Neutral Citation Number: [2018] EWCA Civ 840

Case No: B2/2015/1913

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM
CENTRAL LONDON COUNTY COURT
HIS HONOUR JUDGE HORNBY
ref: 3YK67837

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/04/2018

Before :

LADY JUSTICE ARDEN
LORD JUSTICE SINGH
and
SIR PATRICK ELIAS

- -

Between :

	Reedbase Limited and Anr	**Claimants/ Respondents**
	- and –	
	Fattal and Ors	**Defendants/ Appellants**

- -
- -

Daniel Dovar (instructed by **Collyer Bristow LLP**) for the **Appellants**
Jonathan Chew (instructed by **Forsters LLP**) for the **Respondents**

Hearing dates : 31 January 2018

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Judgment Approved

LADY JUSTICE ARDEN :

1. The first two issues to be determined on this appeal are (1) whether the manner in which the landlord replaced the appellant tenants' terrace tiles satisfied the landlord's obligation to make good damage to the demised premises under the terms of the appellants' underlease; and (2) whether the trial judge, HHJ Hornby, erred in holding that the landlord had conducted sufficient consultation with the appellant tenants in relation to its proposal to replace the terrace tiles previously laid by them.

Outline of events leading to the action which gives rise to this appeal

2. The appellants on this appeal, who were the defendants in the action, are tenants of two penthouses on the top of a block of apartments in 14- 112, Nottingham Terrace, London NW1. Those penthouse apartments had terraces around them and also a large terrace on the top of the adjoining property in York Terrace West. The claimants in the action (the

respondents to this appeal) are the landlord of the apartments and service charge trustee. The management company is a further respondent. The appellants have shares in the first claimant company. They defended an action for arrears of rent and made a substantial counterclaim for damages for breach of covenant.

3. The management company desired to repair an asphalt roof under the terraces adjoining the two penthouses. The appellants, however, had placed tiles on top of this roof. Accordingly the management company recognised that it would have to come to some agreement with the appellants about removing these tiles. They came up with a proposal to seal the roof with a plastic substance called Decothane on which some tiles called "Grantile" would be placed. However, after sending out a specification for this, the management company discovered that it would invalidate the guarantee offered by Decothane if the tiles were placed directly on the Decothane. The appellants in any event wanted a more expensive tile. Accordingly, the management company put forward the proposal that the tiles should be fixed by a pedestal system, which involves inserting "shims" or small sized plastic wedges between the tiles and the Decothane. The financial difference was approximately £30,000 on works worth over £300,000.

4. In the event, the new tiles took some seven months to source. For that time the contractors went off-site. But in the end the tiles were fixed. The judge made a site visit and was satisfied that the work was well done. He observed during the trial that the terrace was "stunning". The trial took eleven days and there were several witnesses. HHJ Hornby delivered a detailed judgment of over 160 paragraphs and 40 pages, to which I pay tribute.

5. The cost of the works done to the roof were added to the service charge, to which the appellants contribute 10%. The rest has been paid by the other tenants and none of them has objected to the cost involved.

6. Before entering into these works, the management company had to go through the statutory process of circulating their proposals, obtaining estimates and making estimates available for inspection by tenants in the way required by the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the Consultation Regulations"). I describe the relevant parts of the Consultation Regulations in a later section of this judgment, and the relevant provisions are set out in the Appendix to this judgment.

7. The appellants object to paying the rent now payable, which includes an element attributable to the cost of these works. They contend that the work was not done in conformity with the landlord's covenant to make good damage occasioned by repair. They also contend that there was a breach of the Consultation Regulations. They further claim that the judge was wrong in his calculation of damages.

Issue (1): landlord in breach of obligation to make good damage?

8. I start with the claim that the works involved a breach of the covenant make good damage occasioned by repairs. This turns on the meaning of Clause 2(7) (B) in the

appellant's underlease, which reads as follows:

> (B) To permit the Superior Lessor the Lessor and the Service Company and all other persons authorised by them respectively with or without workmen tools and appliances at all times during the said term upon previous notice (except in the event of emergency) to enter upon the demised premises and to execute any repairs decorations additions alterations or things to the Building or any part thereof or to any adjoining premises and (without limiting the foregoing) to open construct lay down renew alter repair cleanse empty or maintain any gutters sewers watercourses drains cisterns water pipes cables electric wires gas pipes conduits ducts or heating or sanitary apparatus or other conducting media and all appliances telephone or other service or supply in connection with or for the accommodation of any other parts of the Building or any adjoining property and to survey other parts of the Building or to search for or amend any defect accident or want of repair to any other parts of the Building and to execute any repairs or works to the demised premises which may be required by the Superior Lessor the county or local authority or any public or national authority the Lessor or the Service Company making good to the demised premises all damages thereby occasioned and causing as little inconvenience to the Tenant as possible.

