FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AJ/LSC/2022/0363**
Property	**:**	**438B, 458A, 460A and 468A Lady Margaret Road, Southall, London UB1 2NW**
Applicants	**:**	**Jayshree Shah (Flat 438B); Ram Lal Kukran (Flat 358A); Shefa Rahman (Flat 460A); Talwinder Singh Hayre (Flat 368A)**
Applicant's representative	**:**	**James Sandham of counsel**
Respondent	**:**	**City and Country Properties Ltd**
Respondent's representative	**:**	**Charles Irvine of counsel**
Type of application	**:**	**Determination of service charges**
Tribunal	**:**	**Judge Adrian Jack, Tribunal Member Alison Flynn MA MRICS, Tribunal Member Owen Miller**
Date of decision	**:**	**24th January 2024**

DECISION

Procedural

1. This is an application, originally brought solely by the first applicant, Ms Shah, on 23rd November 2022 to determine her liability for major works billed in two tranches, the first on 27th January 2020 for £32,459.78 and the second on 27th January 2022 for £5,998.84. Subsequently on 15th December 2023 the other three tenants were added as applicants. They had been billed for precisely the same amounts on the same days.

2. This matter was originally listed for hearing on 23rd June 2023, but that hearing had to be adjourned. By order of that date, the Tribunal gave directions as to how the wasted costs of 23rd June 2023 should be dealt with. It directed that, in the events which have happened, the issue of wasted costs should be referred to Judge Sarah McKeown. Both counsel before us were in agreement that this should happen and we do order.

3. By an Order of 19th December 2023, Judge Martyński directed that:

> "If the Respondent wishes the tribunal to determine the question of dispensation from the statutory consultation requirements [under section 20ZA of the Landlord and Tenant Act 1985], it must make an application, and that application will be subject to separate directions."

4. He gave reasons for that direction, including an indication that all issues should be determined by us at this hearing. The respondent landlord has not issued any section 20ZA application. Nor has it made any oral application for dispensation.

5. We heard lay evidence from Dinesh Shah, the husband of Ms Shah, the original applicant on her behalf. We also heard evidence from Foisal Miah, a property surveyor at Freshwater Property Management Ltd, which manages the property. Although he had had some involvement with the property from 2017, he could only give relevant evidence in relation to matters from 2023, when he had more direct involvement. In particular, he could not comment on the process whereby the landlord agreed the costs payable to the contractor. We also heard from experts, one on each side.

The background and the works

6. The property itself is a 1930's block of traditional construction. On the ground floor there are commercial premises. On the upper floors there are nine flats. There is a flat roof with various chimneys from the flats below.

7. Five of the flats are held on long leases. The applicants hold four of them. Although the dates of the leases are all different, the service charge provisions are all identical and are in a standard form. Each tenant pays one nineth of the service charges attributable to the residential tenants only. The landlord's practice is to charge the tenants one eighteenth of the costs attributable to both the residential tenants and the commercial tenants. The landlord charges the tenants nothing in relation to service charges benefiting only the commercial tenants. Although there is nothing in the leases requiring this distribution, in our judgment it is a fair method of division and counsel were not able to suggest what other system could sensibly be adopted.

8. The other four flats are held directly by the landlord, which is part of the Freshwater Group. They have stood vacant for many years due to the poor condition of the block.

9. The Bauder company provided the landlord with a report dated 24th September 2002 on the state of the roof. This noted "a large number of holes and cracks within the asphalt… allowing water ingress into the building", that the "water tank enclosures are in a state of disrepair and require re-building", that there had been numerous patch repairs "indicating a long history of water ingress" and that the "chimney stacks are in a poor condition and will need to be re-built and re-pointed."

10. In 2008, the landlord demanded £27,169.17 and in 2010 a further £1,534.19 as contributions to proposed major works. No consultation was carried out and no works were done. In due course the landlord re-credited the tenants with these sums.

11. On 30th April 2018 the landlord sent the tenants a letter enclosing an initial notice of intention to carry out works (stage 1 of a section 20 consultation). All five long lessees wrote on 30th May 2018 asking for a "copy of [the] recent survey report which was carried out by Hughes Jay and Partners Ltd [HJP], [an] approximate time frame to start the work [and] the estimated cost of the project and the proportion of individual shares." The landlord did not give any of the information requested. Instead it abandoned that proposal to do works.

12. On 28th March 2019 the landlord issued a further stage 1 section 20 consultation letter. The letter said:

> "2. The following is a description, in general terms, of the works proposed to be carried out.
>
> 3. The works are proposed to be carried out to 458-472 Lady Margaret Road, Southall, Middlesex UB1 2NP and consists [*sic*] of:
>
> External repairs and decorations to the property including roof renewal, installation of edge protection, asphalting the rear-walkways and re-building the balustrade walls, repairs to the rear metal staircase, the removal of redundant water tanks, repairs/replacement of windows, electrical repairs and emergency lighting repairs/installations."

