



# Section 20 & Framework Agreements – A Practitioner's Guide

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**Bridget Stark-Wills, Senior Lawyer**  
**Tel: 0121 230 1504/07715 807919**  
**Email: [bridget.stark-wills@capsticks.com](mailto:bridget.stark-wills@capsticks.com)**

# AGENDA



- 
- **Overview of service charge legislation and the section 20 consultation procedures.**
  - **Section 20 consultation and framework agreement.**
  - **Getting it right - Effective section 20 consultation under Schedule 1 and Schedule 4 - Part 2.**
  - **Dispensation – a brief consideration.**
  - **Case law/examples from practice.**

# **Overview of service charge legislation and the section 20 consultation procedures**

# The rationale of section 20



- 
- Service charges are payable by leaseholders for services and works under the terms of leases.
  - Historically there have been abuses of obligations of leaseholders/tenants to pay service charges.
  - No checks and balances.
  - No or limited input from leaseholders/tenants in respect of services or works and their costs.
  - Section 20 aimed at redressing this imbalance and putting leaseholders/tenants and landlord on a more equal footing.

# The rationale of section 20



- 
- Leaseholders do not have the right to veto services and works, though can challenge whether service charges for these are payable.
  - Vital that section 20 consultation procedure is carried out compliantly.
  - Failure to comply results in annual contributions be limited to £100.00/£250.00 per leaseholder per accounting year unless dispensation is obtained.
  - Not all section 20 issues can be “solved” through dispensation.

# Principles of effective management of section 20 consultation



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- Section 27A (liability to pay) applications under the Landlord and Tenant Act 1985 (“LTA 1985”) usually turn on the following:
    - Section 20 consultation procedure has not been compliant.
    - Works are not rechargeable under the terms of the lease.
    - Works were not necessary.
    - Costs are unreasonably incurred.
    - Services/works are not provided to a reasonable standard.
    - Costs have not been charged in accordance with the terms of the lease.
    - Costs are statute barred under Section 20B of the LTA 1985.

# Principles of effective management of section 20 consultation



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- An organisation wide “problem”:
    - Finance;
    - Leasehold management;
    - Development team;
    - Service charge/section 20 team/procurement team;
    - Planned/cyclical maintenance team.
  - No lone rangers or “bubble working”!
  - The section 20 process should be view as ranging from the beginning of the consultation to the point of recharge and receipt of funds.

# Principles of effective management of section 20 consultation



- 
- Common policy and not a compartmentalised approach is key:
    - The planned/cyclical maintenance team decide on works to be carried out.
    - Service charge/section 20 team send out the notices.
    - Procurement does the “procuring”.
    - Service charge/leasehold and finance team to recharge the sums.
  - Poor and unclear communications are the downfall in many major works or QLTA consultations.
  - It is about more than just “sending out the correct information” and having “good” precedent documentation.

# Key Service Charge Legislation



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Key legislation in relation to service charges:

- Landlord & Tenant Act 1985 (“LTA 1985”).
- Commonhold & Leasehold Reform Act (“CLRA 2002”).
- Service Charge (Consultation Requirements) (England) Regulations 2003 (“Consultation Regulations”).

**LEASEHOLD REFORM IS UNDERWAY!**

# How does the legislation interrelate?



- 
- Section 20 of the Landlord and Tenant Act 1985 was reformed by the Commonhold and Leasehold Reform Act 2002.
  - Introduced new consultation requirements which cover works and agreements for works/ services.
  - The Service charges (Consultation Requirements) (England) Regulations 2003 set out 5 consultation procedures – these are set out in 4 schedules.

# 5 Procedures under CLRA 2002



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Landlord must consult leaseholders where he proposes to:-

- Enter a qualifying long term agreement (“QLTA”) where public notice is not required (Schedule 1).
- Enter a QLTA where public notice is required (Schedule 2).
- Carry out work under an existing QLTA (Schedule 3).
- Carry out work (not under a QLTA) where public notice is required (Schedule 4 - Part 1).
- Carry out work (not under a QLTA) where public notice is not required (Schedule 4 - Part 2).