9. Mr Daniel Dovar, for the appellants, submits that this clause requires the landlord to replace the tenant's property like with like, and that the landlord was in breach of this covenant in two respects.

10. First, the substituted terrace tiles are said to give rise to a problem with "ponding", that is, the collection of rain water in puddles. The appellants' further point is that the tiles require more maintenance when they are fitted on the pedestal system than if they are fitted by direct application to the asphalt roof. The tiles have to be removed so that the area underneath can be cleaned and the position of the shims has to be rectified from time to time. Therefore, they say that the landlord did not and could not perform its obligation to make good the damage by replacing like with like.

11. In my judgment, all these arguments must fail because of the judge's findings of fact. The judge held that there had been ponding before the works were undertaken. He considered that this had been part of the original design of the building. However, the judge found that there was no ponding after the works were done and that, if any excess water collected, it was beneath the tiles. Moreover, the amount of ponding after the works was *de minimis* and accordingly there was no breach of the covenant to make good (see Judgment, paragraphs 149 and 151).

12. The judge brought together a number of his reasons for rejecting the appellants' claim for failure to make good the damage caused by removing and replacing the terrace tiles in

paragraph 161 of his judgment, which reads as follows:

> 161. I further find that the decision of the Claimants to apply Decothane over the asphalt and to use the Caro system for the tiles required by the Defendants on the terraces complied with their obligations and accords with the experts of both sides. I find that the system introduced by the Claimants were works that complied with their obligations to keep the property in good and substantial condition. Mr Dovar in his closing submissions argued that the terraces were in poor condition. He asserted that there was stagnant water, a breeding ground for biting insects, tripping hazards and problems with the Caro system. None of these allegations have been proven. Reasonable maintenance is required. I find that the drainage system is sufficient although the terraces are subjected to an excessive profusion of plants. They cause problems and expense. They belong to the Defendants. The Claimants have been very reasonable in allowing the proliferation of greater and bigger plants. I must reject the concluding submissions of Mr Dovar claiming damages firstly for breach of covenant.

13. The judge's approach is supported by authority. In *Bradley v Chorley Borough Council* (1985) 17 HLR 305, this Court held that "what work can reasonably be required of the landlord will depend upon the facts of each particular case." This Court made it clear that the obligation to make good did not impose an absolute standard, but an obligation so far as possible to restore property to its pre-existing condition. The condition of the demised premises before the work takes place is a key consideration. So, for example, it might be the case that the landlord could make good a wall with already badly damaged wallpaper on it by painting it with emulsion (see per Sir John Donaldson MR and per Eveleigh LJ in *Bradley* at 309).

14. The landlord may not be able to restore the premises to exactly what was there before. Here the landlord could not reasonably be expected to lay promenade tiles directly on to the Decothane or to replace the promenade tiles in their pre-existing damaged condition. What the landlord did was to improve the tenant's property by installing new and apparently superior terrace tiles. There was no question of defective work or poor quality tiles being used. There were maintenance obligations but the judge found that these were reasonable, and, that being so, they could not prevent the landlord's actions from amounting to performance of its covenant in Clause 2(7)(B).

15. Second, the appellants contend that there was a further breach of the covenant to make good damage by not watering the plants which they kept on their terraces during the period of the works. The appellants had placed on their terraces large planters with mature shrubs or trees in them. They had an irrigation system which enabled these planters to be watered twice a day. The contractors moved the planters in accordance with the schedule of works, but they did not keep the irrigation system going. Many of the plants died. The appellants also say that some planters were damaged while being moved but there is no finding on this.

16. In my judgment, there are a number of answers to the appellants' contention that there

was a failure of the obligation to make good as a result of the plants dying for lack of water.

17. First the appellants failed to establish any agreement with the contractors to look after the watering of the plants. The arrangements were that the contractors would move the planters to enable them to do the works then replace them. When moving them, they were to move them to another place on the terraces or on to some cradle which would be constructed for the purpose of gaining access to the roof. The contractors turned off the water which was necessary to irrigate the plants. It appears that no one else watered the plants. The plants obtained water if at all from the rain. It should be recalled that, when the problem with the tiling was discovered, the contractors went off-site for seven months. So it must have been obvious that they were not doing any watering.

18. The judge was satisfied that there was no agreement in writing to the effect alleged by the appellants. The only question would be whether the terms could be implied or were agreed orally. The judge's findings make it clear that these terms were not agreed orally (see Judgment, paragraph 157). No one has suggested that the term could be implied into the arrangements for doing the work.

19. The only place where the obligation could be found was in the covenant set out in paragraph 8 above. There is, however, nothing in that clause which expressly deals with watering plants. It merely deals with making good damage to the demised premises. I will proceed on the basis that that phrase would include consequential loss to the tenant's property where it is inevitably damaged in the process of repairing the demised premises, as where a tenant's wallpaper has bonded with the landlord's wall (see *McGreal v Wake* (1984) 13 HLR 107).

20. However, the loss in this case was not the result of the landlord's works (for which purpose the planters had to be and were moved), but by the tenants in failing to water them. The irrigation system had to be turned off so that the planters could be moved but there was nothing to stop the tenants from either reinstalling the irrigation system for the planters in their temporary position during the currency of the works, or providing water for them in some other way. They failed to do this, and even told their gardener that he was not required during the works. At the end of paragraph 161 of his judgment, the judge summarised his reasons for rejecting the appellants' claim for "the deterioration" of their plants: this was due to their own failure to ensure that they were watered and allowing their gardener to be absent from the site for nearly two years. I agree with the judge's conclusion that these circumstances were sufficient to take the damage to the appellants' plants outside the covenant to make good damage to the demised premises set out in Clause 2 (7) (B). The obvious expectation would have been that the tenants would make arrangements for the watering since they were present on the property throughout and had ready access to the water needed to water the plants.

21. In those circumstances I would reject any claim arising out of damage to the plants. Even if there had been such a claim, the appellants could have mitigated any loss by watering the planters themselves.

22. I would accordingly dismiss the appeal on Issue (1). Before turning to Issue (2), I shall

summarise the relevant provisions of the Consultation Regulations.

Landlord's obligation to consult tenants: Consultation Regulations, sched 4, Pt 2

23. The Consultation Regulations were enacted pursuant to section 20ZA(4) of the Landlord and Tenant Act 1985 (see Appendix).

24. It is common ground that, subject to application of the Consultation Regulations, the landlord would be entitled to be recouped for the reasonable costs of the works in issue on this appeal, namely the cost of tiling the penthouse terraces within the appellants' leases, from the service charges for all the apartments in the block. It is also common ground that the relevant works were "qualifying works" to which the procedure for consultation for such works set out in Part 2 of schedule 4 to the Consultation Regulations applied. That procedure required two stages of consultation, which were completed, but the appellants contend that because of changes to the proposals concerning the tiling the second stage had to be repeated with fresh estimates. The appellants challenged the reasonableness of the service charge at first instance, but failed, and that challenge was not continued on this appeal.

25. The recent decision of the Supreme Court in *Daejan Investments Ltd v Benson* [2013] 1 WLR 854 describes the consultation process in detail. Suffice it to say for the purposes of this appeal that, on pain of being able to recover only £250 for the relevant works from each tenant, the landlord had to follow the consultation procedure. Its only alternative was to obtain a dispensation from the First-tier Tribunal (Property Chamber) (Residential Property) (see Landlord and Tenant Act 1985, section 20(1)(b), set out in the Appendix to this judgment), a course considered in detail by the Supreme Court in *Daejan* but which was not taken and which is not in issue on this appeal.

26. The two stages are as follows.

27. First, the landlord must consult the tenants (and any recognised tenants' association ("RTA")) on their intention to carry out the works (Consultation Regulations, sched 4, Part 2, paragraph 1). Paragraph 1 sets out what has to be in the notice. Importantly, the landlord must have regard to any observations made by the tenants or any RTA (Consultation Regulations, sched 4, Part 2, paragraph 3).

28. Second, the landlord must carry out a second consultation on estimates which he obtains for the works. Before the landlord can do this, it must first obtain estimates. If a tenant or the RTA has put forward the name of a person from whom the landlord should try to obtain an estimate, the landlord must seek an estimate from that person ("a nominated person"). There must be at least one contractor who is not connected with the landlord. The landlord must provide tenants and any RTA a "paragraph (b) statement" containing the information set out in paragraph 4(5)(b) in Part 2 of schedule 4 to the Consultation Regulations. The tenants and any RTA can make observations within 30 days and the landlord must have regard to those observations.

