12991

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**CAM/26UH/LDC/2018/0004**
Property	**1-26 Kilby Road, Stevenage SG1 2LT**
Applicant	**Notting Hill Genesis (formerly known as Genesis Housing Association Limited)**
Representative	**Mr Ben Maltz Counsel**
Respondents	**The Lessees of the long leases granted in respect of 1-26, Kilby Road. Stevenage SG1 2LT**
Representative	**Mr James Anderson**
Type of Application	**Section 20ZA Landlord and Tenant Act 1985 – dispensation with consultation requirements**
Tribunal Members	**Judge John Hewitt** **Ms Marina Krisko BSc (Est Man) FRICS** **Mr N Miller BSc**
Dates and venues of hearings	**20 August 2018 Stevenage Magistrates Court** **12 October 2018 St Albans Magistrates Court**
Date of Decision	**29 October 2018**

DECISION

The issues before the tribunal and its decision

1. The issue before the tribunal was an application by the applicant landlord pursuant to s20ZA Landlord and Tenant Act 1985 (the Act) in which it sought dispensation of the consultation requirements in respect of a qualifying long-term agreement (QLTA) entered into with Just Ask Estate Services Limited (Just Ask) on 11 April 2017 (the agreement) in relation to a number of estate management services to be provided. Some of the respondents had argued that the correct consultation procedures had not been fully carried out and that in consequence the liability of each of the respondents to contribute to the costs of the services to be provided under the agreement should be limited to a maximum of £100 in each year of agreement operates.

2. The decision of the tribunal is that it is satisfied the correct consultation procedures were fully carried out. The submissions made on behalf of the respondents are rejected.

3. In case it be held later that we were in error in our finding 2 above and that there was a defect in the consultation process, we do not hesitate to find that this is a proper case where the tribunal should grant dispensation of the consultation requirements.

NB Later reference in this decision to a letter and a number in square brackets ([ ]) is a reference to the folders 'A' and 'B' and the page number of the two files of documents provided for our use in these and related proceedings.

The background

4. On 22 November 2017 a number of the long lessees at the block known as 1-26 Kilby Road made an application to the tribunal pursuant to s27A of the Act in which they sought a determination of the amount of service charges payable by them in the period 1 April 2016 – 31 March 2017. That application was given the reference CAM/26UH/LSC/LSC/2017/0107 (the Service Charge case). One of the issues raised in the Service Charge case was the cost of estate management services provided during that period. It was alleged that some of those services were provided by Just Ask. It was further alleged that the agreement was not entered into on 11 April 2017 but that it was entered into on 1 November 2016. Whatever the date the agreement was entered into, the parties were agreed that it is a qualifying long-term agreement within the meaning of s20 of the Act. The long lessees argued that the landlord had not consulted fully or properly before entering into the agreement with the consequence that the liability of the lessees was limited to the relevant contribution specified in regulation 4 of the Service Charges (Consultation Requirements) (England) Regulations (SI 2003 1987) ('the regulations'), namely £100.

5. The landlord argues that it has complied with the relevant consultation requirements but it has issued this application seeking dispensation as a

precaution and in case it be held that, contrary to its primary submissions, it had not consulted fully or properly.

6. Accordingly, this decision ought to be read in conjunction with our decision in the Service Charge case.

The hearing

7. On 20 August 2018 the tribunal had the benefit of a site inspection of the development 1-26 Kilby Road and the estate on which it is situate. We were accompanied by several of the long lessees, and several representatives of the landlord. A number of physical features were drawn to our attention by both sides.

8. The hearing commenced at about 11:15 on 20 August 2018. The applicant landlord was represented by Mr Ben Maltz of counsel. Mr Maltz called two witnesses, Ms Chomba, Leasehold Services Manager and Mr Declan Burns, Procurement Manager for Building and Property Services. Both of the witnesses had provided detailed witness statements which they said were true and both were cross-examined by Mr Anderson.

