

12519



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case reference** : **LON/00AB/LSC/2017/0240**

**Property** : **Flat A, 9 Oval Road South,  
Dagenham, RM10 9DP**

**Applicant** : **Assethold Ltd**

**Representative** : **Mr R Gurvits, Eagerstates Ltd**

**Respondent** : **Mr N P Franco**

**Representative** : **In person**

**Type of application** : **For the determination of the  
reasonableness of and the liability  
to pay a service charge**

**Tribunal members** : **Mr C Norman FRICS (Valuer  
Chairman)  
Mr P Roberts DipArch RIBA  
Mr M Matthews FRICS**

**Date and venue of  
hearing** : **16 November 2017 at  
10 Alfred Place, London WC1E 7LR**

**Date of decision** : **21 December 2017**

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**DECISION**

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## **Decisions of the Tribunal**

- (1) The Tribunal determines that the sum of £ 4,362.09 is payable by the Respondent in respect of the service charges and administration charges in County Court claim no. D9QZ449J.
- (2) Since the Tribunal has no jurisdiction over County Court costs fees and court interest, this matter should now be referred back to the County Court at Romford.

## **The application**

1. Proceedings were originally issued in the County Court Business Centre under claim no. D9QZ449J. The claim was transferred to the County Court at Romford and then in turn transferred to this Tribunal, by order on 9 June 2017. The relevant legal provisions are set out in Appendix 2 to this decision.

## **The hearing**

2. The Applicant was represented by Mr R Gurvits of Eagerstates Limited at the hearing and the Respondent appeared in person.
3. Immediately prior to the hearing the Respondent handed up a further copy of his defence in the county court.
4. The Applicant applied on 13 November 2017 for the Respondent to be debarred before the Tribunal. A procedural judge directed that that application should be considered by the Tribunal hearing the case. The Tribunal dealt with this as a preliminary point. The grounds were that the Respondent had not complied with the directions in that he had not supplied any documents to the Applicant. Whilst this was admitted by the Respondent, The Tribunal noted that the Applicant had not fully complied with the directions because he had not supplied a Scott Schedule to the Respondent. Further, the Tribunal notes that the Applicant failed to deliver bundles when due on 9 November 2017, that he was previously warned that failure to deliver them by 15 November 2017 might result in a strike out of his case. The Tribunal considered that there was fault on both sides. The Tribunal also considered that barring the Respondent from further participation would be disproportionate and contrary to the Overriding Objective set out at rule 3 of the The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 Tribunal Rules. Accordingly, the Tribunal refused the application.
5. The Respondent said that he had only received the Applicants bundle at the Tribunal on 16 November. The Tribunal reviewed the bundle and

was satisfied that little if any would be new material to the Respondent. However, the Tribunal offered a 20-minute adjournment to the Respondent to review the bundle which he accepted.

### **The background**

6. The property which is the subject of this application is one of three flats in a converted inter-war house in Dagenham. It appears that the house has been extended. The house is in a corner position and has a large front garden, now paved.
7. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
8. The Respondent holds a long lease of the property dated 31 July 1987 under which the respondent holds a lease for 99 years from 25 March 1987. The lease requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. Unfortunately, there has been a prior history of litigation between the parties.
9. Directions were issued on 22 August 2017 which followed an oral case management hearing attended by the tenant but not the landlord. The directions identified the following issues to be determined:
  - (i) The payability/reasonableness of the £5,153.42 claimed;
  - (ii) Identify any ground rent claimed;
  - (iii) Whether the landlord has complied with section 20 of the 1985 Act;
  - (iv) Whether the sums demanded are due;
  - (v) Whether an order under section 20C of the 1985 Act should be made;
  - (vi) Whether an order for reimbursement of application/hearing fees should be made.
10. The Tribunal has not identified applications under 9 (v) or (vi).
11. Major works by way of external redecoration were carried out in 2015.

## **The issues**

12. In the County Court the Applicant sought recovery of service charges, administration charges court fees and interest. The claim was for £5,153.42 plus a court fee of £410.00, being a total of £5,563.42.
13. This claim was therefore a combination of service charges, administration charges and court fees. The Tribunal made clear that its jurisdiction was limited to considering the case as pleaded in the county court as set out in the statement of account in the court claim [43]<sup>1</sup> but excluding the following matters which cannot be transferred to the Tribunal: court fees, court interest and ground rent. As the Respondent has failed to provide a statement of case in the Tribunal, his case was limited to those matters which he had raised in the County Court in his defence.

