FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	HAV/29UK/LDC/2024/0645
Property	:	Various properties of West Kent Housing Association
Applicant	:	West Kent Housing Association
Representative	:	Mr T Morris, counsel, instructed by Trowers & Hamlins LLP
Respondent	:	The Leaseholders
Representative	:	
Type of Application	:	To dispense with the requirement to consult lessees about major works section 20ZA of the Landlord and Tenant Act 1985
Tribunal Members	:	Regional Judge Whitney Mr A Crawford MRICS Mr E Shaylor MCIEH
Date of Hearing	:	27 May 2025
Date of Decision	:	9 June 2025

DECISION

Background

1. The Applicant seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act. The application was received on 28 November 2024.

2. The Applicant seeks dispensation from the consultation requirements in respect of a qualifying long-term agreement for insurance. The Applicant is the landlord of 1126 properties as set out in the schedule which was provided with the application. The owner of each such property is a Respondent to this application.

3. Directions were issued on 19th March 2025. These have been substantially complied with.

4. Objections were received from the following Respondents:

   - Mr Domigan
   - Ms Ferguson
   - Mr Casey on behalf of Moat Homes Ltd
   - Ms Groves
   - Mr Mills
   - Ms Jones
   - Mr Hopper

5. As a result a remote video hearing was listed to consider whether or not dispensation should be granted.

The Law

6. Section 18 of the Landlord and Tenant Act 1985 ("1985 Act") sets out a definition of "service charge" which includes "an amount payable by a tenant of a dwelling as part of or in addition to the rent – (a) which is payable… for… insurance… (b) the whole or part of which varies or may vary according to the relevant costs".

7. Section 20 of the 1985 Act relevantly provides as follows:

> "(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. "

8. The section is supplemented by section 20ZA, which provides relevantly as follows:

"(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.

(2) In section 20 and this section –
"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.
(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement –
if it is an agreement of a description prescribed by the regulations, or
in any circumstances so prescribed.
(4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State."

9. Those regulations are the Service Charges (Consultation Requirements) (England) Regulations 2003 (the "Regulations").

10. The Regulations provide that where the lessor intends to enter into a qualifying long term agreement being an agreement for more than 12 months, with a cost of more than £100 per annum the relevant contribution of each lessee (jointly where more than one under any given lease) will be limited to that sum unless the required consultations have been undertaken or the requirement has been dispensed with by the Tribunal. An application may be made retrospectively.

11. The appropriate approach to be taken by the Tribunal in the exercise of its discretion was considered by the Supreme Court in the case of Daejan Investment Limited v Benson et al [2013] UKSC 14.

12. The leading judgment of Lord Neuberger explained that a tribunal should focus on the question of whether the lessee will be or had been prejudiced in either paying where that was not appropriate or in paying more than appropriate because the failure of the lessor to comply with the regulations. The requirements were held to give practical effect to those two objectives and were "a means to an end, not an end in themselves".

13. The factual burden of demonstrating prejudice falls on the lessee. The lessee must identify what would have been said if able to engage in a consultation process. If the lessee advances a credible case for having been prejudiced, the lessor must rebut it. The Tribunal should be sympathetic to the lessee(s).

14. Where the extent, quality and cost of the works were in no way affected by the lessor's failure to comply, Lord Neuberger said as follows:

15. "I find it hard to see why the dispensation should not be granted (at least in the absence of some very good reason): in such a case the tenants would be in precisely the position that the legislation intended them to be- i.e. as if the requirements had been complied with."

16. The "main, indeed normally, the sole question", as described by Lord Neuberger, for the Tribunal to determine is therefore whether, or not, the Lessee will be or has been caused relevant prejudice by a failure of the Applicant to undertake the consultation prior to the major works and so whether dispensation in respect of that should be granted.

17. The question is one of the reasonableness of dispensing with the process of consultation provided for in the Act, not one of the reasonableness of the charges of works arising or which have arisen.

18. If dispensation is granted, that may be on terms.

Hearing

19. The hearing took place remotely by video. The hearing was recorded and the below is a precis only of what took place at the hearing.

20. Mr Morris of counsel represented the Applicant.

21. Mr Hopper attended as a Respondent for part of the hearing. He was not able to provide any evidence as he was joining from Hong Kong and no authority had been given for him to give evidence from outside the jurisdiction.

22. Mr Hopper's connection to the hearing was lost part way through the hearing. The Tribunal determined that it was in the interests of justice to continue to proceed with the hearing given we had his written representations.

23. The Tribunal had an electronic bundle of 153 pdf pages and references in [ ] are to pages within that bundle. We also had a skeleton argument provided by Mr Morris.

24. The Applicant's statement of case [14-23] set out the circumstances and grounds for the application.

25. On or about March 2024 the Applicant instructed an insurance broker, Arthur J Gallagher, to approach the market to find a renewal insurance policy to replace their existing policy which was due for renewal on 1st June 2024.

26. The current insurer was not prepared to offer a competitive price for renewal. The renewal terms offered were substantially higher than the costs of the previous policy. The brokers recommended that the Applicant considered entering into a policy of longer than 12 months. Insurers were not prepared to commit to a price until close to the date of renewal. Quotes were obtained in writing on 15th May 2024.

27. The Applicant via its broker undertook negotiations over the quote provided. Ultimately it proceeded with the lowest quote obtained from Sirius Point. The terms provided for an initial term of 18 months with two 12 month renewals giving a total term of 42 months. The Applicant explained the initial term was extended to 18 months so that future renewal would be on the 1st November in each year. The Applicant was advised by the brokers this would improve the Applicant's negotiating position for renewals as it was a less busy time of year for renewals generally of insurance contracts.