# What are qualifying works?



- 
- “Qualifying works” are any works on a building or any other premises in respect of which the costs are recoverable from a leaseholder/tenant under the service charge – **Section 20ZA of the LTA 1985.**
  - Where qualifying works will cost more than £250.00 per leaseholder per year, there is an obligation to consult with leaseholders/tenants under section 20 of the LTA 1985 – **Reg 6 of the Consultation Regulations.**
  - If a landlord fails to consult leaseholders/tenants, or does so incorrectly, then unless the landlord obtains dispensation from The First-Tier Tribunal (Property Chamber) (“FTT”) the contribution per leaseholder/tenant will be limited to £250.00 each.

# What is a qualifying long term agreement?



- A “qualifying long term agreement” is a contract for works, services or the supply of goods entered into by the the landlord, or behalf of the landlord for a period of over 12 months (“QLTA”) – **Section 20ZA of the LTA 1985.**
- Leaseholders will be required to pay over £100.00 each per annum by way of service charge for the works, services or good provided under the contract – **Reg 4 of the Consultation Regulations.**
- Where a landlord fails to consult leaseholders in respect of a QLTA then the landlord will be limited to recovering costs of £100.00 per leaseholder.

# Agreements which are not QLTA



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Reg 3 of the Consultation Regulations set out that the following are not QLTA:

- Contract of employment.
- Management agreement between a local housing authority and tenant management organisation or a body established under section 20 of the Local Government Act 2000.
- Where parties to agreement are a holding company and one or more of its subsidiaries.
- No tenants at time agreement was entered and agreement was for less than 5 years.
- Agreements entered into before 31<sup>st</sup> October 2003.

# Section 20 Consultation Procedure – In a nutshell



- 
- Landlord must serve Notice of Intention.
  - Leaseholders have 30 days to respond.
  - Landlord must then seek estimates from nominated contractors and prepare proposals.
  - Landlord must serve Notice of Proposals.
  - Leaseholders have 30 days to respond.
  - Landlord sends a “notification of reason” to leaseholders.

**KEY DIFFERENCE BETWEEN OJEU AND NON-OJEU CONSULTATION PROCEDURE IS THAT LEASEHOLDERS DO NOT HAVE THE RIGHT TO MAKE NOMINATIONS WHERE PUBLIC NOTICE NEEDS TO BE GIVEN.**

# Common features of section 20 consultation procedure



- 
- **“Description in general terms”**
    - Landlord needs to provide adequate description of works, services or goods in general terms.
    - This will be a question of fact.
  
  - **“Relevant period”, i.e. the consultation period**

Leaseholders have 30 days to make observations. Whilst this is stated to be 30 days from date of notice in the legislation, this means 30 days from the date on which notice is served, so a minimum of 2 working days need to be added to the consultation period.

# Common features of section 20 consultation procedure



- **“Regard to observations”**
  - Leaseholders are entitled to make observation in respect of works, services and goods to be provided.
  - What does this mean? No statutory definition!
  - Case law gives some help – ***OM Property Management [2014]UKUT 0009 (LC)*** – to be an observation the point raised must relate to the works or the contract.

# Common features of section 20 consultation procedure

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- Common “observations” raised that are not observations:
  - How to pay/cannot pay.
  - Service charges in general are too high, issues regarding poor services.
  - Apportionments under the lease, other points pertaining to lease.
- Landlord must summarise any observation received and responses to them in Notice of Proposals.

# Common features of section 20 consultation procedure



- 
- Common “observations” raised that are observations:
    - Queries about works, specifications, the contract;
    - Questions about procurement processes
    - Concerns regarding necessity of works/contract.
    - Concerns about costs of works and vfm.
  - Landlord must summarise any observation received and responses to them in Notice of Proposals.

# Common features of section 20 consultation procedure



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- What about “comments” and “challenges”:
    - Expressing opinions? Often invite a response and if relevant to works/contract, then there should be some form of response.
    - Challenges often centre around the necessity of works/contract and the proposed costs of the same, indications of potential for disputes, FTT referrals. Should be handled carefully.
  - Landlord must summarise any observation received and responses to them in Notice of Proposals. It could be problematic if an “observation” was ignored.

