1210

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CHI/23UB/LSC/2016/0090**
Property	:	**16 Naseby House, Cromwell Road, Cheltenham, Gloucestershire, GL52 5DT.**
Type of Application	:	**(1) Section 27A Landlord and Tenant Act 1985;** **(2) Section 20ZA Landlord and Tenant Act 1985**
Applicant (s.27A)	:	**Ms. J. Warsicka**
Represented by	:	**Mr. A Bogacki**
Respondent	:	**Cheltenham Borough Homes**
Represented by	:	**Miss Osler of Counsel**
Applicant (s.20ZA)	:	**Cheltenham Borough Homes**
Respondent	:	**Ms. J. Warsicka**
Tribunal Members	:	**Judge M Davey** **Mrs J. Coupe**
Date and venue of Hearing	:	**16 December 2016**
Date of Decision	:	**19 January 2017**

DECISION

1. The Tribunal determines that the Respondent failed to comply fully with the consultation requirements contained in section 20 of the Landlord and Tenant Act 1985 (as amended) and Schedule 1 to the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987) with regard to a qualifying long term agreement for Neighbourhood Works at properties, including Naseby House, Cromwell Road, Cheltenham, for the period 2012-2017.

2. The Tribunal grants dispensation to the Respondent under section 20ZA of the Landlord and Tenant Act 1985 from compliance with the above consultation requirements in respect of the said agreement.

3. No order is made under section 20C of the Landlord and Tenant Act 1985.

REASONS

The application

1. On 20 September 2016, Ms Jadwiga Warsicka, ("the Applicant") the leaseholder of 16 Naseby House, Cromwell Road, Cheltenham, Gloucestershire, GL52 5DT, ("the property") applied to the Tribunal, under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act"). The application is for a determination as to the payability by the Applicant of a service charge demanded by Cheltenham Borough Council ("the Landlord"). By a counter application the Landlord seeks dispensation from compliance with the consultation requirements contained in section 20 of that Act and in the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987) ("the 2003 Regulations").

The Lease

2. The Tribunal was supplied with a copy of the lease of the property, which is a second and third floor maisonette in a block of similar properties on a residential estate in Cheltenham. Cheltenham Borough Council originally granted the lease of the property, which is currently owned by Ms Warsicka, to Jerzy Urbanski and Millicent Urbanski for a term of 125 years from 05 April 1993.The lease was granted following

the exercise by the then tenants of the Right to Buy contained in the Housing Act 1985. Ms Warsicka acquired the lease by purchase on 11 July 2011. An arms length company, Cheltenham Borough Homes Limited, now manages the Council's properties. There are twenty flats at Naseby House (flats 1-21 – there is no flat 13). Ms Warsicka's flat is one of only two flats that are leaseholder owned. The remaining flats are rented directly from the Respondent on monthly tenancies.

3. As is usual, the lease contains express covenants on the part of the landlord and tenant. More specifically, a lease granted under the Right to Buy is required to conform with Parts 1 and III of schedule 6 to the Housing Act 1985 and the lease of Ms Warsicka's property so complies. Part IV of Schedule 6 to the Housing Act 1985 has effect with regard to certain charges.

4. Schedule C to the lease sets out the leaseholder's obligations. These include

"(e) In accordance with paragraph 16A of Part III of Schedule 6 of the Act to pay to the Council on demand a reasonable part of the costs incurred or to be incurred by the Council in carrying out improvements to the Demised Premises or Entire Property within the meaning of section 187 of the Act such reasonable part of the costs being calculated by reference to an annual period ending on the thirty-first day of March of each year and being proportionate to the number of properties the occupants of which will have the benefit of the said improvement"

5. The lease defines "Demised Premises" as meaning flat 16 and the Entire Premises as meaning the surrounding land and Building as identified on the plan annexed to the lease.

The Law

6. The law is set out in the Annex to this decision.

The inspection and hearing

7. Judge Tildesley OBE issued Directions to the Applicant and Respondent on 18 November 2016, following a telephone case management hearing that day. The Directions provided for an inspection and hearing on 16 December 2016. The Tribunal accordingly inspected the external area of the property on the morning of 16 December 2016. Mr Adam Bogacki represented his partner, Ms Warsicka. Mr Steve Rosagro, Mr Ashley Stephens and Ms Vicky Day represented the Respondent. Naseby House is a block of flats/maisonettes, which front onto Cromwell Road. There are door entry system controlled entrances to the front and rear of the block. To the rear of the block are fenced private gardens, the other side of which comprises communal paved and lawned areas with bin stores to one

side. The rear area is bounded by walls and fences. There are locked side passages to the area. The Tribunal was supplied with photographs of this area before and after the works for which the service charge was levied.