9. Mr Jason Anderson, a joint lessee of flat 10 Kilby Road, represented several of the long lessees, some of whom were present to assist and support him. Mr Anderson did not call any witnesses but he made submissions to us.

The gist of the lessee's case

10. Before summarising the evidence and our findings of fact it may be helpful to set out the gist of the case of the long lessees who assert that the consultation process was not properly carried out:

    10.1 The landlord had not followed the correct procedure;

    10.2 The proposal did not state how much money the services were going to cost;

    10.3 There was no indication the proposed contractor was local;

    10.4 The lessees were told that the contract was entered into on 1 November 2016 from which date services under the contract would commence;

    10.5 The notice of proposal was sent out under cover of a letter to lessees dated 7 October 2016 which letter contained an incorrect date – and that error alone deems the enclosed notice of proposal invalid; and

    10.6 Some of the long lessees were not served with the notice of intention.

11. As the hearing unfolded and explanations were given to Mr Anderson some of his allegations were withdrawn.

The statutory provisions

12. In the Schedule to this decision we have set out in full the relevant statutory materials. We have included both Schedule 1 and Schedule 2 to the 2003 regulations. Initially Mr Anderson complained that the landlord had not followed the requirements of Schedule 1. In its statement of case in answer the landlord at [A32] set out its case and asserted that Schedule 2 was the appropriate process to follow. Evidently Mr Anderson did not investigate or follow up on that assertion but continued to complain that the Schedule 1 process had not been followed. This is unfortunate. Even allowing that Mr Anderson is not a legal representative, it behoves all representatives to consider carefully what the other side has put forward and where necessary carry out some investigation into it before blindly pursuing unmeritorious allegations.

13. Schedule 2 applies for two reasons. First the landlord is a housing association and is deemed to be a public body and the consideration exceeds the applicable financial limits.

14. In summary the statutory process provided for in Schedule 2 is as follows:

Paragraph 1 Notice of intention. The landlord to give notice in writing of the intention to enter into a QLTA. The notice shall describe in general terms the relevant matters or specify a place at which a description of them may be inspected, the landlord's reasons for considering it necessary to enter into the QLTA, the reason why the landlord is not inviting recipients to nominate a potential contractor to try obtain an estimate is that public notice of the QLTA has to be given, invite observations on what is proposed and give details as to when and how those observations should be made;

Paragraph 2 Provisions as to inspection arrangements;

Paragraph 3 Where observations are received within the relevant period, the landlord is under a duty to have regard to them;

Paragraph 4 Notice of proposal. The landlord is to prepare a proposal which is to include the name and address of every party to the QLTA, where it is practicable to estimate the relevant contribution of the tenant, the amount of it, where it is not reasonably practicable for the landlord to make an estimate, the proposal shall contain a statement of the cost or rate(s) applicable;

Paragraph 5 The landlord is to give notice of the proposal to tenants and to provide a copy of it to tenants, or give details as to when and where it may be inspected, and invite observations on it and when and how they should be made;

Paragraph 6 Where observations are received within the relevant period, the landlord is under a duty to have regard to them;

Paragraph 7 Where the landlord receives observations to which it is required to have regard, the landlord shall within 21 days of their receipt, by notice in writing to the person(s) who made them, state its response to them.

Paragraph 8 Where, under paragraph 4 it is not reasonably practicable for the landlord to make an estimate of the likely costs to be incurred, if the landlord subsequently receives sufficient information to enable it to do so, it shall, within 21 days of receiving that information, give notice in writing to the tenant of the estimated amount.

The facts as found

15. In 2015 the landlord took the decision that it would like to procure new contractors to provide Estate Services across all or most of its substantial portfolio of developments, which are of varying size, type and style. On 13 August 2015, Ms Chomba, the landlord's Leasehold Services Manager, was requested to carry out a s20 consultation exercise across approximately 24,500 residents. Due to the high volume of letters to go out and the estimated increased demand on its Contact Call Centre that those letters would generate, it was decided to despatch the letters in six batches over the period 12 to 30 October 2015. The letters were prepared internally and provided to a mailing house regularly used by the landlord for bulk mailing. Details of each recipient were provided digitally and the mailing house prepared each individual letter by way of mail merge. The envelopes were franked prepaid with first class postage and were collected from the mailing house by Royal Mail which put them into its mail delivery service. Ms Chomba said that each envelope bore an 'If undelivered return to address' and that relatively few letters were in fact returned to the landlord undelivered.