# Common features of section 20 consultation procedure



## “Connection to landlord”

- At least one estimate from an unconnected person.
- Indicate if there is a connection.
- No exhaustive determination of “connection” but the following relationships are likely to be deemed as connected:-
  - Company and its directors, manager and their close relatives.
  - Two companies, if any directors, managers and their close relatives.
  - Company and partnership where a director of the company is also a partner in a partnership or is a close relation to one.
  - Close relatives – spouse, cohabitee, parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister, sister-in-law, step family.

# Common features of section 20 consultation procedure

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## “Inspection of information”

- Often detailed information must be supplied with notices e.g. work to be done, cost estimates.
- Landlord can opt to indicate place where information can be inspected instead of sending it out.
- Place and hours of inspection must be reasonable.
- Cannot make charges for service.
- Leaseholders must be able to receive copy free of charge.

# Common features of section 20 consultation procedure



## Costs Estimates

- Where possible, estimates for each unit should be given.
- If not possible, total mount of expenditure for building, complex or estate should be given.
- If not possible, landlord should give details of hourly/daily rates that apply to works/agreement.

**STATEMENT OF ESTIMATES MUST ALWAYS BE PREPARED AS A SEPARATE DOCUMENT!**

## Public Notice

- Some works/ agreements must be advertised by means of a notice in the Official Journal of the EU (“OJEU”) in accordance with Public Contracts Regulations 2006.
- Makes life easier for consultation?!

## Who should notice be given to?

- Each leaseholder/tenant.
- An RTA, if there is one.

# Section 20 Consultation Procedure – Qualifying long term agreement (QLTA) (Schedule 1)

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## Notice of Intention – Stage 1

- Details of proposed works/services to be provided under the QLTA or where these can be inspected.
- Reasons why entering into the QLTA is necessary.
- If works are to be carried out under the agreement, state why these will be necessary.
- Invitation of written observations, stating where they should be sent.
- Invitation of nominations of persons from whom landlord should seek estimates.
- Notification that leaseholders have 30 days to respond, and confirm date on which consultation period ends.

# Section 20 Consultation Procedure – Schedule 1



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## Consultation period – Stage 2

- Leaseholders make observations.

## Having regard to observations – Stage 3

- Consider any observation received and respond to them.

# Section 20 Consultation Procedure – Schedule 1



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## Collection of estimates – Stage 4

Landlord must seek estimate from nominated contractors:

- Single nominee from an RTA; and
- Single nominee from any one leaseholder (if any);
- If more than one leaseholder nominates, the nominee with most nominations;
- If two or more persons receive the same number of nominations, an estimate from at least one of them;
- As a minimum, at least one nominated by the RTA and one by a leaseholder.

# Section 20 Consultation Procedure – Schedule 1



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## Preparation of proposals – Stage 5

- At least 2 proposals must be prepared, at least one of which must be wholly unconnected to the landlord.
- If an estimate has been obtained from a nominated contractor, then a proposal needs to be prepared for this contractor.
- Statement of goods, works or services to be provided.
- Setting out contractor details and any connection.
- Estimated contributions for property/block/estate.
- If estimation is not reasonably practicable, then unit costs or hourly/daily rates should be provided.

# Section 20 Consultation Procedure – Schedule 1



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## Preparation of proposals – Stage 5 continued

- If the agreement is to include the proposed appointment of an agent to discharge the landlord's obligations in respect of management of property to which it relates, there needs to be a statement as to whether the proposed agent is or is not a member of a professional or trade association, whether any code of conduct or voluntary accreditation scheme relevant to the functions of managing agents is subscribed to.
- The name of any relevant professional or trade association must be given.

# Section 20 Consultation Procedure – Schedule 1



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## Preparation of proposals – Stage 5 continued

- Proposal must state any provisions for the variation of any amount specified, or to be determined, under the proposed agreement.
- Duration of the proposed agreement must be stated.
- Summary of observations received to the NOI and the landlord's responses to them.

**SEPARATE PROPOSALS NEEDS TO BE PREPARED BUT  
NO NEED TO SEND OUT.**

# Section 20 Consultation Procedure – Schedule 1



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## Notice of proposals – Stage 6

- Notice of proposals must be sent to each leaseholder and any RTA.
- Statement of works/services to be provided under the QLTA.
- Summary of proposals and enclose them or make available for inspection, with details as to when and where.
- Summary of observations received and landlord's responses to them.
- Invitation of written observations within 30 days.