29. When the landlord enters into any contract for the works (other than a nominated person

or contractor who has submitted the lowest estimate), it must within 21 days give notice to the tenants and any RTA of its reasons for doing so (paragraph 6).

30. In *Daejan*, Lord Neuberger, with whom Lord Clarke and Lord Sumption agreed, made the following observations about the purpose of the Consultation Regulations in the context of the Landlord and Tenant Act 1985:

> 42. It seems clear that sections 19 to 20ZA are directed towards ensuring that tenants of flats are not required (i) to pay for unnecessary services or services which are provided to a defective standard, and (ii) to pay more than they should for services which are necessary and are provided to an acceptable standard. The former purpose is encapsulated in section 19(1)(b) and the latter in section 19(1)(a). The following two sections, namely sections 20 and 20ZA appear to me to be intended to reinforce, and to give practical effect to, those two purposes. This view is confirmed by the titles to those two sections, which echo the title of section 19.
>
> …
>
> 46 I do not accept the view that a dispensation should be refused in such a case solely because the landlord seriously breached, or departed from, the requirements. That view could only be justified on the grounds that adherence to the requirements was an end in itself, or that the dispensing jurisdiction was a punitive or exemplary exercise. The requirements are a means to an end, not an end in themselves, and the end to which they are directed is the protection of tenants in relation to service charges, to the extent identified above. After all, the requirements leave untouched the fact that it is the landlord who decides what works need to be done, when they are to be done, who they are to be done by, and what amount is to be paid for them.

Issue (2): landlord obliged to repeat stage 2 consultation because of tiling changes?

31. That brings me to the statutory consultation. There is no dispute about the first stage. Mr Dovar essentially accepts that there was only an obligation to circulate details of the general works and that this was done. Moreover, the judge made a clear finding that full information was provided at both stages. He held:

> 138. Likewise I am unable to accept the argument relying upon sections 19 and 20 of the Landlord and Tenant Act 1985 as I find that adequate notice and information was given to the Defendants throughout of all relevant changes made to the building works and that the works were carried out to a reasonable standard.
>
> 139. Mr Chew took me through the history. He said that the starting point was the Consultation Notice 20ZA contained in a letter, dated 13th January 2005, (6/131). He then took me to a

> letter dated 30th March 2005, (6/403) providing a great deal of information addressed to 'All Lessees' including information waterproofing. I was next taken to an e-mail, dated 13th April 2005, (6/413) and a number of attachments and then a Warm Roof Specification of the same date (6/414-425) with a great deal of information. Mr Chew then took me to another letter addressed to all the Lessees dated 18th July 2005 (7/634). It pointed out to the tender and other documents at the Porters lodge. Mr Chew then referred to numerous meetings with the Defendants and very detailed correspondence with Rudy Fattal and other documents. Mr Chew submitted that all the documents taken together gave ample information to the Defendants. I am satisfied that the Defendants had adequate notice and information as set out in paragraph 138.

32. What Mr Dovar submits, however, on this appeal (and this appears to be a new submission) is that there should have been a re-tendering at stage 2 once it was realised there had to be a variation to the proposals to take account of the agreement reached on tiles. He submits that the change, especially that caused by the inability to fix tiles directly to the Decothane, was a material change. There had to be a retender. As Mr Dovar put it in his skeleton argument:

> Part of the process [required by the legislation] is to provide alternative tenders for the same works. It is therefore not possible to amend the specification of works after the tender process has been carried out and stay within the consultation requirements; a new second stage notice was required once the specification had changed. D further denies (if it is to be alleged) that they have or even could waive their rights under the 1985 Act.

33. That would have involved going back to all the original tendering parties, including those whose tenders had not been accepted, providing them with information and asking them to quote for the work now agreed between the appellants and the management company should be done. There would be obvious difficulties in getting those estimates and a loss of time and the incurring of cost.

34. Mr Jonathan Chew, for the respondent management company, on the other hand, submits that the relevant question is whether the addition of the new work meant that the old proposal no longer described what was going to happen. A mere increase in cost is not of itself sufficient to invalidate consultation that has taken place since all the landlord is required to do is to produce estimates. In the present case, the uplift in cost due to the changes arising from the selection of the appellants' preferred tile and the new method of fixing were of the order of £31,000, representing 6% of the full costs of the works. Mr Chew submits that the change in the way the tiles were fixed was not sufficient to trigger a retendering obligation. Furthermore the appellants' claim under Landlord and Tenant Act 1985, section 19 (see Appendix) that the costs were unreasonable was dismissed at trial and no permission to appeal has been sought in respect of this decision.

