

FIRST TIER PROPERTY CHAMBER DECISION



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

Case Reference	:	CHI/40UD/LDC/2023/0175
Property	:	Various Properties of Hastoe Housing Association Limited
Applicant	:	Hastoe Housing Association Limited
Representative	:	Bevan Brittan LLP
Respondent	:	The Leaseholders
Type of Application	:	Application to dispense with the consultation requirements under Section 20ZA of the Landlord and Tenant Act 1985
Tribunal	:	Judge T. Hingston Mr. P. Turner-Powell Mr. L. Packer
Date of Decision	:	1 st March 2024

DECISION

Decision of the Tribunal: -

The Tribunal grants dispensation from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act in respect of the qualifying long-term agreement for insurance pursuant to Section 20ZA of the Landlord and Tenant Act 1985.

BACKGROUND

1. The Applicant sought dispensation from the consultation requirements under Section 20ZA of the Landlord and Tenant Act 1985. The application was received on 22 December 2023.
2. The application concerns a qualifying long-term agreement for insurance of a large number of buildings in the Applicant Association's portfolio, which consists of 254 schemes and includes 1,320 leased properties (comprising a mixture of flats, houses, maisonettes, bedsits and bungalows) in respect of which service charges are levied for buildings insurance costs.
3. The existing buildings insurance was due for renewal on the 31st of December 2023. During the latter part of 2023 the Applicants commissioned a report from Gibbs Laidler Consulting LLP.
4. On 24th November 2023, the Applicant's representative Mr Chris Smith (Governance and Compliance Manager) wrote to all leaseholders/shared owners explaining the current position relating to insurance, attaching the Gibbs Laidler report, and inviting observations or questions. It was explained that there would be an Application to the First Tier Tribunal for dispensation with the Section 20 consultation requirements.
5. Only four of the recipients of this letter objected, and the application to the Tribunal was duly made on 22nd December 2023 as above.
6. Directions were issued on the 11th of January 2024 for progression of the case, and the Respondents were directed to complete the reply form and send it to the Applicant if they opposed the application.
7. Of the four leaseholders who originally objected to the proposed dispensation, one (Mr. Twycross) withdrew his objection, but three others returned their objection forms: Mr Alan Blackmore, Mr Mariusz and Mrs. Karolina Pietraszco, and Mrs. Shirley Middlemiss.
8. A bundle of relevant documents was duly provided to the Tribunal and to the other parties by the Applicant by 15th February 2024.

HEARING

9. A hearing was conducted on the 27th February 2024, with the Judge present in the court at Havant Justice Centre and all other Tribunal members and parties attending by video link.
10. Mr. Granby of Counsel appeared for the Applicants, together with Mr. Chris Smith and Mr. Morgan Thomas from Hastoe Housing and Mr. Thandi-Bal from Bevan Brittan Solicitors.
11. Mr. Blackmore and Mrs. Pietraszco attended via the link as Respondents.

The Applicant's Case.

12. The Applicant had provided a detailed description of the grounds upon which it was seeking dispensation on pages 7-9 of the Application form, and this was enlarged upon in the Skeleton Argument of Mr. Granby and in oral evidence and submissions at the hearing.

13. Oral evidence was given by Mr. Smith, who confirmed that the Applicants had started reviewing the insurance position back in August or September of 2023. During 2022/2023 it had been getting increasingly difficult for Housing Associations to persuade insurance companies to tender at all, due to a number of different factors.

14. Mr. Smith stated that, following negotiations with the existing Insurance company, Protector, a very reasonable agreement was proposed, which would consist of cover for the whole portfolio of 7,500 properties (worth approximately £200 million) for a 3-year period. This policy would be linked to the cost of rebuilding but would also take into account claims history.

15. The Tribunal was referred in particular to the Gibbs Laidler report, and it was explained that, because of Hastoe Housing's relatively good claims record and because they had provided a significant amount of data to Protector, they were able to secure a good deal at far less than the average 80% increase in premium which is currently common in the sector.

16. In real terms the average Leaseholder's increase in the insurance element of their service charge under the new scheme would be minimal, if any, and in fact the average contribution of £277.30 p.a. (in 2023) would decrease to £276.19 in 2024. This was described as a 'win-win' situation.

17. As for the need for dispensation, it was submitted that by the time a thorough assessment of the volatile and unpredictable market had been carried out, it was apparent that: -

- i) A full tendering and consultation process would result in less favourable terms and more expensive insurance, because the 'deal' offered by the existing insurers (Protector) would be lost, and
- ii) time had run out for such a consultation process to be completed before the renewal date in any event.

