10746

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case References	:	**MAN/OOBU/LSC/2014/0053/0057 and 0061**
Property	:	**2, 4A and 12A Urban Avenue, Altrincham, Cheshire. WA15 8HS**
Applicants	:	**Mr W. Chisnall** **Mr Scott Turnbull** **Ms Julie Hutton**
Representative	:	**Mr W. Chisnall**
Respondent	:	**Trafford Housing Trust**
Representative	:	**Mr R Darbyshire: Counsel instructed by Devonshires Solicitors.**
Type of Application	:	**Landlord and Tenant Act 1985 – s 27A** **Landlord and Tenant Act 1985 – s 20C ("the Act")**
Members	:	**Judge G. C. Freeman** **Mr J Faulkner FRICS Expert Valuer Member**
Date and place of Hearing	:	**11th February 2015** **The Tribunal Service, Alexandra House, Parsonage Gardens Manchester M3 2JA**

DECISION

DECISION

1. The Stage One Notice inviting consultation on the Respondent's proposed works ("the Works") referred to in the Notice dated 11th January 2010 was served on that date by hand on Ms Hutton and Mr Turnbull. It was not served on Mr Chiswell because he was not at that time the tenant of 4A Urban Avenue. There was no obligation on the Respondent to consult with Mr Chiswell.

2. The Stage Two Notice in relation to the Works dated 22nd June 2010 was served on each of the Applicants.

3. The said Notices dated 11th January 2010 and 22nd June 2010 respectively correctly stated the period by which Ms Hutton and Mr Turnbull were to respond.

4. The said Notices contained the correct content.

5. Ms Hutton and Mr Turnbull had sufficient information to engage in meaningful consultation in respect of the Works.

6. In the light of the above the Respondents were not bound to have due regard to Mr Chiswell's representations following service of the said Notices. No representations were made by Mr Turnbull. No representations were produced to the Tribunal by Ms Hutton.

7. The cost of the Works is payable under the service charge provisions of the Leases, by Ms Hutton and Mr Turnbull. Having regard to the five year limit on the recoverability of costs imposed by section 125 of the Housing Act 1985, Mr Chiswell is not liable for the cost of the Works

8. The Works were necessary.

9. Subject to the Tribunal's decision at paragraph 7 above, Mr Chiswell was invoiced sufficiently promptly after completion of the Works as to be liable to pay.

10. The Tribunal came to no conclusion on whether or not the mortgagee in possession of 4a Urban Avenue overpaid service charges. In any event, Mr Chiswell was not entitled to an appropriate credit.

11. The period covered by the Applications is amended appropriately.

Background

1. The Tribunal has received three separate applications from Mr Chiswell, Ms Hutton and Mr Turnbull dated 18th April 2014, 17th April 2014 and 30th April 2014 relating to 4A, 2 and 12A Urban Avenue Altrincham Cheshire WA15 8HS respectively. They seek a declaration that the service charge payable by them under their respective leases of their properties for the period 2011/2012 is reasonable. The Applicants are three of the four long leaseholders of flats within the development, the remaining flats being let by the Respondent on short term tenancies. All four

properties held on long leases were acquired under the "Right To Buy" legislation contained in the Housing Acts.

2. Each property is part of a larger development of flats, the freehold of which is owned by the Respondent. This originally consisted of seven blocks of semi-detached houses built in 1912 which were converted into flats some 30 years ago. Each block comprises four flats - two on the ground floor and two on the first floor making 28 flats in total. The internal layout of each property is identical. There are no common parts within each block. The entrance to each flat is at the side of the building. The door to the upper flat leads straight to a staircase giving access to the upper flat. The door to the ground floor flat gives direct access to it. The method and date of acquisition of each property is relevant to this decision, and is as follows.