13. The adequacy of this description of the proposed works is in dispute. The other requirements for a valid stage 1 notice, it is common ground, were satisfied. (The landlord did not rely on the second limb of para 1(2)(a), which allows a landlord to make documents available for inspection by the tenants instead of giving a general description of the relevant works.)

14. Ms Shah complains that the stage 1 notice was sent to the flat, which she had let out, instead of to her own address, which the landlord used for billing purposes. As a matter of law (as was conceded at the hearing before us), service at the flat itself was good service under the provisions of the lease. Nonetheless we do note that this was not best practice on the part of the landlord. Indeed as will be seen, the landlord virtually ignored the requirements of the RICS Professional Statement on Real Estate Management (see 3rd Edition, 2016, at para 4.7.6) properly to engage with and to consult with tenants.

15. The tenants did not make any observations or representations in response to the stage 1 consultation.

16. On 9th July 2019, the landlord sent a stage 2 consultation notice giving notice of estimates and indicating that it intended to instruct the cheapest contractor, Mitre Construction Co Ltd ("Mitre"). On 14th August 2019 the tenants requested a meeting with the landlord to discuss the works. Due to various clashes with school holidays and Jewish holidays, the meeting was only held on 3rd October 2019. In the meantime the works had commenced on 2nd October 2019. The tenants had requested further information about the works proposed, but the landlord had failed to provide these.

17. On 27th January 2020 the landlord demanded £32,459.78 from each of the tenants as a contribution to the major works. On 27th January 2022 there was a further such demand for £5,998,84. These are the figures which are in dispute in this matter.

The validity of the stage 1 consultation notice

18. Para 1(2)(a) of Schedule 4 Part 2 to the Service Charges (Consultation Requirements) (England) Regulations 2003 provides that the stage 1 notice shall "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." In the current case, the landlord did not offer an inspection of the description at its offices or elsewhere. Instead the landlord relied solely on the first limb, the description of the works in the stage 1 consultation document itself.

19. Mr Simon Levy FRICS MAE gave evidence as an expert on the tenants' behalf. The issue as to whether a stage 1 consultation notice adequately describes the works proposed will not in general require expert advice. Nonetheless, Mr Levy helpfully set out the works which the tenants say were carried out as part of the major works but were not included in the stage 1 notice actually served. These works, which we shall describe as "the disputed works", were: (a) thermal lagging and improvements to the main flat roof; (b) the renewal of the asphalt to the front balconies and railings; (c) the rebuilding of the chimney stacks; and (d) the replacement of the gutters, downpipes and above-ground drainage.

20. The landlord accepted that these works always formed part of the proposed major works. However, the landlord submitted these works

were sufficient to fall within the description of "[e]xternal repairs and decorations to the property." The stage 1 notice made clear that the list of items were just examples of matters falling within the general classification of "external repairs and decorations". Thus there was a sufficient "general description" of the proposed works.

21. The question thus arises whether the description of the works was sufficient. As to the law on this, we were referred to only one case on the subject, *Southern Land Securities Ltd v Hodge* [2013] UKUT 480 (LC), a decision of His Honour Judge Gerald and P D McCrea FRICS. In that case, the landlord, after the stage 1 consultation, added some additional works to make the building safe in the course of the works. The Tribunal held at para [17]:

> "Whether a notice sufficiently describes in general terms the works proposed to be carried out is a question of fact and degree to be determined in the circumstances of each case. In our judgment the additional works are of such a nature that they do not fall within the stage 1 notice with which we are concerned. Whilst they are external repairs in the sense that they are repairs to the exterior, as a matter of fact there was no proposal at the time when the notice was served for these works to be carried out. As a matter of fact they are not works which had to be done in order for the contract to be completed save to the very limited extent of the repainting of the railings."

22. We pause to note that it is rare that the question of the adequacy of a stage 1 consultation is of key importance to the outcome of a case. This is because a landlord who falls short of the requirements of section 20 always has the option of applying for dispensation under section 20ZA. In the light of *Daejan Investments Ltd v Benson* [2013] UKSC 14, [2013] 1 WLR 854, it is not usually difficult for a landlord to obtain dispensation, subject to an allowance being made if the tenant is prejudiced by the landlord's failure to consult properly. In the current case, however, the landlord for reasons which are unclear has not sought any section 20ZA dispensation and in consequence of the directions of Judge Martińsky they may now face insuperable difficulties in doing so: see *Henderson v Henderson* (1843) 3 Hare 100. As a result the issue of the adequacy of the stage 1 notice is of significant impact, since the tenants will only liable for £250 each, if we hold that no valid stage 1 notice was served.