18. Although a formal Section 20 consultation had not been carried out, the Applicants submitted that they had done their best to explore all options, protect the interests of the Leaseholders and keep them informed as follows:

(i) they had written to all subject leaseholders on 24 November 2023, disclosing a copy of the Gibbs Assessment, explaining the basis of the Application, and inviting any views from the recipients by 8 December 2023; and

(ii) they had published an article providing the same information on their website.

19. On behalf of the Applicants it was submitted that the Leaseholders had suffered no 'prejudice' as a result of the failure to follow the full consultation process, in accordance with the reasoning in the case of *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 W.L.R. 854. If anything, they had benefited as a result of the actions taken by the Applicant Housing Association.

The Respondents' case.

20. Mr Blackmore had initially objected to the Application on the grounds that he had not received previous correspondence and wanted to know if there were cost implications for him. Once full details of the proposal were set out by the Applicants at the hearing, Mr. Blackmore indicated that he had no further questions or objections.

18. Mr. and Mrs. Peitraszco had originally objected because of the reference to '*major works*' in the documentation which was sent to them, and they had suggested that the current arrangement should stay in place. Once Mrs. Pietraszco understood exactly what was being proposed she had no further objections to the application, but she explained to the Tribunal that the letter from Hastoe had used very technical language and had been difficult to understand.

19. Mrs. Middlemiss stated in her objection to the application that she felt strongly that leaseholders should be informed prior to '*major works*' which had an unknown cost impact. She stated that she was an 89-year-old pensioner and that the proposed action frightened her. Unfortunately, Mrs. Middlemiss was not able to attend the hearing, but it is hoped that now that the Housing Association have explained what is going to happen, she will be reassured.

FINDING AND CONCLUSION

20. The only issue for the Tribunal in this case is whether or not it was reasonable to dispense with the statutory consultation requirements in respect of a long-term agreement for buildings insurance.

21. The Tribunal found that the very thorough report by Gibbs Laidler explained in detail why the Protector deal would be the best option for insurance renewal in this case.

22. The Tribunal accepted that it would not have been practical or reasonable for the Applicants to engage in the normal Sec. 20 consultation and tendering process in the particular circumstances.

23. The Tribunal concluded that the Applicant Housing Association had acted in the best interests of all concerned in securing the favourable deal with Protector, and that they needed to confirm the deal swiftly rather than risking delay and possible greater costs if they had gone through the full consultation process.

24. The Tribunal also found that the Applicants had acted fairly and conscientiously in writing to inform the Leaseholders of the situation.

25. The leaseholders/Respondents had not suffered any prejudice as a result of the lack of consultation: on the contrary, for many of them their service charge contribution to the buildings insurance would decrease by a small amount.

26. In the light of the above, the Tribunal determined that it was reasonable to dispense with the consultation requirements in this case.

27. This decision is confined to determination of the issue of dispensation from the consultation requirements in respect of the qualifying long-term agreement. The Tribunal has made no determination on whether the costs are payable or reasonable. If a Lessee wishes to challenge the payability or reasonableness of those costs, then a separate application under section 27A of the Landlord and Tenant Act 1985 would have to be made.

RIGHTS OF APPEAL

- 1 A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
- 2 The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
- 3 If the person wishing to appeal does not comply with the 28- day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
- 4 The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

RELEVANT LAW

Landlord and Tenant Act 1985

Section 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.a Complied with in relation to the works or agreement, or
- A.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.a If relevant costs incurred under the agreement exceed an appropriate amount, or
- A.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.a An amount prescribed by, or determined in accordance with, the regulations, and
- A.b An amount which results in the relevant contribution of any one or more tenant’s 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 20ZA: Consultation requirements: supplementary

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

(2) In section 20 and this section—

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

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

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

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

(b) in any circumstances so prescribed.

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

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

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

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

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

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

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

(5A) And in the case of works to which section 20D applies, regulations under subsection (4) may also include provision requiring the landlord—

(a) to give details of the steps taken or to be taken under section 20D(2),

(b) to give reasons about prescribed matters, and any other prescribed information, relating to the taking of such steps, and

(c) to have regard to observations made by tenants or the recognised tenants' association in relation to the taking of such steps.]

(6) Regulations under section 20 or this section—

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

(b) may make different provision for different purposes.

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