3. Mr Chiswell acquired 4A Urban Avenue at auction on 11th March 2010. He purchased the property from the mortgagee in possession of the former owner. Mr Majid, who had exercised the Right to Buy. Ms Hutton, as sitting tenant, purchased her property from Trafford Borough Council on 4th May 2004Mr Turnbull purchased from a former tenant who bought in February 2006. The Respondent is the successor in title to Trafford Borough Council, which granted the leases of the Property, following the exercise of the Right to Buy.

4. The Applicants query the imposition of the costs of major repairs to the blocks of which their flats form part. The works consisted of re-roofing, replacement of soffits fascias and rainwater goods, window replacement, structural underpinning, and boundary and gate installation ("the Works").

The Leases

5. The Lease of 4A Urban Avenue is dated 27th November 2006 and is made between the Respondent of the one part and Jahangir Majid Agha of the other part. The Lease of 2 Urban Avenue is dated 4th May 2004 and is made between Trafford Borough Council of the one part and Julie Hutton of the other part. The lease of 12A Urban Avenue is dated 10th April 1989 and is made between Trafford Borough Council of the one part and Peter Thomas Taylor of the other part. The leases create terms of 125 years from 4th May 2004, except for number 12A, for which the term commences on 10th April 1989. Each lease reserves a ground rent of £10.00 per year payable on 24th June.

6. All the leases are in a similar form. Clause 4 (b) requires the tenant to pay in arrear on the 1st April in every year ...

"such sums as the Director of Corporate Services ... shall certify to be the estimated share ... of (i) the amount specified in the first proviso to the First Schedule hereto (ii) a reasonable part of the costs incurred or to be incurred by the Council in carrying out improvements and repairs to the Property and Building SUBJECT TO restrictions on the liability of the Purchaser in respects thereof as follows:-

The liability of the Purchaser to pay such costs shall in respect of that element of such costs incurred during a period of five years from a date three months after the date of the Offer Notice be limited as follows:

(i) The Purchaser is not required to make any contribution in respect of works for which no estimate was given in the offer Notice

(ii) The Purchaser is not required to contribute in respect of works for which an estimate was given in the Offer Notice any more than the amount shown as the estimated contribution of the Purchaser in respect of that item together with an allowance in respect of inflation"

7. The lease for 12A Urban Avenue omits the word "improvements" and clause (ii) refers to the repairing obligations of the Council under clause 5 of the lease "... *save such repairs as amount to the making good of structural defects (except structural defects already notified to the Purchaser and which are specified in the Fourth Schedule hereto or of which the Council does not become aware earlier that 10 years from the date of this lease."*

8. It was not disputed that the leases required the Respondent to repair the exterior structure and roof of the buildings of which the respective properties form part.

Directions and Hearing

9. The Tribunal issued directions on 13th June 2014. In the light of the Applicants' amendments to their cases, the Tribunal called for a Case Management Conference and on 28th August 2014 further directions were issued in order to identify the issues between the parties as follows:-

9.1 Whether or not the Stage One Notice inviting consultation on the Respondent's proposed works ("the Works") referred to in the Notice dated 11th January 2010 was served on each of the Applicants.

9.2 Whether or not the Stage Two Notice in relation to the Works dated 22nd June 2010 was served on each of the Applicants.

9.3 Whether or not the said Notices dated 11th January 2010 and 22nd June 2010 respectively correctly stated the period by which the Applicants were to respond.

9.4 Whether or not the said Notices contained the correct content.

9.5 Whether or not the Applicants had sufficient information to engage in meaningful consultation in respect of the Works.

9.6 Whether or not due regard was paid by the Respondents to the Applicants' representations following service of the said Notices.

9.7 Whether or not the cost of the Works is payable under the service charge provisions of the Leases, having regard to the five year limit on the recoverability of costs imposed by section 125 of the Housing Act 1985

9.8 Whether or not the Works were necessary.

9.9 Whether or not Mr Chiswell was invoiced sufficiently promptly after completion of the Works as to be liable to pay.

9.10 Whether or not the mortgagee in possession of 4a Urban Avenue overpaid service charges and if so, whether Mr Chiswell entitled to an appropriate credit

9.11 To amend the period covered by the Applications, subject to the same being specified in the amended statement.

10. A hearing was held at the Employment Tribunal Offices, Alexandra House, Parsonage Gardens, Manchester M3 2JA on 11th February 2015, following an inspection of the Property by the Tribunal. All parties submitted statements and bundles of documents which were considered by the Tribunal. Both Mr Chiswell and Ms Hutton attended the inspection and hearing. Apart from submitting a witness statement dated 19th January 2015, Mr Turnbull did not participate and did not attend the inspection nor the hearing. The Respondents were represented at the inspection and the hearing by Mr Darbyshire of Counsel, Mr Frank Lee, senior assistant manager, Mr Lee Haigh, senior surveyor, and Ms Mia James, leaseholder lead.

The Applicants' Case

11. The Applicants raised a number of issues by way of a statement of case, amended statement of case and further statement, which may be summarised as follows:

11.1. It was not disputed that the major works should have been the subject of consultation under section 20 of the Act. The Applicants disputed that such consultation had been properly carried out as a result of failure to give sufficient notice to make representations. They relied on *Trafford Housing Trust Limited and Rubinstein and others [2013] UKUT 0581 (LC) LT Case Number: LRX/87/2012*. They claimed that the significance of the notices served on them was not apparent to them.

11.2 The Applicants queried the necessity of the Works.

11.3 Recoverability of the cost in the light of the Lease and section 125 of the Housing Act 1985.

11.4 Recoverability of service charge paid by a previous owner.

11.5 Recoverability of service charge under section 20(B) of the Act.

The Respondent's Case

12. The Respondent alleges that the consultation Notices were served correctly, that the works were necessary in view of the age of the Property, that the consultation procedures were correctly carried out and that section 20(B) does not apply. In the event that the process was flawed, the Respondent applied for retrospective dispensation to consult under section 20ZA of the Act, citing in support the case of *Dajean Investments Limited v Benson and others* [2013] UKSC 14.

The Law

13. The relevant law is set out in the Schedule to this decision.

The Tribunal's Findings

The Consultation Process

14. The Consultation Process is governed by the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987) ("the Regulations"). Schedule 4 Part 2 is the relevant schedule applying to the Work. There is essentially a three stage process involved in consulting on major works – (1) a Notice of Intention with an opportunity for tenants to make observations about the proposals, then (2) a notice of proposal to enter into an agreement, with details of estimates provided or being made available, and a further period for observations and (3) after entering into an agreement, a notice to the tenants, giving reasons, summarising observations made and the landlord's response to them. Stage 3 is omitted if the landlord contracts with a nominated person or accepts the lowest estimate. In this case the Respondent did so accept the lowest estimate for the overall cost and so was entitled to disregard stage 3.

15. The Regulations state that a stage 1 notice must state a "relevant period" within which any responses from tenants must be received. The relevant period is "30 days beginning with the date of the notice". Precisely what this means was discussed at length in *Trafford Housing Trust Limited and Rubinstein and others*. At paragraph 26 of that decision Huskisson J agreed that "the date of the notice" cannot be taken as a reference to the date which the piece of paper happens to have printed on it. At paragraph 28 he concludes that the date of the notice is the date on which it performs its crucial function, i.e. its receipt, either by deemed or actual service, not the date of posting.

16. The stage 1 notices produced to the Tribunal are dated 11th January 2010 (a Monday). Each one states that the consultation period will end on 9th February 2010 (a Tuesday). If posted by first class post to each property on that date, it would necessarily only be delivered to each property at the earliest on the following day, i.e. 12th January 2010, thus not giving the requisite period for observations. The lease of each property is silent on the service of notices on either party to it. Section 196(3) of the Law of Property Act 1925 provides that a notice served on a lessee shall be sufficiently served *"if left on the land or building comprised in the lease"*.

