Section 20 Information

Consultation - Introduction

This is section number 1 of a 3-part series looking at Section 20 consultation

Other information sheets explain about leaseholders' obligations to pay for works and services through a service charge. Where your landlord intends to undertake works at significant cost or enter into a long term agreement, he may have to consult with you first, if he wishes (as is very likely) to fully recover the costs as service charges.

Section 20 of the Landlord and Tenant Act 1985 ("Section 20"), specifies when and how consultation should take place. It is a prescriptive process which can take several months and involves at least two (possibly three) notices at different stages of the process. These sheets aim to explain what each of those notices should contain and your rights to respond by making observations.

The consultation does not seek your approval for any works or services. The primary purposes are to give you an opportunity to make observations on the landlord's proposals, to give you an opportunity to propose a contractor from whom the landlord may seek an estimate and to require the landlord to demonstrate that value for money is being achieved.

Section 20 applies to physical "works on a building" and to any services provided under a "qualifying long term agreement" ("QLTA"). The next 2 sheets in this series look at each of those consultation processes in turn:

Myth buster

There are a few common misconceptions about Section 20 consultation:

- **The consultation is on proposals to spend service charge monies.** It is not part of the service charge collection regime. Your obligations to pay service charges and estimated 'on account' service charges are detailed in your lease. It is likely, therefore, that you will be asked to contribute to estimated costs at the start of the financial year. This is likely to be before the consultation has been completed or even before it has commenced.
- **How do I know how much the proposed works are likely to cost if I am being asked to contribute before estimates have been received?** Your lease is likely to provide for a service charge to be payable 'on account' based on a budget estimate. Your landlord will make an informed estimate in exactly the same way as they estimate other costs that will be incurred throughout the year. The actual costs will be reflected in any balancing statement / service charge accounts at the end of the financial year.

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- **Is it necessary to consult under Section 20 if the money is already held within the reserve fund?** Yes. Consultation is about spending service charge money. A reserve fund is made up of service charges collected in advance and consultation will be necessary (on works which exceed the cost threshold) before the money is spent.
- **Does the landlord have to use the contractor I proposed?** No. The choice of contractor lies with the landlord. There are obligations to seek a price from at least one proposed contractor (where applicable) and to include such prices in the Statement of Estimates but the landlord may choose to use another contractor.

Consultation - Qualifying Works

This is section number 2 of a 3-part series looking at Section 20 consultation. You should read sheet number 1 first to fully understand the context.

Section 20 consultation is most commonly required where the landlord has identified a need for physical works to the building or equipment (e.g. lift) and wishes to recover the costs as service charges.

The Regulations state that the most that any one leaseholder can be required to contribute to a set of "works on a building" is £250 unless consultation has been complied with or dispensation has been obtained from a First-tier Tribunal. Your landlord will, therefore, consult with you before undertaking any works where the estimated contribution from you or any other leaseholder is more than £250.

In an emergency situation the landlord may consult with you in a more limited / quicker way and seek dispensation from a Tribunal to allow the works to proceed quickly.
You will first receive a "Notice of Intention". This should:

- Describe the proposed works in general terms
- State the landlord's reason for considering those works to be necessary
- Invite you to propose a contractor from whom the landlord should consider seeking an estimate
- Give you a period of at least 30 days to make any observations on the proposed works and detail the name and address of where those observations should be sent.

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If you have any observations on the proposed works it is important that you send them (in writing) to the person named within the notice, within the 30 day period. You may make whatever observations you like but common observations relate to the need, the extent or the timing of the proposed works. If you do not make any observations, you may have difficulty if you later seek a determination from a tribunal that works were not necessary or were not necessary to the degree undertaken and costs were not reasonably incurred. Having had regard to all observations received, the landlord will obtain at least two estimates of cost for those works.

You will then receive a further notice including a "Statement of Estimates", that will:

- Detail at least two estimates of cost. One of those estimates must be from a person (company) totally unconnected with the landlord.
- Include a summary of observations received following the first notice and a response as to how the landlord has had regard to those observations
- Give you a further period of at least 30 days to make any observations on the estimates and detail the name and address of where those observations should be sent.

Having had regard to any further observations, the landlord may place a contract for the works with the person he considers most appropriate. If that person did not provide the lowest estimate or was not proposed by one or more leaseholders, the landlord must send you a further notice explaining why the successful contractor was chosen and how he had regard to any further observations received. You should receive this statement within 21 days of the contract being placed. It does not provide any further opportunity for observations because the contract has already been placed. Its purpose is to advise you why the successful contractor was chosen.

The landlord does not need to send you a statement of reasons for awarding the contract if the successful contractor submitted the lowest estimate or was proposed by a leaseholder at the first consultation stage.

If your landlord is a local authority or housing association, they have to comply with European Procurement Regulations before entering into costly contracts. In these circumstances, the consultation regulations contain alternative procedures at both notice stages. The most notable differences are that you will not be given an opportunity to propose a contractor because the contract is advertised by 'public notice' and following a procurement exercise, you will only receive details of one estimate. You will still have opportunities to make observations at both notice stages.

Now you have a better understanding of the consultation process, it is a good time to re-read the myth buster section in sheet No 1.

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Consultation - Qualifying Long Term Agreements

This is section number 3 of a 3-part series looking at Section 20 consultation. You should read sheet numbers 1 and 2 to fully understand the context. The process outlined below is similar to that outlined in sheet number 2 and some detail has therefore been omitted.

A "qualifying long term agreement" ("QLTA") is an agreement for works or services, for a period of more than a year, where the cost to any one leaseholder is likely to exceed £100 in any one year.

It is common for landlords to enter into annual agreements which are renegotiated and renewed each year. They are not QLTAs irrespective of the annual costs.

Agreements for several years will also not be QLTAs if no leaseholder is required to pay more than £100 in any year.

The Regulations provide some exceptions from being QLTAs requiring consultation. The most notable are:

- Some contracts on new developments entered into before there were any leaseholders
- Contracts between related companies owned or controlled by the landlord
- Contracts of employment; most typically concierge, porter, caretaker etc.

The consultation process for QLTAs is very similar to the process detailed in sheet no. 2 for qualifying works. You will receive a minimum of two notices and possibly three.

The Notice of Intention should describe the landlord's proposal in general terms and state why it is considered necessary. You will be given a minimum of 30 days to make any observations and propose a person from whom the landlord should consider obtaining an estimate.

The second notice will include a 'summary of proposals', giving you details of at least two proposals. The details will include the name and address of the contractor, the length of the proposed contract and an estimate of costs.

A third notice is, once again, only required if the contract is not awarded in accordance with the lowest price proposal or to a person proposed by a leaseholder.

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If your landlord is a local authority or housing association the European Procurement Regulations may apply and there is a revised consultation process as per Qualifying works (see sheet 1).

Qualifying Works Under A Qualifying Long Term Agreement

Landlords sometimes enter into qualifying long term agreements with contractors to undertake physical works over a number of years e.g. a 5 year agreement with a roofing contractor to undertake any roofing works that become necessary. You will be consulted on the QLTA (as above), at which point the contractor and pricing mechanism are finalised but the extent of future works is unknown. When proposed works are identified, you will receive one Notice of Intention. That notice will describe the works in general terms, explain why the works are considered necessary and state the estimated cost. It will give you a period of at least 30 days to make any observations, to which your landlord is required to respond, directly to you, within 21 days.

Other Guides: