FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BE/LSC/2022/0367**
Property	:	**Flats 57a, 57b, 57c, 59a, 59b, 59c, 61a, 61b, 61c, 63a, 65a, 65b, 67a Camberwell Road, London, SE5 0EZ**
Applicant	:	**Castle Data Limited**
Representative	:	**Feldgate Limited**
Respondent	:	**Leaseholders of the above flats**
Representative	:	**In person**
Type of application	:	**The payability of service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	:	**Judge Tueje** **Mr O Dowty MRICS** **Mr J Francis QPM**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of hearing	:	**16th January 2024 and 17th May 2024**
Date of decision	:	**10th June 2024**

DECISION

In this determination, statutory references relate to the Landlord and Tenant Act 1985 unless otherwise stated.

Decisions of the Tribunal

(1) The decision of the Tribunal is that £393,048.94 is a greater amount than is reasonable for the cost of the works the Applicant proposes to carry out. Accordingly, we find that sum is unreasonable.

(2) The Tribunal makes an order under section 20C in favour of Mr Shah.

(3) The Tribunal makes orders under section 20C and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform in favour of Mr Reed.

The application

1. The Application relates to 13 dwellings at 57a, 57b, 57c, 59a, 59b, 59c, 61a, 61b, 61c, 63a, 65a, 65b, 67a Camberwell Road, London, SE5 0EZ . These 13 flats are on the first, second and third floor of a mixed-use terraced building (the "Premises"), which also has commercial premises on the ground floor.

2. The Applicant is the landlord of the Premises, and the Respondents are the leaseholders of the flats it comprises.

3. The Application is dated 30th November 2022. It was accompanied by a schedule of all residential leaseholders including their name, the property in respect of which they hold a leasehold interest, and where different, their correspondence address.

4. The Applicant requests the Tribunal determines whether £393,048.92 is a reasonable cost for proposed works to the building in which the Premises are situated (the "Works"). In particular, the Applicant will be seeking payments on account from the leaseholders in order that it can enter into a contract for the Works to be carried out. It therefore seeks the Tribunal's determination as to whether the amount claimed is reasonable under section 19(2).

The procedural history

5. As stated, the Application is dated 30th November 2022.

6. By an order dated 12th May 2023 the Tribunal gave directions, including making provision for the Respondents to provide their statements of case, witness statements and supporting documents. Initially, Mr Shah, the leaseholder of 59a Camberwell

Road, London, SE5 0EZ, was the only Respondent who submitted written evidence and documents in response to the Application.

7. The Application was originally listed for a final hearing on 31st July 2023, but that hearing was adjourned at the Applicant's request.

8. It was re-listed for a final hearing on 16th January 2024. At that hearing the Applicant was represented by Mr Rottenberg of Feldgate Limited, the Applicant's agent responsible for managing the Premises, but not the commercial units.

9. Mr Shah attended the hearing. Other leaseholders attended the hearing, but they had not submitted any written evidence. They were Mr Clive Batty of Flat 57b; Ms Julie Verhoeven of Flat 63a; Mr Stephen Renn of Flat 67a; and Mr Anthony Reed of Flat 61a.

10. At the hearing Mr Reed stated he had not received a copy of the 12th May 2023 directions order. At that time, the Tribunal's understanding was that the directions order had been sent to all leaseholders, and the hearing proceeded on that basis.

11. The Applicant prepared a 362-page bundle for use at the hearing.

12. The Tribunal heard evidence from Mr Rottenberg on behalf of the Applicant, and from Mr Shah.

13. Following questions from the Tribunal, Mr Rottenberg confirmed he had not checked the commercial leases to clarify whether the commercial leaseholder may be liable for a proportion of the cost of the Works, but said he would do so before service charge demands in respect of the Works were sent out.

14. Despite most of the leaseholders not submitting written evidence, the Tribunal exercised its discretion to allow all leaseholders present to make closing submissions. However, their submissions were limited to the evidence already provided on behalf of the Applicant and by Mr Shah. Mr Rottenberg made closing submissions on behalf of the Applicant.

