FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**CHI/29UL/LSC/2023/0078**
Property	:	**27 Court Place, Castle Hill Avenue Folkstone, CT20 2QZ**
Applicant	:	**Margaret Elizabeth Gadsden**
Representative	:	**In person and by Miss Rebecca Marsden (daughter)**
Respondent	:	**Home Group Limited**
Representative	:	**Ms Scarlett Taylor-Waller of counsel instructed by Devonshires LLP**
Type of application	:	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985 and costs orders**
Tribunal members	:	**Mr C Norman FRICS** **Mr D Ashby FRICS**
Venue	:	**Ashford House Tribunal Hearing Centre**
Date of Hearing	:	**17 May 2024**
Date of decision	:	**12 August 2024**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985 have not been complied with.

(2) The recoverable service charge is limited to £250 in respect of the major works payable for lift replacement, unless and until dispensation from compliance with the consultation requirements is granted.

(3) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

(4) The tribunal does make an order under Para 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 that the landlords litigation costs cannot be recovered from the lessee Ms Rebecca Gadsden as an administration charge.

(5) The tribunal determines that the Respondent shall pay the Applicant £300 within 28 days of this Decision, in respect of the reimbursement of the tribunal and hearing fees paid by the Applicant.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable to the Respondent in respect of the service charge years. There were also applications for costs protection under section 20C of the 1985 Act and Para 5A Sch 11 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act").

The hearing

2. The Applicant appeared in person assisted by her daughter. The Respondent was represented by Ms Scarlett Taylor-Waller of counsel, who provided a helpful skeleton argument.

The background

3. The property which is the subject of this application is a one-bedroom flat in a six-storey block. The Applicant's daughter holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The applicant is occupying and paying service charges. The Tribunal previously determined that the applicant had standing to bring the application (Directions by Judge Jutton 17 February 2024).

4. The Judge stated:

> "Section 27A of the Landlord and Tenant Act 1985 provides that: '*An application may be made to the appropriate tribunal for a determination whether a service charge is payable ….'* It goes on to provide that if a service charge is payable then the tribunal can determine who should pay it, to whom and in what amount. The wording does not place any restriction on who may make an application, in particular it does not restrict applicants to landlords and tenants. The Respondent has produced no legal argument or legal authority in support of their application that the Applicant may not have the legal standing to bring these proceedings. The Respondent simply questions, given that the Applicant is not the current lessee property, whether she may bring these proceedings… In the circumstances the Tribunal is satisfied that the Applicant does have the standing to bring these proceedings."

5. The specific provisions of the lease and will be referred to below, where appropriate. Neither party requested an inspection, and the tribunal did not consider that one was necessary.

The issues

6. The relevant issues for determination are as follows:

   (i) Whether the consultation requirements under section 20 of the 1985 Act and Service Charges (Consultation Requirements)(England) Regulations 2003 ("the Regulations") have been complied with in relation to lift works.

   (ii) The payability and/or reasonableness of service charges relating to lift works. Although this was incorrectly stated to relate to the service charge years 2018 and 2019 the costs were applied to the accounts in 2020, 2021 and 2022. The respondent suffered no prejudice as a result of this and the real issues in dispute were clear.

   (iii) The costs applications.

The Law

Relevant legislation is set out in the legal annex attached.

The applicant's case

7. The applicant made written an oral submissions but did not provide a witness statement. The applicant disputed whether the consultation

requirements had been met and the reasonableness and payability of the lessee's contribution to lift refurbishment works of £69,997.26. The applicant accepted that on 1 June 2018 the landlord wrote to residents under section 20 advising their intention to modernise the lift and replace the control panel and hydraulic pump to lift 1.

8. On 29 October 2018, a summary of the tender report was issued for the modernisation of the lift with alternative cost estimates of £54,515.60 and £64,060 received, both excluding VAT. On 11 December 2018, a statement of estimates was sent relating to replacement of control panel lift hydraulics associated health and safety works and provision of servicing and maintenance.