# Section 20 Consultation Procedure – Schedule 1



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## Consultation Period – Stage 6

- Leaseholders make observations.

## Having regard to observation – Stage 7

- Consider any observation received and respond to them.

# Section 20 Consultation Procedure – Schedule 1



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## Notification of contract – Stage 8

- Unless the Landlord enters into contract with a nominated person or a person submitting lowest estimate, the landlord must provide written reasons for entering into the agreement within 21 days of doing so.
- Summarise any observations and responses to them.
- Can simply advise where the foregoing may be inspected.

# Section 20 Consultation Procedure – Qualifying long term agreement – OJEU notice (QLTA) (Schedule 2)

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## Notice of Intention – Stage 1

- Details of proposed works/services to be provided under the QLTA or where these can be inspected.
- Reasons why entering into the QLTA is necessary.
- If works are to be carried out under the agreement, state why these will be necessary.
- Invitation of written observations, stating where they should be sent.
- Leaseholders have no right to make contractor nominations as public notice needs to be given in the OJEU.
- Notification that leaseholders have 30 days to respond, and confirm date on which consultation period ends.

# Section 20 Consultation Procedure – Schedule 2



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## Consultation period – Stage 2

- Leaseholders make observations.

## Having regard to observations – Stage 3

- Consider any observation received and respond to them within 21 days.

# Section 20 Consultation Procedure – Schedule 2



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## Conduct of tender process & preparation of proposals – Stage 4

- Landlord carries out an EU tender process in accordance with the Public Contracts Regulations 2015.
- Landlord must prepare proposals in respect of at least one contractor.
- Must set out the address of every party to the proposed agreement and any connection between the landlord and any other party.
- Estimated contributions for property/block/estate.
- If estimation is not reasonably practicable, then unit costs or hourly/daily rates should be provided.

# Section 20 Consultation Procedure – Schedule 2



- 
- If it is not reasonably practicable for the landlord to provide the property/block/estate estimate, the total estimated cost to be incurred under the agreement should be stated.
  - If no estimated costs information can be given, reasons for this should be set out and the date specified by which this will be provided.
  - If the agreement is to include the proposed appointment of an agent to discharge the landlord's obligations in respect of management of property to which it relates, there needs to be a statement as to whether the proposed agent is or is not a member of a professional or trade association, whether any code of conduct or voluntary accreditation scheme relevant to the functions of managing agents.

# Section 20 Consultation Procedure – Schedule 2



- 
- The name of any relevant professional or trade association must be given.
  - Duration of the proposed agreement must be stated.
  - Summary of observations received to the NOI and the landlord's responses to them.

**SEPARATE PROPOSAL NEEDS TO BE PREPARED BUT NO  
NEED TO SEND OUT.**

# Section 20 Consultation Procedure – Schedule 2



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## Notice of proposals – Stage 5

- Statement of works to be carried out.
- Estimated costs in respect of at least one of the contractors who have submitted a tender and any connection between the landlord and the proposed contractor.
- Summary of observations received in respect of the Notice of Intention and the landlord's responses to them.
- Information as to when and where all tenders & proposals may be inspected.
- Invitation of written observations within 30 days.

**SEPARATE PROPOSAL NEEDS TO BE PREPARED BUT NO NEED TO SEND OUT.**

# Section 20 Consultation Procedure – Schedule 2



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## Consultation Period – Stage 6

- Leaseholders make observations.

## Having regard to observation – Stage 7

- Consider any observation received and respond to them within 21 days.

# Section 20 Consultation Procedure – qualifying works under a QLTA (Schedule 3)

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## Notice of Intention – Stage 1

- Details of proposed works to be carried out or where these can be inspected.
- Refer to previously consulted upon QLTA.
- Reasons why works are necessary.
- Statement of the total amount of the expenditure estimated as being likely to be incurred in respect of the proposed works.
- Invite written observations, stating where these should be sent.
- Notification that leaseholders have 30 days to respond and confirm date or which consultation period.

# Section 20 Consultation Procedure – Schedule 3



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## Consultation Period – Stage 2

- Leaseholders make observations.

