FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AE/LSC/2018/0386**
Property	**:**	**41-50 Lawns Court, The Avenue, Wembley HA9 9PN**
Applicant	**:**	**Mr J Goldenberg**
Representative	**:**	**Mr Richard Davidoff of Aldermartin, Baines & Cuthbert, Applicant's managing agents**
Respondents	**:**	**The leaseholders of the Property as listed in Appendix 1**
Representative	**:**	**Mr Beresford of Counsel (acting for leaseholders of Flats 41, 43, 44, 46, 47 and 48)**
Type of Application	**:**	**For the determination of the liability to pay a service charge**
Tribunal Members	**:**	**Judge P Korn** **Mr W R Shaw FRICS**
Date and venue of Hearing	**:**	**4th March 2018 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**15th April 2019**

DECISION

Decisions of the Tribunal

(1) The consultation requirements have been complied in relation to the works which are the subject of this application, on the assumption that the Applicant goes on to award the contract to Hammer & Chisel on the basis of its existing quote.

(2) The Tribunal orders the Respondents to reimburse to the Applicant the application fee of £100 and the hearing fee of £200 under paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

(3) The Tribunal makes no cost order under section 20C of the Landlord and Tenant Act 1985.

(4) The Tribunal determines that the Applicant is not entitled under the terms of the leases to charge to the Respondents as a service charge the fees incurred by his managing agents in connection with these proceedings.

Introduction

1. The Applicant is the freehold owner of the Property and he seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("**the 1985 Act**") in connection with anticipated service charges for proposed major works.

2. The Applicant has carried out a consultation exercise in relation to the proposed works, which are described in the application as Pathways and Retaining Wall Repairs and Rebuilding Scheme. The expected cost is £154,800, and the Applicant seeks a determination as to whether the consultation process was validly carried out, i.e. whether he complied with the requirements of section 20 of the 1985 Act and the consultation regulations.

3. The relevant statutory provisions are set out in Appendix 2. A sample lease (the one relating to Flat 48) was included within the hearing bundle, and it is common ground between the parties that the leases are identical for all relevant purposes.

Preliminary points

4. After some discussion the Tribunal ruled, without objection from either party, that the issue for determination was simply that of compliance with the consultation requirements. The Tribunal was not being asked to make a determination as to the reasonableness or otherwise of the estimated cost itself. As to the necessity for the works, it was common ground between the parties – as confirmed in the Respondents' written submissions – that the works are necessary.

Applicant's case

5. In written submissions, Mr Davidoff describes the chronology of events according to his understanding, including regarding the serving and re-serving of section 20 notices and on the question of whether (and, if so, when) DG Stone had tendered for the work and as to his response on receiving a quote for the work from DG Stone via the Respondents' solicitors. He also describes an exchange of emails with the Respondents' solicitors as to whether the specification for the works needed to be revised, culminating in his informing the Respondents' solicitors that the Applicant's project manager stood by his tendered specification and that if there was an appetite to spend more money and to carry out more works then any such further works could be carried out at a later stage pursuant to a fresh section 20 notice.

6. At the hearing, Mr Davidoff said that he wanted to be sure that leaseholders were 'on board' as there had been problems previously. In relation to the first notices served by him, he realised that these did not mention the walls and so he reissued amended notices. Then on being told that not all leaseholders had seen the reissued notice he sent out another copy but neglected to alter the deadline for responses and so sent out fresh notices with an appropriate deadline for responses. He did not accept that notices had been sent out haphazardly – they were only re-sent in response to direct requests by or on behalf of the Respondents.

7. As regards DG Stone, Mr Davidoff said that they did not tender for the work. He noted that the hearing bundle contained a copy letter dated 20th December 2018 from the Respondents' solicitors attaching a copy letter from DG Stone dated 1st June 2018 providing a quote. However, he pointed to his email of 20th December 2018 in response stating that Aldermartin, Baines & Cuthbert ("**ABC**") had not previously received the quote but adding that they were nevertheless happy to consider it even at that late stage. He also asked the Respondents' solicitors in that same email when and where the quote was originally sent but he did not receive a reply. He also pointed out that the quote was not actually addressed to anyone.