## **The Applicant's Case**

14. The Applicant's case may be summarised as follows: the sums on the statement of case [43] are all payable; the accounting is correct; no formal responses to the major works consultation for external painting were received from Mr Franco but if he had wished to replace his windows he had time to do so between the initial notice of consultation [5 January 2015] and the work being carried out and had suffered no prejudice; as the Respondent had not served a statement of case in the Tribunal the Tribunal's jurisdiction was limited to matters disputed in the county court defence and Mr Gurvits was not in a position to deal with other issues. The Tribunal noted that relevant invoices had been supplied in the bundle. Mr Gurvits also explained the way the accounts had been prepared.

## **The Respondent's Case**

15. The Respondent's case may be summarised as follows: during the major works consultation, on 8 January 2015, he contacted the landlord's agents to say that as his windows were rotten it would be pointless painting over them and that the house did not require painting; however the consultation response said that there has been no objections; the Respondent was given to understand that if a prior payment was made a previous county court judgment would be set aside which has not happened; he disputed the accuracy of the accounts; he was not willing to pay charges for the front gate and post repair; a Dyno Road invoice had been sent to his flat instead of the Applicants; he objected to a charge for waste removal; he had suffered distress and spent a large amount of time dealing with the landlord.

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<sup>1</sup> Numbers in square brackets are references to page numbers in the hearing bundle

## **The Tribunal's decision**

16. The Tribunal explained that it had no jurisdiction concerning the setting aside of a county court judgment. This was entirely a matter for the county court.
17. The Tribunal considered the reasonableness of the charge in respect of major works. The Tribunal accepts the landlord's oral submission that it was open to the tenant to replace the windows prior to the repainting, because there was just under 5 months between the initial notice and the works. The Tribunal notes that the window frames are demised to the tenant under the terms of the lease (clause 1(a) [71]) and the tenant has covenanted to keep these in repair (clause 4(a) [78]). If the tenant has not done so, he cannot complain if the landlord nevertheless intends to paint them as required under the lease. The Tribunal notes that the landlord accepted the lower of two quotes. The Tribunal considers that the quote is reasonable.
18. The Tribunal then considered the whether the applicant had complied with its duty to consult in light of the Respondent's case. The Tribunal identified an email in the transferred County Court file dated 8 February 2015 which appears to be addressed to Eagerstates, in which Mr Franco referred to the notice of intention, stated that the works were unnecessary because the woodwork was rotten and that he planned to completely change his windows.
19. This was therefore a written response to the notice of intention to which the landlord was bound to have regard to under Para 3 of Sch 4 Part 2 of the Service Charges (consultation) (etc) Regulations 2013 ("Consultation Regulations")(see Appendix 2). This states "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." In addition, Para 4(4) of the regulations states "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 [must accompany the statement of estimates]."
20. Although a notice of intention was served on 5 January 2015 inviting responses by 27 February 2017, and a statement of estimates issued on 16 March 2017, this stated "we received no objections to the notice of intention" instead of summarising Mr Franco's response.
21. The Tribunal therefore finds that the consultation requirements were not complied with. Consequently, in the present proceedings, the effect of Para 3 of the consultation regulations and section 20(3) of the Landlord and Tenant Act 1985 is to limit the amount recoverable in relation to this item of expenditure, to £250.