17. At the date of the stage 1 notice Mr Chiswell had not acquired 4A Urban Avenue. He did not acquire it until approximately two months' later, at auction on 11th March 2010, just more than one month after the consultation period had purportedly closed. There was therefore no obligation on the Respondent to serve this notice on Mr Chiswell, since at the date of the Notice he was not a tenant within the ambit of the Regulations. The Notice was correctly addressed to the then current tenant and owner, Mr J Majid. The Tribunal therefore find that at the relevant date Mr Chiswell was not entitled to be consulted on the Works. Neither Mr Majid nor his mortgagees are party to these applications so it is unnecessary for the Tribunal to consider this aspect further.

18. Both Ms Hutton and Mr Turnbull occupied their respective properties as their homes. Ms Hutton stated that she definitely received the Stage 1 Notice by post, sometime after 11th January 2010, but she could not recall when. She could not recall having received another copy which was purportedly hand delivered by Mr Haigh on behalf of the Respondent. She did not categorically state that she had not received it, merely that she did not have any evidence of having received it. Mr

Turnbull, in his witness statement, stated that *"In all honesty I do not recollect a clear consultation. A number of documents were delivered to my property delivered by Royal Mail."*

19. Mr Haigh provided an undated witness statement. At paragraph 12 he stated that *"all the Applicants received these letters both by post, and being hand delivered to the property. I personally delivered the letters by hand, so I am clear on this point. As such the Applicants received the letters on the day the letters are dated, which meant that they provided exactly 30 days."*

20. Mr Haigh gave evidence on oath at the hearing confirming paragraph 19 above.

21. The Tribunal accepted Mr Haigh's evidence on service of the Stage 1 Notices, except, of course, that he could not have served Mr Chiswell, but instead served Mr Majid at the property. That being the case in the light of paragraphs 15 and 16 above, the Tribunal found that a stage 1 notice with the correct period for consultation stipulated by the Regulations was given to both Ms Hutton and Mr Turnbull.

22. Although strictly not required to go further, the Tribunal then considered whether, if the consultation period had not been sufficiently given in the notices, Ms Hutton or Mr Turnbull were significantly prejudiced by this flaw and whether the Tribunal would have granted dispensation under section 20ZA of the Act pursuant to the Respondent's application. The Tribunal noted Ms Hutton's undated statement that *"This paperwork was of no concern to me as I was expecting some work to be done on the Respondent's flats and had no general objection"*. She stated she made representations in writing to the Respondent in June, following receipt of a further letter from them. She was unable to produce a copy of this as she did not keep one. The Tribunal concluded that there was no obligation on a landlord in the Regulations or under general law to ensure that a tenant understands the contents of a notice served on them.

23. Mr Turnbull, in his statement dated some months after the date for compliance with the Tribunal's directions, makes general allegations against the Respondent for which no evidence was produced in substantiation. None go to the consultation process in any coherent way.

24. In deciding whether or not to grant dispensation the Tribunal must have regard to the decision of the Supreme Court in *Dajean Investments Limited v Benson and others [2013] UKSC 14*. In that case Lord Neuberger said that section 27ZA was directed at ensuring that tenants are not required to pay for unnecessary services or services which are to a defective standard, nor to pay more than they should for services which are necessary and are provided to an acceptable standard. The Supreme Court went on to decide that no distinction should be made between serious and trivial breaches of the Regulations. In all cases it is the fact and degree of prejudice that are critical.

24. The Tribunal proceeded to consider the alleged breach in failing to give adequate notice of consultation. They found that no serious prejudice had been caused to Ms Hutton or Mr Turnbull. The Tribunal considered that such breach was towards the "vanilla" end of seriousness. In the light of the above findings the Tribunal decided that it would have given dispensation under section 20ZA of the Act.

25. To complete the consultation process the Respondent must serve stage 2 notices indicating that they proposed to enter into an agreement for the Works. The

Tribunal decided that these notices were given by letter dated 22 June to all the Applicants, although, in the case of Mr Chiswell, this was not strictly necessary.

