FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AH/LSC/2023/0130**
Property	**:**	**8 Kirby House, 82 Lower Addiscombe Road, Croydon, CR0 6AB**
Applicant	**:**	**Mark Capstick**
Representative	**:**	**In person**
Respondent	**:**	**London Borough of Croydon**
Representative	**:**	**James Hutchfull, Solicitor**
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	**:**	**Judge Brandler** **Ms M Krisko FRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of hearing	**:**	**2 October 2023**
Date of decision	**:**	**9 October 2023**

DECISION

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Decisions of the tribunal

(1) The tribunal determines that the sum of £250.00 is payable by the Applicant in respect of the service charges for the years 2019/20 in relation to the replacement lift

(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 £300.00 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant

The application

1. Mark Capstick ("the Applicant") seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and administration charges payable by the Applicant in respect of the service charge years 2019/2020 in relation to the installation of a new lift. This work was completed in March 2020.

2. The Tribunal had the benefit of a joint bundle of documents of 211 pages. Pages referred to in this decision will appear in square brackets.

The background

3. On 19/08/2015 the London Borough of Croydon ("the Respondent") wrote to the Applicant with a Notice of Intention for Qualifying Long Term Agreements -Lifts [78]. That stage 1 Notice states "*This proposed agreement is for maintenance servicing, repair and refurbishment of our lifts. The contract is expected to run for up to 15 years.... A description of the services and works to be provided under the agreement may be inspected at Bernard Weatherill House....*" [78-79].

4. On 06/10/2016 the Respondent wrote to the Applicant with a Stage 2 Notice stating "*This notice is a legal requirement and is given following the notice of intention dated 19 August 2015 to enter into a long-term agreement for* ***Lift Work.*** *This would include provision of lift refurbishment, call-out and servicing. The consultation period in respect of the notice of intention ended on 22 September 2015.*"[80]

5. Later in that notice it states "*Due to the length, scope and value of this contract, it is not reasonably practicable to provide an estimate cost of works for the entire contract at this time. We are however able to provide you with the estimated cost for the following:*

- *Servicing Charge an annual value of £696 will apply to your block*
- *Call out charges for breakdowns of £132 per incident*
- *Call out charges when there is no apparent fault of £66 per incident."* [80-81]

6. On 14/03/2017 a Term Brief was signed *"in relation to the provision of lift and escalator refurbishment, call out and servicing, in the London Borough Croydon*" [84]. The Appendices referred to at the bottom of that document were not provided by the Respondent for the hearing.

7. All the documents provided by the Respondent refer to "*Provision of lift and escalator refurbishment, call-outs and servicing of the Council's properties"* [85,89,]

8. In the document headed "Planned Maintenance and Improvements, 554/2016 PMI Provision of lift and escalator refurbishment, call-outs and servicing of the Council's properties" [89 -152, at section 3 "Scope of Service" [103], it states at 3.4 "*The appointed Service Provider will be responsible for: Servicing and maintenance, call-outs; and refurbishment"*

9. At section 5 of that document "*Leaseholder Consultation and Section 20 Requirements, 5.19 The Council will lead the formal Section 20 process for all aspects of the Contract; 5.20 The Service Provider is required to attend and actively support early consultation meetings with the Leaseholders and tenants in specific blocks and post completion meetings and correspondence as required; 5.21 Where a Works Order exceeds the section 20 threshold for a particular block, the Council will inform the Service Provider whether they will require a formal Section 20 notice process to be following, or whether the works will be done as an 'emergency' The Service Provider will be required to provide detailed estimates of costs for Section 20 purposes and final actual costs on completion of works where works are subject to re-charge and as directed by the Council. These are to be included in the tendered rates and prices*" [120]

10. Section 9 refers to routine servicing of passenger lifts [137]; to Housing lift servicing process [140]; Section 10 refers to Housing lift refurbishment, replacement[141]

11. On 05/06/2018 the Respondent wrote to the Applicant with a Notice of intention for qualifying works under qualifying long term agreement providing a description of the proposed works as "*Lift refurbishment works.....It is Croydon Council's intention to carry out the works under an existing long-term agreement with our long term contractor Guideline Lift Services Ltd. The consultation period for the Notice of Intention ended on 09-Nov-16. We consider it necessary to cary (sic) out works as the lifts were installed approximately 45 years ago. They*

are now obsolete and provision of spares is becoming difficult. The lift has therefore has (sic) become uneconomical to repair". The block charge is given as £91,022.63 plus administration fee @ 4.00%, grand total £94,663.54. The charge to the applicant is £5,916.47 [174]. Since that time the Applicant has been challenging the installation of a new lift, and asking for the s.20 consultation in that regard.