9. On 17 June 2019 a notice of reasons for awarding the contract to the supplier were issued. In March 2020 the lift work commencement was delayed owing to the covid pandemic. On 18 June 2020 notice was issued that the lift refurbishment would commence around October 2020 and the applicant was subsequently advised that this would take around four weeks. On 25th of January 2021 it was said that additional works will be carried out to resolve a parts ordering error.

10. In *Jastrzembski v Westminster City Council* [2013] UKUT 0284 (LC) it was held that a s.20 process is invalidated in instances where there is a delay between the consultation process and the commencement of the major works. Furthermore, the description of works had changed to including all control equipment which was not listed in any of the section 20 documentation.

11. Section 20 has been breached. Mr Farooq Chaudhry of Home Group in an email with another resident also considered that the costs were high. Accordingly, home group should have instigated a new section 20 process.

12. All consultations were to be carried out at Home Group offices in Harrow or Farringdon which is an unreasonable location for a group of elderly infirm and/or vulnerable individuals. Home Group were advised about this but did not alter their position.

13. The net tender sum of £54,515 was above industry standard. The applicant obtained other quotes of £24,950, £29,445 and £25,650. It is not necessary to replace the hydraulic rams/cylinders on well-maintained machinery. These should last for generations. The original rams are 35 years old. The cost from Home Group for this item is £3,850. Waste disposal could have been completed free of charge by licensed waste disposers.

14. The applicants also obtained alternative quotes in relation to individual items within the tender specification and identified lower sums in

relation to those lines in the tender. The applicant's case was that this demonstrated that the tender price was too high.

15. The applicant also raised concerns in relation to the suppliers used, their licensing and qualification. The Robin Primrose Partnership was chosen by Home Group as the consultant to lead the works, manage the tender and select suppliers and contractors. The section 20 notice did not include a requirement for the hydraulic rams to be replaced. The rams were incorrectly measured, could not be used and had to be replaced. The unusable rams were incorrectly stored outside. The waste removal company used was not properly licensed by the environmental agency.

16. Home group had provided a lack of clear budgetary information.

The respondent's case

17. Ms Taylor-Waller produced a helpful skeleton argument including a chronology of events which the tribunal set out below:

Date	Event	Ref
1987	The lifts at the Building were installed.	[A309]
05.04.2018	A meeting took place with residents to discuss the need for modernising the lift at the Building following the lift passing its engineering life expectancy.	[A265]
01.06.2018	The Respondent sent leaseholders a notice of intention to carry out works pursuant to s.20 LTA 85 and Schedule 4, Part 2 of the Service Charges (Consultation Requirements) (England) Regulations 2003/1987 ("the Regulations"). Robin Primrose Partnership were appointed to manage the project of the lift repairs and evaluate any tenders.	[A51]
06.07.2018	The relevant deadline for making observations and/or nominations of estimates in respect of the notice of intention pursuant to paragraph 1(2)(c) and 1(2)(d), Schedule 4, Part 2 of the Regulations.	
29.10.2018	The Respondent sent leaseholders a tender report setting out the estimates received.	[A54]

11.12.2018	The Respondent sent a statement of estimates to leaseholders pursuant to paragraph 4, Schedule 4, Part 2 of the Regulations.	[62]
15.01.2019	The relevant deadline for written observations in respect of the notice of estimates.	
17.06.2019	The Respondent sent a notice of reasons for awarding the contract to leaseholders/tenants pursuant to paragraph 6, Schedule 4, Part 2 of the Regulations.	[A60]
08.2019	Works to the lift were initially due to take place. This was deferred as the Scheme Manager was on leave. Works were delayed until November 2019.	[A268]
06.10.2019	Mr Primrose sent a detailed letter to the Maintenance Surveyor addressing the leaseholders concerns over the tender.	[A326]
11.2019	The works were further delayed due to the delayed completion of another project at the Building.	[A278]
03.2020	First period of covid lockdown.	
06.2020	Works were due to take place but further deferred given the residents' concerns over covid.	[A278]
28.07.2020	On or around this date, a ballot of residents took place as to whether to progress the lift update. The vast majority votes in favour.	[A67]
10.2020	Works to the lift began.	[A278]
21.04.2023	The Applicant made an application under s.27A of the LTA 85.	[A3]
14.01.2024	The Applicant made an application under s.20C of the LTA 85.	[A13]
15.01.2024	The Applicant made an application under paragraph 5A, Schedule 11 to the Commonhold	[A22]