## Having regard to observations – Stage 3

- Consider any observations received and respond to them within 21 days.

**COMMENCE WORKS!**

# Section 20 Consultation Procedure – Qualifying works (Schedule 4 – Part 1)



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## Notice of Intention – Stage 1

- Details of proposed works to be carried out or where these can be inspected.
- Reasons why works are necessary.
- Invitation of written observations, stating where they should be sent.
- Invitation of nominations of persons from whom landlord should seek estimates.
- Notification that leaseholders have 30 days to respond, and confirm date on which consultation period ends.

# Section 20 Consultation Procedure – Schedule 4 – Part 1



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## Consultation period – Stage 2

- Leaseholders make observations.

## Having regard to observations – Stage 3

- Consider any observation received and respond to them within 21 days.

# Section 20 Consultation Procedure – Schedule 4 – Part 1



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## Conduct of tender process & preparation of proposals– Stage 4

- Landlord carries out an EU tender process in accordance with the Public Contracts Regulations 2015:
- Landlord must prepare proposals in respect of at least one contractor.
- Must set out the address of every party to the proposed contract and any connection between the landlord and any other party.
- Estimated contributions for property/block/estate.
- If it is not reasonably practicable for the landlord to provide the property/block/estate estimate, the total estimated cost to be incurred under the contract should be stated.

# Section 20 Consultation Procedure – Schedule 4 – Part 1



- 
- If no estimated costs information can be given, unit costs, daily/hourly rates should be provided, with reasons for this and a date specified by which estimates will be provided.
  - If the agreement is to include the proposed appointment of an agent to discharge the landlord's obligations in respect of management of property to which it relates, there needs to be a statement as to whether the proposed agent is or is not a member of a professional or trade association, whether any code of conduct or voluntary accreditation scheme relevant to the functions of managing agents is subscribed to.
  - Summary of observations received to the NOI and the landlord's responses to them.

# Section 20 Consultation Procedure – Schedule 4 – Part 1



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## Notice of proposals – Stage 5

- Notice to be given to each leaseholder and any RTA.
- Must comprise or be accompanied by a copy of the proposal, or specify where and when this may be inspected.
- Information as to when and where all tenders and proposals may be inspected.
- Summary of observations received to the notice of intention and landlord's responses to them.
- Invitation of written observations within 30 days.

**SEPARATE STATEMENT OF ESTIMATES NEEDS TO BE PREPARED BUT NO NEED TO SEND OUT.**

# Section 20 Consultation Procedure – Schedule 4 – Part 1



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## Consultation Period – Stage 6

- Leaseholders make observations.

## Having regard to observation – Stage 7

- Consider any observation received and respond to them within 21 days.

# Section 20 Consultation Procedure – Qualifying works (Schedule 4 - Part 2)



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## Notice of Intention – Stage 1

- Details of proposed works to be carried out or where these can be inspected.
- Reasons why works are necessary.
- Invitation of written observations, stating where they should be sent.
- Invitation of nominations of persons from whom landlord should seek estimates.
- Notification that leaseholders have 30 days to respond, and confirm date on which consultation period ends.

# Section 20 Consultation Procedure – Schedule 4 – Part 2



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## Consultation period – Stage 2

- Leaseholders make observations.

## Having regard to observations – Stage 3

- Consider any observation received and respond to them.

# Section 20 Consultation Procedure – Schedule 4 – Part 2



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## Collection of estimates – Stage 4

Landlord must seek estimate from nominated contractors:

- Single nominee from an RTA; and
- Single nominee from any one leaseholder (if any);
- If more than one leaseholder nominates, the nominee with most nominations;
- If two or more persons receive the same number of nominations, an estimate from at least one of them;
- As a minimum, at least one nominated by the RTA and one by a leaseholder.

# Section 20 Consultation Procedure – Schedule 4 – Part 2



## Preparation of estimates – Stage 5

- At least 2 proposals must be prepared, at least one of which must be wholly unconnected to the landlord.
- If an estimate has been obtained from a nominated contractor, then a proposal needs to be prepared for this contractor.
- Statement of works to be provided.
- Setting out contractor details and any connection.
- Estimated contributions for property/block/estate.
- Summary of observations received to the NOI and the landlord's responses to them.

