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

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| **Case reference** | : | **CAM/12UD/LSC/2022/0061** |
| **Property** | : | **64A Hammonds Drive, Peterborough PE1 5AA** |
| **Applicant** | : | **Mr Kevin Rickard** |
| **Respondent Landlord** | : | **Connect 21 Community Ltd** |
| **Represented by** | : | **Firstport Property Services Ltd** |
| **Type of application** | : | **Application for payability and reasonableness of service charges, pursuant to s.27A Landlord and Tenant Act 1985; counter application for dispensation** |
| **Tribunal** | : | **Tribunal Judge Stephen Evans**<br>**Mr Alan Tomlinson** |
| **Date of hearing** | : | **12 July 2023 and 5 October 2023** |
| **Date of decision** | : | **3 December 2023** |

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**DECISION**

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**The Tribunal determines that:**

**(1) The costs incurred by the Respondent/to be incurred are/will be reasonably incurred, and reasonable in amount, and the Applicant's proportion is payable in the sum of £2498.69 (0.72% of £283,360 + VAT and £5850 + VAT), subject to the Respondent's compliance with the dispensation conditions set out in paragraph 56 below.**

**(2) The application by the Respondent for dispensation is granted on the conditions set out in paragraph 56 below;**

**(3) The application by the Applicant under s.20C of the Landlord and Tenant Act 1985 is granted. No costs of his s.27A application nor the Respondent's s.20ZA application may be recovered from the Applicant through the service charges.**

## REASONS

### Background

1. On 28 November 2008 Bellwinch Homes Limited granted a lease to the Applicant for a term of 999 years from 1 January 2007. The Respondent was also a party to the lease.
2. On 17 June 2016 the Respondent was registered with leasehold title to 2-302 (even) Hammond's Drive.
3. On 1 January 2020 the Applicant received a demand for service charges for water charges in the sum of £191.18, covering the period 1 January 2020 to 30 June 2020.
4. On 20 May 2020 the Applicant received a demand for service charge in respect of water charges in the sum of £191.18, covering the period 20 May 2020 to 31 December 2020.
5. On 1 January 2021 the Applicant received a demand for service charges for water charges in the sum of £191.18, covering the period 1 January 2021 to 30 June 2021.
6. On 28 May 2020 the Applicant received a demand for a balancing sum service charges for water charges in the sum of £45.41, covering the period 1 January 2020 to 31 December 2020.
7. On 7 July 2021 a s.20 notice of intent (Stage 1) was drafted with regards to major works on lifts, which the Applicant alleges he has no record of receiving.
8. On 24 December 2021 the Applicant received a s.20 notice of proposal (Stage 2) in respect of the proposed works. A company called SLS was proposed as

the contractor, albeit it was not the cheapest, but alleged to provide long term value.

9. On 26 December 2021 the Applicant wrote to the Respondent to complain of defects in the stage 2 notice.

10. The Respondent responded on 17 January 2022.

11. On 18 January 2022, managers Firstport Property Services Ltd ("Firstport") emailed the Applicant to accept some errors in the notice.

12. On 31 January 2022 Firstport sent a second (corrected) version of the stage 2 section 20 notice of proposal (although it is also dated 27 January 2022 on its face).

13. On 21 March 2022 a service charge demand for water charges was levied in the sum of £38.81.

14. On 1 April 2022 the Applicant wrote to Firstport requesting calculations for these charges, and sent a chaser on 13 April 2022.

15. On 5 May 2022 Firstport wrote to the Applicant accepting there had been contradictory figures given.

16. The Respondent wrote again to the Applicant on 24 May 2022.

17. Between 2 and 3 September 2022 emails were exchanged between the Applicant and Firstport regarding the section 20 process.

18. On 23 September 2022 Firstport issued a section 20 stage 3 notice, informing of the contract award to SLS. Works were stated to be due to commence on 3 October 2022.

19. On 12 October 2022 the Applicant wrote to Firstport with observations on the stage 3 notice.

20. On 15 October 2022 the Applicant issued this section 27A application in relation to the major works charge for 2022.

21. On 22 October 2022 the Applicant issued a second section 27A application in respect of water charges for the years 2019 to 2021. (That is the subject of a separate determination of the Tribunal under case no. CAM/12UD/LIS/2022/0015).

22. On 5 January 2023 directions were given by the Tribunal procedural judge on both applications.

23. Statements of case and witness statements followed.

**The hearing**

24. The matter first came on for hearing on 12 July 2023.

25. The Applicant's case was that he should be limited to a service charge of £250 for failure to consult properly with him in relation to the major lift works.

26. The Tribunal attempted to ascertain what the overall cost was, in relation to the major works, but even this basic matter the parties were unable to agree.

27. The Respondent did agree that the relevant consultation machinery was Schedule 4, Part 2 of the Service Charges (Consultation etc) Regulations 2003.

28. The Applicant's case was that he had not received the stage 1 notice of intent dated 7 July 2021. As a result he was unable to make any observations on this first notice.

29. In relation to the stage 2 notice dated 24 December 2021 his complaints were as follows:

(1) the covering letter stated "we have also indicated below your proportion of the cost including fees and VAT", yet no such cost was indicated either in the letter or in the accompanying notice;

(2) the notice itself incorrectly stated at para. A7 that "we did not receive, within the first consultation period any written observation from owners in relation to the first notice of proposal". This was shown to be wrong, given that on 17 January 2022 the Respondent had by mistake sent the Applicant another leaseholder's complaints in relation to the first notice, plus the Respondent's response to that leaseholder;

(3) The stage 2 notice at para A2 referred to a table at the end, which was missing;

(4) Para A6 of the same stated that "any such observations should be made in writing to the address at the bottom of this notice", but there was no address at the bottom of the notice.

30. The Applicant referred the Tribunal to an email to the Respondent complaining of the above, dated 26 December 2021.

31. In relation to the stage 3 notice the Applicant's complaints were:

(1) Only 3 observations from other leaseholders were present in the table on p.2, despite the Applicant making his own representations (per his email of 26 December 2021);

(2) The notice stated SLS had entered into a contract in respect of cores 1,2 and 5 in the building, yet the Applicant had been consulted on the whole of the lift modernisation for all cores;

(3) The prices on the notice were all confusing, the contractor price being stated as £141,684, the subtotal "8,649,808.20" and the total "185,960.26.";

(4) It was unclear whether, and to what extent, the consultant cost of £5850 plus VAT" had been factored in.

32. The Respondent called evidence from Mrs Gibson, a major works team leader at the time of the notices, employed by Firstport, to assist the Tribunal on the 1st and 2nd s.20 notices. She was asked questions by Respondent's counsel. She could not answer how many observations had been made in relation to the stage 1 notice. She had been told there were no representations in relation to that notice by the operations team involved. She gave evidence that once it came to light that the second notice had issues within it, it was reissued on 31 January 2022. She stated that the one sent dated 27 January 2022/ 31 January 2022 corrected the stage 2 notice previously sent. The reissued notice explained that the reason they were re-issuing the notice was that there were a couple of errors identified within the notice, including reference to a table (not included) and that they had not received observations during the first consultation period, which was incorrect. The reissue stated that "you will not be required to pay anything, as it is expected that the cost of these works will be met wholly from the developments reserve funds". In response to questions by the Applicant at the hearing, Mrs Gibson contended that the summary of observations in the reissued notice was accurate, and Firstport did not have to go into specifics as regards the question asked, and answers given. She confirmed that as far as she was aware, only 1 person had made observations on the first notice; hence box A7 on the second notice was limited to 1 observation.

33. The Respondent then called Ms Karen Lacey to assist the Tribunal as to the stage 3 notice. The Applicant indicated he did not object to questions being asked by Respondent's counsel. Ms Lacey confirmed her witness statement. When asked what observations were made after the stage 2 notice, she gave evidence that she was not involved; any observations would have gone to the observations team, not now. She could not assist with interactions with the Applicant, given the major works were dealt with by the observation teams and the property manager.

34. Mr Izzo was then called by counsel to give evidence. He confirmed his witness statement dated 17 February 2023. He said that there would appear to have been 3 observations after stage 2, given the contents of the table on page 2 of the stage 3 notice, although he was unable to say personally how many observations had been received. He was also unable to assist the Tribunal as to whether the stage 3 notice contained the Applicant's observations on the stage 2 notice.

35. The Respondent, at this stage, mentioned dispensation, in the event the notices were held to be defective,. Counsel was asked by the Tribunal whether or not the Tribunal had jurisdiction to entertain a dispensation application where no application form had been filed and no fee paid, and indeed whether or not the Respondent was pursuing such an application. Respondent's counsel responded to say the application had been made in the Respondent's

statement of case; and dispensation was sought only in relation to the Applicant; applying the overriding objective (including avoiding unnecessary formality and ensuring flexibility), that the Tribunal should entertain the dispensation application without a formal application and fee. When asked whether or not, if dispensation was given, it should be made on conditions, Counsel said he had no instructions.

36. There were then discussions about what sum was being demanded for major works and how it was calculated. The Respondent could not give definitive answers.

37. The Tribunal decided that it would give directions for the Respondent to file a section 20ZA application, with a witness statement in support, and also a witness statement explaining the calculation of the major works charge for 2022, whether it was an estimated or actual amount, the sum payable by the Applicant, and an explanation of the apportionment percentage applied, and any documents in support of the above.

38. A second witness statement dated 16 August 2023 by Mrs Lacey has since been provided. This explains that the works have been planned to be undertaken in 3 phases; that the stage 3 notice refers to the sum of £141,684 plus VAT correctly, being Phase 1 only (since completed); the balance of the total of £283,360 + VAT (as per the stage 2 notice) will be for Phases 2 and 3, but the contractors will need to decide after stage 1 which lifts will be done in Phase 2 and which in Phase 3.

39. The witness statement goes on to state that Firstport, following the hearing on 12 July 203, had found an error, the Applicant being demanded 0.97% instead of 0.72% (as stated in his lease).

40. Therefore his contribution will be £1266.27, being 0.72% of £141,684 plus VAT (already taken from reserves), together with 0.72% of the surveyor's fee of £5850 + Vat for the whole project. No other surveyor's fee is mentioned.

41. The s.20ZA application was also filed, and a statement dated 2 August 2023 from Mr Humphrey, a solicitor, accompanied. This contended that the section 20 consultation procedure was duly followed, but in the event the Tribunal considered the regulations have not been complied with, an application for dispensation is made on a contingency basis. The grounds are, in summary:

    (1) the Applicant is not paid for inappropriate works, only necessary ones under the terms of the lease;

    (2) the Applicant has not been charged more than is necessary;

    (3) one of the lower quotations was selected to keep costs as reasonable as possible, based on the surveyor 's assessment;

    (4) there is no evidence that the cost of the works would have been cheaper had valid consultation been effected;

(5) there was more than one quote obtained;

(6) major works cannot be sourced more cheaply without inappropriate / unacceptable compromises / risks;

(7) there is no evidence that, had the consultation been validly effected, the extent and quality of the works would have been any different;

(8) any breach of the consultation requirements was not serious or egregious; there was some consultation;

(9) the Respondent has not been cavalier, dismissive or uncaring;

(10) it was clear what the costs of the works were;

(11) the Respondent has at all times been open transparent and willing to engage to resolve issues;

(12) any breach was a technical one as a result of electronic error;

(13) the Applicant cannot show relevant prejudice;

(14) refusal of dispensation would be financially devastating for the Respondent, representing an underserved windfall for the Applicant and a punitive, vastly disproportionate and unfair outcome for the Respondent.

**The adjourned hearing**

42. At the adjourned hearing, Mr Leb of Counsel for the Respondent relied on the matters in paragraph 41 above, emphasising that the purpose of consultation is to be found in *Daejan v Benson* [2013] UKSC 14: the consultation requirements have been enacted to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate.

43. Mr Leb emphasised that the Applicant had not paid for inappropriate works, nor had he paid more than necessary or reasonable. He added that the Applicant's observations had been adequately considered. Moreover, the Applicant was not prejudiced, because he could not say he would have obtained cheaper works, or that they were not needed.

44. The Applicant's response to this was to say that he had been prejudiced. For a start, he had suffered an inability to sell the Property on the open market. Moreover, there had been a decrease in the value of the Property. He emphasised that he had sought answers to questions specifically, which had not been responded to by the Respondent; hence the need for this application.

45. He admitted that he did not have correspondence between any proposed purchasers of his lease and himself/his solicitors, to show they had been dissuaded from proceedings by either the errors in the notice or the lack of answers to questions.

46. As for the decreased in value of the Property alleged, the Applicant alleged this was in the region of £5000 to £6000. He accepted that he had no valuation evidence, or other documentary evidence, to show this diminution in value.

47. He argued that, if dispensation were granted, it should be on conditions: firstly, that the leaseholder pack he had paid for, at a cost of £240, for the aborted sale be refunded to him (alternatively that the next one he requests be free). Secondly, he asked that it be a condition of dispensation that Firstport answer any reasonable question posed by any prospective purchaser of his leasehold interest. Lastly, the Respondent should pay the application and hearing fees to him.

48. Mr Leb responded on the matter of conditions. He agreed that the Tribunal has a wide discretion as to terms, to achieve justice: *Aster Communities v Chapman & Others* [2021] EWCA Civ 660. He agreed the payment of the application and hearing fee incurred by the Applicant would be an appropriate condition, were conditions necessary. As for the leaseholder pack charge, he did not argue that this would be an inappropriate condition, rather he contended that any sum be limited to £240 for the historic pack and up to £400 for a future pack.

**Determination**

49. The Applicant does not challenge the necessity for lift works, only the sum he should pay. He does not say the invoice cost is unreasonable; his argument is that he should not have to pay more than £250, given there were consultation failures, as he alleges.

50. In the Tribunal's determination, there were failures in the consultation requirements. Specifically:

    (1) Schedule 4, Part 2 of the Service Charges (Consultation etc) (England) Regulations 2003, para 8 requires a stage 1 notice to be given to the tenant. We cannot be satisfied that on balance of probability any such notice was given to the Applicant; we found him an honest historian; and the lack of any observations from any leaseholder to the Respondent bar 1 is surprising;

    (2) Contrary to para 11(5)(b)(ii) of the above Regs, the first stage 2 notice wrongly stated that there had been no observations made, although we accept a second stage 2 notice rectified this, and other errors;

    (3) There was no address for observations on the estimates at the bottom of the stage 2 notice, contrary to Reg 11(10)(c)(i);

    (4) The stage 3 notice contained such confusing figures for the contractor's price that this rendered the reasons for awarding the contract, as required by Reg 13(1)(a), unintelligible and prejudicial;

(5) The stage 3 notice did not contain the Applicant's observations, contrary to Reg 13(1)(b). This could not be gainsaid by Mr Izzo.

51. For sake of completeness, we do not consider the other matters alleged by the Applicant fall within the requirements of the Regulations.

52. Where we also part company with the Applicant is on the matter of dispensation. The Tribunal determines that it shall grant dispensation to the Respondent for the above failures. The Tribunal has the jurisdiction to grant dispensation under section 20ZA of the 1985 Act "if satisfied that it is reasonable to dispense with the requirements". As the Supreme Court emphasised in *Benson,* the Tribunal should not be concerned with the gravity of the failures, but instead whether there is *relevant* prejudice to the tenant. Mr Leb referred the Tribunal to para 44 of the decision, but the surrounding paras 42, 43 and 44 are also of considerable assistance:

> "42. So I turn to consider section 20ZA(1) in its statutory context. It seems clear that sections 19 to 20ZA are directed towards ensuring that tenants of flats are not required (i) to pay for unnecessary services or services which are provided to a defective standard, and (ii) to pay more than they should for services which are necessary and are provided to an acceptable standard. The former purpose is encapsulated in section 19(1)(b) and the latter in section 19(1)(a). The following two sections, namely sections 20 and 20ZA appear to me to be intended to reinforce, and to give practical effect to, those two purposes. This view is confirmed by the titles to those two sections, which echo the title of section 19.
>
> 43. Thus, the obligation to consult the tenants in advance about proposed works goes to the issue of the appropriateness of those works, and the obligations to obtain more than one estimate and to consult about them go to both the quality and the cost of the proposed works…
>
> 44. Given that the purpose of the Requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT should focus when entertaining an application by a landlord under section 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the Requirements.
>
> 45. Thus, in a case where it was common ground that the extent, quality and cost of the works were in no way affected by the landlord's failure to comply with the Requirements, I find it hard to see why the dispensation should not be granted (at least in the absence of some very good reason): in such a case the tenants would be in precisely the position that the legislation intended them to be – i.e. as if the Requirements had been complied with."