26. The Tribunal then turned to the content of the Notices. It is not a requirement of the Regulations that the recipient is to be advised of the consequences of the notices. The Tribunal found as a fact that they contained the information required by the Regulations.

The Necessity of the Works

27. The Applicants helpfully produced photographs of the building prior to the Works being carried out. These unfortunately do not show the condition of the roof. The photographs show timber window frames and fascias in a poor state of repair. Mr Chiswell was asked what he considered to be the useful life of the roof, bearing in mind the Respondent's evidence that it had not been replaced since the buildings were erected over one hundred years before. He considered that it still had a further twenty five years' useful life. In response to questions from the Tribunal it was found that the original roof consisted of slates secured by iron nails to timber battens. The Tribunal is an expert tribunal. In the Tribunal's opinion, it is often found that iron nails rust and disintegrate over a period of time, leading to failure to secure the slates to the battens. The slates then slip and thus the roof loses its weatherproofing. This would be particularly apply to a roof of an age of approximately 100 years, which would require constant maintenance and renewal of slates.

28. The Respondent obtained a Structural Investigation Report and Feasibility Study which was appended to the Respondent's bundle. This recommended, at paragraph 5.15 that if no remedial work was undertaken to the foundations there was the possibility that further differential settlement might occur albeit on a slow and gradual, or periodic basis. The report recommended the underpinning of the outrigger foundations since extensive refurbishment was planned (paragraph 6.3)

29. The Respondent commissioned a preferred option appraisal from Appleyard and Trew LLP which was appended to the Respondent's bundle. This was based on four options: Flat refurbishment; Flat refurbishment with partial demolition; house conversion and new-build option. The second lowest option (by £269) was to refurbish the flats. (7.00 Option Summary). The Tribunal therefore found as a fact that it was reasonable for the Respondent to carry out the Works.

30. In the light of the above the Tribunal found that the Works were necessary and reasonable.

31. The Tribunal noted that the Applicants also complained of damage to their properties caused as result of contractors working on other parts of the building. As Ms Hutton pointed out in her statement (paragraph 15), the Applicants are entitled to quiet enjoyment of their respective properties. Any compensation for such damage is a separate head of claim against the Respondent and it is not within the Tribunal's jurisdiction to decide on it.

Mr Chiswell's Liability under the Lease

32. Mr Chiswell argued that his liability to contribute to the costs of the Works was nil as a result of the provisions of the lease dated 27th November 2006. Clause 3 provides for the Tenant to pay:-

"... (ii) a reasonable part of the costs incurred or to be incurred by the Landlord in carrying out improvements and repairs to the Property and the Building SUBJECT TO restrictions on the liability of the Tenant in respect thereof as follows:-

The liability of the Tenant to pay such costs incurred during a period of five years from a date three months after the date of the Offer Notice be limited as follows:-

3.2.1 the Tenant is not required to make any contribution in respect of works for which no estimate was given in the Offer Notice

3.2.2 the Tenant is not required to contribute in respect of works for which an estimate was given in the Offer Notice any more than the amount shown as the 'estimated contribution of the Tenant in respect of that item together with an allowance in respect of inflation'".

33. The copy of the Offer Notice produced to the Tribunal is dated 1st August 2006 and is addressed to Mr Majid who exercised the Right to Buy. [pages 24 to 29 inc of Applicants Bundle: pages 2-9 to 2-15 inc of Respondent's Bundle.] The Offer Notice states that "no obvious significant structural defects noted"