16. As regards 1-26 Kilby Road, the notice of intention was dated 19 October 2015 and sent out on or about that date, to all 26 flats, save for flat 8 which had been repossessed by a mortgagee. Ms Chomba said, and we accept, that she was not aware of any non-delivery of the notices to the remaining flats.

17. A sample covering letter (sent to flat 10) is at [B/274] The notice is at [B/275], FAQS are at [B/277] and a pre-printed response form on which observations or comments can be entered is at [B/278]. We have gone through these documents carefully. We are satisfied that they are compliant with the requirements of paragraph 1. The heading of the notice of intention quite clearly refers to Schedule 2, it proposes a four-year contract with an option to extend it by two periods of three years each. The services to be provided under the proposed QLTA were:

    - Communal cleaning services including windows, staircases, bins, removal of bulk rubbish, removal of graffiti, removal of environmental waste and litter picking;

    - Grounds maintenance services including grass cutting, wed control, and tree and shrub maintenance (including roses and hedges); and

    - General estate maintenance including pest control, and graffiti and snow clearance.

    It set out reasons why it was considered necessary to enter into the QLTA and it invited observations to be submitted in writing by 20 November 2015. The

notice also explained that the proposed QLTA requires public advertisement within the European Community and for this reason the right of leaseholders to nominate a potential contractor does not apply.

At the time this notice was sent out there was a provisional intention that the services to be provided under the proposed QLTA would commence on 1 November 2016.

18. The landlord did not receive any observations in response to the notice.

19. In September 2016 the landlord's procurement team provided to Ms Chomba the information necessary to enable Ms Chomba and her team to prepare the 'landlord's notice of proposal' required by paragraph 4 of Schedule 2.

20. As regards 1-26 Kilby Road the covering letters were dated 7 October 2016. A sample (flat 1) is at [B/279]. Unfortunately, in the first line there is a typographical error. It referred to the covering letter sending out the notice of intention which it said was dated 19 October 2016 (whereas it was in fact dated 19 October 2015). A sample of the notice of proposals is at [B/281]. The proposal gave details of when and where the preferred tenders may be inspected. It indicated the nature of the services to be provided and stated that it was not possible to provide an estimated contribution for each flat but indicated what the overall cost rates for the four lots were. As regards Lots A, B and C which it was proposed to be allocated to Just Ask an appendix showed that in each of the first four years the estimated cost of the contract was put at £628,640.51. (Lot A included a number of counties, including Hertfordshire in which Stevenage is situate). Accompanying notes about the s20 consultation process at [B/285] explained about public notice requirements and stated contracts for services worth more than £173,934 per year must be the subject of a Public Notice in the Official Journal of the European Union and that where such notice is required tenants do not have the right to nominate a potential contractor.

The notice of proposals invited written observations on them to be submitted by 8 November 2016.

Paragraph 7 of the notice [B/282] stated that written observations received in response to the notice of intention and the landlord's responses to them were summarised in an attachment - it runs to 14 pages [B/286- 299].

Also attached was a FAQS document [B/284]. Rather unhelpfully it stated:

Q: When will it start

A: The Long-Term Agreement is due to commence November 2016

We have gone through the landlord's proposal carefully and we are satisfied that it complies with the requirements of paragraph 4 of Schedule 2.

21. Mr Anderson (Flat 10) sent email on 18 and 28 October 2016 [B/316] objecting to the placing of the proposed contract in general terms stating that the landlord will no longer manage the block after 17 January 2017, that there

has been no consultation, only the landlord telling the lessees 'what will happen', complaining that there was no indication of the cost of the services, complaining that the proposed contractor was not local, and asserting that the contract had already been signed and was due to start on 1 November 2016. Ms Chomba provided a comprehensive reply by email dated 30 November 2016 [B/320]. Included in the reply was the statement: *"I will be discussing your objection with our Procurement team prior to the signing of the Contract and I will be raising your concerns with them."*

Mr Anderson replied by email later in the day [B/322].