15. Following the hearing, the Tribunal learnt the directions order had not been sent to Mr Reed, who was therefore given an opportunity to make written representations. On receipt of which, the Tribunal issued further directions as follows:

   15.1 Mr Reed to file and serve a signed witness statement attaching any documents he wishes to rely on in support of his written representations;

15.2 The Applicant to file and serve a signed witness statement attaching any documents it wishes to rely on in dealing with Mr Reed's written representations;

15.3 Mr Reed may submit a brief written reply; and

15.4 A further hearing was listed on 17th May 2024 to deal with the issues raised by Mr Reed's written representations.

16. At the hearing on 17th May 2024, Mr Rottenberg again represented the Applicant, and Mr Reed was unrepresented. The Applicant had prepared an updated 564-page bundle for use at the hearing. At that hearing the Tribunal asked Mr Rottenberg whether he had checked if the commercial leaseholder is liable for a proportion of the cost of the Works; he confirmed he had not yet done so.

The factual background

17. Except that some leaseholders have extended the term, all leases appear to have similar or broadly similar terms.

18. Clause 3(2) deals with payment of service charges by the leaseholders. So far as is relevant, sub-clause 3(2)(iii) of the lease defines service charges to include the following:

(iii) The cost of maintaining repairing redecorating and renewing

(a) *The structure of the said buildings including drains foundations roofs chimney stacks gutters external doors and windows (including frames) gutters and rainwater pipes*
(b) *The gas and water pipes electric cables and wires in under or upon the said buildings*
(c) *The entrance drive pathways entrance hall staircases and landings of the said building and such other parts of the said buildings so enjoyed or used by the Lessee or the Lessees of other fats in common and boundary walls and fences of the said buildings including the cleaning and lighting thereof*

19. The Applicant's position is that there is no provision for a sinking fund in the lease, which was not expressly disputed by the leaseholders.

20. On 7th October 2014, Mr King of Building Surveying Consultancy ("BSC") inspected the Premises and prepared a condition survey report dated 12th October 2014. Mr Rottenberg initially described Mr King as a surveyor, but when asked about Mr King's

credentials as set out in the report, Mr Rottenberg accepted he is a chartered builder, but not a chartered surveyor. BSC's report recommended various works are carried out to the Premises, including works to the structure, the exterior and internal communal areas.

21. On 19th February 2015, Feldgate sent the leaseholders notice of intention to carry out qualifying works pursuant to the section 20 consultation requirements. After discussions with leaseholders, and at their request, on 16th November 2015, Feldgate wrote to leaseholders stating they would ask Mr King if works could be carried out in phases. That letter enclosed a statement of estimates to leaseholders containing two estimates for all works recommended in the BSC report as follows:

    21.1 Maintaining London for £192,526.50 plus VAT; and
    21.2 Smart Build for £207,603.17 plus VAT.

22. Following a meeting on 10th December 2015 between Abe Berger of Feldgate and some of the leaseholders, one leaseholder, Mr Bailey, e-mailed Mr Berger on behalf of around six other leaseholders confirming one of the next steps was that Mr Bailey would obtain a third estimate. It appears Mr Bailey never provided an estimate.

23. It's unclear what, if anything, happened between January 2016 to October 2017 in respect of the Works. Although during the intervening period, Mr Shah purchased his flat.

24. On 6th November 2017, Feldgate wrote to the leaseholders confirming works will be carried out in two phases, payment for which was requested, as the contractor had been provisionally booked to start work the following spring. On receiving this letter, Mr Shah complained to Feldgate that it failed to inform him of the qualifying works when he purchased his flat. He later pursued this complaint with the Property Redress Scheme, which ultimately found his complaint was unfounded.

25. On 19th March 2018, Feldgate wrote to Mr Shah stating the February 2015 notice of intention was withdrawn.

26. On 3rd July 2019, Feldgate sent leaseholders a fresh notice of intention to carry out the Works, inviting leaseholders to nominate contractors within the relevant period, from whom Feldgate would obtain an estimate.

27. On 31st March 2020 Feldgate sent leaseholders a statement of estimates containing three estimates as follows:

    27.1 Maintaining London for £184,986.30 plus VAT;
    27.2 B&E Contractors for £186,576.50 plus VAT

27.3 Smart Build for £228,177.08 plus VAT.

28. The estimates were lower than those received in November 2015, because the March 2020 estimate was for external works only, being stage one of the Works. Whereas the consultation documents sent to leaseholders on 3rd July 2019 included some works to internal communal areas.

29. Mr Rottenberg states that due to COVID, the works were not progressed until 2021 when discussions regarding the Works resumed.

30. In 2022 some leaseholders discussed instructing their own surveyor to advise them regarding the Works. Mr Rottenberg says he welcomed this, and in fact Feldgate agreed to meet with the leaseholders' surveyor remotely on 14th July 2022. However, the surveyor did not attend, nor did any leaseholders. The surveyor later informed Feldgate he had not received further instructions from the leaseholders.