23. The meaning of para 1(2)(a) is a matter of statutory construction. There are two relevant heads of statutory interpretation which potentially apply. Firstly, there is the "ordinary linguistic meaning" of the words. Secondly, there is a "purposive construction": see Bennion, Bailey and Norbury on Statutory Interpretation (8th Ed, 2020, paras 10.4 and 12.2).

24. If the ordinary meaning is correct, then in our judgment all the disputed works fall in the category of "external repairs". On this interpretation, therefore, the stage 1 consultation was valid.

25. As to the application of a purposive approach, it is necessary to examine the relevant purposes. These in our judgment are two. Firstly, stage 1 of the consultation is an opportunity for the tenants to comment on whether the proposed works are appropriate. The tenants may, for example, feel that some works are not immediately necessary and that it would be better to spread the cost of the works over a longer period. Alternatively, the tenants may feel that more extensive works should be done, for example, to take advantage of the erection of scaffolding to do other (even if less urgent) works.

26. Secondly, stage 1 gives the tenants an opportunity to nominate their own contractor, but they can only sensibly do this is they know what works are proposed. Mr Irvine in argument gave what we consider is a compelling example. If a landlord proposes to repair the roof and re-asphalt the car parking, but the stage 1 description of works is simply "external works including roof repair", then the tenants might well nominate a roofing contractor, who would then refuse to bid for the works because it included the car parking works.

27. In our judgment, if the purposive construction is correct, the thermal lagging was covered by the term "roof renewal". The landlord was proposing using the Bauder system on the roof, which is nowadays a normal system of roof renewal. The other three elements were not, however. Asphalting the front balconies was arguably excluded by the express reference to asphalting the rear balconies. Rebuilding the chimney stacks was something on which the tenants might well have relevant views, since one (potentially cheaper) possibility was removing the chimney stacks completely and extending the roofing over the base of the stacks. Replacement of the gutters was again something on which the tenants would have had views. In particular, the works carried out were like for like. This meant that the gutters were replaced with cast iron gutters in the same three inch dimensions as the pre-existing guttering. As we shall explain, three inch guttering was inadequate: deep five inch guttering was required.

28. Should we apply the ordinary meaning construction or the purposive interpretation of para 1(2)(a)? Both constructions in our judgment are possible in the absence of any binding authority from a higher Tribunal or Court. Here there is an absence of unanimity in the Tribunal. The judge prefers the purposive interpretation, whilst the other two members prefer the ordinary meaning construction. Normally, of course, one would expect the non-legal members to defer to the legal member, but here, as we have said, both interpretations are possible. In these circumstances, by a majority we apply the ordinary meaning of para 1(2)(a) and hold that the stage 1 notice was valid. The amount payable by each tenant is thus not capped at £250.

29. We should add that Mr Irvine rather faintly submitted that, if the stage 1 notice was invalid, the invalidity would only extend to the matters which should have been, but were not, included in the stage 1 notice. He cited no authority for this proposition. It is in our judgment wrong. If a stage 1 notice omits material works which it is intended be carried out, the notice is invalid. There is no scope for a partial invalidity. The case (which arises fairly frequently) where further works are required mid-way though a contract for major works but the landlord fails to carry out a further section 20 consultation is different. In such a case, the consultation is valid, but only for the works on which consultation took place. This is a different to the invalidity of the consultation as a whole, as would be the situation in the current case on the minority view of the construction of para 1(2)(a).

The amount payable

30. We turn to the amount payable. Here we have Scott Schedule which contains the joint statement of the experts, Mr Levy for the tenants and Mr Paul Williams BSc (Hons) MRICS for the landlord. It starts at page 1412 of the bundle.

31. We should first mention one peculiarity. When deciding payability a landlord will often seek to establish that the amounts agreed with the contractor were a reasonable compromise. When a landlord does this, it is not usually sufficient for a tenant to show that there was an overcharge, whether the overcharge was because the contractor was not entitled to payment as an extra for a particular item or because the workmanship was poor. A landlord is entitled to show that an item was the subject of dispute which was resolved by the contract administrator. In such cases, it would not generally be fair to go behind a reasonable settlement. In the current case, the landlord has not attempted to show this. No evidence has been adduced from HJP, who administered the contract with Mitre, or from anyone at Freshwater who was involved in the works at the time, as to what discussions were had. Accordingly, we have proceeded, as the experts did, solely in terms of what the contract required.

32. We can say at once that we preferred on balance the evidence of Mr Levy to that of Mr Williams. Both men were experienced surveyors, however, Mr Levy was able to justify his views with many photographs, whereas Mr Williams did not. Further Mr Williams had not visited the roof on his inspection. His report was also surprisingly short, given the length of the specification and the number of issues.