22. On 22 October 2016 Mr Kevin Cox (Flat 17) sent an email [B/300-302] to the landlord drawing attention to the typographical error of '19 October 2016' asserting that such an error invalidated the notice and expressing a number of matters on which he was dissatisfied with the levels of service provided. At [B/303] there is a letter dated 28 October 2016 signed by Ms Chomba in which she apologised for the oversight of the typographical error and any confusion it may have caused and stated that the notice of proposal was correct and the error did not interrupt the 30 days consultation period. Mr Cox responded to that by an email dated 10 November 2016 [B/305]. Ms Chomba replied by email dated 25 November 2016 in which she made a number of points including: *"Please note the new Contract has not been signed* and *"We have delayed the signing of the Contracts."*

23. The invitation to tender for the proposed contract is at [B/62 – 273]. The deadline for its return was stated to be 18 April 2016. Mr Declan Burns, the landlord's Procurement Manager for Building and Property services told us, and we accept that the bids received were duly evaluated. There was a robust evaluation process with 60% focus on price and 40% focus on quality. Notification of the result of that process was set out in a letter dated 31 August 2016 [B/324] signed-off by Mr Burns. That letter records that the most economically advantageous tender was that submitted by Just Ask in respect of three of the four lots, namely lots A, B and C.

24. Mr Burns told us, and we accept, that detailed contract negotiations with Just Ask ensued. The contract was not ready to be signed-off for commencement of services on 1 November 2016.

25. As regards 1-26 Kilby Road, the original contractor for grounds maintenance and estate repairs, E & P Cleaning Contractors had been given notice of termination as of 31 October 2016. Given that the proposed QLTA was not in place as of 1 November 2016, the landlord made ad hoc arrangements with Just Ask for it to provide estate services on a temporary basis under what Mr Burns described as an Emergency Services Agreement a document prepared by the landlord and setting out its terms and conditions of contract for the provision of such services.

26. QLTA negotiations continued between the landlord and Just Ask well into 2017. Mr Burns produced a copies of email traffic passing between the landlord and Just Ask [B/410 – 422] which show the continuing negotiations quite clearly and that the QLTA was finally agreed and signed off on 11 April

2017. Although this email was only produced late in the day, Mr Anderson did not have any objections to it being admitted into evidence.

27. Throughout, and despite the email traffic referred to in paragraph 26 above, Mr Anderson continued to assert that the agreement was signed off on or by 1 November 2016. Mr Anderson had requested to see the original agreement because he alleged some form of fraud had occurred. An order was made for the original document to be produced at the hearing so that it might be inspected by Mr Anderson and members of the tribunal.

28. Mr Burns explained that there is no one version or copy of the agreement bearing wet signatures of both parties available for inspection. He said that in the modern way with significant transactions the parties upload materials and documents to a secure data room. Evidently, each party signed off a print of the final version of the agreement, converted it into pdf format and uploaded it to the data room. Mr Burns produced a message timed at 19:21 11/04/2017 from Just Ask to the landlord which stated: *Hi Declan. As discussed, please find attached signed Estate Services Agreement."* Attached to it was a document – *"Agreement – JUST ASK SERVICES – FINAL – PDF-pdf"*. Mr Burns produced a version of that document [B/349 – 401]. On the front sheet the space for the date to be entered was blank, as was the space for the date the first substantive page [B/352].

Definitions included:

Commencement Date: *1st November 2016* [B/353];

Initial Term: *The period commencing on the Commencement Date and ending on the fourth anniversary of the Commencement Date* [B/354];

Clause 2 provides that: *This Agreement shall take effect on the Commencement Date and shall continue for the Term.* [B/358]

The final clause at [B/377] states: *This Agreement has been entered into on the date stated at the beginning of it.* As mentioned the space for that date was blank.

At [B/399] (which is page 51 of the agreement itself) there is a photocopy of a page which bears two manuscript signatures on behalf of the landlord and two manuscript signatures on behalf of Just Ask. Photocopy lines/marks on the page bearing the manuscript signatures lead us to infer that a blank copy of the final form of the agreement was printed off and the page bearing those signatures was then substituted for a blank page.

26. Mr Anderson consistently asserted that the agreement was executed on 1 November 2016 and that invalidated the consultation process because that date was part-way through the period in which the lessees were entitled to submit observations on the landlord's notice of proposals. That is to say the landlord entered into the agreement without waiting to receive and evaluate or have regard to lessees' observations. Mr Anderson did not produce any evidence to support his assertion.

27. In contrast, the oral and documentary evidence provided by Mr Burnsand supported by Ms Chomba in several respects, is overwhelming. We do not hesitate to find that the agreement was not finally signed-off by both parties until 11 April 2017 and it was not until this date that Just Ask commenced to provide services under that agreement. We also find that between 1 November 2016 and 11 April 2017 Just Ask provided services on an ad hoc month by month basis to a number of the landlord's developments, including 1-26 Kilby Road pursuant to the landlord's then standard terms and conditions applicable to an Emergency Service Agreement.

Conclusions

28. Eventually, but with some reluctance, Mr Anderson accepted that the applicable consultation process was that set out in Schedule 2 of the Regulations. We find that the requirements of that Schedule have been complied with.

29. Mr Anderson did not adduce any evidence to support his assertion that the initial notice was only given to flats 10 and 17 Kilby Road. In contrast Ms Chomba' s evidence as to the arrangements for mailing the notices was, on the balance of probabilities, convincing.

30. The typographical error as to the date in the letter of 7 October 2016 sending out the landlord's notice of proposal is of no consequence and it did not mislead or prejudice any of the long lessees. In any event that challenge was withdrawn by Mr Anderson during the course of the hearing.

31. We are satisfied on the evidence that the landlord gave due regard and consideration to the observations it received on the landlord's notice of proposal, including those observations that were received after the formal closing date of 8 November 2016.

32. There was no obligation on the landlord to specify the amount of contribution payable by the lessees under the proposed QLTA. For obvious reasons that was not possible. For example, where one of the services to be provided was bulk refuse removal and graffiti removal the actual cost on an annual basis would depend very much upon the amount of removal that was required to be undertaken and could only be ascertained with certainty at year-end when all the invoices were in.

33. The complaint that the proposed contractor was not local was without foundation because there is no statutory requirement that the contractor must or ought to be local.

34. We have found that the agreement was not signed-off until long after the proper conclusion of the consultation process.

35. In these circumstances we conclude that the landlord had carried out a full and compliant s20 consultation process in relation to the agreement entered into with Just Ask on 11 April 2017.

But what if we are in error?

36. In case it be held elsewhere that we are in error in reaching our conclusion that the consultation process has been fully carried out, we have considered whether this might be an appropriate case in which to grant dispensation with regards to any defects in the process.

The law on dispensation in summary

37. S20ZA of the Act provides that a tribunal may dispense with all or any of the consultation requirements where it considers it 'reasonable' to do so.

38. In *Daejan Investments Ltd v Benson* [2013] UKSC 14, the Supreme Court set out guidance to tribunals as to the range of matters they should take into account when considering its jurisdiction and an application for dispensation under s20ZA. The focus is to be on any real prejudice to the tenants flowing from a landlord's breach of a consultation obligation. The Supreme Court made plain that whilst the consultation provisions are prescriptive, the main function of them is to ensure that tenants are not paying for inappropriate works or contracts. Thus, the focus is on prejudice to the tenants (usually financial) and the extent to which that can be accommodated, perhaps by the imposition of conditions or terms on the landlord.