22. In accordance with the guidance given to the leasehold valuation tribunal (the predecessor to this Tribunal) by the Lands Tribunal (the predecessor of the Upper Tribunal) in *Warrior Quay v Joackim*, [2008] EWLands LRX/42/2006 the Tribunal draws the landlord's attention to seeking dispensation from the consultation requirements by further application.
23. As to the gate and post repair of £650 which also included a small glazing repair, an invoice had been supplied together with photographs. The Respondent offered £150. The Tribunal considered that the cost of £650 was excessive and that £400 was reasonable and it so determines.
24. With regards to the waste removal charge, for which there was an invoice, the Respondent acknowledged that waste had been left in the front paved garden of the property in the past. However, he suggested that the landlord should identify who deposited the material. The landlord's case was that it might be impossible to identify those responsible. The Tribunal has referred above to the large accessible paved front garden at the property, which could therefore accommodate large waste items. On balance, the Tribunal prefers the landlord's case and considers that this is reasonable and payable.
25. Other items on [43], [121] and [135] were not challenged by the Respondent in the county court defence or were conceded during the hearing.
26. The Tribunal agrees with the Respondent that the landlord's accounting presentation was not easy to follow or decipher but is satisfied following explanations from Mr Gurvits that it does enable the Tribunal to correctly ascertain the amount payable.
27. The Tribunal has summarised its findings and calculations at Appendix 1, attached.

### **The Next Steps**

28. For the reasons given above this matter should now be returned to the County Court at Romford and the Tribunal so directs.

**Name:** C Norman FRICS

**Date:** 21 December 2017

### **ANNEX - RIGHTS OF APPEAL**

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure

(First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.

- If a party wishes to appeal against this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
- The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

<b>Appendix 1</b>					
<b>Statement of Account 29.05.2016</b>		<b>Charges</b>	<b>Payments received</b>		
Opening credit (agreed)			£	381.39	
External decorating		£ 708.00			
Service charge - June 2015		£ 245.95	£	245.95	
Service charge - Dec 2015		£ 245.95	£	245.95	
Notice of proceedings		£ 90.00			
Interest		£ 6.47			
Solicitors costs		£ 240.00			
Admin costs		£ 210.00			
Interest		£ 2.27			
Interest		£ 8.75			
Interest		£ 3.53			
		£ 1,760.92	£	873.29	
less Aggregate of administration charges			£	561.02	
Balance brought forward			£	312.27	
<b>Actual Service Charge June 03.06.2016</b>		<b>Claim</b>	<b>One third</b>	<b>Tribunal Decision</b>	<b>Reasons</b>
Insurance		£ 931.07	£ 310.36	£ 310.36	Not challenged in Defence and accepted at hearing
Fire Health & Safety Service		£ 234.96	£ 78.32	£ 78.32	Not challenged in Defence and accepted at hearing
External Decorating		£ 2,274.00	£ 758.00	£ 250.00	Refer to Decision
Fire Health & Safety Survey		£ 252.00	£ 84.00	£ 84.00	Not challenged in Defence and accepted at hearing
Fire Health & N Safety Signs		£ 12.00	£ 4.00	£ 4.00	Not challenged in Defence and accepted at hearing
Replacement hazardous light fitting		£ 110.00	£ 36.67	£ 36.67	Not challenged in Defence
Repair of front post, Gas boxes & glazing front door		£ 650.00	£ 216.67	£ 133.33	Refer to Decision
Dyno Road Works		£ 255.60	£ 85.20	£ 85.20	challenged in Defence but conceded during hearing
Waste removal		£ 156.00	£ 52.00	£ 52.00	See Decision
Emergency line		£ 36.00	£ 12.00	£ 12.00	Not challenged in Defence or Tribunal
Management fee		£ 792.00	£ 264.00	£ 264.00	Not challenged in Defence or Tribunal
		£ 5,703.63		£ 1,309.88	
Less balance brought forward (see above)				£	312.27
Balance				£	997.61



