



An Informal Brief Guide to Section 20 Procedures & applications relative to Service Charges to The Leasehold Valuation Tribunal

In the case of qualifying works, the threshold for consultation is reached if the contribution for any one leaseholder exceeds £250. In a property with unequal service charge contributions, the need for consultation arises if any one leaseholder would have to pay more than £250; consultation must then take place with all leaseholders.

Procedures for specific qualifying works

- **Notice of intention**

Notice of intention to carry out qualifying works is given to each leaseholder and any recognised tenants' association RTA, as defined in Section 29, Landlord & Tenant Act 1985. The notice must describe in general terms the proposed works, or specify a place and hours where the description may be inspected.

The notice must state the reasons for the works, and invite written observations, specifying where they should be sent, over what period (30 days from the notice), and the end date. Further, the notice must contain an invitation for nominations of persons from whom the manager should obtain estimates. The landlord must have regard to written observations received during the consultation period.

- **Estimates**

The landlord must seek estimates:

1. from a single nominee of an RTA (whether or not any are received from individual leaseholders);
2. from a single nominee of only one leaseholder (whether or not one is made by an RTA);
3. if single nominations are made by more than one leaseholder (whether or not any are made by an RTA), the landlord must seek an estimate from the person with most nominations, or, if there is no clear leader but there are two or more who tie for first place, from one of those. If the result is not even that clear (for example, there could be five nominees with one vote each), an estimate must be obtained from one of them. If multiple nominations are received from any leaseholder and more than one from the RTA, the landlord must request an estimate from at least one person nominated by a leaseholder and at least one nominated by the RTA.

- **The paragraph b statement**

The landlord then issues a statement (free of charge) setting out the estimated cost from at least two of the estimates and a summary of the observations received and his responses to them. The statement is issued with a notice. At least one of the estimates shown in the statement must be from a person wholly unconnected with the landlord. If any estimates were received from leaseholders' nominees, they must be included in the statement. (There is no need to attach copies of estimates; indeed, the regulations state that all the estimates must be made available for inspection. If the landlord intends to attach copy estimates to help leaseholders, he should also make it clear that they are all available for inspection.)

The regulations call this the 'paragraph b statement'.

- **Notice accompanying paragraph b statement**

The statement must be sent out with a notice, detailing where and when all of the estimates may be inspected and inviting each leaseholder and any RTA to make written observations on any of the estimates, specifying an address where they should be sent, the consultation period (30 days from the notice) and the end date.

- **Regard to observations**

The landlord must have regard to written observations received this second 30-day consultation period.

- **Notification of reasons**

Unless the chosen contractor is a leaseholder's or RTA nominee or submitted the lowest estimate, the landlord must give notice within 21 days of entering into the contract to each leaseholder and any RTA, stating his reasons for the selection, or specifying a place and hours for inspection of such a statement.

The landlord must also summarise any observations made and his responses. There is no requirement for inspection of the summary and responses in this case.

In all cases, where the landlord is under a duty to provide facilities for inspection of documents, the place and hours for inspection must be reasonable, and facilities and copies must be available free of charge.

It is probable that the provision of such facilities, and the management, administrative and ancillary costs which flow from the new consultation requirements will lead to increased costs to the service charge, and thus to the leaseholders in due course.

The duty to have regard

In any case where the landlord receives written observations during a consultation period, he has a duty to 'have regard' to them. There is no statutory definition of 'regard'; neither is there an immediate sanction for failure to have regard. However, the landlord is required on several occasions to state how he had regard to the observations received, and if he is unable to show that he has acted within the spirit of the Act from this point of view, it is possible that the LVT could determine that the consultation procedure has not been followed properly, and then disallow the recovery of the costs of the agreement over and above the relevant consultation threshold (£100 or £250 for any one tenant).

Nominations from leaseholders

The Act does not lay down the terms within which the landlord approaches leaseholders' nominees when seeking to obtain estimates for works or services. Most will require certain fundamental criteria from their contractors (for example, public liability insurance, valid tax exemption certificate, confirmation of VAT status, copies of health and safety policy and confirmation of company status); furthermore, some landlords (particularly in the social housing sector) are bound only to employ contractors who are on an approved list or qualify for placing on such a list. Any nominee would have to apply to join the approved list and meet the criteria set. The criteria will include those mentioned above, but also may include a requirement for an equal opportunities policy and a declaration of any relationship with employees of the manager. Landlords are not prevented from applying their yardsticks as regards leaseholders' nominees, but they will have to justify their selection procedures to the LVT, if challenged.

If they fail to convince the LVT in a particular case, there is a risk that the consultation procedure could be disallowed.

It is suggested that landlords make their criteria part of their requests to nominated contractors, so as to make clear that meeting the criteria is a necessary condition of any contract which may be awarded.

The Act does not require that persons nominated by leaseholders or RTAs should be wholly unconnected with the leaseholder or RTA concerned, but no doubt the landlord will take such factors in account when formulating his proposals.