39. Having regard to *Daejan* the current approach of tribunals is that dispensation is likely to be granted in the majority of cases, albeit on terms. It is for tenants to show, with or without the benefit of hindsight, what financial prejudice they have or might suffer by the failure to consult or a by a defect in the process. If and to the extent tenants are able to establish the relevant prejudice, dispensation may be granted on condition that the recoverable costs are reduced to compensate for such prejudice.

40. It has been made very clear that the s20 consultation process is not to be considered a trap for an unwary landlord by which a landlord is to be penalised and prevented from recovering reasonable costs and contributions otherwise due and payable.

The present case

41. Mr Anderson did not adduce any evidence to show that the alleged imperfections in the process has caused, or is reasonably likely to cause, financial prejudice to the long lessees. Mr Anderson submitted that the applicants had lost the opportunity going forward and the level of service has not improved.

42. It is difficult to understand what loss of opportunity has occurred. In respect of both the notice of intention and the notice of proposals, the applicants had the opportunity to put forward observations on the proposed QLTA. In relation to the notice of intention none of the applicants took the opportunity to do so. In relation to the notice of landlord's proposals some applicants did take the opportunity to make observations both before and after the cut-off date and the landlord took them all into consideration and the evidence is that the landlord had regard to them. We were not persuaded that a loss of

opportunity was made out. Still less were we persuaded that any or may material prejudice, financial or otherwise was made out.

43. The quality of the service provided by Just Ask under the agreement post 11 April 2017 was not an issue before the tribunal on this application or in the Service Charge case. In any event the quality of service actually delivered under a QLTA is not a factor material to the question of dispensation. It may, of course, be a factor material in a s27A application.

44. In these circumstances if it be the case that there was some imperfection in the process carried out by the landlord and something was not done that ought to have been done, we would not hesitate to conclude that it would be reasonable to dispense with the need for that omission to be carried out.

John Hewitt

29 October 2018

The Schedule

The statutory provisions

Landlord and Tenant Act 1985

20.- Limitation of service charges: consultation requirements

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

(a) 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.

20C.— Limitation of service charges: costs of proceedings.

(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 leasehold valuation tribunal or the First-tier 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 a leasehold valuation tribunal;

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

(ba) in the case of proceedings before the First-tier Tribunal, to the 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.

20ZA Consultation requirements: supplementary

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

(2) In section 20 and this section—

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

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

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

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

(b) in any circumstances so prescribed.

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

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

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

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

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

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

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

(6) Regulations under section 20 or this section—

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

(b) may make different provision for different purposes.

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

Service Charges (Consultation Requirements) (England) Regulations

S1 2003 /1987

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) [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.

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.

Regulation 5(1)

SCHEDULE 1 CONSULTATION REQUIREMENTS FOR QUALIFYING LONG TERM AGREEMENTS OTHER THAN THOSE FOR WHICH PUBLIC NOTICE IS REQUIRED

Notice of intention

1.—(1) The landlord shall give notice in writing of his intention to enter into the agreement—

(a)to each tenant; and

(b)where a recognised tenants' association(1) represents some or all of the tenants, to the association.

(2) The notice shall—

(a)describe, in general terms, the relevant matters or specify the place and hours at which a description of the relevant matters may be inspected;

(b)state the landlord's reasons for considering it necessary to enter into the agreement;

(c)where the relevant matters consist of or include qualifying works, state the landlord's reasons for considering it necessary to carry out those works;

(d)invite the making, in writing, of observations in relation to the proposed agreement; and

(e)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 in respect of the relevant matters.

Inspection of description of relevant matters

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 relevant matters 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 agreement

3. Where, within the relevant period, observations are made in relation to the proposed agreement by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

Estimates

4.—(1) Where, within the relevant period, a single 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 single 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).

Preparation of landlord's proposals

5.—(1) The landlord shall prepare, in accordance with the following provisions of this paragraph, at least two proposals in respect of the relevant matters.

(2) At least one of the proposals must propose that goods or services are provided, or works are carried out (as the case may be), by a person wholly unconnected with the landlord.