53. The Tribunal does not consider that the Applicant can, on balance of probability, show the prejudice he alleges: namely loss of sale and diminution in value of the Property. We simply do not have sufficient material to enable us to make such a finding.

54. Secondly, we cannot accept that such prejudice as the Applicant may show is *relevant* prejudice, i.e. that led him to pay for inappropriate works or excess cost. Rather, seems to us that this is the sort of case envisaged by the Supreme Court in para. 45 of *Benson*. The extent, quality and cost of the works were in no way affected by the landlord's failure to comply with the Requirements, and there is no special reason why dispensation should not be granted.

55. Accordingly, we grant dispensation to the Respondent for the failures detailed in para. 50 above. However, we do consider that the justice requires some conditions to be attached.

56. The dispensation shall be conditional on the following:

    (1) The Respondent shall pay the Applicant his hearing and application fees, totalling £300;

    (2) The Respondent shall bear its costs of the dispensation application;

    (3) The Respondent shall reimburse the Applicant the leasehold pack he paid for, in the sum of £240;

    (4) No costs incurred in the Applicant's application nor the s.20ZA dispensation application shall be recoverable by way of service charge from the Applicant (see below).

57. We do not consider that we can circumscribe or limit the way the Respondent/Firstport should respond to future questions. We do not make a condition in that regard.

58. To conclude, the costs incurred by the Respondent/to be incurred are/will be reasonably incurred, and reasonable in amount, and the Applicant's proportion is payable in the sum of £2498.69 (0.72% of £283,360 + VAT and £5850 + VAT), subject to the Respondent's compliance with the dispensation conditions set out in paragraph 56 above.

**Application under Section 20C/Paragraph 5A to CLARA**

59. In *Tenants of Langford Court v Doren Ltd* (LRX/37/2000), HHJ Rich held:

"In my judgement the only principle upon which the discretion should be exercised is to have regard to what is just and equitable in all the circumstances. The circumstances include the conduct and circumstances of

all parties as well as the outcome of the proceedings in which they arise.....In my judgement the primary consideration that the LVT should keep in mind is that the power to make an order under section 20C should be used only in order to ensure that the right to claim costs as part of the service charge is not used in circumstances that makes its use unjust. Excessive costs unreasonably incurred will not, in any event, be recoverable by reason of s.19 of the Landlord and Tenant Act 1985. Section 20C may provide a short route by which a Tribunal which has heard the litigation giving rise to the costs can avoid arguments under s.19, but its purpose is to give an opportunity to ensure fair treatment as between landlord and tenant, in circumstances where even although costs have been reasonably incurred by the landlord, it would be unjust that the tenant or some particular tenant should have to pay them."

60. In the instant case, were it not for dispensation, the s.27A would have been successful in limiting the service charge recovery which could be made from the Applicant. While some of the matters of which the Applicant complained were not strictly requirements within the Regulations, the Respondent has not been as engaging as it might in the face of the Applicant's questions, and there has been a lack of transparency. Accordingly, we do not find it just and equitable to make a s.20C order in favour of the Applicant.

Judge:

S J Evans

Date:

3/12/23

**ANNEX – RIGHTS OF APPEAL**

1. 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 at the Regional Office which has been dealing with the case.
2. 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.
3. If the Application is not made within the 28-day time limit, such Application must include a request to 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.

4. 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.

**Appendix 1**

## Landlord and Tenant Act 1985

### Section 18

(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

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

   and the amount payable shall be limited accordingly.

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

### 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, a First-tier Tribunal, or the Lands 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) .....
(3) .....

(4) 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.

**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.

**Schedule 4, Part 2 of the Service Charges (Consultation etc) Regulations 2003.**

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)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.