35. Mr Chew further contents that the appellants are estopped from challenging these costs

in any event because the work only proceeded once the appellants confirmed that they had approved both the tiles and the pedestal system.

36. It is sometimes necessary for a landlord to repeat stage 2 of the process required by the Consultation Regulations but neither the Landlord and Tenant Act 1985 nor the Consultation Regulations give guidance as to when this should be done. In my judgment, the relevant test, in the absence of any explicit statutory guidance, as to when a fresh set of estimates must be obtained, must be whether, in all the circumstances, the appellants have been given sufficient information by the first set of estimates. That involves, as both counsels submit, comparing the information provided about the old and the new proposals (and that comparison should be made on an objective basis). The difference is that the estimates produced at the second stage did not include an estimate for the additional cost of the appellants' preferred tiles or of the pedestal system for fixing them. But that difference was not the only relevant factor and it would not, as I see it, be right to conclude that there had been a material change in the information provided on the basis of that one factor. In my judgment, in the light of the statutory purpose, as expounded in *Daejan*, it must also be considered whether, in all the circumstances, and taking account of the position of the other tenants who did not object to the changes, the protection to be accorded to the tenants by the consultation process was likely to be materially assisted by obtaining the fresh estimates.

37. In my judgment, the answer to the question I have posed is clearly no, taking a realistic view of the circumstances of this case, for several reasons. First, as the judge recognised, it is a relevant consideration that the tenants who contend that there should have been a fresh tender knew about the change in the works (including the need for a pedestal system of shims) and approved it, and did so without contending at that point in time that there should be a fresh tender. This is not a case where the landlord was seeking to ambush the tenants by doing some fundamentally different set of works from that originally proposed. Second, the change in cost was relatively small in proportion to the full cost of the works, especially when account is taken of the fact that the increase in cost due to the appellants' choice of tile was primarily for the appellants' sole enjoyment, and yet was being borne by the service charge. As Mr Chew put it, the proposals remained substantially the same. Third, it was on the face of it likely to be unrealistic to think that contractors who had estimated for the full works but not obtained the contract would be likely to tender or to hasten to tender for a small part of it (supplying and fixing the tiles). (There was a single contract awarded for the works). There is no evidence that there would have been any saving in cost. No other contractor had been put forward by the tenants. Nor indeed was there any suggestion that it would be best practice to seek fresh tenders in these circumstances. Fourth, the retendering process would have led to a loss of time in completing the works, which might prejudice other tenants. Fifth, the appellants continued to have their protection under section 19 of the Landlord and Tenant Act 1985 (see Appendix) against the inclusion of unreasonable costs in the service charge, which claim the judge dismissed at trial.

38. In those circumstances it is unnecessary to consider the alternative arguments of waiver and estoppel.

39. I would, therefore, dismiss the appeal on both Issues (1) and (2).

Issue (3): calculation of damages

40. That leaves the third issue, namely the question of damages and the judge's holdings on those matters. In the light of the conclusions that I have reached so far, question of damages does not arise. I, therefore, do not propose to answer those questions on those points.

Conclusion

41. In my judgment, for the reasons given above, this appeal should be dismissed.

LORD JUSTICE SINGH :

42. I agree.

SIR PATRICK ELIAS :

43. I also agree.

Appendix

Relevant Statutory Provisions

Landlord and Tenant Act 1985

19 Limitation of service charges: reasonableness

(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.

20 Limitation of service charges: consultation requirements

(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.

…

(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.

20ZAConsultation requirements: supplementary

(1) Where an application is made to [the appropriate tribunal] for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

(4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord –

(a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them
(b) to obtain estimates for proposed works or agreements,
(c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

The Service Charges (Consultation Requirements) (England) Regulations 2003

7 The consultation requirements: qualifying works

(4) Except in a case to which paragraph (3) applies, and subject to paragraph (5), where qualifying works are not the subject of a qualifying long term agreement to which section 20 applies, the consultation requirements for the purposes of that section and section 20ZA, as regards those works –

(a) in a case where public notice of those works is required to be given, are those specified in Part 1 of Schedule 4;
(b) in any other case, are those specified in Part 2 of that Schedule.

Schedule 4

Consultation Requirements for Qualifying Works Other Than Works Under Qualifying Long Term or Agreements to Which Regulation 7(3) Applies

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.

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 –

(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.

(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 –

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

(b) where observations are made to which (in accordance with paragraph 5) the landlord was required to have regard, summarise the observations and set out the landlord's 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.