FIRST-TIER TRIBUNAL

PROPERTY CHAMBER

(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AA/LDC/2025/0734**
Properties	:	**The Barbican Estate and City of London Housing Revenue Account Estates**
Applicant	:	**The Mayor and Commonality and Citizens of the City of London represented by Edward Blakeney**
Respondents	:	**2,953 leaseholders at the properties, Richard Tomkins appearing in person for himself**
Type of application	:	**To dispense with the requirement to consult leaseholders about long-term agreements for the supply of temporary worker services s20ZA LTA 1985**
Tribunal	:	**Judge Hargreaves** **Stephen Mason FRICS**
Date of decision	:	**24th November 2025**

DECISION

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1. The applications made for s20ZA LTA 1985 dispensation in relation to the Hays contract and the Reed contract (as defined below) are granted.

2. The Applicants are directed to serve a copy of this Decision on all residential leaseholders, as well as any residential sub-lessee responsible for the payment of service charges by email, hand delivery or first-class post as soon as possible and in any event by **5pm 8th December 2025** and confirm to the tribunal that this has been done.

3. **Costs directions:** (i) any application for costs pursuant to Tribunal 13(1)(b) must be filed and served by 5pm 8th December 2025 supported by (a) a **brief**

summary of the reasons supporting the application and (b) a schedule of costs claimed in Form N260 or similar; (ii) any submissions in response should be filed and served by 5pm 22nd December 2025; (iii) costs will be dealt with after 22nd December 2025.

REASONS

1. Page references [...] are to the agreed hearing bundle; references described as A[..] refer to pages in the Authorities bundle.

2. To understand how these applications came about, and to provide context for these decisions, it makes sense to set out the procedural background first. The shorthand 'Hays' and 'Reed' contracts will be applied throughout.

3. There are three particular features about these *s20ZA* applications concerning temporary worker employment contracts across the Applicant's residential estates which should be noted at the outset: (i) in respect of the Hays contract, the application is made over 8 years after it was entered into; (ii) neither the Hays nor Reed contracts come within the consultation structure of the *Service Charges (Consultation Requirements) (England) Regulations 2003* because they are 'framework' agreements, flagging up a 'lacuna' in the statutory consultation scheme.[1] That much is agreed, as is the fact that both contracts are QLTA's. Further, (iii) Mr Tomkins is the only leaseholder from the Barbican Estate to appear to oppose the applications, though he later clarified that he did not oppose the application in respect of the Reed contract. No HRA tenants opposed the applications. The Tribunal is satisfied on Mr Blakeney's assurance, that the Applicant has complied with all directions made by the Tribunal in respect of notifications and service of relevant documents on the long leaseholders and tenants affected by these applications. In addition, the Tribunal is not concerned with questions of recoverability as it is common ground that the charges in relation to the contracts fall within the service charge provisions of the leases, a specimen copy being in the bundle at [120-159] though we did not have to refer to it.

4. The *s20ZA* application in relation to the Hays contract which was originally entered into by the Applicant with Hays Specialist Recruitment Limited on 13th April 2017 was made on 27th March 2025, see [4-28]. However, this was the second application in respect of the Hays contract: an earlier application was made on 30th May 2023 and the Applicant was permitted to withdraw that application on 25th October 2023. The explanation was that the Applicant wished to try to negotiate outstanding issues and it realised that the existing application excluded numerous leaseholders who should have been joined (the HRA leaseholders). The current applications concern nearly 3000 leaseholders,

[1] SI 2003/1987

2014 on the Barbican Estate and 939 leaseholders on the Housing Revenue Account (HRA) Estates. The fact that Mr Tomkins was the sole leaseholder to present a case is significant, though it is fair to note that the Barbican Association which had apparently incurred costs on behalf of leaseholders had come to terms with the Applicant, the details of which (being without prejudice) were not before us.

5. The *s20ZA* application in respect of the contract with Reed Specialist Recruitment Limited (19th February 2025) was made on the same day, see [33-57]. Both applications are supported by detailed Grounds settled by Mr Blakeney with a statement of objection by Mr Tomkins in respect of the Hays application at [98]. Nadia Bouzidi originally opposed the Reed agreement but withdrew her objection at a pre-trial CMC on 28th October 2025, see [116]. At that hearing the Applicant's application to file a witness statement (Dan Sanders, 7th October) was dismissed. Two pages of the exhibits to that statement ended up in the hearing bundle at [118-119] and against Mr Tomkins' objections, we permitted the Applicant to rely on them being updates of figures submitted at [31] and [103]. In the event they added little to the matters we considered and could not have and did not prejudice Mr Tompkins' arguments (see below).