(3) Where an estimate has been obtained from a nominated person, the landlord must prepare a proposal based on that estimate.

(4) Each proposal shall contain a statement of the relevant matters.

(5) Each proposal shall contain a statement, as regards each party to the proposed agreement other than the landlord—

(a)of the party's name and address; and

(b)of any connection (apart from the proposed agreement) between the party and the landlord.

(6) For the purposes of sub-paragraphs (2) and (5)(b), it shall be assumed that there is a connection between a party (as the case may be) and the landlord—

(a)where the landlord is a company, if the party 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 party 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 party 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 party 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 party 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.

(7) Where, as regards each tenant's unit of occupation and the relevant matters, it is reasonably practicable for the landlord to estimate the relevant contribution attributable to the relevant matters to which the proposed agreement relates, each proposal shall contain a statement of that estimated contribution.

(8) Where—

(a)it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (7); and

(b)it is reasonably practicable for the landlord to estimate, as regards the building or other premises to which the proposed agreement relates, the total amount of his expenditure under the proposed agreement,

each proposal shall contain a statement of that estimated expenditure.

(9) Where—

(a)it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (7) or (8)(b); and

(b)it is reasonably practicable for the landlord to ascertain the current unit cost or hourly or daily rate applicable to the relevant matters,

each proposal shall contain a statement of that cost or rate.

(10) Where the relevant matters comprise or include the proposed appointment by the landlord of an agent to discharge any of the landlord's obligations to the tenants which relate to the management by him of premises to which the agreement relates, each proposal shall contain a statement—

(a)that the person whose appointment is proposed—

(i)is or, as the case may be, is not, a member of a professional body or trade association; and

(ii)subscribes or, as the case may be, does not subscribe, to any code of practice or voluntary accreditation scheme relevant to the functions of managing agents; and

(b)if the person is a member of a professional body trade association, of the name of the body or association.

(11) Each proposal shall contain a statement as to the provisions (if any) for variation of any amount specified in, or to be determined under, the proposed agreement.

(12) Each proposal shall contain a statement of the intended duration of the proposed agreement.

(13) Where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, each proposal shall contain a statement summarising the observations and setting out the landlord's response to them.

Notification of landlord's proposals

6.—(1) The landlord shall give notice in writing of proposals prepared under paragraph 5—

(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)be accompanied by a copy of each proposal or specify the place and hours at which the proposals may be inspected;

(b)invite the making, in writing, of observations in relation to the proposals; and

(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.

(3) Paragraph 2 shall apply to proposals made available for inspection under this paragraph as it applies to a description of the relevant matters made available for inspection under that paragraph.

Duty to have regard to observations in relation to proposals

7. Where, within the relevant period, observations are made in relation to the landlord's proposals by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

Duty on entering into agreement

8.—(1) Subject to sub-paragraph (2), where the landlord enters into an agreement relating to relevant matters, he shall, within 21 days of entering into the agreement, by notice in writing to each tenant and the recognised tenants' association (if any)—

(a)state his reasons for making that agreement or specify the place and hours at which a statement of those reasons may be inspected; and

(b)where he has received observations to which (in accordance with paragraph 7) he is required to have regard, summarise the observations and respond to them or specify the place and hours at which that summary and response may be inspected.

(2) The requirements of sub-paragraph (1) do not apply where the person with whom the agreement is made is a nominated person or submitted the lowest estimate.

(3) Paragraph 2 shall apply to a statement, summary and response made available for inspection under this paragraph as it applies to a description of the relevant matters made available for inspection under that paragraph.

SCHEDULE 2 CONSULTATION REQUIREMENTS FOR QUALIFYING LONG TERM AGREEMENTS FOR WHICH PUBLIC NOTICE IS REQUIRED

Notice of intention

1.—(1) The landlord shall give notice in writing of his intention to enter into the agreement—

(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 relevant matters or specify the place and hours at which a description of the relevant matters may be inspected;

(b)state the landlord's reasons for considering it necessary to enter into the agreement;

(c)where the relevant matters consist of or include qualifying works, state the landlord's reasons for considering it necessary to carry out those works;

(d)state that the reason why the landlord is not inviting recipients of the notice to nominate persons from whom he should try to obtain an estimate for the relevant matters is that public notice of the relevant matters is to be given;

(e)invite the making, in writing, of observations in relation to the relevant matters; and

(f)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.