	and Leasehold Reform Act 2002.	
23.01.2024	The Respondent made an application for a preliminary determination of *locus standi*. This was dealt with during the hearing on the papers dated 07 February 2024.	[A10]

18. Miss Taylor-Waller submitted that where the nature of the proposed works changes after the consultation process it may be necessary landlord to repeat it. In *Reedbase Limited and Another v Fattal and Others* [2018] EWCA Civ 840 it was held that the test was whether the tenants are being given sufficient information by the first set of estimates. There is no time limit under the 1985 Act or consultation regulations for completing the section 20 consultation or implementing the proposals. In *Jastrembski v Westminster City Council* [2013] 284 (LC) it was held that there had been a breach of the consultation process given the delay and changes in the nature of the work.

19. Counsel submitted that the consultation requirements had been fully complied with in the present case. The landlord served notice of intention on 1 June 2018, where the works are described as lift modernisation phase 1 replacement of the control panels and hydraulic pump to lift one (left-hand lift). Observations within 30 days were invited and the name of the person from whom the lessees should obtain an estimate. No proposals were received within that period. One observation was received as to whether it should be the left or right lift which required modernisation. [Consequently, the landlord changed the works from left to right hand side lift].

20. The landlord obtained two estimates from Aspects Lift Ltd £54,550 and Target Lifts Ltd £64,060. The tenants also received a tender report on 29 October 2018 from Robin Primrose.

21. There was no change to the scope of the works save from the left to right lift. The respondent is required only to describe in general terms works proposed and the reason why they are needed.

22. The lifts were not replaced, and the lift car and door equipment maintained. In accordance with *Reedbase Limited v Fattal*, the leaseholders were given sufficient information within both the notice of intention and notices of estimates.

23. The alternative quotes provided by the applicant were not made within the 30-day consultation period being dated 13 January 2019. In addition, the quotations submitted by the applicant were not for comparable works. The two landlord estimates received were close in

price and had been considered by an independent adviser. The market had been properly tested. There was no undue delay during consultation there was no change scope the works in the present case. Replacement of the hydraulic rams of pump were necessary and the cost reasonable. The leaseholders had been charged once only for the relevant ram/pump. The applicant's suggestion that individual items in the tender could be outsourced at cheaper cost was not reasonable nor cost-effective. Replacement of the rams was appropriate and reasonable.

24. The total invoice cost of works was £65,418.

The Respondent's Witness - Ms Nikki Burton

25. Ms Nicki Burton Leasehold Manager for the South for Home Group was called, having given a witness statement verified by a statement of truth. Her evidence insofar as relevant to matters still in issue may be summarised as follows. The building is a leasehold retirement scheme and therefore a working lift is essential. Home Group acknowledged that it was under an obligation to keep the lift in repair. Parts of the lift were becoming obsolete, and modernisation was required. Lifts require technical expertise, so Robin Primrose Partnership were instructed to manage the project and evaluate the tenders. A meeting took place with residents on 5 April 2018 at which residents were informed that the equipment has reached the end of life. Notices of intention were served. Following an observation, it was decided to carry out works to the right hand rather than left hand lift. No nominated contractor was put forward within the consultation period. Four companies were approached in the lift industry but only two tendered. The tenders were much higher than an initial informal estimate of £35,000 but this reflected the great pressures in the industry and the location of the property. Notice of award was issued on 17 June 2019. The work commenced in October 2020. This delay was for several reasons including Covid.

