

Leasehold Services Section 20 Consultation Policy and Procedure

Final Version

Document Control

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1. Definitions

Leasehold	What a leaseholder owns is often defined in the lease as the “Demised Premises”. The leasehold ownership of a flat usually relates to everything within the four walls of the flat, including floorboards and plaster to walls and ceiling, but does not usually include the external or structural walls. A garden can be included unless it is a communal garden for the building.
Homeowner	A leaseholder, shared owner, or freeholder.
Service Charge	Term that defines the costs incurred by the Landlord of any block, building, or estate following obligated maintenance, improvement works, or necessary supplies or services, which may be rechargeable to the leaseholder by virtue of the lease terms.
Service Charge Payer	Person/s paying a charge in addition to their rent/mortgage, in respect of managing demise and maintaining communal areas.
Section 20	A Section 20 notice (S20) is a notice served upon Leaseholders by the Landlord to inform them of intended works or services that the Leaseholder will be affected by or receives and will therefore be required to financially contribute towards. A S20 must be correctly served by the Landlord on any leaseholder who will be affected by the work or receive the service.
S20ZA	Refers to legislative requirements for dispensation from all or any Section 20 consultation procedures (application sought from the First Tier Tribunal).
Qualifying Works (QW)	Or Major works (MW) are defined as any repair, replacement, redecoration or improvement/refurbishment to the building or estate which will result in a cost per unit exceeding £250.
QLTA	Qualifying Long-Term Agreements are agreements that the Landlord may enter into with an independent contractor or organisation for more than a period of 12 months after 31 st October 2003 whereby the leaseholders financial contribution exceeds £100 per financial year i.e. reactive repairs, grounds maintenance, cleaning, ongoing servicing of equipment e.g. lifts etc.
Public Notice	The 2003 service charge regulations refer to contracts ‘for which public notice is required’. These are contracts where the value involved will be of a level where EU, or subsequently UK, procurement rules apply. In these cases, landlords must advertise the proposed contract by a public notice. A public notice is needed for work contracts as well as contracts for supplying goods or services with a value above certain limits.

2. Legislative Framework

[Landlord and Tenant Act 1985, Section 20](#) as amended by [Section 151 of the The Commonhold and Leasehold Reform Act 2002](#)

[The Service Charges \(Consultation Regulations\) \(England\) Regulations 2003](#)

Housing Acts [1985](#), [1988](#), and [1996](#)

[Housing and Regeneration Act 2008](#)

3. Policy Introduction

Under the terms of a lease, a leaseholder or shared owner is required to financially contribute towards the cost of any works or services that are received by the building or estate that their home is situated on. This contribution is collected through the form of a service charge.

The law, as set out under Section 20 (S20) of the Landlord and Tenant Act 1985 (as amended by section 151 of the Commonhold and Leasehold Reform Act 2000), requires the Landlord to consult with leaseholders and shared owners prior to the entering into an agreement for works or services that the leaseholder or shared owner would receive or be affected by, and therefore required to pay towards. If the Landlord fails to consult, or does not follow the correct consultation procedure, they will not be eligible to collect the full cost owed by the service charge payer.

NOTE: only applicable to leaseholders who pay variable service charges.

Therefore, as the Landlord, the London Borough of Barking and Dagenham (LBBD) must ensure that each affected leaseholder and shared owner is consulted if they intend to:

- Enter into a Qualifying Long-Term Agreement (agreement exceeding 12 months) with an external contractor to supply or provide a service to the building and/or estate (i.e. grounds maintenance, lift maintenance, cleaning etc), that will cost any one leaseholder more than £100 per accounting year;
- Enter into a qualifying long-term agreement with an external contractor where works will cost any one leaseholder more than £250.
- Carry out work under a standard contract (lasting less than 12 months) that will cost any one leaseholder more than £250, such as repairs, maintenance, or improvements to the building and/or estate;

As specified in law, the Landlord is to consult via the service of a Section 20 (S20) Notice upon any leaseholder and/or shared owner who will be affected by the proposed work, supply of goods, or service. A S20 Notice informs the leaseholder of what the Landlord plans to do, and the estimated cost associated with the proposed work, supply, or service.

The service of a S20 Notice then gives the Leaseholder the opportunity to take part in the consultation process by querying or commenting on what the Landlord has proposed, and in certain circumstances, the opportunity to nominate a contractor of their preference.