8. Having agreed to consider the quote at this late stage ABC passed the quote to the building surveyor who was overseeing the project, Paul McCarthy. Mr McCarthy duly considered the quote but found it unacceptable for the reasons given in an email dated 16th January 2019 to Mark Reed of ABC. Mr McCarthy is arm's length and is a chartered surveyor, and so his opinion could properly be relied on.

Respondents' case

9. In written submissions, Mr Beresford for the Respondents submits that the relevant consultation requirements are those set out in Part 2 of Schedule 4 of the Service Charges (Consultation Requirements) (England) Regulations 2003 (the "**Regulations**"). He goes on to refer to the various steps required by those

requirements and argues that the Applicant's purported compliance with the Regulations was defective.

10. First of all, Mr Beresford submits that the Applicant served so many iterations of different stages of notice and generally approached the consultation process in such a haphazard way that this did not constitute compliance. Secondly, the fourth version of the second notice stated that DG Stone had declined to tender, but this was not the case as DG Stone tendered on 1st June 2018. Thirdly, to the extent that the Applicant sent any iterations of the second notice to some leaseholders but not to others the process was fundamentally flawed as the Regulations require uniformity, i.e. all versions of all notices must be served on all leaseholders at the same time. Fourthly, the consultation process was never completed as the Applicant failed to serve a third notice, which it was required to do as it entered into a contract with a contractor other than the one giving the lowest estimate or one nominated by a leaseholder.

11. At the hearing, Mr Beresford took the tribunal through the chronology and he made various observations as to deficiencies in the earlier notices. In relation to the quotes received from the other contractors, Mr Beresford said that it was surprising that none of the quotes had changed after the specification was revised.

12. As a general point, Mr Beresford said that the consultation regulations were there to protect leaseholders and that the process had been too confusing and had contained too many mistakes.

Cross-examination of Mr Davidoff

13. Mr Beresford asked Mr Davidoff why he had only included in the hearing bundle one copy of the contentious second-stage notice, to which he replied that he did not want to swamp the Tribunal with too much paperwork.

14. With regard to the exchange of emails on 2nd March 2018 with the Respondents' solicitors, Mr Davidoff accepted with the benefit of hindsight that he should have clarified the position but he added that he was unaware that his colleague Mr Reed had already sent out second-stage notices. With regard to his reluctance on 5th April 2018 to send copy notices to the Respondents' solicitors for information, Mr Davidoff said that this was because he was in the process of moving offices.

15. As regards the notice sent out in January 2018, Mr Davidoff said that it was sent out by ordinary post but Mr Beresford put it to him that the notice was never sent. Why did he not obtain proof of posting? Mr Davidoff said that this was because he did not think that any of the Respondents would claim not to have received it and that it was expensive to obtain proof of posting on a routine basis. He added that Mr Reed had copies of all of the notices on file; Mr Reed had his complete trust and he would not have simply pretended to send out the notices.

16. In response to another question he said that he did not consider it possible that Mr Reed had received the DG Stone quote in June 2018. As regards the question of why the specification and/or the quotes were relatively light on detail, Mr Davidoff said that all of the contractors met with Mark Reed on site and they discussed the issues in detail. This also explained why the quotes did not change after the specification was amended, as they were all experienced builders and had already fully discussed the issues with Mr Reed.

Further submissions at hearing

17. Mr Beresford said that the estimates were based on two different specifications, the first of which was incomplete and misleading.

18. In relation to the April 2018 notice and whether the specification at that point was fit for purpose, Mr Davidoff said that it was and that the Applicant's independent surveyor had had no problems with it. The fact that none of the contractors changed its quote after seeing the revised specification was itself proof that the changes made no practical difference and that they did not cover any points which were not already obvious. Specifically as to the listing of the walls as 'provisional' in the first version of the specification, this was done because of a lack of clarity at that stage, but the position was explained to each of the contractors on a walk-around, and it was made clear that the walls were categorised as provisional simply because they had been added at the personal suggestion of the independent surveyor.