8. A hearing was held at 11.00 a.m. on the morning of the same day. At the hearing Ms Warsicka, who was present, was represented by Mr Bogacki. Miss Osler, of counsel, instructed by the Respondent's solicitor, Miss Fennell, who was also present, represented the Respondent.

The submissions

9. Mr Bogacki stated that the Applicant's grievance concerned a service charge demand in respect of "Neighbourhood Works" at Naseby House. The invoice from Cheltenham Borough Council, for £4,212.69, was dated 20 May 2016 and required payment by 03 June 2016. The works in question concerned (1) improved perimeter security (2) improved external lighting (3) improved bin storage (4) improved washing lines (5) favouring soft landscaping over hard landscaping and (6) making the areas easier to maintain. The work was carried out between 08 June and 13 August 2015, by The Landscape Group, which had been awarded a contract to provide the Respondent's overall Neighbourhood Works Programme for the period 2012-2017.

10. Mr Bogacki submitted (1) that the Respondent had not complied with the consultation requirements in section 20 of the 1985 Act and the 2003 Regulations. He also submitted that, although she had agreed in principle to the works in question, Ms Warsicka had not agreed to the details or the cost. He further argued that the works amounted to improvements rather than repairs and that consequently the charge demanded could not be recovered from the Applicant.

11. Miss Osler, for the Respondent, submitted that the Respondent had complied with the statutory consultation requirements. She referred to a Notice of Intention on the part of Cheltenham Borough Council to enter into a qualifying long-term agreement for a Neighbourhood Works Contract. Miss Osler stated that the Notice, dated 22 August 2011, was sent to Ms Warsicka on that date by first class post. The agreement was for works to approximately 27 properties containing approximately 574 dwellings. The works to be provided under the agreement, which were described in general terms, were stated to have the aim of improving the quality and usefulness of external areas within the curtilage of the properties thereby making them areas which residents would choose to use. The Notice enclosed an observation form that invited Ms Warsicka to make observations on the proposal. A nomination form was also enclosed which gave Ms Warsicka an opportunity to nominate an alternative Company to carry out the proposed works. Miss Osler said that no observations or nomination were received by the Respondent from Ms Warsicka. (Mr Bogacki said

in his submission that the Notice and enclosures were not received at that time).

12. Miss Osler then referred to a statutory Notice of Estimate, to carry out Neighbourhood Works. The Notice was dated 06 May 2015 and was served on the Applicant by first class post on that date. The Notice listed the tender prices received from 5 contractors and informed Ms Warsicka that the lowest tender, being that of the Landscape Group, for the sum of £333,212.29, had been accepted. The Notice stated that the budget, within that contract, for the works at Naseby House was £70,000, which meant that the estimated charge for flat 16 would be £3,500. (The actual cost of the works when completed was higher then the estimate and the proportionate cost demanded of Ms Warsicka rose accordingly to the sum demanded in the invoice of 20 May 2016). Enclosed with the Notice was a further observations form that gave Ms Warsicka the opportunity to make observations. No observations were received at this stage. (Mr Bogacki said that the Applicant did not see this Notice of Estimates until after 29 June 2016).

13. Ms Osler said that in the meantime the Respondent had carried out additional informal consultation with all tenants and leaseholders at Naseby House to determine what works the residents would like to see carried out. Thus in November 2014 the Respondent had hand delivered questionnaires, headed "Naseby House Improvements Project – Have Your Say", to be completed and returned by 13 November 2014. (Mr Bogacki said that the Applicant did not see this document until after the case management hearing of 18 November 2016). On 12 March 2015 the Applicant completed and signed a "Have Your Say" form stating that she was happy with the proposals and for the works to begin. Finally, the Applicant, along with other residents, was invited to a Community Event on 26 August 2015 at Naseby House to enable them to have their say regarding the new and improved garden areas.

14. A member of the Respondent's staff, Ms Lia Tomlinson, gave evidence that Ms Warsicka and Mr Bogacki visited the Respondent's area office in the week commencing 20 June 2016 on which occasion Ms Warsicka agreed that she had received the paperwork but had not sent anything back. Mr Bogacki said that he had not seen any of the paperwork. Ms Tomlinson told them that she would send them copies of the section 20 Notices that had been sent in the post to Ms Warsicka. These were subsequently sent.

