tribunal prefers the evidence of the applicant. There is no expert evidence on behalf of the Respondent. An email from the unsuccessful contractor criticising the works carries no weight as it was unsupported

by witness statement and the witness was not available for cross examination. The Respondent is not an expert.

40. On the evidence before it, the tribunal concludes that the amounts claimed have been properly incurred and are reasonable and payable.

### **Comment**

41. It is clear from the evidence that there has been a long history of dispute within this property. It is also apparent that major works are required to the exterior of the property and in order to avoid a rerun of this dispute, the RTM company may wish to consider appointing an independent surveyor to prepare the specification for the works and oversee them.

### **Application under s.20C and refund of fees**

42. At the hearing, the Respondent applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that as the applicant has been successful in the case no order will be made under section 20C.

**Name:** A Harris

**Date:** 15 March 2023



## **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

## Landlord and Tenant Act 1985

### **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 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.

(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.

(5) If a person takes any proceedings in the High Court in pursuance of any of the provisions of this Act relating to service charges and he could have taken those proceedings in the county court, he shall not be entitled to recover any costs.]

### **20 Limitation of service charges: consultation requirements**

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

(a) complied with in relation to the works or agreement, or

(b) dispensed with in relation to the works or agreement by (or on appeal from) [F2the appropriate tribunal].

(2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or

(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

- (a) an amount prescribed by, or determined in accordance with, the regulations, and
- (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

#### **27A Liability to pay service charges: jurisdiction**

(1) An application may be made to [F2the 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.

( 3 ) An application may also be made to [F3the appropriate 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.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
  - (a) in a particular manner, or
  - (b) on particular evidence,of any question which may be the subject of an application under subsection (1) or (3).
- (7) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

## **The Service Charges (Consultation Requirements) (England) Regulations 2003**

### **Citation, commencement and application**

- 1.—(1) These Regulations may be cited as the Service Charges (Consultation Requirements) (England) Regulations 2003 and shall come into force on 31st October 2003.
- (2) These Regulations apply in relation to England only.
- (3) These Regulations apply where a landlord—
  - (a) intends to enter into a qualifying long term agreement to which section 20 of the Landlord and Tenant Act 1985 applies on or after the date on which these Regulations come into force; or
  - (b) intends to carry out qualifying works to which that section F3 applies on or after that date.

### **Interpretation**

- 2.—(1) In these Regulations—
  - “the 1985 Act” means the Landlord and Tenant Act 1985;
  - “close relative”, in relation to a person, means a spouse or cohabitee, a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister, sister-in-law, step-parent, step-son or step-daughter of that person;
  - “cohabitee”, in relation to a person, means a person who is living with that person as if they were a married couple or civil partners;
    - (a) a person of the opposite sex who is living with that person as husband or wife; or

(b) a person of the same sex living with that person in a relationship which has the characteristics of the relationship between husband and wife;

“nominated person” means a person whose name is proposed in response to an invitation made as mentioned in paragraph 1(3) of Schedule 1 or paragraph 1(3) of Part 2 of Schedule 4; and “nomination” means any such proposal;

“public notice” means notice published, pursuant to the Public Contracts Regulations 2015, on the UK e-notification service (as defined by those Regulations);

“relevant period”, in relation to a notice, means the period of 30 days beginning with the date of the notice;

“RTB tenancy” means the tenancy of an RTB tenant;

“RTB tenant”, in relation to a landlord, means a person who has become a tenant of the landlord by virtue of section 138 of the Housing Act 1985 (duty of landlord to convey freehold or grant lease), section 171A of that Act (cases in which right to buy is preserved), [F7section 180 of the Housing and Regeneration Act 2008] or section 16 of the Housing Act 1996 (right of tenant to acquire dwelling) F8 under a lease whose terms include a requirement that the tenant shall bear a reasonable part of such costs incurred by the landlord as are mentioned in paragraphs 16A to 16D of Schedule 6 to that Act (service charges and other contributions payable by the tenant) F9;

“section 20” means section 20 (limitation of service charges: consultation requirements) of the 1985 Act;

“section 20ZA” means section 20ZA (consultation requirements: supplementary) of that Act;

“the relevant matters”, in relation to a proposed agreement, means the goods or services to be provided or the works to be carried out (as the case may be) under the agreement.

(2) For the purposes of any estimate required by any provision of these Regulations to be made by the landlord —

(a) value added tax shall be included where applicable; and

(c) where the estimate relates to a proposed agreement, it shall be assumed that the agreement will terminate only by effluxion of time.

### **Agreements that are not qualifying long term agreements**

3.—(1) An agreement is not a qualifying long term agreement F10—

(a) if it is a contract of employment; or

(b) if it is a management agreement made by a local housing authority F11 and—

(i) a tenant management organisation; or

(ii) a body established under section 2 of the Local Government Act 2000 F12 [F13or section 1 of the Localism Act 2011];

(c) if the parties to the agreement are—

- (i) a holding company and one or more of its subsidiaries; or
- (ii) two or more subsidiaries of the same holding company;

(d) if—

- (i) when the agreement is entered into, there are no tenants of the building or other premises to which the agreement relates; and
- (ii) the agreement is for a term not exceeding five years.