6. As to Mr Tomkins' position, he explained that in his former position as the chair of the (Barbican's) Lauderdale Tower RTA, he was prompted by certain factual observations of the numbers of cleaners during the Covid pandemic to follow a line of inquiry which prompted the discovery in 2021 that the Hays temporary worker contract was a QLTA which had not been consulted on (first because the Applicant states that was a genuine mistake and then because the Applicant states it is not possible to consult within the scheme) and which therefore required *s20ZA* dispensation. Mr Blakeney says that following that discovery (ie the mistake as to the effect of the Hays contract as a QLTA), the Applicant sought to address the matter, leading to the 2023 application. Mr Blakeney says the Applicant has been progressing matters since and therefore this is not a case of an 8 year delay as such. Though there are no applicable time limits for a *s20ZA* application, 8 years is towards the exceptional end. In the event, we do not consider that on the facts of this case, that the delay is a particularly consequential factor in the sense that Mr Tomkins seeks to exploit the delay. It is regrettable, but there is no evidence of the type of deliberate bad faith by the Applicant that Mr Tomkins seems to suggest against the Applicant, particularly since we accept that the QLTA/cap issue did not arise until 2021 and the first proceedings were issued – with nearly 3000 leaseholders to deal with (omitting the HRA parties) – in 2023. Therefore we note the criticisms of the Applicant by Mr Tomkins but are not inclined to spend more time on the point as on the facts, and because of the particular nature of the framework agreement which means that there could be no consultation under the Regulations, the delay is

arguably irrelevant and there is no credible evidence of bad faith or 'egregious' behaviour by the Applicant. As Mr Blakeney submits, it is arguable that a failure to consult when no consultation under the statutory framework is possible, cannot give rise to prejudice to the leaseholder in any event.

7. The other background procedural point to refer to is that Mr Tomkins issued *s27A* proceedings (the '2024 proceedings') to challenge the service charges in relation to some of the services provided by the Hays contract for the years 2017-2018 to 2023-2024. Mr Tomkins says he was successful, Mr Blakeney contends that he was largely unsuccessful and so far as his current arguments replicate arguments on reasonableness that he deployed in those proceedings, his current opposition is an abuse of the process and/or res judicata and/or a 'second bite of the cherry' (Reply, paras. 22-23 at [112]).[2] The parties' arguments on this aspect took up more time than we consider was necessary and was perhaps part of the Applicant's manoeuvring on lining up a costs application. Mr Tomkins says he issued the application to force the Applicant to make a *s20ZA* application.

8. Mr Blakeney also explained in response to our question (why the 2023 application was not stayed pending negotiations and a new application joining the HRA leaseholders made by the Applicant to be heard together) that an application for a stay was refused by the Tribunal (no decision in our papers), though permission to withdraw pursuant to Rule 22 was granted in October 2023. It follows that Mr Tomkins is not wholly accurate in submitting that he issued the 2024 application to force the Applicant to make a *s20ZA* application, as it had already done so, if to no great effect. The procedural history is less than straightforward and has added to Mr Tomkins' difficulties because he seeks to rely on arguments which he has already made in the 2024 proceedings, which Mr Blakeney argues is an abuse of process and grounds for striking out. Either way, the Applicant needs dispensation whatever Mr Tomkins argues.

9. Mr Tomkins for his part denies being a crusader in relation to the Hays contract which he evidently considers to be flawed, which is the crux of his opposition and a matter to which we return in more detail below. Again, when asked why he was the only leaseholder opposing the current application, he said he had given an undertaking to the leaseholders of Lauderdale Tower to litigate the point and felt duty bound to do so. As a basis for continuing an unsupported fight on a relatively difficult area of law, it seems an odd decision, particularly since the Applicant has made it clear it reserves the right to seek Tribunal Rule 13(1)(b) costs if it considers appropriate against him.[3] It transpires as we have

[2] LON/00AA/LSC/2024/0018

[3] The Applicant accepts that it cannot recover the costs of these proceedings through the service charge or as an administration charge under the relevant leases.

indicated already that there has been a settlement with other leaseholders, or at least the Barbican Association representing them. These clearly did not debar Mr Tomkins from continue with his objections and anyway, he said he knew nothing about their detail.