15. Although, in Miss Osler's submission, the Respondent had complied with the statutory consultation requirements, she said that if the Tribunal did not agree, she would ask the Tribunal to grant dispensation under section 20ZA of the 1985 Act. Miss Osler submitted that there had been an abundance of formal and informal consultation and Ms Warsicka had had ample opportunity to discover the Respondent's intentions and plans with regard to the works in question. Ms Warsicka had not questioned the quality of the works.

Moreover she had in June 2016 accepted an interest free repayment plan from the Respondent with regard to the disputed charge but had stopped making payments after the first payment of £168.51 on 22 August 2016. Miss Osler said that it could not be said that Ms Warsicka had suffered prejudice as a result of any failure by the Respondent to comply fully with the consultation procedure. Miss Osler also suggested that the invoice had been miscalculated and should have been higher but the Respondent was only claiming the lower sum specified in the invoice.

16. The Applicant had indicated on her application form that she was not asking the Tribunal to make an order under section 20C of the 1985 Act preventing the Landlord from adding the costs of the present Tribunal proceedings to a future service charge demand. However, it became clear when questioned by the Chairman, that she was not aware of the implications of ticking the No box on the section 27A form. The Chairman referred to the overriding objective set out in rule 3 of the Tribunal Procedure (First-tier Tribunal) Property Chamber Rules 2013, which obliges the Tribunal to deal with cases fairly and justly.

17. Although Miss Osler at first resisted the Applicant changing her decision to tick the No box, she then chose not to oppose the making of a section 20C application. However, Miss Osler did oppose the grant of a section 20C Order on the basis that there had been no misconduct on the part of the Respondent. She emphasised that the Respondent was a not for profit organisation and that a section 20C Order amounts to a deprivation of a property right and is not to be granted without good cause. She also noted that Ms Warsicka would have the benefit of section 19 and section 27A of the 1985 Act should she disagree with the amount of any such charge.

Consideration

18. The sole issue raised by the section 27A Application, is whether the Respondent complied with section 20 of the 1985 Act with regard to the works at Naseby House. If the Tribunal determines that the Respondent has not complied, it must then decide whether dispensation from the need to comply, with all or any part of the consultation requirements, should be granted to the Respondent under section 20ZA of the 1985 Act.

19. The Tribunal must then decide whether to make an order under section 20C of the 1985 Act preventing the Respondent from recovering from Ms Warsicka, by way of a future service charge demand, the costs incurred by the Respondent in the present Tribunal proceedings. The Respondent has stated that it will seek to recover those costs from Ms Warsicka.

20. In order to decide whether the Respondent has complied with the consultation requirements it is necessary to examine the relevant statutory provisions. Section 20ZA(2) of the 1985 Act defines a qualifying long-term agreement ("QLTA") as an agreement entered into by or on behalf of the landlord, or a superior landlord, for a term of more than 12 months. Regulation 4 of the Service Charges (Consultation Requirements) (England) Regulations 2003 provides that section 20 of the 1985 Act shall apply to such an agreement if relevant costs incurred by the Landlord 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. "Relevant costs" are defined for these purposes by section 18(2) of the 1985 Act as "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.

21. Section 20 provides that where that section applies to any QLTA the contributions of the tenants are limited to £100 each unless either the Landlord has complied with the consultation requirements or the Tribunal, on an application under section 20ZA, has granted dispensation from compliance.

22. The consultation requirements are contained in the Schedules to the 2003 Regulations. Schedule 1 sets out the consultation requirements for a QLTA (other than those for which public notice is required). The agreement entered into by the Respondent was not one in respect of which public notice was required. Schedule 1 provides for a two-stage consultation process. The first stage (set out in paragraphs 1 to 3 of the Schedule) requires the Landlord to give notice to tenants of his intention to enter into the QLTA. The Notice must invite the tenant (1) to make observations on the proposed agreement and (2) to propose the name of a person from whom the landlord should seek to obtain an estimate in respect of the relevant matters. The "relevant matters" are the goods or services to be provided under or the works to be carried out (as the case may be) under the agreement (Reg.2).