28. The contract was entered into.

29. The Applicant explained given the short timeframes between obtaining the quote and the time by which the policy had to be in place (1st June 2025) they had been unable to consult. At least one leaseholder would have to pay in excess of £100 per annum in respect of their share of the insurance costs and so dispensation was required. It was explained that the leaseholders included within the schedule to the application were required under the terms of their respective leases to contribute towards the costs of the Applicant's effective buildings insurance.

30. The Applicants relied upon a report of Arthur J Gallagher [60-110] and Mr Lynch of the brokers attended the hearing.

31. Mr Morris took the Tribunal through his skeleton argument. He addressed each of the objections in turn:

Mr Domigan: criticises the Applicant for not obtaining quotes earlier. Mr Morris explained that his client had not been able to obtain earlier quotes. He suggested if there was any challenge it was as to the cost which if dispensation was granted would not preclude any challenge as to the reasonableness of the sums claimed from any leaseholder.

Ms Ferguson: She was concerned that she was deprived of her rights. Mr Morris suggested she had not discharged the burden of identifying any prejudice.

Mr Casey: Mr Casey objected on behalf of Moat Homes Ltd who have interests in a number of properties. He referred to the fact that Arthur J Gallagher will not have tested the whole market and referred to two insurers from whom he suggests the broker would not have been able to obtain quotes. Mr Morris confirmed that the broker did not test the whole market. However, Mr Casey has not produced a cheaper quotation. Further he has not demonstrated any prejudice has been suffered by entering into the current long term agreement.

Ms Graves: she appears to refer to major works. The dispensation sought only relates to the placing of the qualifying long term insurance contract and that contract only.

Mr Mills: he refers to "right to manage". Nothing within his objection amounts to relevant prejudice.

Ms Jones: provided no grounds for her objection.

Mr Hopper: Suggests no reasons has been given for the failure to consult. Mr Morris referred to the above chronology and the statement of case. He suggested no prejudice had been identified.

32. Mr Morris submitted the Applicant was entitled to rely upon the services of a broker. The broker used was a well known and large broker of such contracts. They tested the market but in so doing do not approach all insurers. Of the two referred to by Moat Homes Ltd, Zurich do not provide quotes via brokers and Protector only provide quotes via a particular broker, not Arthur J Gallagher.

33. Mr Morris explained that a letter was sent to all leaseholders explaining the situation on 1st August 2024. A copy of that letter was in the bundle [112-113] albeit dated 15th October 2024 being the date a copy was produced for use in this application. It was however sent to all leaseholders on 1st August 2024.

34. Mr Morris confirmed on behalf of his client that they were not looking to recover any of the costs of this application by way of service charges. He therefore sought dispensation.

Decision

35. We thank counsel for his helpful skeleton argument and submissions. We make clear we have had regard to the totality of the bundle and in particular the written objections [131-143]. We also record that a

number of Respondents did respond to the Tribunal directions agreeing that dispensation should be granted.

36. We accept the facts are as set out in the Applicant's statement of case. We are satisfied that in trying to obtain insurance quotes insurers are often reluctant to commit until close to the date of renewal. If therefore the Applicant wishes to enter into a contract for more than 12 months this does mean that compliance with the consultation requirements is often impractical. Equally we accept the evidence of the Applicant that it was appropriate in the circumstances for them to consider entering into a contact for longer than 12 months.

37. We find in so doing the Applicants were able to change the date for renewal to a more favourable date for future renewals as advised by their brokers. Further a longer term agreement provided certainty and means the Applicant can avoid the expenditure of resources on entering into annual renewals. We find that it is reasonable to look to enter into a long term agreement in the facts and circumstances of this application.

38. We have considered carefully the law which we set out above. In particular we are mindful that Neuberger LJ in his leading judgment in Daejan stated that in considering Respondents' objections and in considering whether or not they have suffered prejudice we should view the same sympathetically. We have had this foremost in our mind but whilst remembering that we must be satisfied there is some prejudice if we are to consider refusing the grant of dispensation.

39. We are not satisfied that any of the objecting Respondents has demonstrated any prejudice. We accept the submissions of Mr Morris that none of the Respondents has demonstrated that they suffered any prejudice. The Act specifically envisages that compliance may not be possible and prescribes that applications in such circumstances may be made to this Tribunal. We are satisfied the Applicant's followed a proper and reasonable curse of conduct in looking to place the insurance policy and then bringing this application. We find the objections raised do not in our judgment give rise to prejudice.

40. It is for the Applicant to determine how they go about placing the insurance contract. We are satisfied it is reasonable for them to instruct a broker and any broker will typically only test part of the market. The broker chosen is a large well-known broker whose report demonstrates the steps they undertook. There is no suggestion they will have looked to obtain quotes from every provider in the market but we are satisfied they tested a good range of providers of such insurance in making their recommendations. The consultation requirements themselves specifically address that on occasion consultation may not be possible. As we have stated

above we are satisfied that that was the case in respect of this application. It is then for this Tribunal to consider whether or not dispensation should be granted.

41. We are satisfied it should be. We have stepped back and considered what if any conditions should be attached to such a grant. Whilst no specific conditions were contended for we are satisfied that the following conditions should be attended to the grant:

- The Applicant shall not seek to recover any of the costs of this application from the Respondents;

- The Applicant shall cause a copy of this decision to be published upon its website or intranet (if it has one) for its leaseholders and shall send a copy to all Respondent leaseholders;

42. Our reason for such conditions are that the Applicants undertook to not seek to recover the costs. For the sake of completeness it is appropriate to include as a condition.

43. As to the second condition it is important that all leaseholders are aware of this decision and steps to ensure that they are aware are reasonable in the circumstances of an application affecting over 1000 leaseholders.

44. Finally, in determining this application we remind all that we have made no findings as to whether any Respondent is required to pay any sums claimed or the reasonableness of the same.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.