<b>Tribunal Decision on the Statement of Account in the County Court Claim (omitting ground rent and court fees)</b>						
			<b>Claim</b>		<b>Tribunal Decision</b>	<b>Reasons</b>
Balance Brought Forward			£ 1,588.94		£ 997.61	See analysis above
Service charge on account			£ 1,225.94		£ 1,225.94	Not challenged in Defence or Tribunal
Notice of Proceedings			£ 90.00		£ 90.00	Administration charge - not challenged in Defence or Tribunal
Interest			£ 34.50		£ 34.50	Administration charge - not challenged in Defence or Tribunal
Interest			£ 9.33		£ 9.33	Administration charge - not challenged in Defence or Tribunal
Admin costs			£ 42.00		£ 42.00	Administration charge - not challenged in Defence or Tribunal
Service charge on account			£ 1,225.94		£ 1,225.94	Not challenged in Defence or Tribunal
Interest			£ 77.23		£ 77.23	Administration charge - not challenged in Defence or Tribunal
Notice of Proceedings			£ 90.00		£ 90.00	Administration charge - not challenged in Defence or Tribunal
Interest			£ 9.85		£ 9.85	Administration charge - not challenged in Defence or Tribunal
Interest			£ 11.08		£ 11.08	Administration charge - not challenged in Defence or Tribunal
Admin costs			£ 210.00		£ 210.00	Administration charge - not challenged in Defence or Tribunal
solicitor costs			£ 240.00		£ 240.00	Administration charge - not challenged in Defence or Tribunal
Interest			£ 15.51		£ 15.51	Administration charge - not challenged in Defence or Tribunal
Interest			£ 11.10		£ 11.10	Administration charge - not challenged in Defence or Tribunal
Admin costs			£ 72.00		£ 72.00	Administration charge - not challenged in Defence or Tribunal
			<b>£ 4,953.42</b>		<b>£ 4,362.09</b>	

## **Appendix 2 - Relevant legislation**

### **Landlord and Tenant Act 1985 (as amended)**

#### **Section 18**

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
  - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
  - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
  - (a) "costs" includes overheads, and
  - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

#### **Section 19**

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
  - (a) only to the extent that they are reasonably incurred, and
  - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

#### **Section 27A**

- (1) An application may be made to the appropriate Tribunal for a determination whether a service charge is payable and, if it is, as to -
  - (a) the person by whom it is payable,
  - (b) the person to whom it is payable,

- (c) the amount which is payable,
  - (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate Tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
  - (b) the person to whom it would be payable,
  - (c) the amount which would be payable,
  - (d) the date at or by which it would be payable, and
  - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral Tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

## **Section 20**

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
  - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate Tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
  - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
  - (a) an amount prescribed by, or determined in accordance with, the regulations, and
  - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

### **Section 20B**

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

### **Section 20C**

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with

proceedings before a court, residential property Tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

- (2) The application shall be made—
  - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  - (aa) in the case of proceedings before a residential property Tribunal, to that Tribunal;
  - (b) in the case of proceedings before a residential property Tribunal, to the Tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property Tribunal;
  - (c) in the case of proceedings before the Upper Tribunal, to the Tribunal;
  - (d) in the case of arbitration proceedings, to the arbitral Tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or Tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

## **Commonhold and Leasehold Reform Act 2002**

### **Schedule 11, paragraph 1**

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
  - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
  - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
  - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
  - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
- (a) specified in his lease, nor
  - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

**Schedule 11, paragraph 2**

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

**Schedule 11, paragraph 5**

- (1) An application may be made to the appropriate Tribunal for a determination whether an administration charge is payable and, if it is, as to—
- (a) the person by whom it is payable,
  - (b) the person to whom it is payable,
  - (c) the amount which is payable,
  - (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate Tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) may be made in respect of a matter which—
- (a) has been agreed or admitted by the tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral Tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or

- (b) on particular evidence,  
of any question which may be the subject matter of an application  
under sub-paragraph (1).

**Service Charges (consultation)(etc) Regulations 2013**

**Schedule 4**

**PART 2 CONSULTATION REQUIREMENTS FOR QUALIFYING WORKS  
FOR WHICH PUBLIC NOTICE IS NOT REQUIRED**

*Notice of intention*

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

(a) to each tenant; and

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

(2) The notice shall—

(a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;

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

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

(d) specify—

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

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

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

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

*Inspection of description of proposed works*

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

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

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

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

*Duty to have regard to observations in relation to proposed works*

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

*Estimates and response to observations*

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

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

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

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

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

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

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

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

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



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

- (a) obtain estimates for the carrying out of the proposed works;
- (b) supply, free of charge, a statement (“the paragraph (b) statement”) setting out—
  - (i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and
  - (ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and
- (c) make all of the estimates available for inspection.

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

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

- (a) where the landlord is a company, if the person is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
- (b) where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
- (c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;
- (d) where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or
- (e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.

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

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

(a) each tenant; and

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

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

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

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

(c) specify—

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

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

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

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

*Duty to have regard to observations in relation to estimates*

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

*Duty on entering into contract*

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

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

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

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

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