34. Mr Chiswell cites (at paragraph 30 – Applicants Further Statement)) that he is entitled to rely on Section 125C (1) (b) and Part III of the Sixth Schedule of the Housing Act 1985. Sections 16B and 16C of the Sixth Schedule restrict the liability of the tenant in Right to Buy cases to contribute to repairs or improvements to the property within a period of five years beginning on the date of the Offer Notice or, where the notice states that the lease will provide for a service charge or improvement contribution to be calculated by reference to a specified annual period, with the end of the fifth year after the beginning of that period. The period of five years from the date of the Offer Notice expired on 31st July 2011. The specified annual period referred to above would have expired on 31st March 2011. The Lease refers to the "relevant time" for the purposes of the Sixth Schedule being 29th March 2006, which was the valuation date referred to in the Offer Notice. This would mean the five year period expired on 28th March 2011. The Lease refers to a date five years from a date three months after the date of the Offer Notice, which would have been 31st October 2011. Whichever date is adopted as the correct date for the purposes of the Act, it postdates Mr Chiswell's acquisition of his property.

35. Mr Chiswell was not the original Tenant under the Lease; Mr Majid was. Mr Majid could therefore have taken advantage of the provisions, assuming the Offer Letter did not refer to any of the Works. The question to be decided by the Tribunal was whether the benefit of that provision passed to Mr Chiswell, who acquired it from Mr Majid's mortgagee in possession.

36. The covenant to pay the service charge was expressed in the lease at clause 3 to be on behalf of the Tenant for himself and his successors in title. The Tribunal decided that Mr Chiswell is the original tenant's successor in title. He is therefore entitled to the benefit of the proviso.

Liability to repay Mr Chiswell any over payments made prior to his ownership

37. Mr Chiswell claims that payments in excess of the amounts due were paid on behalf of Mr Majid prior to Mr Chiswell's acquisition of his property in March 2010. The amounts alleged to have been overpaid were not quantified. Mr Chiswell claims that these should be re-paid to him.

38. There was no application before the Tribunal by Mr Majid or his mortgagees for repayment of any money. The Tribunal decided that if such a claim were to be made, subject to it being substantiated, any refund would be due to Mr Majid or his mortgagees and not to Mr Chiswell who would otherwise be unjustly enriched.

Liability under section 20B of the Act.

39. Section 20B(1) of the Act imposes a time limit on the making of demands for payment of service charges. Broadly, if any relevant costs were incurred more than eighteen months before a demand for payment is served on the Tenant, then the Tenant is not liable to repay so much of the service charge as is represented by the costs so incurred. Section 20B(2) contains a proviso to the above. If the tenant was notified within the eighteen month period in writing that the costs had been incurred and that he would subsequently be required to pay them, then section 20B(1) is disapplied. Mr Chiswell claims that the demands for payment were served outside the eighteen month period.

40. Mr Darbyshire relied on *OM Property Management Limited v Thomas Burr [2013] EWCA Civ 479* arguing that correct time for the eighteen month period to run is when the costs to be re-charged are "incurred" by the landlord, giving "incurred" its natural and ordinary meaning. Such costs are not "incurred" on the mere provision of services or supplies to the landlord.

41. Mr Chiswell was initially invoiced for the Works on 24 September 2012. This invoice was subsequently credited and re-issued with amendments to reduce the final balance. These invoices were produced with the Respondent's bundle and were not disputed. The Tribunal, accepted the Respondent's argument that the amount due was not incurred until the final balance was crystallized on completion of the Works on 19th March 2012. Thus Mr Chiswell was invoiced within the eighteen month period required by the Act.

Section 20C Application

42. Some leases allow a landlord to recover costs incurred in connection with proceedings before the First-tier Tribunal (Lands Chamber) as part of the service charge. The Applicants have made an application under s20C of the Act to disallow the costs incurred by the Respondent of the application in calculating service charge payable for the Property, subject, of course, to such costs being properly recoverable under the provisions of the Lease.

43. The Tribunal noted that there was no provision in the lease for the recovery of the Respondents costs of the application to the Tribunal. It was therefore unnecessary for the Tribunal to make an order under the section

The Schedule

The Law

Section 18 of the Landlord and Tenant Act 1985 ("the 1985 Act") provides:

(1) In the following provisions of this Act "service charge" means" an amount payable by a tenant of a dwelling as part of or in addition to the rent –

(a) which is payable directly or indirectly , for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose-

(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19 provides that

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

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

(b) where they are incurred on the 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.