**SEPARATE STATEMENT OF ESTIMATES NEED TO BE PREPARED AND SENT OUT.**

# Section 20 Consultation Procedure – Schedule 4 - Part 2



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## Notice of proposals – Stage 6

- Notice of proposals must be sent to each leaseholder and any RTA.
- Statement of works to be provided under the contract.
- Summary of estimates and enclose them and make them available for inspection, with details as to when and where.
- Summary of observations received and landlord's responses to them.
- Invitation of written observations within 30 days.

# Section 20 Consultation Procedure – Schedule 4 – Part 2



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## Consultation Period – Stage 7

- Leaseholders make observations.

## Having regard to observation – Stage 8

- Consider any observation received and respond to them.

# Section 20 Consultation Procedure – Schedule 4 – Part 2



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## Notification of contract – Stage 9

- Unless the Landlord enters into contract with a nominated person or a person submitting lowest estimate, the landlord must provide written reasons for entering into the agreement within 21 days of doing so.
- Summarise any observations and responses to them.
- Can simply advise where the foregoing may be inspected.

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# Section 20 consultation and framework agreements

# Framework agreements and the QLTA



- 
- A framework agreement is an arrangement with one or more contractors to provide goods, services or works under separate contracts with the terms and conditions to apply having been established by the framework agreement.
  - It is not a “contract” in the traditional sense, unless the framework agreement includes an obligation to purchase goods, services or works.
  - Common scenario for social landlords is that they are part of the “set up” of a framework agreement, or subsequently “piggy back” on to an existing one.
  - Joining an existing framework will mean it does not qualify as a QLTA, whereas consulting on one which is then set up will amount to one.

# Problems with framework agreements and the section 20 regime



- 
- The section 20 regime can be viewed as somewhat dated and in need of reform, for a number of reasons.
  - One frequent criticism is that, section 20 and the Consultation Regulations, do not adequately make provision for the practical means by which landlords, and particularly social landlords procure services and works, i.e. via framework agreements.
  - Depending on the framework “set up”, the agreement does not fall neatly within, nor completely outside of, the definition of a QLTA.
  - There are but two key cases regarding framework agreements, and whilst there is somewhat more clarity now, the situation is not ideal.

# Solutions to the framework challenges



- 
- Ignore it completely and enter into frameworks, worrying about the situation if challenged by a leaseholder and seeking dispensation at the stage!
  - Be part of the set up of a framework agreement where possible and carry out a Schedule 2 consultation.
  - If it is highly desirable to source a QLTA or a contract for qualifying works from an existing framework agreement that has been joined, carry out Schedule 1/Schedule 4 – Part 2 consultations whereby leaseholder nominations for contractors are sought and estimates obtained.
  - Only use frameworks for general needs properties – mixed tenure makes this impractical.

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# **Getting it right - Effective section 20 consultation under Schedule 1 and Schedule 4 - Part 2**

# In-depth consideration of Schedule 1 and Schedule 4 – Part 1 Consultation



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- Consideration of requirements of the consultation procedures.
  - Examination of good vs. bad examples of notices.

# Schedule 1 and Schedule 4 – Part 1

## Consultation with contractors sourced from a framework agreement

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- It will be necessary to carry out a mini-tender to obtain at least two estimates from contractors from the framework agreement after service of the notices of intention for both Schedule 1 and Schedule 4 – Part 2.
- Any leaseholder/RTA nominations received during the observation period following the notice of intention should be included within this exercise.
- Can require that the contractor complying with the same criteria as the contractors who are part of the framework agreement. This ought appropriately to be based on the original tender questionnaires and invitation to tender used for the set up of the framework agreement.

# Schedule 1 and Schedule 4 – Part 1

## Consultation with contractors sourced from a framework agreement continued

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- In the event that it was most appropriate to appoint the nominated contractor, where the ensuing QLTA or contract for works would exceed OJEU thresholds, then there would be potential for a challenge by the framework contractors in respect of an illegal direct appointment.
- Challenges can be defended by evidencing the competition procedure, measures put in place to ensure fairness etc.
- Fairly low risk of this arising, and even less so in the context of QLTA's and contracts for works that fall below the OJEU thresholds.
- Retaining documentation pertaining to the entering into or joining the framework, subsequent section 20 consultation and any mini-tenders, estimate collation is essential.