26. The nature of the proposed work did not change between stages 1 and 2. It was always a partial lift modernisation not full replacement. The lift car and door were not replaced. A second consultation would have led to higher costs.

27. Home Group provided that documents could be inspected at its offices. Documents were also provided by email on request or by being made available at the scheme manager's office.

28. The applicant's quotations related to traction lifts (not hydraulic lifts) with an incorrect number of floor stops and were not comparable. Neither applicant's contractor had visited the property. The hydraulic ram should be replaced as part of major works. It was impractical to assess their condition without disassembly which was expensive, and

the stand-alone replacement cost would be £8,000 as opposed to the £3,850 tender cost.

29. The professional fees of Robin Primrose Partnership totalled £5,533.20 as against the amount envisaged in the notice of estimate of £4,579.26. This was because VAT had been incorrectly omitted.

The Lease

30. The Tribunal also finds it helpful to refer to Counsel's summary of the relevant lease provisions as follows:

Definitions [A286]:

6.1 Buildings: *"any buildings or other structures (and any structures incidental to the users thereof) and any Service Installations now or hereafter constructed"*

6.2 Common Parts: *"all parts of the Development (other than those comprised in the Leases and excluding the Warden's Residence)"*

6.3 Maintenance Charge: *"the sums payable by the Purchaser to the Association in accordance with the provisions of Parts I and II of the Sixth Schedule of this Lease"*

6.4 the Specified Proportion: *1.961%* [A285]

Third Schedule, Covenants by the Purchaser [A292]:

(1): "*To pay the yearly rent hereinbefore reserved (if demanded) and by way of additional rent to pay to the Association the Maintenance Charge"*

(13): *"To pay all sums of whatever nature assessed and charged at any time upon the Property or the Association or the Company or the Purchaser in respect thereof"*

Fifth Schedule, Covenants by the Association [Respondent] as to the provision of services [A297]:

(5): *"To keep the Common Parts clean and tidy and in a good state of repair and condition…"*

(7): *"To keep and maintain in proper working order and when necessary replace all tools and electrical and other equipment and apparatus provided for the use…"*

Sixth Schedule Part I (Covenants in respect of the Maintenance Charge)

1. The Association shall as soon as reasonably practicable after 1st June in every year of the said term prepare an estimate of the sums to be spent by it in such year on the matters specified In Part II of this Schedule and shall add thereto or deduct therefrom (as may be appropriate) any difference between: -

(a) the amount notified in accordance with paragraph 3 hereof; and

(b) the amount of the estimate prepared in respect of the previous year of the said term and shall serve on the Purchaser notice of the total amount so calculated

2. The Purchaser shall pay to the Association a sum without deduction equal to the Specified Percentage of the total amount specified in such notice such payment to he made in quarterly instalments on the usual quarter days provided that if at any time the sum shall remain unpaid for the period of 14 days after becoming payable the same shall bear interest calculated at an annual rate equal to the base rate payable by Barclays Bank PLC for the time being in force the first such instalment or a pro-portionate part thereof from the date hereof to the 1st day of the quarter next following shall be paid on the date hereof

Sixth Schedule, Part II, Expenditure to be recovered by means of the maintenance charge [A302]:

(1): "*The sums spent by the Association in and incidental to the observance and performance of the covenants on the part of the Association contained in the Fifth Schedule and Part I of this Schedule"*

(6): "All sums paid by the Association in and about the repair maintenance dec the oration cleaning lighting and running of the Common Parts and the Warden's Residence whether or not the Association was liable to incur the same under the covenants herein contained"

(9): "The costs incurred by the Association in bringing or defending any actions or other proceedings against or by any person whatsoever in connection with the Property and the Development"

Findings

31. The Tribunal found that Ms Burton was an honest witness doing her best to assist the Tribunal, but she did not have personal knowledge of the property at the material time.