10. Mr Blakeney, expanding his submissions on abuse of process, submitted that Mr Tomkins' position on certain allegations was also an abuse (what he described as his 'abuse adjacent' point). He argued that Mr Tomkins' characterisation of the delay as an 8 year delay overlooked the actual history of the delay (see above), that his complaints of unethical behaviour by the Applicant were unfounded, and that his position as a sole objector undermined his case on prejudice. We have decided, as set out above, that none of these points add anything really useful to either party's position on the underlying question we have to decide, though we reject Mr Tomkins' assertions on delay and unethical behaviour on the facts. As to the third point, we do not have the precise facts about the settlement with other leaseholders because it is privileged. What the criticisms boil down to is a sustained attack on the merits and evidence on which Mr Tomkins seeks to rely.

11. The Applicant's skeleton argument in the 2024 proceedings is at A[16-24] and Mr Tomkins' at A[25-44]. The decision dated 1st August 2024 is at A[90-103]. The Tribunal determined the statutory cap of £100 applies to the costs incurred by Mr Tomkins alone in relation to the Hays contract, which the Applicant always accepted. The only actual *s27A* reduction on the grounds of reasonableness related to agency cleaning costs for 'the year 2023-2024 by the appropriate percentage provided by [Mr Tomkins'] lease of a total cost of £300,000' (being the sum the Tribunal substituted as reasonable for that year over the Barbican estate). Mr Tomkins' challenge to the reasonableness of the costs of Hays porter staff in 2020 failed (para.34, A[98], as did his challenge to the cost of daily rubbish collection (para.38, A[99]) and the recoverability and reasonableness of the costs of a communications officer (para.44, A[100]). On Mr Tomkins' challenge to the reasonableness of agency cleaning costs, he succeeded in relation to the year 2023-2024 as noted above only (para.51, A[102]). We agree with Mr Blakeney's basic submission that so far as these costs underpin Mr Tomkins' case on prejudice, he has had one 'bite of the cherry' and cannot re-run the arguments or seek to expand them as vaguely as he does.

12. The position in relation to the Hays costs for these years for agency cleaning costs, porters and rubbish collection is that both parties are bound by the 2024 decision as Mr Blakeney pleaded (paragraph 37.2, [115]). Those were the issues which Mr Tomkins chose to challenge (his challenge to car parking related costs was not determined on the grounds that he was not charged in relation to such costs and the case was limited to determining his individual position alone). On balance, the Applicant, putting it crudely, scored more points than Mr Tomkins

did. So when Mr Tomkins pleads in paragraphs 11, 12, 13, 14 and 15 of his statement of objection ([98-107]) that in broad terms he suffered prejudice because 'Barbican Estate leaseholders ended up paying for unnecessary services and for services that were provided to a defective standard and that this would not have happened if a consultation had taken place', he made this broader point in the 2024 proceedings but did not succeed overall, succeeding on one cost for the year 2023-2024 only. His challenge on reasonableness in the 2024 proceedings essentially failed, and there is, moreover no evidence to support the other allegations made in paragraphs 14 and 15 of his statement of objection, which Mr Tomkins regards as a fresh way of putting his case but amounts to a series of assertions which are not supported by any credible evidence on which – second bite of the cherry apart – the Tribunal could make any decisions on the usual burden and standard of proof.

13. So far as the particular items in the 2024 proceedings are concerned, there might have been a case for striking out the relevant part of Mr Tomkins' pleadings under *Tribunal Rule 9(3)(c)* because *'the proceedings or case are between the same parties and arise out of facts which are similar or substantially the same as those contained in a proceedings or case which has been decided by the Tribunal'* though paragraphs 14 and 15 of Mr Tomkins' statement of case are pleaded much more broadly than by reference to the matters decided in the 2024 proceedings. Mr Blakeney said he thought making such an application would be a waste of the Applicant's and judicial time, and that is understandable, though it might have resulted in Mr Tomkins having to plead his case on prejudice correctly – or trying to analyse what it is, which might well have been a costs and time saving exercise.

14. Mr Blakeney expanded his submissions on the abuse of process/res judicata point at the hearing. He is correct to submit that arguments which re-tread the *s27A* grounds do not assist Mr Tompkins because they have been decided. The problem for Mr Tomkins is that he appears not to understand that the reasons and decisions in the 2024 decision do not support his general arguments on the unreasonableness of those parts of his service charge which derive from the Hays costs and that making wider, general allegations cannot disguise the limits of his challenge. Assertion is not evidence (particularly where thinly based on hindsight) and the bottom line point in this case is that nothing in Mr Tomkins' submissions demonstrates any prejudice caused by the lack of consultation assuming, for the purpose of this application that he would be able to show prejudice by failure to consult in a case where it is said and agreed that statutory consultation cannot be undertaken.