4. Policy Scope

- 4.1. This policy applies to Leaseholders and Shared Owners of the London Borough of Barking and Dagenham (LBBD).
- 4.2. As the Landlord, LBBD will comply with the law by consulting with leaseholders and shared owners if they are to enter into any agreement or contract to carry out works or provide a service that would cost the leaseholder/ shared owner above a certain value.
- 4.3. This policy does not apply to tenants who do not pay a variable service charge in addition to their rent.

5. Policy Aims

Under this Section 20 Consultation policy, LBBD aims to:

- Ensure and enforce compliance with the law and all other statutory obligations during the Section 20 Consultation process;
- Ensure that all eligible service charges are recovered from those required to pay;
- Ensure clear and consistent treatment of capital service charges;
- Maximise value for money for both affected residents and LBBD alike;
- Encourage resident engagement in the consultation process by offering choice (where possible) and providing residents with accessible opportunities to influence the services that they receive;
- Maximise resident satisfaction.

6. Qualifying Works

This is work on a building or any other premises and includes repair, maintenance and improvement works. Landlords must consult all leaseholders if the amount any one leaseholder would have to pay towards qualifying work would be more than £250. If the landlord does not consult leaseholders, they will not be able to collect service charges of more than £250 per leaseholder.

The consultation rules for qualifying work are set out in Schedule 3 and Schedule 4 of the 2003 service charge regulations.

7. Qualifying Long Term Agreements

A Qualifying Long-Term Agreement (QLTA) is an agreement that the Landlord enters into with an independent organisation or contractor for a period exceeding more than 12 months after 31st October 2003. The consultation rules for qualifying long-term agreements are set out in Schedule 1 and Schedule 2 of the 2003 service charge regulations.

Any agreements the Landlord enters into for a period less than 12 months is referred to as a standard contract.

Landlords often opt to enter QLTAs over standard contracts, as they generally provide better value for money, as by providing organisations or contractors with a longer period of work, they are more likely to maintain the same work force and generally keep costs down. QLTAs are also favoured because it enables contractors to get to know and understand our buildings better, meaning problems that may arise can be resolved more swiftly, and quality of work is likely to be better; thus maximizing customer satisfaction.

Examples of QLTAs include:

- Communal cleaning and caretaking;
- Grounds maintenance;
- Agreements which affect the building generally i.e. lift servicing, door entry-phone system maintenance, waste-management services, and other maintenance services;
- Insurance; and
- Utilities (water, gas, and electricity services) etc.

In a property, block, or estate where service charge rates paid by leaseholders may vary from property to property, LBBB must consult with all affected leaseholders if it is calculated that any one leaseholder is required to pay more than £100.00 per year. LBBB will calculate this figure based on the Leaseholder's total contribution towards the agreement for works or service, including VAT. Supervision and administrative costs may also be included where applicable.

Failure to consult will result on the LBBB only being able to collect the amount of £100.00 per leaseholder per financial year for any service provided, even if the leaseholders total contribution exceeds this amount.

8. Nominating a Contractor

Under consultations that are carried out under Schedule 1 and Schedule 4 (part 2) of the 2003 service charge regulations, landlords must invite leaseholders to nominate possible contractors *from whom the landlord should try to obtain an estimate*. Inviting leaseholders to nominate contractors is meant to provide more openness and encourage competition to make sure the charges are fair and reasonable.

A brief statement on the selection criteria will be included with the notice of intention sent to leaseholders when inviting them to nominate contractors for the work. This will make clear that any contractor they nominate will need to meet the requirements before they can be seriously considered for the contract.

If a nomination is received, then the nominated contractor should be included in a tender list (n.b. they should not be ruled out on the basis of not meeting the criteria at this stage).

9. Section 20 Schedules

The S20 process, as set out in law, is in fact made up of four schedules: each of which deal with different situations. Therefore, the Landlord would look to serve the most appropriate schedule/notice in accordance with the work, supply, or service being proposed. The schedules are outlined below.

Schedule Number	Consultation procedure for:	Number of stages/ notices:	Public notice required?
1	Qualifying Long Term Agreements	2/3	No
2	Qualifying Long Term Agreements	2	Yes
3	Qualifying Works under a QLTA	1	No
4 (part 1)	Qualifying Works not under a QLTA	2	Yes
4 (part 2)	Qualifying Works not under a QLTA	2/3	No

Dependent on which schedule the Landlord is required to serve, the leaseholder may receive up to three notices under the Section 20 consultation process, one at each of the three following stages:

Stage of S20 Consultation	Notice title	Description of stage
Stage 1 (Pre-tender)	Notice of Intention	Notice served upon the leaseholder before the Landlord invites contractors to tender (provide an estimated cost for the work.)
Stage 2 (Tender)	Notice of Proposal/ Estimates	Notice served upon the leaseholder after the Landlord has received the tenders (estimates).
Stage 3 (Award of Contract)	Notice of Award of Contract	Notice served within 21 days of the Landlord appointing the successful contractor.