32. The Tribunal finds that the estimates themselves were not sent to the leaseholders. The statements of estimates letter of 1 December 2018 [A62] states: *"All of the estimates obtained may be inspected at* ***Hygeia House, 66 College Road, Harrow HA1 1BE*** *(between 9 am - 5pm Monday to Friday. Appointments must be made prior to any visit by emailing LRAdmin @homegroup.org.uk)…".*

33. The tribunal finds that the location at which the estimates could be inspected was not a reasonable location as required under Paras 2(1)(a), 4(5)(c) and 6(3) of Schedule 4 Part 2 of the Regulations. This is because it was approximately 95 miles away by road from Court Place Folkestone, or a long and expensive rail journey. The Notices made no reference to the estimates being available for inspection at the subject property.

34. The Tribunal therefore finds that the consultation requirements have not been complied with. Consequently, the cost of the lift works is capped at £250 unless and until dispensation has been granted under section 20ZA of the Act.

35. The Tribunal has then considered the reasonableness and payability in the event that such dispensation is granted in the future.

36. The Tribunal finds that in all other respects the consultation requirements have been complied with.

37. The Tribunal finds that an appropriate tendering exercise was undertaken, and that the results reflected the market cost. It notes that the lower of the two tender responses was accepted. There was no material change to the works after the tender responses had been received. Any error regarding the rams being incorrect was not charged to lessees. Applying *Reedbase Limited and Another v Fattal and Others* [2018] EWCA Civ 840, re-consultation was not required.

38. The Tribunal does not consider that the factual matrix of *Jastrzembski v Westminster City Council* to be comparable to the present case. In that case the UT held that a 2007 Notice was invalid in the context of 2009 works. However, in that case there was a substantial change in the nature of the works as three blocks were removed from the scope of works. Furthermore, that case was not affected by delays caused by the Covid pandemic. In the present case, although delays had various causes some resulted from the Covid pandemic.

39. The Tribunal rejects the alternative quotations provided by the applicant. Those quotes give an incorrect number of floor stops and are predicated on the assumption that a conventional traction lift can be installed as opposed to the hydraulic lift, for which the building was designed. This is not a reasonable assumption as the design loads are

different. Nor does the Tribunal accept that the elements of the tender can be individually tested against third party suppliers. What matters is the tender overall. The Tribunal also considers that the licencing position of waste removers to be outside the tribunal's jurisdiction.

40. The Tribunal is satisfied that service charges totalling £65,341.00 have been levied in respect of the lift works [A340]. It finds that these costs have been reasonably incurred and would be payable if dispensation is granted. It also finds that the costs incurred for the professional fees of Robin Primrose Partnership were also reasonably incurred and would be payable if dispensation is granted.

Applications under s.20C and Para 5A Sch 11

41. The Applicant has applied for orders under section 20C of the 1985 Act and Para 5A of the 2002 Act. The wording of Para 5A of Sch 11 closely follows that of section 27A of the 1985 Act. Therefore, applying the procedural decision of Judge Jutton, as the applicant has been successful the Tribunal orders that the landlords' costs of litigation may not be recovered as an administration charge against Ms Rebecca Marsden, the lessee.

42. However, the wording of section 20C is entirely different. It is clear that only the tenant can make a section 20C application. For those reasons the application is refused. However, Ms Rebecca Marsden may bring her own application.

43. Under rule 13(2) the Tribunal has power to direct that one party reimburses fees incurred by another party. The Tribunal orders that the respondent shall reimburse the applications application and hearing fee within 28 days.

Name: Mr C Norman FRICS **Date:** 12 August 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).

Legal Annex

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 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property Tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

(aa) in the case of proceedings before a residential property Tribunal, to that Tribunal;

(b) in the case of proceedings before a residential property Tribunal, to the Tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property Tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the Tribunal;

(d) in the case of arbitration proceedings, to the arbitral Tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or Tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,

(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,

(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

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

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—

(a) specified in his lease, nor

(b) calculated in accordance with a formula specified in his lease.

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

Schedule 11, paragraph 2

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

Schedule 11, paragraph 5

(1) An application may be made to the appropriate Tribunal for a determination whether an administration charge is payable and, if it is, as to—

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

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

(4) No application under sub-paragraph (1) may be made in respect of a matter which—

(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral Tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).