Inspection of description of relevant matters

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 relevant matters 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 relevant matters

3. Where, within the relevant period, observations are made, in relation to the relevant matters by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

Preparation of landlord's proposal

4.—(1) The landlord shall prepare, in accordance with the following provisions of this paragraph, a proposal in respect of the proposed agreement.

(2) The proposal shall contain a statement—

(a)of the name and address of every party to the proposed agreement (other than the landlord); and

(b)of any connection (apart from the proposed agreement) between the landlord and any other party.

(3) For the purpose of sub-paragraph (2)(b), it shall be assumed that there is a connection between the landlord and a party—

(a)where the landlord is a company, if the party 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 party 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 party 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 party 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 party 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.

(4) Where, as regards each tenant's unit of occupation, it is reasonably practicable for the landlord to estimate the relevant contribution to be incurred by the tenant attributable to the relevant matters to which the proposed agreement relates, the proposal shall contain a statement of that contribution.

(5) Where—

(a)it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (4); and

(b)it is reasonably practicable for the landlord to estimate, as regards the building or other premises to which the proposed agreement relates, the total amount of his expenditure under the proposed agreement,

the proposal shall contain a statement of the amount of that estimated expenditure.

(6) Where—

(a)it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (4) or (5)(b); and

(b)it is reasonably practicable for the landlord to ascertain the current unit cost or hourly or daily rate applicable to the relevant matters to which the proposed agreement relates,

the proposal shall contain a statement of that cost or rate.

(7) Where it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (6)(b), the proposal shall contain a statement of the reasons why he cannot comply and the date by which he expects to be able to provide an estimate, cost or rate.

(8) Where the relevant matters comprise or include the proposed appointment by the landlord of an agent to discharge any of the landlord's obligations to the tenants which relate to the management by him of premises to which the agreement relates, each proposal shall contain a statement—

(a)that the person whose appointment is proposed—

(i)is or, as the case may be, is not, a member of a professional body or trade association; and

(ii)subscribes or, as the case may be, does not subscribe, to any code of practice or voluntary accreditation scheme relevant to the functions of managing agents; and

(b)if the person is a member of a professional body trade association, of the name of the body or association.

(9) Each proposal shall contain a statement of the intended duration of the proposed agreement.

(10) Where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, the proposal shall contain a statement summarising the observations and setting out the landlord's response to them.

Notification of landlord's proposal

5.—(1) The landlord shall give notice in writing of the proposal prepared under paragraph 4—

(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)be accompanied by a copy of the proposal or specify the place and hours at which the proposal may be inspected;

(b)invite the making, in writing, of observations in relation to the proposal; and

(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.

(3) Paragraph 2 shall apply to a proposal made available for inspection under this paragraph as it applies to a description made available for inspection under that paragraph.

Duty to have regard to observations in relation to proposal

6. Where, within the relevant period, observations are made in relation to the landlord's proposal by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

Landlord's response to observations

7. Where the landlord receives observations to which (in accordance with paragraph 6) he is required to have regard, he shall, within 21 days of their receipt, by notice in writing to the person by whom the observations were made, state his response to the observations.

Supplementary information

8. Where a proposal prepared under paragraph 4 contains such a statement as is mentioned in sub-paragraph (7) of that paragraph, the landlord shall, within 21 days of receiving sufficient information to enable him to estimate the amount, cost or rate referred to in sub-paragraph (4), (5) or (6) of that paragraph, give notice in writing of the estimated amount, cost or rate (as the case may be)—

(a)to each tenant; and

(b)where a recognised tenants' association represents some or all of the tenants, to the association.

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28-day time limit, such application must include a request 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.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.