33. Separate from our general preference for Mr Levy's evidence, there were three matters particularly where we considered Mr Levy's view was better established. Our conclusions on these points reinforced our overall view of the evidence of the two men.

34. The first concerned the Bauder system as installed. The specification on which Mitre's quote was accepted provided for tapered insulation.

The building here has a flat roof, thus there had to be some gradient to allow water to flow off the roof into the guttering. One in eighty is normal. Bauder are able to provide insulation which is tapered, so that it can be laid on a perfectly flat roof. Tapered insulation is, however, more expensive that flat insulation, because it has to be made bespoke. In fact the roof in question did already have a small gradient, so it was not necessary to pay the extra for tapered insulation and bespoke tapered insulation was not used. The contractor did not, however, pass on the saving to the landlord.

35. We do not agree with Mr Williams' view that the insulation (despite not being bespoke) was nonetheless "tapered to the gutters". The position is that next to the guttering the insulation is lower than over the roof as a whole. However, that is merely using a thinner form of flat insulation at the side next to the guttering, so that there is a visible step in the roof where the thinner insulation is installed. It is not in our judgment using tapered insulation. Mr Levy's view on what constitutes "tapered" is in our judgment correct.

36. The second relates to the guttering. Mr Williams' view in his report was it was right to replace the guttering like-for-like with the preëxisting cast iron guttering, including the width of the guttering. In our judgment this is wrong. We have seen dramatic videos of water overflowing the gutters which were installed as part of the works. Water enters the flats regularly in wet weather due to the inadequate flows in the gutters as installed. Mr Williams in cross-examination accepted that he had seen these videos and that the current guttering is undersized. We accept Mr Levy's evidence that it is easy to calculate the size of gutters needed to remove water from roofs. The current three inch gutters are obviously inadequate; deep five inch gutters are required.

37. The third relates to the scaffolding. The contractor claimed extras due to difficulties (a) with erecting the scaffolding over a probably unlawful extension at the back of the commercial premises and (b) with unlawfully parked cars interfering with access. In our judgment, these were matters on which it was Mitre who bore the risk. We agree with Mr Levy that the contractor needed to inspect the site before fixing the sums on its tender. Likewise the specification provided for there to be an alarm on the scaffolding. That should have been installed as soon as the scaffolding started to be erected. Installing an alarm during the erection of the scaffolding should not have been an extra.

38. Accordingly, we accept the figures put forward by Mr Levy in the joint Scott Schedule. Due to the format of Schedule in the bundle (pdf rather than excel), we cannot readily do the mathematics, but it should be easy for the parties to agree the figures using the original excel spreadsheet.

39. We should add that there was a problem of ponding of water on the first floor east balcony. Mr Levy attached a figure of £7,500 to the work needed to correct the fault. Mr Williams, when pressed in cross-

examination, said that he thought this might be too low and provisionally suggested a figure of £15,000 for relaying the asphalt. Mr Sandham was understandably keen to rely on this figure rather the lower amount put forward by his clients' expert. In our judgment, however, Mr Irvine is right to say that this was not a considered view on the part of Mr Williams. He only gave that evidence when pressed in cross-examination with little time for reflection. In our judgment, we should apply the general approach we have taken to the experts and accept the figure of £7,500 put forward by Mr Levy.

Section 20C

40. The tenants apply for an order under section 20C of the Landlord and Tenant Act 1985 so as to prevent the landlord from recovering its legal costs of the current proceedings through the service charge. The tenants were unable to identify any provision of their leases which would allow the landlord to recover these costs. Although we are aware that different First-tier Tribunals have reached different views on this, in our judgment where a lease does not permit recovery of costs, the Tribunal does not have the power to make a section 20C order. In these circumstances we decline to do so. If we had had the power to do so, we would have made a section 20C order.

Costs

41. The tenants have not succeeded on the stage 1 notice point, but they are overall in our judgment the winners. In these circumstances, it is appropriate to order that the landlord pay the tenants the issue fee of £100 and the hearing fee of £200.

DECISION

(a) The service charges due to the respondent landlord in respect of the major works shall be based on the figures approved by Mr Levy FRICS MAE in the joint Scott Schedule at page 1412 to page 1451 of the trial bundle.

(b) The Tribunal declines to make an order under section 20C of the Landlord and Tenant Act 1985 on the ground that the respondent landlord has no power lawfully to demand the legal costs of the current proceedings from the applicant tenants.

(c) The respondent landlord shall pay the applicant tenants £300 in respect of the fees payable to the Tribunal.

(d) All issues as to the wasted costs of 23rd June 2023 shall be referred to Judge Sarah McKeown in accordance with the Order of that date.

Landlord and Tenant Act 1985 (as amended)

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 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 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 21B

(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

(5) Regulations under subsection (2) may make different provision for different purposes.

(6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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

SCHEDULE 4 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) 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.