15. Mr Tomkins responded to these arguments by accusing the Applicant of being intimidatory in its litigation tactics, and that so far as he is accused of an abuse of process, he has acted as an 'armchair lawyer' without legal advice and that

there is a 'world of difference' between the financial impacts of the Hays and Reed contracts. He sought to demonstrate this point by arguing that had there been consultation in relation to the Hays contract as with the Reed contract, there would have been tighter 'controls' over Hays expenditure which would have reduced costs, but the results of the *s27A* proceedings are an answer to that. There is no probative evidence before the Tribunal to show that the Reed contract is cheaper than the Hays contract and that this is because one was 'consulted' on (though outside the regulations and informally) and the Hays contract was not.

16. A key part of Mr Tomkins' case as set out in paragraph 14 of his statement of objection (putting aside the 2024 proceedings point) is contained in a bar chart at [103]. This has been created by Mr Tomkins to demonstrate the inadequacies of the Hays contract and is said to be largely based on the report of some consultants (the Altair Report) prepared in 2022. As we do not have a copy of the report, the deductions made by Mr Tomkins are not supported by credible evidence, it being wholly wrong for the Tribunal to proceed on the basis of a report without reading it or understanding what its point was or how it was compiled or giving the Applicant time to cross-examine on it. Evidence like this cannot be introduced in a pleading or skeleton argument to be accepted without inquiry. In addition, the bar chart relates only to temporary worker costs, so the proportions attributable to service charges as a whole are lacking, and the 'green' column, relating to the Reed costs, contains projected as opposed to actual costs (hence the dispute about the two additional documents going in the bundle at p118-119 which show actual Reed costs to be higher). The underlying point about the bar chart is that it does not establish Mr Tomkins' case on prejudice because it is flawed in its data for true comparison purposes and again, does not show what might have been if there had been consultation. We stress that we have come to this conclusion *without* relying on the disputed pages 118-119 as it is unnecessary to do so. Mr Tomkins' position on the bar chart is similar to his point that the Applicant should not have entered into an 'open-ended' contract with Hays (or presumably Reed for that matter logically) though the nature of the services being provided required the contract to be 'open-ended' because based on an unquantifiable demand for services which cannot be predicted. Both points fail evidentially and neither are sufficiently credible to engage the 'sympathy' of the Tribunal. If we are wrong about the nature and quality of the evidence relied on by Mr Tomkins, the Applicant's case as put by Mr Blakeney rebuts it.

17. We have also concluded that the Applicant's behaviour as alleged by Mr Tomkins in paragraph 10 of his objection (A[100-101]) does not qualify as 'egregious' – surprisingly (or unsurprisingly) inefficient maybe, but not as alleged by Mr Tomkins egregious, it being accepted that the mistake was not identified until 2021, and the suggestion that it was deliberately concealed is

not made out. That also goes to the point on delay which has been countered by the Applicant by reference to the previous proceedings.

18. Prejudice is financial and governed by the principles in *Daejan Investments Limited v Benson* [2013] UKSC 14, particularly Lord Neuberger at para 44:

    "Given that the purpose of the Requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT should focus when entertaining an application by a landlord under section 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the Requirements."

19. Mr Tomkins argues that in the case of the Reed contract matters are demonstrably better because there was consultation, and he does not object to the *s20ZA* application in respect of it, but it was clear to us that there was no statutory consultation and the Applicant merely carried out meetings and engaged with the relevant leaseholders as a form of PR exercise (which seems to have been successful in the case of the Reed contract). As Mr Blakeney submits, it is still open to Mr Tomkins to issue *s27A* proceedings in respect of the Reed contract if he wishes (while adding that any such challenge would be resisted).

20. The better approach in our judgment is to take the position as we do that (i) so far as Mr Tomkins seeks to argue prejudice to himself as a leaseholder for the reasons set out in paragraphs 14 and 15 of his statement of case, he is on very weak grounds because his underlying complaints (even if expressed as far wider statements of fact and/or principle) cannot succeed having been decided against him and (ii) the other evidence on which he relies is flawed or non-existent as well as arguably disguising a re-run of facts and matters he could have relied on in the 2024 proceedings. So, although we accept Mr Blakeney's broad submissions on the attempt to re-use or re-run arguments on reasonableness, we do not consider it necessary or desirable to make particular findings on abuse of process or res judicata. The two statutory applications do different things and limit the scope of the inquiry we have to make or the attempts by Mr Tomkins to re-open issues. Res judicata in particular is a very technical principle and the purported labels do not move the Applicant's case into a different, stronger sphere.