9.1. Schedule 1 – Public notice not required

Schedule 1 covers long-term contracts (exceeding 12 months) that are entered into by LBB D to provide a service to a block or estate for which they are the responsible Landlord, e.g. planned works, repairs & maintenance, communal cleaning, grounds maintenance, lift servicing, insurance etc. These long-term contracts are also referred to as Qualifying Long-Term Agreements (QLTAs).

In cases where leaseholders are set to receive or benefit from services under a QLTA as proposed by LBB D, the leaseholder is required to pay towards their share of the overall associated cost. If the proposed works or service are to cost any one affected leaseholder more than £100.00 per financial year, LBB D (as the Landlord) are obliged to comply with consultation regulations.

The S20 Schedule 1 consultation process is comprised of the following three stages:

Stage 1:

In cases where the cost for service or supply falls above the £100.00 per leaseholder per accounting year, LBBB must write to each affected Leaseholder to advise of the proposed work or service to be provided during the first stage of consultation. This is known as a **'Notice of Intention to enter a Qualifying Long-Term Agreement (QLTA)'**. The leaseholder will then be given a minimum of 30 days to query or comment on the Landlord's proposed plans and subsequent QLTA.

Under a Schedule 1 notice, the leaseholder will also be invited to nominate a contractor of their preference during the same 30-day window, as the works are not subject to public notice.

Stage 2:

Once estimates have been received, LBBB would then send a second notice to affected leaseholders called the **'Notice of Proposal to enter a Qualifying Long-Term Agreement (QLTA)'**.

This Notice provides the leaseholder with information regarding the shortlisted contractors (including any nominated contractors) and total estimated costs if they are known at this stage. Leaseholders are then given a further 30 days to comment upon the Notice of Proposal.

Stage 3:

Under a Schedule 1 Notice, a third notice will be served upon the leaseholder within 21 days of a contractor being appointed. This notice is referred to as the **'Notice of Award of Contract'** and will include details about the appointed contractor, and the reason(s) they were chosen. However, this is not always necessary in cases where the contract has been awarded to a nominated contractor or in cases where the appointed contractor had supplied the lowest estimate.

9.2. Schedule 2 – Public notice required

Schedule 2 also covers long-term contracts (exceeding 12 months) that are entered into by LBBB to provide a service to a block or estate for which they are the responsible Landlord, e.g. planned works, repairs & maintenance, communal cleaning, grounds maintenance, lift servicing, insurance etc. These long-term contracts are also referred to as Qualifying Long-Term Agreements (QLTAs).

In cases where leaseholders are set to receive or benefit from services under a QLTA as proposed by LBBB, the leaseholder is required to pay towards their share of the overall associated cost. If the proposed works or service are to cost any one affected leaseholder more than £100.00 per accounting year, LBBB (as the Landlord) are obliged to comply with consultation regulations.

The S20 Schedule 2 consultation process is comprised of the following two stages:

Stage 1:

In cases where the cost falls above the £100.00 per leaseholder per year, LBBB must write to each affected Leaseholder to advise of the proposed work or service to be provided during the first stage of consultation. This is known as a **'Notice of Intention to enter a Qualifying Long-Term Agreement (QLTA)'**. The leaseholder will then be given 30 days to query or comment on the Landlord's proposed plans and subsequent QLTA.

If a Schedule 2 notice has been served, the leaseholder will not be invited to nominate a contractor of their preference, as the works will be subject to public notice.

Stage 2:

Once estimates have been received, LBBB would then send a second notice to affected leaseholders called the **'Notice of Proposal to enter a Qualifying Long-Term Agreement (QLTA)'**.

This Notice provides the leaseholder with information regarding the shortlisted contractors and total estimated costs if they are known at this stage. Leaseholders are then given a further 30 days to comment upon the Notice of Proposal.

The Landlord is not required to serve a third Notice as the contractor is tendered through Public Notice.

9.3. Schedule 3

Schedule 3 covers Qualifying Works carried out under Qualifying Long-Term Agreements (exceeding 12 months) that are entered into by LBBB with a contractor in order for works such as responsive repairs or cyclical communal decoration to be provided to a block or estate for which they are the responsible Landlord.

Leaseholders who are set to receive or benefit from the work proposed by the Landlord are again required to pay toward their share of the overall associated cost. If the proposed qualifying works under the QLTA are to cost any one affected leaseholder more than £250.00, the Landlord is obliged to apply with consultation regulations through the service of a Schedule 3 Notice.

The S20 Schedule 3 Notice is only comprised of one stage notice. This notice must include a description of the works the Landlord is planning to carry out, the reason(s) the work is required, the estimated cost to the leaseholder, and the estimated total cost.

Once a Schedule 3 Notice has been served, the leaseholder will be given a minimum of 30 days to make comment on the planned work. All comments must be considered by the Landlord and responded to within 21 days.

A Schedule 3 Notice does not provide the leaseholder with the opportunity to nominate a contractor of their preference, as a contractor (or contractors) will already have been appointed under Schedule 1 or 2.

9.4. Schedule 4 (Part 1) – Public notice required

Schedule 4 (Part 1) covers Qualifying Works **not** under a Qualifying Long-Term Agreement where Public Notice **is** required. Therefore, leaseholders will not have the opportunity to nominate a contractor of their preference under this schedule.

The Schedule 4 (Part 1) S20 consultation process is comprised of the two following stages:

Stage 1:

If a Schedule 4 Notice (Part 1) is to be served by the Landlord, LBBB must write to each affected leaseholder advising of the works to be undertaken, including the reason the works are required. This first notice is referred to as a '**Notice of intention to carry out work**'. The leaseholder will then be given a minimum of 30 days to raise query or comment about the proposed works to be carried out.

If the leaseholder has been served a Schedule 4 (Part 1) Notice at this first stage of consultation, they will not be invited to nominate a contractor as the works will be subject to public notice.

Stage 2:

Once estimates are received, LBBB must send a second Notice to all leaseholders called the '**Notice of Proposal to carry out work**'. This Notice will advise as to who the Landlord has appointed as the contractor, and the estimated costs associated to the works. The leaseholder will then be given a further 30 days to raise any observations they might have.

The Landlord is not required to serve a third Notice as the contractor is tendered through Public Notice.

9.5. Schedule 4 (Part 2) – Public notice not required

Schedule 4 (Part 2) covers Qualifying Works not under a Qualifying Long-Term Agreement where Public Notice is **not** required. Therefore, leaseholders will have the opportunity to nominate a contractor of their preference under this schedule.

The Schedule 4 (Part 2) S20 consultation process is comprised of the three following stages:

Stage 1:

If a Schedule 4 Notice (Part 2) is to be served by the Landlord, LBBB must write to each affected leaseholder advising of the works to be undertaken, including the reason the works are required. This first notice is referred to as a '**Notice of intention to carry out work**'. The leaseholder will then be given 30 days to raise query or comment about the proposed works to be carried out.

If the leaseholder has been served a Schedule 4 (Part 2) Notice at this first stage of consultation, they will be invited to nominate a contractor of their preference within the same 30-day window.

Stage 2:

Once estimates are received, LBBB must send a second Notice to all leaseholders called the '**Notice of Estimates to carry out work**'. This Notice provides details of the shortlisted contractors (including nominated contractors) and their estimated costs. The leaseholder will then be given a further 30 days to raise any observations they might have.

Stage 3:

Under a Schedule 4 (Part 2) Notice, a third notice will be served upon the leaseholder within 21 days of a contractor being appointed. This notice is referred to as the '**Notice of Award of Contracts**' and will include details about the appointed contractor, and the reason(s) as to why they were chosen.

However, this is not always necessary in cases where the contract has been awarded to a nominated contractor or in cases where the appointed contractor had supplied the lowest estimate.

10. Monitoring, Review and Evaluation

To ensure best practice and compliance, the LBBB Leasehold and Service Charge Team will undertake all Section 20 consultations.

The Leasehold and Service Charge team will ensure that records of each individual Notice are kept for reference purposes.

Compliance checks are undertaken to make sure that all LBBB Section 20 consultations are delivered in accordance with this policy.

The Section 20 Consultation Policy and connected procedures will be reviewed by appropriate staff every 2 years at minimum, or following any legislative change, in order to ensure that a comprehensive service is being delivered to the borough's residents affected by this policy.

11. Equality Impact Assessment

An Equality Impact Assessment has been carried out on this policy.

This involves assessing the effects of the policy and subsequent service provided to our customers in respect of their age, disability, race, religion/belief, sexual orientation, and/ or gender identity to ensure equal and fair access for all.

Conducting an Equality Impact Assessment assists us to make sure that the needs of people are accounted for when developing and implementing policies and services.

12. Procedure

The [LBBB Consultation Flowcharts](#) outline the procedure that is to be followed when conducting a Section 20 Consultation under Schedules 1, 2 3, and 4 (parts 1 and 2).