23. In the present case the Respondent's Notice of Intention of 22 August 2011 complied with these requirements. The Tribunal is satisfied that the Notice was sent to Ms Warsicka on that date by first class post and must be presumed to have arrived at her address, unless the contrary is proved to be the case. No such proof has been provided. In so far as Ms Warsicka states that she never received this notice that assertion is not reconcilable with the evidence of Ms Tomlinson, that when Ms Warsicka visited the Respondent's offices she indicated that she had received "all the paperwork". It seems probable therefore that Ms Warsicka had received the Notice sent to her on 22 August 2011 but had not realised its significance and had since mislaid or unwittingly destroyed the notice.

24. The next matter is whether the Respondent complied with the second stage of the Schedule 1 consultation, which is set out in paragraphs 4 to

8 of the Schedule 1. The Respondent says that it did by sending Ms Warsicka the Notice of Estimate dated 6 May 2015. Paragraph 4 only applies where a nomination or nominations has been received by the Landlord within the stage 1 consultation period. None were received in the present case and therefore paragraph 4 does not apply. Paragraph 5 requires the Landlord to prepare at least two proposals in respect of the "relevant matters" and each proposal shall contain a statement of the tenant's estimated contribution or if that is not reasonably practicable the landlord should estimate the total amount of his expenditure under the proposed agreement and each proposal shall contain a statement of that estimated expenditure. Paragraph 6 requires the landlord to notify tenants of each proposal and invite observations in respect of each of those proposals. When the observations period expires the landlord is then free to enter into the QLTA.

25. In the present case this procedure was clearly not followed. The Notice of Estimate of 6 May 2015 was given nearly four years after the stage 1 Notice of Intention which expressly stated that the proposed QLTA "will include delivery of works at approximately 27 properties containing approximately 574 dwellings." Furthermore, The Notice of Estimates letter sent to Ms Warsicka on 6 May 2015 stated "in order to deliver the programmed works for 2012/2017, one contractor **was appointed** (emphasis supplied) and Cheltenham Borough Homes intends to proceed with the Landscape Group as they scored the highest in a selection process evaluated on a 60% weighting for quality and 40% weighting for cost." The Notice which gave details of five tenders also stated that "The below prices relate to the project at Bush Court, which was the initial tender from which the Landscape Group won the overall contract." It is clear therefore that the QLTA was entered into some years earlier and certainly before the consultation period of the Notice of Estimates had expired.

26. There is a further issue in relation to the consultation procedure carried out by the Respondent. Where a QLTA is entered into for the purpose of carrying out "qualifying works" governed by section 20 a further consultation process must be carried out in relation to the works themselves. That process is set out in Schedule 3 to the 2003 regulations. That is a single stage consultation and requires the Landlord to give Notice of Intention to carry out qualifying works and invite observations in relation to the proposed works or the landlord's estimated expenditure. It does not require the landlord to invite the tenant to nominate a contractor because a contractor will have already been appointed following the Schedule 1 consultation on the QLTA.

27. In the present case the Respondent has in practice complied with Schedule 3 by virtue of its Notice of 6 May 2015 (purportedly served under Schedule 1) relating to the proposed works at Naseby House. For the same reasons as set out in paragraph 26 above the Tribunal is satisfied that this Notice was properly served on and received by Ms Warsicka.

28. It follows that because of the Respondent's failure to comply with all the requirements of Schedule 1 of the 2003 regulations, the recoverable sums are limited to £100 unless the Tribunal grants dispensation under section 20ZA. Following the decision of the Supreme Court in *Daejan Investments Limited v Benson and Others* [2013] UKSC 14, in order to refuse dispensation to the Applicant the Tribunal would need to be satisfied that the lessees have been prejudiced by the Landlord's failure to consult. The Tribunal is not so satisfied.

29. The Respondent's failure to give the Applicant notice of the estimates received from tenderers before the QLTA with the Landscape Group was entered into did not prejudice the Applicant. The tender received from the successful contractor was the lowest tender and had met all the relevant criteria as offering best value for money. The Respondent had carried out a lengthy and comprehensive extra-statutory consultation and had given the Applicant every opportunity to comment on the proposed works at Naseby House.

30. It became clear at the hearing that the Applicant's main grievance was that she was being required to pay for neighbourhood works when other residents, who had not bought their flat, had no such obligation. However, this was because her lease obliged her to make such contributions to the cost of such works. Despite the Respondent's efforts, Ms Warsicka had clearly not fully appreciated that she would be required to make a payment in the order of the sum claimed by the Respondent until she received the invoice. The suggestion by Mr Bogacki that the works could not proceed without the agreement of Ms Warsicka is a misunderstanding of the true position. The lease permits the Respondent to carry out the works in question and obliges Ms Warsicka to contribute to their cost. Neither the lease nor the 1985 Act require her agreement to the works or their cost.