31. By the time discussions resumed, the March 2020 estimates had expired, so Feldgate obtained an updated estimate from Maintaining London in respect of the external works. Feldgate asked only this contractor to provide an updated estimate because it had provided the lowest estimate in 2019.

32. Maintaining London has since changed its name to SkyBuild Maintenance Limited. Its updated tender dated 10th November 2022 is for £288,927.72, bringing the total cost of the Works to £393,048.92 including health and safety compliance, management fees, surveyor's fees and VAT. Leaseholders were sent notification of the updated cost. It was only apportioned between the residential leaseholders in amounts ranging from 6% to 9.5% of the total cost. It is the cost contained in the November 2022 tender that was submitted with the Application.

The issues

33. The Tribunal identified the following issues as requiring determination:

    33.1 Whether £393,048.92 is a reasonable amount for the proposed Works; and

    33.2 What order, if any, should be made under section 20C and/or paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

The legal framework

34. The relevant legislation is set out in the Appendix to this determination; a summary is at paragraphs 35 to 40.6 below.

35. Section 18(1) defines service charges to include amounts payable by a leaseholder for services, repairs, maintenance or improvements, where these costs vary according to the relevant cost.

36. Section 18 continues that *"relevant costs"* means the cost or estimated cost incurred, or to be incurred, in connection with service charges payable under section 18(1).

37. Section 19(2) limits the amount of service charges payable on account to an amount that is no greater than it is reasonable to pay.

38. Section 20 imposes an obligation on landlords to consult leaseholders where the relevant costs of carrying out qualifying works, which are works on a building or other premises, exceed a specified amount, currently £250. Failure by a landlord to consult leaseholders in accordance with section 20, means the amount payable by the leaseholder in relation to qualifying works that have been carried out is limited to £250.

39. The consultation requirements are contained in the Service Charge (Consultation Requirements) (England) Regulations 2003 (the "2003 Regulations").

40. In brief, Part 2 of Schedule 4 to the 2003 Regulations requires that as part of the consultation, a landlord must do the following:

    40.1 give leaseholders written notice of its intention to carry out qualifying works, which contains a general description of the proposed works and the necessity for them. The notice of intention must also invite leaseholders, if they wish, to make written observations regarding the proposed works and nominate a contractor within 30 days;

    40.2 have regard to any observations from leaseholders regarding the proposed works that are made within the required timescale;

    40.3 tries to obtain an estimate from a nominated contractor where one is nominated;

    40.4 provide a statement of estimates to leaseholders setting out the estimates received from at least two contractors. Where the landlord obtains an estimate from a nominated contractor, that estimate must be one of the estimates included in the statement of estimates. The statement of estimates must also contain a summary of any responses received from leaseholders, the landlord's response to these, and invite leaseholders, if they wish, to make written observations on the estimates within 30 days;

40.5 have regard to any observations regarding the estimates that are made within the required timescale; and

40.6 except where entering into a contract with a nominated contractor or the contractor providing the lowest estimate, a landlord must provide notice to leaseholders of entering into a contract to carry out the proposed works within 21 days of doing so.

The Tribunal's Determination

42. This determination sets out the Tribunal's decision following the hearings on 16th January 2024 and 17th May 2024.

43. The Tribunal reached its decision after considering the witnesses' oral and written evidence, including documents referred to in that evidence, and taking into account its assessment of the evidence.

44. This determination does not refer to every matter raised by the parties, or every document the Tribunal reviewed or took into account in reaching its decision. However, if a point or document was referred to in the evidence or submissions that was relevant to a specific issue, it was considered by the Tribunal.

45. Furthermore, this determination does not deal comprehensively with those matters raised by the parties which are extrinsic to the issues that need to be determined.

The Tribunal's Decision

46. In our judgment, £393,048.92 is a greater amount than it is reasonable to claim from the Respondents in connection with the Works.

Reasons for the Tribunal's Decision

47. For the payment on account to be reasonable, it should be reasonably anticipated the Works for which the costs are being claimed, will in due course be carried out. The Applicant relies on the report prepared by the BSC dated 12th October 2014 which recommends the Works are carried out. Mr Shah accepts the Works are necessary. Mr Reed argues he has been provided with insufficient information to assess the extent to which all Works are necessary. In our judgment, it is more likely than not that some works are required to the structure and exterior of the property. Although some works have been carried out since BSC's report was prepared, such works are not as extensive as the report recommends, meaning it's likely some works are still necessary.