Service Charges (Consultation Requirements) (England) Regulations 2003

SI 2003/1987 Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987)

1 Citation, commencement and application

(1) These Regulations may be cited as the Service Charges (Consultation Requirements) (England) Regulations 2003 and shall come into force on 31st October 2003.

(2) These Regulations apply in relation to England only.

(3) These Regulations apply where a landlord—

(a) intends to enter into a qualifying long term agreement to which section 20 of the Landlord and Tenant Act 1985 applies on or after the date on which these Regulations come into force; or

(b) intends to carry out qualifying works to which that section applies on or after that date.

2 Interpretation

(1) In these Regulations—

"the 1985 Act" means the Landlord and Tenant Act 1985;

"close relative", in relation to a person, means a spouse or cohabitee, a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister, sister-in-law, step-parent, step-son or step-daughter of that person;

["cohabitee", in relation to a person, means a person who is living with that person as if they were a married couple or civil partners;]

"nominated person" means a person whose name is proposed in response to an invitation made as mentioned in paragraph 1(3) of Schedule 1 or paragraph 1(3) of Part 2 of Schedule 4; and "nomination" means any such proposal;

["public notice" means notice [published, pursuant to the Public Contracts Regulations 2015, on the UK e-notification service (as defined by those Regulations)];]

"relevant period", in relation to a notice, means the period of 30 days beginning with the date of the notice;

"RTB tenancy" means the tenancy of an RTB tenant;

"RTB tenant", in relation to a landlord, means a person who has become a tenant of the landlord by virtue of section 138 of the Housing Act 1985 (duty of landlord to convey freehold or grant lease), section 171A of that Act (cases in which right to buy is preserved), [section 180 of the Housing and Regeneration Act 2008] or section 16 of the Housing Act 1996 (right of tenant to acquire dwelling) under a lease whose terms include a requirement that the tenant shall bear a reasonable part of such costs incurred by the landlord as are mentioned in paragraphs 16A to 16D of Schedule 6 to that Act (service charges and other contributions payable by the tenant);

"section 20" means section 20 (limitation of service charges: consultation requirements) of the 1985 Act;

"section 20ZA" means section 20ZA (consultation requirements: supplementary) of that Act;

"the relevant matters", in relation to a proposed agreement, means the goods or services to be provided or the works to be carried out (as the case may be) under the agreement.

(2) For the purposes of any estimate required by any provision of these Regulations to be made by the landlord—

(a) value added tax shall be included where applicable; and

(b) where the estimate relates to a proposed agreement, it shall be assumed that the agreement will terminate only by effluxion of time.

3 Agreements that are not qualifying long term agreements

(1) An agreement is not a qualifying long term agreement—

(a) if it is a contract of employment; or

(b) if it is a management agreement made by a local housing authority and—

(i) a tenant management organisation; or

(ii) a body established under section 2 of the Local Government Act 2000 [or section 1 of the Localism Act 2011];

(c) if the parties to the agreement are—

(i) a holding company and one or more of its subsidiaries; or

(ii) two or more subsidiaries of the same holding company;

(d) if—

(i) when the agreement is entered into, there are no tenants of the building or other premises to which the agreement relates; and

(ii) the agreement is for a term not exceeding five years.

(2) An agreement entered into, by or on behalf of the landlord or a superior landlord—

(a) before the coming into force of these Regulations; and

(b) for a term of more than twelve months,

is not a qualifying long term agreement, notwithstanding that more than twelve months of the term remain unexpired on the coming into force of these Regulations.

(3) An agreement for a term of more than twelve months entered into, by or on behalf of the landlord or a superior landlord, which provides for the carrying out of qualifying works for which public notice has been given before the date on which these Regulations come into force, is not a qualifying long term agreement.