'Wholly unconnected'

The categories to be considered as persons connected to the landlord are set out in paragraphs 2(1), 12(6), 19(3), 31(3) and 38(7) of the regulations.

It is to be assumed that there is a connection if any of the individuals concerned is a director, manager or partner in the business of the other contracting party, or is a close relative of such a person. A 'close relative' is a spouse or cohabitee, parent, parent-in-law, son or son-in-law, daughter or daughter-in-law, brother or brother-in-law, sister or sister-in-law, step-parent, step-son or step-daughter.

LVT APPLICATIONS – SERVICE CHARGES

The LVT's role in dealing with service charge disputes is to determine whether the charge is "payable" and, if so, whether it is "reasonable". The issues may be heard together or separately. Some disputes may be based on both issues. In other cases it may be agreed that the charge is payable, but a determination is sought as to whether it is reasonable,

Either the tenant or the landlord may apply for determinations on:

- ▷ whether the service charge is payable
- ▷ to whom it is payable
- ▷ the amount which is payable
- ▷ the date by which it is payable
- ▷ the manner in which it is payable

The application may be in respect of charges which have been levied or charges which are proposed and whether or not the charge has been paid. Payment of the charge does not amount to an agreement or admission by the tenant that the charge is payable.

The LVT can interpret the terms of the lease to resolve disputes or uncertainties as to whether the tenant is liable to pay a service charge. Where a determination is also sought as to the reasonableness of a service charge, the applications may be heard together, if the LVT thinks it appropriate, so that the LVT is able to clarify the issues of liability to pay before addressing the details of reasonableness. Indeed, in some cases the issues may be settled once the initial issue as to the liability to pay has been decided.

No application may be made where the issue has been; agreed or admitted by the tenant, determined by a court or referred to arbitration or determined by arbitration. Any reference to arbitration must be with the tenant's agreement following the dispute. Any clause in a lease or any other agreement which appears to commit the tenant to arbitration in advance of a dispute arising, is deemed to be void and will not bind the tenant nor prevent an application to the LVT.

As part of the issue of payability, either the tenant or the landlord may apply to the LVT for a determination of reasonableness. The application may be in respect of charge which has been levied or a proposed charge and whether or not the charge has been paid. Payment of the charge does not amount to an agreement or admission by the tenant that the charge is reasonable. Landlords proposing to carry out works can ask for a ruling that their proposals are reasonable before they start spending. Service charges can include maintenance, repair or other works to the building, improvements, management, cleaning, portage or insurance and other costs incurred by the landlord and recharged to the tenants, such as legal and other professional fees.

Determinations can be made in the following situations:

- ▷ where the works have been done or the services have been or are presently being provided:
- ▷ whether the costs were reasonably incurred and/or
- ▷ whether the works or services are of a reasonable standard and/or
- ▷ whether an interim charge payable before costs are incurred is reasonable
- ▷ where works or services are proposed in the future:
- ▷ whether, if the proposed works or services were to be provided, the costs would be reasonable and/or

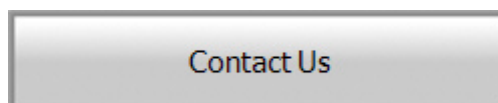
- P whether services to be provided, or works proposed, to a particular specification would be to a reasonable standard and/or
- P what amount of charge payable on account before costs are incurred would be reasonable
- P are, or were, the works or services necessary?
- P do the costs represent good value?
- P There is, of course, no simple definition of "reasonable" and it is for the LVT to determine the issue according to the evidence before them:
- P are (or were) the works or services necessary?

Some of the questions that might be addressed are:

- P Are the works or services required at all?
- P Is the works sufficient to remedy the perceived problem or the service necessary?
- P Are the works or services adequate or over extensive?
- P Did any element of the work or service arise as a result of earlier neglect or mismanagement by the landlord?
- P was, or is, the original specification for the works or service adequate?
- P Did it include all necessary work or was the job allowed to expand as additional repairs were revealed?
- P Are there genuine grounds for additional works of an urgent nature?
- P what were the landlord's procedures for costing the works or services?
- P Are there arrangements for competitive tendering or obtaining competitive estimates?
- P Did the landlord follow the procedures where the tenants' nominated a contractor or insurer?
- P Do the works or services arise from a contract already in place?
- P what are the landlord's arrangements for controlling costs?
- P How adequate is site supervision?
- P What controls are there for checking and payment of invoices etc?
- P What arrangements are there for checking the service provided against that specified?
- P Is the standard of the works or service proposed or completed appropriate and reasonable?

This guide is merely to provide an indication as to some of the requirements of legislation. It is not supposed to be a in depth analysis and you should always obtain independent advice. However you should check to ensure that the contents are accurate at the time this is supplied to you and furthermore is appropriate to you, your circumstances and any RTM / Management Company. We cannot accept any responsibility in any way for any omission or error herein and you should not place any reliance on the contents hereof. The supply of this information is conditional in all respects upon acceptance of these terms and conditions.

ALWAYS SEEK APPROPRIATE LEGAL ADVICE



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