

Consultation



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Introduction

- Part of the statutory overlay onto private law relationship between landlord and tenant
- The principal statutory provisions in relation to consultation requirements are:
 - Sections 19, 20 and 20ZA of the LTA 1985
 - The Service Charges (Consultation Requirements) (England) Regulations 2003 (2003/1987)
- In short: if L fails to either comply with consultation requirements or seek dispensation, the contribution of tenants is limited to £250 per tenant (in the case of qualifying works) or £100 per tenant (in the case of qualifying long term agreements).



The consultation requirement: s.20

- The relevant contributions of tenants are limited to the qualifying amounts unless the consultation requirements have either been complied with or dispensed with: s.20(1).
 - “relevant contributions” – amount tenant is required to pay under the lease to contribute to service charge – see definition in s.18 LTA 1985 – payable for services, repairs, maintenance, improvements, insurance, costs of L’s management
- Section 20 applies to “qualifying works” or “qualifying long-term agreement”



The consultation requirement: s.20 - qualifying works

- Defined in s.20ZA(2) – “works on a building or any other premises”
 - Require “works”; e.g. – does not include window cleaning
(*Paddington Walk Management Ltd v Peabody Trust* [2010] L&TR 6)
- Section 20 applies where the costs/estimated costs incurred/to be incurred in connection with the works exceed “an appropriate amount”
- Appropriate amount here = “an amount which results in the relevant contribution of any tenant being more than £250”: Regulation 6



The consultation requirement: s.20

- qualifying long term agreement

- Defined in s.20ZA(3) and Regulation 3
- An agreement entered into by L or superior landlord for a term of more than 12 months, subject to exclusions in Regulation 3
- Section 20 applies to a QLTA where relevant costs incurred thereunder in any accounting period result in the relevant contribution of any tenant, in the relevant period, being more than £100: regulation 4



The consultation requirement: s.20

- What is the purpose of the consultation requirements?
 - To ensure that the tenants are protected from paying for inappropriate works
 - To ensure that tenants are protected from paying more than would be appropriate
 - Reflecting the reasonableness limitation on the extent of service charges found in s.19 LTA 1985
 - Not for the purposes of “transparency and accountability” generally

See judgment of Lord Neuberger in ***Daejan Investments Ltd v Benson and others*** [2013] UKSC 14 at [42]-[44] and [52]



Content of the consultation requirements

- Qualifying works and/or QLTA
- Different consultation requirements where 'public notice' under public procurement regulations is required – see definitions and thresholds in the Public Contracts Regulations 2015, which principally apply to public sector
- The requirements are set out in schedules 1 to 4 of the Regulations:
 - Schedule 1 – QLTA (no public notice)
 - Schedule 2 – QLTA + public notice
 - Schedule 3 – QLTA + QW
 - Schedule 4 pt 1 – QW + public notice
 - Schedule 4 pt 2 – QW (no public notice)



Content of the consultation requirements

- Schedule 1 – QLTA (no public notice)
 - L to give notice in writing of intention to enter into the relevant agreement , notice providing certain specified information:
 - Describe the goods or services to be carried out or specify place/hours at which description may be inspected
 - Reasons why necessary/ where consist of relevant works, explain why L considers necessary to carry out those works
 - Invite observations
 - L has duty “to have regard” to observations made



Content of the consultation requirements

- Notice should invite tenant/association to propose name of a person from whom L should try to obtain an estimate
- L's has duties to obtain certain estimate(s) - in para. 4
- L then to prepare proposals and give notice to tenant:
 - At least one providing goods/services provided by a person wholly unconnected with L
 - Where estimate obtained with a nominated person, a proposed based on that estimate
 - Intended duration of the proposed agreement
 - Statement setting out T's observations and L's response to them



Content of the consultation requirements

- L has duty “to have regard” to observations made in regard to proposals
- Where L enters into agreement, duty to give notice to each tenant and any recognised tenants association stating reason for making agreement and setting out observations on proposal and response



Content of the consultation requirements

- Schedule 3 – QLTA + QW
 - Similar to Schedule 1 requirements but reduced:
 - Notice in writing
 - Duty to have regard to observations
 - Duty to respond to observations within 21 days



Content of the consultation requirements

- Schedule 4 pt 2 – QW (no public notice)
 - L to give notice in writing to tenants
 - Duty to have regard to observations in relation to proposed works
 - Duty to obtain certain estimate(s) – and to invite observations thereon and have regard thereto – paras. 4-5
 - Where L enters into agreement, duty to give notice to each tenant and any recognised tenants association stating reason for making agreement and setting out observations on proposal and response

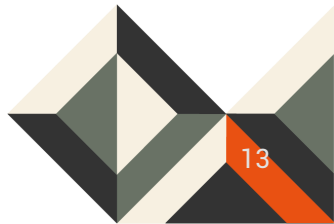


Content of the consultation requirements

- Duty.... to have regard?

“the landlord must conscientiously consider the lessees' observations and give them due weight, depending on the nature and cogency of the observations...it is impossible to say that the tenants' views are ever immaterial. They will have to be considered in every case. This does not of course mean that the lessees have any kind of veto over what the landlord does; nor that they are entitled to insist upon the cheapest possible means of fulfilling the landlord's objective. But [the duty] entails more than simply telling them what is going to happen. Given that in every case the tenants will have had the opportunity to make observations on the landlord's proposals I do not consider that the landlord has any further positive duty to inquire into the tenants' views. The statutory consultation process is designed to inform the landlord about the tenants' views.”

Waler v Hounslow [2017] EWCA Civ 45 at [38].



Dispensation

- See ***Daejan Investments Ltd v Benson*** [2013] UKSC 14 and *Jastrzemski v Westminster City Council* [2013] UKUT 284:
- (1) whether, and if so to what extent, T would relevantly suffer if an unconditional dispensation was granted. relevantly suffer = full compliance – unconditional dispensation
- (2) factual burden on T to identify any relevant prejudice which he claims he would or might have suffered;
- (3) once T has shown a credible case for prejudice, Tribunal should look to the landlord to rebut it
- (4) not sensible or convenient to distinguish between serious failing and a technical, minor or excusable oversight, save in relation to the prejudice it causes
- (5) that the tribunal could grant dispensation on such terms as it thought



Key points





- Are consultation requirements engaged? Qualifying works or qualifying long term agreement
- Content of requirements – refer to schedules to Regulations – Schedules 1, 3 and 4 Pt 2 most relevant (unless procurement requirements apply)
- Dispensation may be granted where reasonable to do so
- Requirements are about making sure tenants are protected from paying for inappropriate works or paying more than would be appropriate. Compliance is important; but not a broader licence for transparency/veto of landlord's discharge of duties.



Thank you

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