19. As to the claim that the Applicant had acted in a haphazard and confusing way by serving additional copies of notices, he said that the Applicant served additional copies simply to keep the Respondents happy because they had picked holes in the notices served previously. The specification was not confusing for the tenderers, and they were the ones who needed to understand the details. Again, the Applicant only provided further information to keep the Respondents happy. Indeed, it was only on the Friday before the hearing that the Respondents finally accepted that the works themselves were necessary, and the Applicant had simply been doing what he needed to do to keep the Respondents on side.

20. The Applicant did not accept that the consultation process was incomplete, because the DG Stone quote was not submitted within the consultation period. That quote was only received in December 2018 from the Respondents' solicitors, by which point the consultation process had technically closed.

21. The argument that the Applicant had not complied with the consultation requirements because he had acted in a haphazard way was in Mr Davidoff's view a made-up argument.

22. As regards Mr Davidoff not knowing on 2nd March 2018 whether Mr Reed had sent out the second notice, he said that on that date he and Mr Reed were in separate offices and that this was probably the reason for any confusion. Also,

the request for Mr Reed to clarify the position was a perfectly normal request by an employee's boss in circumstances where the employee had more information on the precise details.

Further written submissions after the hearing

23. Following the hearing the Respondents forwarded to the Tribunal a copy of an email dated 4th March 2019 from DG Stone stating (amongst other things) *"We have not had any contact … apart from confirmation that our tender was received"*. In response, the Tribunal stated that although this was late evidence, in view of the nature of the evidence it was prepared to consider it provided that a copy of the alleged confirmation of receipt of the tender was sent to the Tribunal and to the Applicant by no later than 14th March 2019. No such confirmation has been received by the Tribunal.

Tribunal's analysis and determination

24. We agree that the relevant consultation requirements are those set out in Part 2 of Schedule 4 of the Regulations.

25. We note the parties' respective summaries of the chronology, and we do not accept that the Applicant has acted in a haphazard manner. He has made some errors, but he has acknowledged these and has sent out fresh notices as a consequence. Certain of the revisions to the notices were made in direct response to a request by or on behalf of the Respondents, and in our view the Respondents cannot rely on the Applicant's compliance with their own requests as evidence of non-compliance with the consultation requirements.

26. The Respondents have in any event not been able to point to the wording of the Regulations or to any legal authority by way of support for the proposition that sending out corrected notices in this manner constitutes a breach of the Regulations. Nor have they offered any authority for the proposition that all versions of all notices must be sent to all leaseholders on exactly the same day, failing which the landlord will not have complied with the consultation requirements, particularly in circumstances where the additional copies of notices appear to have been sent in order to correct an actual or perceived defect in procedure.

27. To the extent that the Respondents' point is that notices were sent out in a confusing manner and therefore that this prejudiced the leaseholders by making it difficult for them to understand the process, we do not accept this either. Again, the amended notices were sent out at the Respondents' request and/or to correct an actual or perceived defect. Once the correct notices were sent out the Respondents had the information that they needed and we do not accept that they should have been confused and nor do we have any credible evidence that they were in fact confused by the notices.

28. As regards the changes to the specification, there is no evidence that the contractors themselves were either confused by the initial specification or influenced by the subsequent changes, as shown in part by the fact that each of them provided identical quotes the second time around.

29. As regards the DG Stone quote, on the basis of the evidence before us our factual finding is that the Applicant did not receive this during the consultation period. There is no address on the copy of the quote allegedly sent to the Applicant's agents and no evidence as to posting, and we are not persuaded that the Applicant's managing agents have lied in denying having received it until their much later receipt of a copy from the Respondents' solicitors. Consequently, there was no obligation on the Applicant to consider it and no obligation to send out a third notice under paragraph 13 of Part 4 of the Regulations. The analysis of the DG Stone quote which did take place was therefore a voluntary goodwill gesture, and the evidence supports the Applicant's managing agents' submission that the quote was properly considered by an independent surveyor. In our view, to the extent that this is even relevant in the light of our factual finding above, there is no reasonable basis for concluding that the surveyor failed to act properly when considering and then rejecting the DG Stone quote.

30. In relation to the issue of service of the notices on which the Applicant is relying, we note that the Applicant's agents did not obtain proof of posting in each case or send them out (for example) by special delivery. However, we consider the reasons given for this policy to be credible ones and we also have Mr Davidoff's witness evidence which we consider to be credible on these issues (and generally). Therefore, we consider that the Applicant has discharged the civil burden of proof on this point and that the relevant notices were in fact all sent out.