48. Although BSC's report is almost 10 years old, and various works have been carried out since then, there has been no updated inspection and/or report to reflect the repairs carried out during the intervening period. Mr Rottenberg argues only patch repairs have been carried out in recent years. However, we note that some aspects of the Applicant's list of maintenance carried out in the last three years relate to works and/or repairs included in the 2014 condition survey.

49. Furthermore, Mr Reed points out that between January 2022 to February 2023, works amounting to £11,734 have been carried out to the roof. Mr Reed's assertion was not challenged by the Applicant, and it is supported by the service charge demands he referred us to. As the condition survey and specification of works are dated, works have since been carried out, yet the original, subsequent and current tenders are based on defects present in 2014, this means some of the works recommended may no longer be required. Therefore, we are not satisfied that all works in the tender remain outstanding. As a result, we are unsatisfied that the cost of the Works claimed from the Respondents is no greater than is reasonable.

50. Mr Rottenberg states the time that has elapsed since the 2014 report was prepared is because the leaseholders have not put the Applicant in funds to carry out the Works. He adds Feldgate also spent time negotiating with leaseholders, they adopted a consensual approach resulting in the original works being carried out in stages at the leaseholders' request. Feldgate also agreed to meet the leaseholders' surveyor, and no doubt, frustratingly for them, the leaseholders' surveyor did not attend the agreed meeting. However, the Applicant is contractually obliged to keep the Premises in repair. And while we do not criticise the Applicant for waiting until it was in funds, there are remedies available to procure payment from leaseholders for necessary works the leaseholders are liable for. Therefore, we find not being in funds is insufficient justification for relying on an outdated survey to fulfil its contractual obligations.

51. Both Mr Shah and Mr Reed argued the cost of the Works are unreasonable because they have not been correctly apportioned between the residential and commercial leaseholders. Mr Rottenberg accepts he has not yet checked whether the commercial leaseholder is liable to pay a proportion of the cost of the Works. In our judgment, until there is clarification on whether the commercial leaseholder is liable to pay a proportion of the costs, we are unsatisfied that the amounts being claimed from residential leaseholders is not greater than is reasonable.

52. Mr Reed argues the Applicant has not complied with the statutory consultation requirements, and that he has not received any notices sent under section 20. Relying on clause 9 of the lease, Mr Reed stated section 196 of the Law of Property Act 1925 had not been complied with. Mr Rottenberg submits notice was given to Mr Reed, and that the 1925 Act only applies to notices that must be sent as required by the lease. He points out all leaseholders were sent a notice of intention on 3rd July 2019; no contractors were nominated during the required timescale; a

statement of estimates was sent on 31st March 2020; there were no observations regarding the estimates; the contractor submitting the lowest tender was selected; and that chosen contractor was asked to provide an updated estimate in November 2022. Mr Rottenberg adds the notices required as part of the statutory consultation do not expire, so remain valid, even if sent some time ago.

53. We conclude Mr Reed was not given the required notice of the proposed Works. We find section 196 of the Law of Property Act applies to notices which affect a property, and a notice given in connection with works to a property fall within that definition. Where section 196 of the 1925 Act applies, notice is only properly given in one of two ways: either by proving the document came to Mr Reed's attention, or if it was sent by registered post pursuant to section 196 of the 1925 Act. The Applicant has not adduced evidence nor argued that either requirement is met. Instead Mr Rottenberg argues the 1925 Act doesn't apply. However, as stated above, we consider the Act does apply.

54. Mr Rottenberg is correct that the legislation does not give a period by which section 20 notices expire. In fact, the *Jastrzembski v Westminster City Council [2013] UKUT 0284 (LC)* decision Mr Shah relied on supports Mr Rottenberg's argument on this point. *Jastrzembski* held that whether or not an earlier notice of intention which was valid at the date it was sent, remains valid for qualifying works which are revised and/or carried out later, depends on the circumstances of the case.

55. Despite the decision in *Jastrzembski,* we find that when the Applicant obtained an updated estimate from SkyBuild Maintenance, it did so in breach of the statutory consultation requirements. In particular, statutory consultation requires obtaining estimates, the Applicant must invite leaseholders to nominate contractors and try to obtain an estimate from a nominated contractor. After the estimates have been obtained, it must provide a statement of estimates containing at least two estimates, and invite leaseholders to make written observations (see paragraph 40.4). These are mandatory requirements under the 2003 Regulations, so would apply to any updated estimates. However, this was not undertaken when the Applicant obtained the SkyBuild's updated estimate.