12. On 13/07/2018 the Respondent wrote to the Applicant stating "*The lift in Kirby House is approximately 45 years old and has only received minor upgrades during its life. The lift is no longer complaint* (sic) *with current regulations and the vast majority of parts are obsolete and cannot be readily replaced*" [201]

13. In an itemised list of all the new components installed, including a new car and sling, states "*The information provided above will give you a good guide as to how much a lift refurbishment will cost*"[177]

Directions

14. The Tribunal issued directions on 21/04/2023 on the papers.

15. The Tribunal identified the following issues to be determined [16]:-

- Whether the costs of major works as invoiced on 3 March 2020 are reasonably incurred and payable
- Whether the landlord has carried out its consultation requirements correctly under section 20 of the Act

16. At paragraph (4) the Tribunal raised the issue as to whether the landlord wished to apply for dispensation from the consultation requirements under section 20ZA of the 1985 Act. If it wishes to do so, the landlord was directed to make such an application by 19 May 2023. It was directed that any such application will be heard together with the section 27A application [16]

17. The landlord was directed to disclose by 21/07/2023 copies of all relevant invoices relating to the matters disputed together with any other documents upon which the landlord intends to rely.

18. Each party had permission to call one expert witness in relation to whether the lift repair costs were reasonably incurred [18]

19. It was directed that documents in the bundle should include:

- Any expert reports
- The lease or specimen lease and a schedule of any relevant variations
- A copy of any written quotation/alternative estimate

- The consultation notice, including section 20 notice
- Any parties' statements if a section 20ZA application has been made

The hearing

20. The Applicant appeared in person and the Respondent was represented by James Hutchfull, solicitor, and was accompanied by Mr Plummer and Ms Olaniyan (leasehold officers). Neither of those officers had produced a witness statements and the Tribunal were informed that Ms Olaniyan was at the hearing to observe, and Mr Plummer was there to support Mr Hutchfull. There being no witness evidence, the basis of the Respondent's case relied on the documentation (referred to above) and submissions from Mr Hutchfull.

21. At the start of the hearing the Applicant confirmed that the sole issue for the Tribunal to consider was whether the Respondent was entitled to rely on the 2015 s.20 consultation for the Long Term Qualifying Contract to allow them to install a new lift in the building at a cost of almost £100,000. Or whether they should have carried out a s.20 Consultation for what he says are major works which were not included in the description provided for the Long Term contract works.

22. Mr Hutchfull argues that the Respondent was not required to consult under the terms of s.20 for the installation of a new lift because in 2015 they had consulted for a Qualifying Long Term Contract for lift works, and that the installation of a new lift was covered by the terms of that contract. The contract was not provided to the Tribunal.

23. The Tribunal raised several issues with Mr Hutchfull at the start of the hearing. These included:

- the lack of witness evidence, such the Tribunal could not hear from the leasehold officers present;
- the lack of an application under s.20ZA,;
- the lack of any engineer's reports/expert reports confirming the need to replace the lift;
- why the lease provided by the Respondent had been redacted and why the lease plan attached to the lease for the property referred to flat 4

24. In response, Mr Hutchfull could not clarify issues relating to the lease, other than the name on the lease was redacted due to data protection.

25. In relation to the lack of expert/engineers reports these were not provided by his client, the Respondent,

26. In relation to an application under s.20ZA Mr Hutchfull confirmed that they had not made an application under this provision because, he said,

the Respondent had satisfied the criteria for consultation and did not need to make such an application

The background

27. The property which is the subject of this application is flat 8 Kirby House, 82 Lower Addiscombe road, Croydon CR-6AB ("the property") a one bedroom flat on the first floor of a purpose built block ("the block") over 4 floors, containing 16 flats.

28. 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.

29. The Applicant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. This is not in dispute.

30. A lease dated 04/07/1988 between the Respondent and a lessee (whose identity has been redacted by the Respondent on the lease document provided), was granted for a period of 125 years from 04/04/1988 under Title Number SGL167486. The Applicant acquired the leasehold interest in the property in 1996. No Land Registry documentation was produced, but this issue was not in dispute.