2) An agreement entered into, by or on behalf of the landlord or a superior landlord—

(a) before the coming into force of these Regulations; and

(b) for a term of more than twelve months,

is not a qualifying long term agreement, notwithstanding that more than twelve months of the term remain unexpired on the coming into force of these Regulations.

(3) An agreement for a term of more than twelve months entered into, by or on behalf of the landlord or a superior landlord, which provides for the carrying out of qualifying works for which public notice has been given before the date on which these Regulations come into force, is not a qualifying long term agreement.

(4) In paragraph (1)—

“holding company” and “subsidiaries” have the same meaning as in the Companies Act 1985;

“management agreement” has the meaning given by section 27(2) of the Housing Act 1985; and

“tenant management organisation” has the meaning given by section 27AB(8) of the Housing Act 1985

#### **Application of section 20 to qualifying long term agreements**

4.—(1) Section 20 shall apply to a qualifying long term agreement if relevant costs F17 incurred under the agreement in any accounting period exceed an amount which results in the relevant contribution of any tenant, in respect of that period, being more than £100.

(2) In paragraph (1), “accounting period” means the period—

(a) beginning with the relevant date, and

(b) ending with the date that falls twelve months after the relevant date.

(3) Subject to paragraph (3A), in the case of the first accounting period, the relevant date is—

(a) if the relevant accounts are made up for periods of twelve months, the date on which the period that includes the date on which these Regulations come into force ends, or

(b) if the accounts are not so made up, the date on which these Regulations come into force.

(3A) Where—

(a) a landlord intends to enter into a qualifying long term agreement on or after 12th November 2004; and

(b) he has not at any time between 31st October 2003 and 12th November 2004 made up accounts relating to service charges referable to a qualifying long term agreement and payable in respect of the dwellings to which the intended agreement is to relate,

the relevant date is the date on which begins the first period for which service charges referable to that intended agreement are payable under the terms of the leases of those dwellings.]

(4) In the case of subsequent accounting periods, the relevant date is the date immediately following the end of the previous accounting period.

#### **The consultation requirements: qualifying long term agreements**

5.—(1) Subject to paragraphs (2) and (3), in relation to qualifying long term agreements to which section 20 applies, the consultation requirements for the purposes of that section and section 20ZA are the requirements specified in Schedule 1.

(2) Where public notice is required to be given of the relevant matters to which a qualifying long term agreement relates, the consultation requirements for the purposes of sections 20 and 20ZA, as regards the agreement, are the requirements specified in Schedule 2.

(3) In relation to a RTB tenant and a particular qualifying long term agreement, nothing in paragraph (1) or (2) requires a landlord to comply with any of the consultation requirements applicable to that agreement that arise before the thirty-first day of the RTB tenancy.

#### **Application of section 20 to qualifying works**

6. For the purposes of subsection (3) of section 20 the appropriate amount is an amount which results in the relevant contribution of any tenant being more than £250.

#### **The consultation requirements: qualifying works**

7.—(1) Subject to paragraph (5), where qualifying works are the subject (whether alone or with other matters) of a qualifying long term agreement to which section 20 applies, the consultation requirements for the purposes of that section and section 20ZA, as regards those works, are the requirements specified in Schedule 3.

(2) Subject to paragraph (5), in a case to which paragraph (3) applies the consultation requirements for the purposes of sections 20 and 20ZA, as regards qualifying works referred to in that paragraph, are those specified in Schedule 3.

(3) This paragraph applies where—

(a) under an agreement entered into, by or on behalf of the landlord or a superior landlord, before the coming into force of these Regulations, qualifying works are carried out at any time on or after the date that falls two months after the date on which these Regulations come into force; or

(b) under an agreement for a term of more than twelve months entered into, by or on behalf of the landlord or a superior landlord, qualifying works for which public notice has been given before the date on which these Regulations come into force are carried out at any time on or after the date.

(4) Except in a case to which paragraph (3) applies, and subject to paragraph (5), where qualifying works are not the subject of a qualifying long term agreement to which section 20 applies, the consultation requirements for the purposes of that section and section 20ZA, as regards those works—

(a) in a case where public notice of those works is required to be given, are those specified in Part 1 of Schedule 4;

(b) in any other case, are those specified in Part 2 of that Schedule.

(5) In relation to a RTB tenant and particular qualifying works, nothing in paragraph (1), (2) or (4) requires a landlord to comply with any of the consultation requirements applicable to that agreement that arise before the thirty-first day of the RTB tenancy.

#### **SCHEDULE 4 CONSULTATION REQUIREMENTS FOR QUALIFYING WORKS OTHER THAN WORKS UNDER QUALIFYING LONG TERM OR AGREEMENTS TO WHICH REGULATION 7(3) APPLIES**

##### **PART 2 CONSULTATION REQUIREMENTS FOR QUALIFYING WORKS FOR WHICH PUBLIC NOTICE IS NOT REQUIRED**

###### **Notice of intention**

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

(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**

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) where 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.