56. While *Jastrzembski* confirms an earlier notice of intention which was valid when sent, may remain valid for works carried out sometime later, we do not consider that applies in these circumstances. That is because we consider notification of SkyBuild's updated estimate was invalid at the date it was sent, since it wasn't sent out as a part of a statement of estimates.

57. On its own, we do not consider the above failure to comply with the statutory consultation requirements is fatal. However, we find it is a relevant factor in determining whether the amount claimed from leaseholders for the Works is reasonable.

58. In the circumstances, where an outdated survey is relied on that does not reflect subsequent works carried out, where it is also unclear whether the cost of the Works has been properly apportioned, and there has been only partial compliance with the statutory consultation process, we find the costs claimed are unreasonable.

Miscellaneous Issues

59. A number of issues were raised which do not impact on the decision we have made, so we will only deal with these briefly. Firstly, Mr Shah, Mr Reed and Ms Verhoeven complained about inadequate communication from Feldgate regarding service charges. In light of our findings regarding non-compliance with the statutory consultation requirements, these complaints do not take matters any further.

60. Secondly, and contrary to Mr Reed's claim of a failure to consider spreading the cost over a longer period, the Applicant has done so. Originally works were intended to include the internal communal areas, but after discussing the feasibility for works being carried out in two or three stages, the current application relates to external and structural works only.

61. Mr Shah argued that as a result of the time that has elapsed since the BSC report, the extent of work now required will be more expensive. Mr Rottenberg counterargued Mr Shah provided no supporting evidence of an alleged increase in costs. The Tribunal asked Mr Shah for his estimate of the reasonable cost of these Works, but he explained he doesn't have the expertise to provide this. Essentially, Mr Shah is asking the Tribunal to infer that the cost of Works will now be more as a result of the time that's elapsed, but as Mr Rottenberg points out, there is no evidence to support that finding.

62. Mr Shah and Mr Renn complained that there should have been a sinking fund to ease the financial impact of the cost of the Works. Mr Rottenberg explained there is no provision in the lease for a sinking fund, which Mr Shah acknowledged. We find there is no basis for criticising the Applicant or Feldgate for refusing to create a sinking fund, when doing so would be contrary to the lease.

63. Mr Shah feels aggrieved that prior to him purchasing his flat, Feldgate did not inform him that qualifying works were anticipated. This is not relevant to whether the amount the Works cost is reasonable, nor do we have jurisdiction to deal with this matter. In any event, Mr Shah has already pursued this complaint with the Property Redress scheme.

64. Mr Reed asks the Tribunal to limit the cost recoverable in respect of the Works to £250 per leaseholder. However, we have no jurisdiction to do so in respect of a

payment on account being claimed in relation to costs that have not yet been incurred.

Applications Relating to Costs

65. Mr Shah made an application under section 20C.

66. Mr Reed made applications under section 20C and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform.

The Tribunal's Decision

67. In respect of Mr Shah's application, the Tribunal makes an order under section 20C.

68. In respect of Mr Reed's applications, the Tribunal makes orders under section 20C and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform.

Reasons for the Tribunal's Decision

69. Taking into account the Tribunal's decision made in respect of the Application, and that Mr Rottenberg made no representations opposing Mr Shah's and Mr Reed's applications, the Tribunal determines it is just and equitable to make the orders sought. Accordingly, the Applicant may not claim any costs it has incurred in connection with the proceedings before the Tribunal through Mr Shah or Mr Reed's service charges.

Name: Judge Tueje **Date:** 10th June 2024

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

Extracts from the Landlord and Tenant Act 1985

18.— Meaning of "service charge" and "relevant costs"

(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.

19.- Limitation of service charges: reasonableness

(1) Relevant costs shall be taken into account in determining the amount of service charge payable for a period-

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

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

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 subsections (6) or (7) (or both) unless the consultation have been either-

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

(b) Except in the case of works to which section 20D applies, 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 payment of service charges) to relevant costs incurred on carrying out the works under the agreement.

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

27A- Liability to pay service charges: jurisdiction

(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.

<u>Service Charge (Consultation Requirements) (England) Regulations 2003</u>

Schedule 4 Part 2

Consultation requirements for qualifying works for which public notice is not required

1.— ***Notice of intention***

(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) (ii) that they must be delivered within the relevant period; and*
  - *(iii) (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.

2.— Inspection of description of proposed works

(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.

3.- Duty to have regard to observations in relation to proposed works

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.

4.— Estimates and response to observations

(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.

5. - Duty to have regard to observations in relation to estimates

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.

6.— Duty on entering into contract

(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.