# Dispensation from the need to consult under section 20



- 
- Often considered the “get out of jail” free card in respect of section 20 consultations that have been undertaken incorrectly or not at all.
  - Can also be used as a tool to avoid the pain of undertaking section 20 consultation in the contexts of frameworks.
  - The amount that can be recovered under a QLTA or in respect of qualifying works are capped at the threshold amounts of £100.00/£250.00 respectively unless there is a valid consultation under section 20 or dispensation is sought from the First-tier Tribunal (Property Chamber).
  - Dispensation is sought under section 20ZA of the LTA 1985.

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# Case law and examples from practice

# ***Daejan Investments Limited –v- Benson [2013] UKSC 14***



- 
- Daejan owned block comprising shops and seven flats.
  - Five of the flats let under long leases.
  - Block required major works and Daejan were required to consult under section 20. The costs of the works were £270,000.
  - In July 2005 Daejan sent out a Notice of Intention. In December 2005 tenders were obtained.
  - In July 2006 Daejan sent Notice of Proposals but not all estimates were made available.
  - Before 30 day consultation period expired Daejan awarded contract.
  - Contributions from 5 lessees capped at £250 i.e. £1250 for failure to comply with section 20. Shortfall of £268,750!!!

# ***Daejan Investments Limited –v- Benson [2013] UKSC 14***



- If there has been a breach of the regulations the burden of proof is on the Leaseholders to show prejudice.
- Lord Neuberger makes it clear that actual prejudice to the tenant must be identified; a failure to comply with the Regulations does not, of itself, constitute prejudice.
- Once prejudice identified, burden shifts to the landlord to re-but.
- If prejudice can be shown the FTT should be sympathetic to the leaseholders.
- The judgment establishes the FTT may now grant dispensation on terms, which gives the FTT greater flexibility.
- So in essence, if a landlord knows that prejudice has been suffered, it should seek to calculate a financial value of it, by which the costs of the works are to be reduced.

# *London Area Procurement Network v All Right to Buy Lessees [2007]*



- This case set out a rather unhelpful position for social landlords.
- The LVT held that where a landlord enters into a framework agreement with one or more contractors, it is not possible to consult with leaseholders under section 20 as the costs are not incurred under the framework agreement, rather they are incurred under the ensuing contracts that are entered into under the framework agreement.
- It was considered that this form of agreement does not meet the criteria of a qualifying long term agreement, as set out in section 20ZA of the LTA 1985.
- The only way to procure contracts under a framework agreement without leaving oneself open to challenge would be via the dispensation route.

# ***The Royal Borough of Kensington & Chelsea v Lessees of 1-124 Pond House, Pond Place and ors [2015] 0395 UKUT***



- In this case, the landlord consulted leaseholders on an overarching framework agreement under which works were to be provided.
- It was held by the Upper Tribunal that this framework agreement could amount to a QLTA and that accordingly, there had been a valid section 20 consultation.
- The decision was received with a sigh of relief within the sector, though the ideal would be for there to be a consultation procedure for this type of agreement, so that subject to valid consultation a social landlord can always be sure of its position in the event of a challenge.

# ***The Royal Borough of Kensington & Chelsea v Lessees of 1-124 Pond House, Pond Place and ors [2015] 0395 UKUT***

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- The Upper Tribunal held that there was “*sufficient factual nexus between the subject matter of the agreement and the proposed works*”.
- The works were identified with sufficient particularity” to be considered to flow from the framework.
- In the call off agreements the landlord was not able to introduce terms vastly different from those set out in the framework agreement.
- Inappropriate to consider the framework agreements and the costs incurred under the call offs separately.

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# Examples from practice

# Questions?



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**Bridget Stark-Wills**  
**Senior Lawyer**  
**Housing & Leasehold Management**

**0121 230 1504/07715 807 919**

**[Bridget.stark-wills@capsticks.com](mailto:Bridget.stark-wills@capsticks.com)**

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THANK YOU FOR LISTENING

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