31. 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.

New lift installed in March 2020 - amount claimed £6,172.82 (being the tenant's 1/16th share of the total cost of £98,765.14)

32. There are two parts to the Applicant's objection to this charge. Firstly he says that the Notice of Intention for Qualifying Long Term Agreements for lifts dated August 2015 does not mention installation of a new lift at a cost of £6,172.82 to him. That 2015 notice of intention refers only to what are effectively maintenance works to the lifts. Secondly, he says, the major works to install a new lift at a cost of almost £100,000 is a capital work that should have required the Respondent to commence s.20 consultation which requires them to obtain three tenders, instead they gifted the contract to the contractor who had been awarded the Qualifying Long Term agreement to maintain, service and refurbish the lift.

33. In oral evidence the Applicant stated that the lift had broken down on only three occasions during his occupation at the property over a 25 year period. To support this assertion, the Applicant provided the Tribunal with a breakdown of service charges he had paid from 2014 to 2018 as

follows: the lift expenses in 2014 were £0; in 2015 his contributions were £45.67; in 2016 they were £380.06; in 2017 they were £60.00; and in 2018 they were £48.52. [202]. There was some discussion about the total charges, the Applicant's contributions being 1/16th of the total charge. The only substantial charges being in 2016, and since that time only minimal charges have been demanded.

34. While Mr Hutchfull thought the lift had broken down more often than stated but no evidence was produced to support that assertion. In relation to evidence of the service charges paid by the Applicant for lift services, Mr Hutchfull did not dispute those amounts, but suggested that the works in 2016 were more than just maintenance. No evidence was produced to support that assertion.

35. The Applicant included his complaint emails in the bundle demonstrating his attempts since 2018 to try to find out how and why the long term contractor had been gifted a contract to install a new lift when that had not been part of the 2015 s.20 Consultation. He told the Tribunal that when he eventually got the response to say that they did not obtain 3 tenders, he brought his case to the Tribunal.

The tribunal's decision

36. The tribunal determines that the amount payable in respect of the installation of a new lift in 2020 is £250.

Reasons for the tribunal's decision

37. The Respondent argues that by virtue of the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the 2003 Regulations") they are not obliged to give detailed information on the works proposed. The difficulty with this argument is that the information provided in the Consultation in 2015 for the Qualifying Long Term Contract make no mention of a proposed installation of a new lift. It refers only to maintenance servicing and refurbishment. It is clear from the document listing the components installed, all of which are referred to as new, that the installation of a new lift was not a refurbishment.

38. Schedule 3 of the 2003 Regulations describes the consultation requirements for qualifying works under qualifying long term agreements. The notice of intention shall describe in general terms the works proposed to be carried out, state the reasons for considering it necessary to carry out the proposed works, and contain a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred by the leaseholder in connection with the proposed works.

39. The Respondent in their 2015 notice, upon which they now seek to rely, described the lift works in terms of maintenance, servicing and

refurbishment. The cost implications of such works were included in the stage 2 Notice dated 06/10/2016 which states *"Servicing Charge an annual value of £696 will apply to your block; call out charges for breakdowns of £132 per incident; call out charges when there is no apparent fault of £66 per incident*" [81]. There is no mention of the cost of replacement lift which is only introduced in some years later, without the entitlement to consult, that right having ended some years earlier.

40. It was only in 2018, when the Applicant was notified of the installation of a new lift at a cost to him of over £6,000 that he objected. By that date the Respondent's position was that the consultation had ended in 2016, and the Applicant had no right to further consult. The Applicant then resorted to trying to complain, but the responses he got were evasive and he eventually got the answer that the Respondent did not obtain tenders but gave the contract to the long term contractor.

41. The Tribunal accepted the Applicant's submission that the amounts that he was warned of in the stage 2 notice in 2016 did not raise concerns such as to prompt him to investigate further. The Tribunal further accepted the Applicant's submission that had he been warned in 2015 or 2016 that the Respondent was planning to replace the lift at a cost of almost £100,000 he would have responded to the consultation. However, the Respondent's position was that consultation had ended in 2016, and so that route was now closed to the Applicant.

42. The Tribunal find therefore that the information provided in the s.20 consultation for the Long Term Contract did not alert the leaseholder to the installation of a new lift and the cost of that new lift is therefore not covered by that consultation, and the Tribunal find that a further consultation for the major works for the installation of a new lift should have been carried out.

43. It had been open to the Respondent to make an application for dispensation. They were alerted in the Directions Order giving them such an opportunity. They chose not to make such an application and indeed at the beginning of the hearing, when asked if such application had been made, the Respondent's representative told the Tribunal that no such application had been made because they were covered by the s.20 consultation for the long term contract.

44. Even if an application would have been made for dispensation, it is difficult to see how it could have succeeded. No evidence was produced to evidence the bald statement that the lift was so old and obsolete that a new lift was required. The representative for the Respondent told the Tribunal there was no expert report to clarify this, nor was there any engineer's report, and when asked by the Applicant about the document setting out the works, the representative told the Tribunal that document was lost. Nor did the Respondent produce the long term contract, which may have been to clarify these issues. It was a mystery to the Respondent

as to whether that document still existed, even though the original long term contract was still being in place.

45. This decision is however not a determination on that issue as no application was made. However, the documentation to support the requirement for a new lift that was lacking for this hearing, would also be required for any dispensation application. With no witness evidence, the Tribunal are in the dark as to whether the Respondent did conduct an inspection at all. The charges in 2018 for lift works are so low that it does not indicate such inspection took place.

46. Other documents were missing. No evidence was produced to confirm that the contractor's invoice had been paid, nor was there any invoice from the contractor. The Tribunal had only the Respondent's invoice to the leaseholder. There was no evidence produced of a guarantee, or whether there was insurance, or a post inspection report.

47. The evidence produced by the Applicant in relation to service charges for lifts from 2014-2018 did not support the assertion that a new lift was required. Those costs were minimum and suggested that the 2016 works had been successful and the minimal costs in 2017 and 2018 did not support the need for a new lift. In any event, the Respondent's works to install a new lift should have instigated new s.20 consultation for the works, as they are not included in the 2015 s.20 consultation for long term qualifying contract for lift maintenance. The consequence of the Respondent's failure to properly consult results in the Applicant being responsible for only £250 towards the installation of a new lift.

Application under s.20C and refund of fees

48. At the end of the hearing, the Applicant made an application for a refund of the fees that he had paid in respect of the application and the hearing[1]. He explained that he had once he had been told that a new lift would be installed, he spent 5 years trying to find out what consultation had taken place, and when he was finally told that there had not been any quotations obtained, and that the Qualifying Long Term Contractor had been gifted the contract to install the lift, he felt he had no alternative but to issue proceedings in the Tribunal. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the Respondent to refund any fees paid by the Applicant within 28 days of the date of this decision.

49. In the application form the Applicant did not seek an order under section 20C of the 1985 Act. This, he said, is based on his interpretation of the lease which he did not think allowed the Respondent to recharge the legal costs of this application to the leaseholders. However, the Applicant is not a lawyer and confirmed he did not understand all the legalese in that

[1] The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

document. Mr Hutchfull similarly did not think that the lease permitted a recharge. Having heard the submissions from the parties and taking into account the determinations above, for the avoidance of doubt, the tribunal nonetheless determines that it is just and equitable in the circumstances for an order under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Name: Judge D Brandler **Date:** 9 October 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).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 27A

(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.

(3) An application may also be made to the 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.

Section 20

(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) the 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.]

Section 20C

(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 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—
  (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 a county court;
  (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
  (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
  (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
  (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
  (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
  (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
  (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
  (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
  (a) specified in his lease, nor
  (b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) 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 matter of an application under sub-paragraph (1).The Service Charges (Consultation Requirements) (England) Regulations 200

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

SCHEDULE 3CONSULTATION REQUIREMENTS FOR QUALIFYING WORKS UNDER QUALIFYING LONG TERM AGREEMENTS AND AGREEMENTS TO WHICH REGULATION 7(3) APPLIES

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)contain a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred by him on and in connection with the proposed works;

(d)invite the making, in writing, of observations in relation to the proposed works or the landlord's estimated expenditure;

(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.

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 and estimated expenditure

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

Landlord's response to observations

4. Where the landlord receives observations to which (in accordance with paragraph 3) he is required to have regard, he shall, within 21 days of their receipt, by notice in writing to the person by whom the observations were made, state his response to the observations