31. In conclusion, on the assumption that the Applicant goes on to award the contract to Hammer & Chisel on the basis of its existing quote we do not accept any of the Respondents' objections and we consider that the Applicant has complied with the consultation requirements. For the avoidance of doubt, this does not constitute a decision as to whether the proposed cost is reasonable.

Cost Applications

32. The Applicant has made a cost application under paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("**Rule 13(2)**"), which reads as follows: *"The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor".* At the same time, the Respondents have made an application under section 20C of the 1985 Act for an order that the costs incurred by the Applicant in connection with these proceedings should not be charged to leaseholders through the service charge.

33. The Applicant submits that he had no choice but to get a determination from the Tribunal on this issue as the Respondents have prevaricated in relation to

the works for a very long time. It was only on the Friday before the hearing that the Respondents finally conceded that the works needed to be done, and they were also very late to concede that at least part of the consultation process was valid. For years the Respondents raised various objections to the proposed works but at no point were their objections backed up by a report from a surveyor. The Applicant by contrast has behaved very reasonably and has tried his best to accommodate the Respondents' concerns by, for example, sending out revised notices and even considering DG Stone's quote despite being under no legal obligation to do so.

34. The Respondents submits that the application for a determination as to compliance with the consultation requirements was necessitated by the Applicant's own flawed approach and that in any event the application was premature.

35. On the basis of the evidence before us, we prefer the Applicant's analysis. In our view, the correspondence and the witness evidence indicate a long history of at least some of the Respondents simply not wanting to spend money on contributing to the cost of works which they then very belatedly accepted were indeed necessary. In relation to the validity of the consultation process, whilst some of the Respondents' objections were valid, one is left with the impression of them trying to find different ways to object. In addition, the Applicant responded appropriately to any valid objections and sent out revised notices. In the circumstances of the Respondents' less than constructive approach, we agree with the Applicant that it was reasonable for him to seek a determination on this issue and we do not accept that the application was premature in these particular circumstances. The Applicant has been successful in his application, and using our discretion we order the Respondents to reimburse the application and hearing fees and we refuse to make a section 20C order.

36. The Applicant has also sought a determination as to whether he is entitled to charge to the leaseholders through the service charge the costs incurred by his managing agents in connection with these proceedings. Mr Beresford for the Respondents argues that the leases do not contain provisions entitling him to do so, but the Applicant's managing agents argue that the Applicant can do so under paragraph 27 of the Sixth Schedule in combination with paragraphs 2(iv) and 2(v) of the Seventh Schedule.

37. Neither party has brought any case law in support of its view on the recoverability of the abovementioned costs. In *Arnold v Britton (2015) AC 1619* the Supreme Court ruled that there were no special rules of interpretation which applied to service charge clauses as distinct from other contractual provisions, contrary to what had previously been understood to be the position, and Lord Neuberger set out certain principles of interpretation to be used, including the need to give words their natural meaning whilst considering the overall context, circumstances and purpose of the clause in question.

38. The issue of the recoverability of litigation costs has been considered on a number of occasions by the Upper Tribunal. In *Union Pension Trustees v*

Slavin (2015) UKUT 0103 Martin Rodger QC ruled that the legal costs of tribunal proceedings brought to obtain approval of a service charge were not covered by a clause entitling the landlord to recover through the service charge *"any other costs and expenses reasonably and properly incurred in connection with the landlord's Property including without prejudice to the generality of the foregoing (a) the cost of employing Managing Agents and (b) the cost of any Accountant or Surveyor employed to determine the Total Expenditure and the amount payable by the Tenant hereunder"*. He placed weight on the absence of any reference to legal expenses or the costs of proceedings. Whilst the absence of these words was not conclusive if there was other language to demonstrate a clear intention to recover that type of expenditure, the omission here was regarded as very significant in the context of the overall meaning of the words relied on.

39. Applying the above, the Applicant is relying on the leaseholders' obligation to contribute towards the cost of *"(iv) Charges for maintenance of areas and forecourts boundary walls and fences belonging to or forming part of the Reserved Property [and] (v) Management expenses limited to a reasonable and proper percentage agreed by the Management Company or the Lessor all sums other than the amount under this sub-paragraph (v) recoverable from the Lessee under this Lease"*. Leaving to one side the slightly ambiguous nature of aspects of sub-paragraph (v), applying the ruling of Martin Rodger QC in *Union Pension Trustees v Slavin* we do not consider that the relevant wording is wide enough to cover the managing agents' costs incurred in connection with these proceedings. Whilst *Union Pension Trustees v Slavin* concerned lawyers' charges rather than managing agents' charges, both were incurred in the context of tribunal proceedings. In the wording relied on by the Applicant, there is no mention of tribunal or court proceedings and no mention of litigation or disputes. In theory one could argue (and it has indeed been argued elsewhere) that managing agents sometimes need to engage in court or tribunal proceedings in order to comply with their management responsibilities. However, in our view the wording in this case it simply not wide enough for us to conclude that its natural meaning within the overall context, circumstances and purpose of the clause is such that it can properly be said to contemplate costs incurred in tribunal proceedings.

40. Accordingly, the costs incurred by the Applicant's managing agents in connection with these proceedings are not recoverable through the service charge under the terms of the leases.

Name: Judge P Korn **Date:** 15th April 2019

RIGHTS OF APPEAL

A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.

B. The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

D. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

APPENDIX 1

List of leaseholders

Mr & Mrs Cheng	Flat 41
Ms G Nwoga	Flat 43
Ms E Wilson	Flat 44
Mr B Dodhia	Flat 46
Ms L Manoochehri	Flat 47
Ms Koss	Flat 48
Ms E L Cotton	Flat 49
Mr Allen	Flat 50

APPENDIX 2

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 20

(1) Where this section applies to any qualifying works … the relevant contributions of tenants are limited … unless the consultation requirements have been either – (a) complied with … or (b) dispensed with …

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
   (a) the person by whom it is payable,
   (b) the person to whom it is payable,
   (c) the amount which is payable,
   (d) the date at or by which it is payable, and
   (e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
   (a) the person by whom it would be payable,
   (b) the person to whom it would be payable,
   (c) the amount which would be payable,
   (d) the date at or by which it would be payable, and
   (e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
   (a) has been agreed or admitted by the tenant,
   (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
   (c) has been the subject of determination by a court, or
   (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Service Charge (Consultation Requirements) (England) Regulations 2003

Schedule 4, Part 2

Notice of intention

8.

(1) The landlord shall give notice in writing of his intention to carry out qualifying works … to each tenant …

(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 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 … 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.

Inspection of description of proposed works

9.

(1) Where a notice under paragraph 1 specifies a place and hours for inspection— (a) the place and hours so specified must be reasonable; and (b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

Duty to have regard to observations in relation to proposed works

10.

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

11.

(1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.

(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.

(3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate— (a) from the person who received the most nominations; or (b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or (c) in any other case, from any nominated person.

(4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate— (a) from at least one person nominated by a tenant; and (b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).

(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) At least one of the estimates must be that of a person wholly unconnected with the landlord.

(7) ...

(8) Where the landlord has obtained an estimate from a nominated person, that estimate must be one of those to which the paragraph (b) statement relates.

(9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by — (a) each tenant; and (b) the secretary of the recognised tenants' association (if any).

(10) The landlord shall, by notice in writing to each tenant and the association (if any) — (a) specify the place and hours at which the estimates may be inspected; (b) invite the making, in writing, of observations in relation to those estimates; (c) 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.

(11) Paragraph 2 shall apply to estimates made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

Duty to have regard to observations in relation to estimates

12.

Where, within the relevant period, observations are made in relation to the estimates by a recognised tenants' association or, as the case may be, any tenant, the landlord shall have regard to those observations.

Duty on entering into contract

13.

(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 his reasons for awarding the contract or specify the place and hours at which a statement of those reasons may be inspected; and (b) there he received observations to which (in accordance with paragraph 5) he was required to have regard, summarise the observations and set out his 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.

(3) Paragraph 2 shall apply to a statement made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.