Section 27A provides that

(1) an application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -

(a) the person by whom it is payable

(b) the person to whom it is payable

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

(d) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) ....

(4) No application under subsection (1)...may be made in respect of a matter which –

(a) has been agreed by the tenant.....

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

No guidance is given in the 1985 Act as to the meaning of the words "reasonably incurred". Some assistance can be found in the authorities and decisions of the Courts and the Lands Tribunal.

In *Veena v S A Cheong* [2003] 1 EGLR 175 Mr Peter Clarke comprehensively reviewed the authorities at page 182 letters E to L inclusive. He concluded that the word "reasonableness" should be read in its general sense and given a broad common sense meaning [letter K].

Section 20C of the 1985 Act
provides that

(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 or the First-tier Tribunal (Property Chamber) 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 the county court

(b) in the case of proceedings before a First-tier Tribunal (Property Chamber) to the Tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded to any First-tier Tribunal (Property Chamber)

(c) ....

(d)....

(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.

(4)

The Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987) ("the Regulations").

Consultation – Qualifying Works for which Public Notice is not required

Schedule 4 Part 2

1 - (1) The landlord shall give notice in writing of his intention to carry out qualifying works-

(a) to each tenant; and

(b) .....

(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 prtoposed works may be inspected;

(b) state the landlord's reasons for considering it necessary to carry out the proposed works;

(c) invite the making, in writing, of observations in relation to the proposed works; and

(d) specify-

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(3) The notice shall also invite each tenant and the association (if any) to propose within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

Inspection of description of proposed works

2 - (1) Where a notice under paragraph 1 specifies a place and hours for inspection-

(a) the place and hours so specified must be reasonable; and

(b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant on request and free of charge, a copy of the description.

Duty to have regard to observations in relation to proposed works

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

Estimates and response to observations

4.— (1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.

(2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.

(3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate—

(a) from the person who received the most nominations; or

(b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or

(c) in any other case, from any nominated person.

(4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate—

(a) from at least one person nominated by a tenant; and

(b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).

(5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)—

(a) obtain estimates for the carrying out of the proposed works;

(b) supply, free of charge, a statement ("the paragraph (b) statement") setting out—

(i)as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and

(ii)where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and

(c)make all of the estimates available for inspection.

(6) At least one of the estimates must be that of a person wholly unconnected with the landlord.

(7) For the purpose of paragraph (6), it shall be assumed that there is a connection between a person and the landlord—

(a) where the landlord is a company, if the person is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(b) where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;

(d) where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or

(e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.

(8) Where the landlord has obtained an estimate from a nominated person, that estimate must be one of those to which the paragraph (b) statement relates.

(9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by—

(a)each tenant; and

(b)the secretary of the recognised tenants' association (if any).

(10) The landlord shall, by notice in writing to each tenant and the association (if any)—

(a)specify the place and hours at which the estimates may be inspected;

(b)invite the making, in writing, of observations in relation to those estimates;

(c)specify—

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(11) Paragraph 2 shall apply to estimates made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

Duty to have regard to observations in relation to estimates

5. Where, within the relevant period, observations are made in relation to the estimates by a recognised tenants' association or, as the case may be, any tenant, the landlord shall have regard to those observations.

Duty on entering into contract

6.—(1) Subject to sub-paragraph (2), where the landlord enters into a contract for the carrying out of qualifying works, he shall, within 21 days of entering into the contract, by notice in writing to each tenant and the recognised tenants' association (if any)—

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

(b) there he received observations to which (in accordance with paragraph 5) he was required to have regard, summarise the observations and set out his response to them.

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

(3) Paragraph 2 shall apply to a statement made available for inspection under this paragraph as it applies to a description of proposed works made available for I nspection under that paragraph.