(4) In paragraph (1)—

"holding company" and "subsidiaries" have the same meaning as in the Companies Act 1985;

"management agreement" has the meaning given by section 27(2) of the Housing Act 1985; and

"tenant management organisation" has the meaning given by section 27AB(8) of the Housing Act 1985.

4 Application of section 20 to qualifying long term agreements

(1) Section 20 shall apply to a qualifying long term agreement if relevant costs incurred under the agreement in any accounting period exceed an amount which results in the relevant contribution of any tenant, in respect of that period, being more than £100.

(2) In paragraph (1), "accounting period" means the period—

(a) beginning with the relevant date, and

(b) ending with the date that falls twelve months after the relevant date.

(3) [Subject to paragraph (3A), in] the case of the first accounting period, the relevant date is—

(a) if the relevant accounts are made up for periods of twelve months, the date on which the period that includes the date on which these Regulations come into force ends, or

(b) if the accounts are not so made up, the date on which these Regulations come into force.

[(3A) Where—

(a) a landlord intends to enter into a qualifying long term agreement on or after 12th November 2004; and

(b) he has not at any time between 31st October 2003 and 12th November 2004 made up accounts relating to service charges referable to a qualifying long term agreement and payable in respect of the dwellings to which the intended agreement is to relate,

the relevant date is the date on which begins the first period for which service charges referable to that intended agreement are payable under the terms of the leases of those dwellings.]

(4) In the case of subsequent accounting periods, the relevant date is the date immediately following the end of the previous accounting period.

5 The consultation requirements: qualifying long term agreements

(1) Subject to paragraphs (2) and (3), in relation to qualifying long term agreements to which section 20 applies, the consultation requirements for the purposes of that section and section 20ZA are the requirements specified in Schedule 1.

(2) Where public notice is required to be given of the relevant matters to which a qualifying long term agreement relates, the consultation requirements for the purposes of sections 20 and 20ZA, as regards the agreement, are the requirements specified in Schedule 2.

(3) In relation to a RTB tenant and a particular qualifying long term agreement, nothing in paragraph (1) or (2) requires a landlord to comply with any of the consultation requirements applicable to that agreement that arise before the thirty-first day of the RTB tenancy.

6 Application of section 20 to qualifying works

For the purposes of subsection (3) of section 20 the appropriate amount is an amount which results in the relevant contribution of any tenant being more than £250.

7 The consultation requirements: qualifying works

(1) Subject to paragraph (5), where qualifying works are the subject (whether alone or with other matters) of a qualifying long term agreement to which section 20 applies, the consultation requirements for the purposes of that section and section 20ZA, as regards those works, are the requirements specified in Schedule 3.

(2) Subject to paragraph (5), in a case to which paragraph (3) applies the consultation requirements for the purposes of sections 20 and 20ZA, as regards qualifying works referred to in that paragraph, are those specified in Schedule 3.

(3) This paragraph applies where—

(a) under an agreement entered into, by or on behalf of the landlord or a superior landlord, before the coming into force of these Regulations, qualifying works are carried out at any time on or after the date that falls two months after the date on which these Regulations come into force; or

(b) under an agreement for a term of more than twelve months entered into, by or on behalf of the landlord or a superior landlord, qualifying works for which public notice has been given before the date on which these Regulations come into force are carried out at any time on or after the date.

(4) Except in a case to which paragraph (3) applies, and subject to paragraph (5), where qualifying works are not the subject of a qualifying long term agreement to which section 20 applies, the consultation requirements for the purposes of that section and section 20ZA, as regards those works—

(a) in a case where public notice of those works is required to be given, are those specified in Part 1 of Schedule 4;

(b) in any other case, are those specified in Part 2 of that Schedule.

(5) In relation to a RTB tenant and particular qualifying works, nothing in paragraph (1), (2) or (4) requires a landlord to comply with any of the consultation requirements applicable to that agreement that arise before the thirty-first day of the RTB tenancy.

SCHEDULE 4 Consultation Requirements for Qualifying Works Other Than Works Under Qualifying Long Term or Agreements to Which Regulation 7(3) Applies

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.

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