31. The Tribunal considers it reasonable for the above reasons to grant dispensation from compliance with the consultation requirements in respect of the QLTA and neighbourhood works carried out to the property by The Landscape Group between 08 June and 26 August 2015.

The Section 20C Application

32. In the present case the Applicant has succeeded in the section 27A application and the Respondent has succeeded in the section 20ZA application. This might have led the Tribunal to conclude that any section 20C Order that might be made in respect of the Respondent's costs, incurred in connection with the Tribunal proceedings, should be limited to, say, half of those costs.

33. In its statement of case the Respondent stated that "The Respondent, should matters progress, will seek to recover costs from the Applicant

due to the fact that all evidence shows that all statutory obligations have been complied with and copies of the documentation enclosed has already been provided." No application was made before or at the hearing for a costs order under Rule 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, nor was it suggested that there were grounds for such an application.

34. However, it became clear at the hearing that the Respondent would seek to recover those costs not by way of a service charge demand but by way of an administration charge instead. The difference is important. A service charge is payable proportionately by all service charge payers. An administration charge is payable by an individual tenant. Furthermore, the power of the Tribunal to make an order under section 20C of the 1985 Act is limited to service charges. There is no power at present to make such an order in relation to an administration charge governed by schedule 11 of the Commonhold and Leasehold Reform Act 2002. Section 131 of the Housing and Planning Act 2016 gives the Tribunal such a power but that provision is not yet in force.

33. An examination of the lease in the present case reveals that the service charge provisions of the lease do not in any event permit the Respondent landlord to recover by way of service charge its costs incurred in connection with the Tribunal proceedings. Thus a section 20C order would not be necessary, even were the Tribunal minded to make such an order.

34. Should the Respondent landlord subsequently seek to recover its costs incurred in connection with the present proceedings by way of an administration charge it would need to establish that the lease entitles it to make such a charge. In this regard Miss Osler referred to clause (c) in Schedule C to the Lease whereby the purchaser covenants

"to pay to the Council all costs charges and expenses including legal costs and fees payable to a surveyor which may be incurred by the Council in connection with the recovery of arrears of the rent or other payments to be made by the purchaser under the terms of this Lease or for the purposes of or incidental to the preparation and service of any notice of proceedings under sections 146 or 147 of the Law of Property Act 1925 or any statutory modification or re-enactment thereof notwithstanding that forfeiture may be provided otherwise than by relief granted by the court."

35. Whether such a charge is permitted by the above covenant is by no means clear. It is not obvious that the costs incurred by the Respondent in responding to an application by the leaseholder to the Tribunal under section 27A of the 1985 Act can be said to be costs incurred by the Council "in connection with the recovery of arrears of the rent or other payments to be made by the purchaser under the terms of this Lease". However, no charge has as yet been made, or challenged and therefore it is not part of the Tribunal's function in connection with

the current Application to determine whether or not the clause in question would permit such a charge.

Martin Davey
Chairman

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional Office, which has been dealing with the case.

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

3. If the person wishing to appeal does not comply with the 28 day time limit, that person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Annex: The Law

1. A "service charge" is defined in section 18(1) of the 1985 Act as:

"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. Section 19(1) of the 1985 Act, provides that:

"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 provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

3. "Relevant costs" are defined for these purposes by section 18(2) of the 1985 Act as "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.

4. Section 20 of the 1985 Act provides that

(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.

5. Section 20ZA of the 1985 Act permits the Tribunal to dispense with all or any of the consultation requirements in relation to any qualifying works where it is satisfied that it is reasonable to dispense with the requirements.

6. Schedules 1 to 4 of the Service Charges (Consultation Requirements) (England) Regulations 2003 set out the relevant consultation requirements.

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 a ccreditation 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 3
CONSULTATION REQUIREMENTS FOR QUALIFYING WORKS UNDER QUALIFYING LONG TERM AGREEMENTS AND AGREEMENTS TO WHICH REGULATION 7(3) APPLIES

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) contain a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred by him on and in connection with the proposed works;
(d) invite the making, in writing, of observations in relation to the proposed works or the landlord's estimated expenditure;
(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.

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 and estimated expenditure

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

Landlord's response to observations

4. Where the landlord receives observations to which (in accordance with paragraph 3) 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.