21. Mr Tomkins' muddling of prejudice and reasonableness does not justify a strike out for abuse of process at this very late stage. But neither does it support his case on prejudice. He is not alone in this approach. This aspect was considered recently by the Tribunal in combined county court/tribunal proceedings

dealing with dispensation agreements in respect of Fitzroy Place and Pearson Square, London W1.[4]

22. At paragraph 70 of this decision the Tribunal said: *"First, there is no authority as yet to support the proposition that relevant prejudice might extend beyond financial prejudice. Secondly, even if that were the position, we find that there is little evidence of any such prejudice in the present case arising as a result of any failure to consult before entering into QLTAs. In particular, and in relation to Mr Giret's submission, we have had no evidence as to how resale value might have been affected and insofar as it is suggested that this is a measure of prejudice as a result of a failure to consult in accordance with the Consultation Regulations, we reject the submission.*

    71. A further point regarding prejudice is that the parties generally used reference to prejudice (for the purposes of dispensation) and reasonableness (for the purposes of section 19 of the 1985 Act) interchangeably. In other words, in cases where dispensation was sought, it was frequently submitted that the extent to which relevant costs were considered to be unreasonable broadly equated to the prejudice suffered – provided this arose as a result of a failure to consult. While we understand the practicalities of such approach, it largely stems from the fact that it has been so difficult to establish prejudice in the present case. Moreover, we are mindful of the fact that conceptually, there is a difference between considerations of prejudice and reasonableness, and we are accordingly hesitant in applying the test for reasonableness to determining prejudice. …." In this case of course, reasonableness has been decided.

23. With these points in mind, we turn to consider the merits of the application, though having dispensed with Mr Tomkins' main allegations on the costs of temporary staff or their relationship to lack of non-applicable statutory consultation, there is arguably little to add. The Tribunal has the power to dispense with the consultation requirements under *s20ZA* if *'satisfied that it is reasonable to dispense with the requirements'*. It is a broad discretion. We consider that the reasonableness test is met in these two cases. It is an odd feature of this application that we cannot strictly dispense with requirements which are said to be inapplicable. On the other hand, there is a dispensation jurisdiction and if the requirements do not cover the particular circumstances of the Hays contract, we can dispense with them: as Mr Blakeney submits, if there is no dispensation in cases such as these, the financial impacts would be severe (though as *Daejan* indicates, the financial impacts on the landlord are not relevant to the Tribunal's exercise of discretion). The better position is to

[4] See eg LON/OOBK/LLE/2021/0005 3rd September 2024

conclude that absent any credible reason in these cases why it would be unreasonable to grant dispensation, we should do so.

24. Though Mr Tomkins argues no doubt correctly that the Applicant is free to contract through other methods which *would* be covered by the consultation requirements, there was no evidence before us as to the feasibility of this in the context of arrangements such as the Hays and Reed contracts, and Mr Tomkins did not suggest any or establish that the failure to adopt another model which came within the regulations was prejudicial to himself. That the Applicant considers some form of consultation desirable is evidenced by the meetings it held in respect of the Reed contract, but Mr Blakeney agreed that these were more of a PR/good relations with leaseholders exercise than an attempt to provide the leaseholders with any statutory consultation rights. As Mr Blakeney submits, the landlord is not bound to act on the results of the consultation process in any event.

25. In summary, Mr Tomkins' challenges are too weak and boil down to unsubstantiated challenges based on hindsight, which have, moreover, been dealt with and largely dismissed by the Tribunal in 2024. On the point on which Mr Tomkins did succeed in 2024, he cannot connect that to a failure to consult. If we are wrong about the strength of Mr Tomkins' challenges, then the Applicant is still entitled to an order for dispensation.

Judge Hargreaves
Stephen Mason FRICS
24th November 2025

Rights of appeal

Rights of appeal By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the Firsttier Tribunal at the Regional Office which has been dealing with the case. The application should be made on Form RP PTA available at https://www.gov.uk/government/publications/form-rp-pta-application-forpermission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber 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. If the application is not made within the 28-day time limit, such

application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit. 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. If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber)