



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **BIR/00CN/LDC/2025/0028**

Subject Properties : **70 Holmes Close
Norwich
Norfolk NR7 9XN
And other properties managed by the Applicant**

Applicant : **Orbit Group Limited**

Representative : **Shakespeare Martineau LLP**

Respondents : **Tenants of the subject properties**

Type of Application : **Application under section 20ZA of the
Landlord and Tenant Act 1985 for
dispensation of the consultation
requirements in respect of a qualifying
long term agreement**

Tribunal Member : **Deputy Regional Judge Gravells**

Date of Decision : **30 March 2026**

DECISION

Preliminary

- 1 This is a decision on an application for dispensation with the statutory consultation requirements for qualifying long term agreements for the supply of gas and electricity to energy to the subject properties.
- 2 Section 20 of the Landlord and Tenant Act 1985 ('the 1985 Act') (as amended by the Commonhold and Leasehold Reform Act 2002) and the Service Charges (Consultation Requirements) (England) Regulations 2003 ('the 2003 Regulations') set out the consultation procedure that a landlord must follow in respect of a 'qualifying long term agreement', defined in section 20ZA(2) of the 1985 Act as an 'agreement entered into, by or on behalf of a landlord ..., for a term of more than twelve months'.
- 3 In summary, under Schedule 2 to the 2003 Regulations (which applies to qualifying long term agreements for which public notice is required under regulation 5(2) of the 2003 Regulations and which applies to the proposed agreements in the present case) the landlord must (i) give written notice to the tenants of its intention to enter into the agreement, (ii) provide a description of the agreement and its purpose, (iii) provide for the inspection of relevant documents, (iv) invite observations in relation to the proposed agreement, (v) prepare a proposal in respect of the proposed agreement, (vi) provide, if reasonably practicable, an estimate of the cost to individual tenants or the total cost, (vii) respond to observations on the proposed agreement and (viii) notify the tenants of the proposed agreement.
- 4 If a landlord fails to comply with the consultation requirements, there is a statutory maximum sum (£100.00) that a tenant has to pay by way of a contribution to the cost of the qualifying long term agreement in any one year. However, the landlord may apply to the First-tier Tribunal under section 20ZA of the 1985 Act for dispensation from the consultation requirements. If dispensation is granted, the statutory maximum contribution does not apply.

Background

- 5 By application received by the Tribunal on 29 July 2025, the Applicant, the landlord of the subject properties, applied under section 20ZA for dispensation from the consultation requirements in respect of proposed agreements (for a term of more than twelve months) for the supply of gas and electricity across all its social housing schemes. The agreements would largely concern gas and electricity for the benefit of communal facilities in the Applicant's housing developments but would also extend to energy consumed within tenants' homes where the costs are currently included in the tenants' service charge ('personal utility charges'). (The agreements would not extend to supplies to tenants' homes where the tenants have a direct personal contract with an energy supplier.)
- 6 The Applicant states that its buying power enables it to get better rates from energy suppliers, leading to savings that can be passed directly to tenants. The Applicant currently concludes 12-month contracts but states that it is possible to secure cheaper rates if a longer contract is negotiated. However, the energy market is volatile and a purchaser such as the Applicant needs to act quickly to secure the most favourable rates. Quotations received from suppliers are typically held for very short periods, sometimes as short as a few hours. The delay inherent in full compliance with the statutory consultation requirements makes it impossible to act quickly to secure the better rates when they become available.

- 7 The Applicant wrote to the tenants on 22/23 May 2025 to explain the current position relating to its contracts with energy suppliers, to set out the arguments for longer term agreements and to seek views. The Applicant included a question-and-answer document and a short survey. The Applicant received 266 responses to the survey. Sixty per cent of those who responded indicated a lack of awareness that the gas and electricity contracts are currently awarded annually. A clear majority (223 tenants) agreed or strongly agreed with the statement that 'Orbit should be allowed to agree longer term contracts [for energy supplies] if it helps to secure better value for [tenants]'. Only 22 tenants disagreed or strongly disagreed with the statement.
- 8 By the present application the Applicant seeks a formal determination from the Tribunal that full compliance with the statutory consultation requirements for long term agreements for the supply of gas and electricity is dispensed with.
- 9 On 3 November 2025 the Tribunal issued Directions in order to ascertain whether any of the Respondent tenants opposed the application for dispensation.
- 10 Although some tenants indicated that they opposed the application, they indicated that they were content for the Tribunal to determine the application on the basis of the parties' written representations and without an oral hearing.

Representations of the parties

- 11 The Tribunal received two substantive responses objecting to the application for dispensation - from (1) Zofija Topalova, a tenant at Sheen Court, Margate, Kent and (2) Robert Vernon, representing 42 tenants at Rosalind Court, Stratford on Avon, Warwickshire.
- 12 Zofija Topalova noted objections as annotations on the question-and-answer document sent to the tenants in May 2025. Unfortunately, this resulted in some repetition and some comments on matters that have questionable relevance to the issue of dispensation.
- 13 However, the Tribunal distilled the following representations –
 - (i) that indicative potential savings for tenants were not substantiated;
 - (ii) that the Applicant provided no comparative tables of commercial rates;
 - (iii) that the Applicant provided no 'data on commercially optimal rates, comparative tables and market analysis';
 - (iv) that the Applicant provided no evidence of currently available rates;
 - (v) that dispensation would deny to tenants the opportunity to check contract details and market offers in advance of the contracts;
 - (vi) that (discounted) costs currently charged by the Applicant were irrelevant to future costs;
 - (vii) that market instability supports the need for consultation;
 - (viii) that the Applicant failed to demonstrate that tenants' financial interests would not be harmed;
 - (ix) that failure to consult increases the risk of the Applicant making non-transparent and unfavourable decision.

- 14 Robert Vernon submitted three sets of representations. Those representations ranged widely and again some have questionable relevance to the issue of dispensation.
- 15 In his first submission –
- (i) he referred to a decision of the Upper Tribunal (*Orbit Housing Association Ltd v Robert Vernon* [2023] UKUT 156 (LC)) which the Tribunal had determined that the Applicant had demanded a support charge at Rosalind Court but had failed to prove that it had provided the relevant services to Mr Vernon;
 - (ii) he argued that in the supply of gas and electricity to its housing developments the Applicant has a conflict of interest as both buyer and seller;
 - (iii) he referred to the repayment of utilities charges incorrectly demanded from pre-February 2024 tenants at Rosalind Court;
 - (iv) he referred to attempts by the Applicant to control what was perceived to be his ‘persistent communication’ with the Applicant as ‘harassment’;
 - (v) he referred to an alleged prohibition on tenants switching energy suppliers.
- 16 In his second submission –
- (i) he referred to a Performance Report on the Applicant in which the Housing Ombudsman found a maladministration rate in 2024/25 of 62 per cent (although the comparable national rate for landlords of a similar size and type was 64 per cent);
 - (ii) he argued that dispensation would deny to tenants the opportunity to propose alternative suppliers;
 - (iii) he referred again to the matters in paragraph 15(i) and (ii) above;
 - (iv) he alleged significant and unexplained increases in the energy costs charged to tenants between 2022/22 and 2022/23;
 - (v) he argued that section 27A of the Landlord and Tenant Act 1985 does not provide an adequate remedy.
- 17 It is convenient at this stage to summarise the representations of the Applicant made in response to the opposition to the application for dispensation.
- 18 The Applicant stated –
- (i) that the focus for the Tribunal is whether tenants will suffer relevant prejudice;
 - (ii) that the proposed dispensation does not remove tenants’ rights to challenge the reasonableness of charges under section 27A of the Landlord and Tenant Act 1985;
 - (iii) that the Applicant will continue to provide full transparency post-contract, including details of suppliers, tariffs, and contract terms;
 - (iv) that the Applicant will act only where longer term contracts demonstrably offer better value than annual agreements;
 - (v) that energy quotations are typically valid for only a few hours so that a 30-day consultation period makes it practically impossible to secure advantageous rates when they arise; and that, without dispensation, the Applicant is restricted to short-term contracts, which are less competitive and create greater uncertainty for tenants;

- (vi) that, to address concerns, the Applicant proposes to provide annual disclosure of contract details and comparative data, exploration of break clauses where commercially feasible and continued engagement with tenants through surveys and updates;
 - (vii) that historic disputes or Ombudsman findings do not alter the legal test for dispensation under section 20ZA of the Landlord and Tenant Act 1985, which is forward-looking and concerned with mitigating prejudice in the specific context of the current application.
- 19 Mr Vernon made a third submission (responding to the Applicant's response to the opposition to the application for dispensation) –
- (i) while adhering to his primary argument that dispensation should be refused entirely, he argued that, if dispensation is granted, it should not extend to personal utility charges (see paragraph 5 above);
 - (ii) he argued that the Applicant had not provided 'the minimum procurement information necessary for the Tribunal to assess whether non-consultation will cause relevant prejudice'; and, in particular, he argued 'that the Applicant had not evidenced: (i) proposed term length(s) and the rationale for term choice; (ii) the proposed product type (fixed, capped, indexed, blended); (iii) the full pricing components and pass-through structure (including standing charges and any additional components); (iv) whether brokers or intermediaries are used, and if so the commission/fee structure and how it is disclosed and controlled; (v) whether break clauses, termination rights, step-in rights, or variation clauses exist, and what triggers apply; (vi) how allocation, apportionment, reconciliation, and 'true-up' adjustments will be calculated, evidenced and made challengeable';
 - (iii) he repeated the argument that section 27A of the Landlord and Tenant Act 1985 does not provide an adequate remedy;
 - (iv) he argued that consultation is not about consulting on a single intraday quote but about the underlying decisions that drive value and risk, including specification, procurement approach, product type, risk allocation, transparency, break rights, auditability, and the charging framework; that landlords can plan procurement and consult on these matters in advance; that, if the Applicant contends that timing is genuinely constrained, it should propose a lawful, proportionate alternative consultation mechanism and seek dispensation only to the minimum extent necessary; and that the Applicant instead seeks broad dispensation without evidencing how prejudice will be neutralised;
 - (v) he argued that the Applicant's proposed safeguards (annual disclosure, comparative data, 'exploration' of break clauses, and continued engagement via surveys and updates) are not safeguards unless imposed as binding Tribunal conditions with defined minimum content, defined timing, and enforceable consequences; and that, if dispensation were contemplated at all, the Applicant must be required to demonstrate that it sought and negotiated meaningful break provisions and tenant protections, and to evidence the outcome;
 - (vi) he argued, contrary to the submission of the Applicant, that historic conduct and previous disputes do not alter the legal test for dispensation, history is relevant to assessing (i) the credibility and adequacy of the Applicant's promised 'safeguards' and (ii) what conditions are necessary to prevent prejudice in practice.;

- (vii) he argued that relevant prejudice is not confined to proving, after the event, that a contract price is higher than a hypothetical alternative; but that it includes the lost opportunity to influence and protect tenants against (a) inappropriate procurement route or specification; (b) unfavourable or unchallengeable pricing structures and pass-through components; (c) embedded fees, commissions, management uplifts, or administrative add-ons; (d) opaque allocation, apportionment, and reconciliation methodologies which generate dispute and consumer harm; (e) being forced into reactive litigation after exposure has crystallised.
- (viii) he argued that, if the Tribunal is minded to grant dispensation, it should only do so on strict, binding conditions to neutralise prejudice, including: (a) pre-contract disclosure (including the proposed supplier, term length, product type, commencement date, full pricing structure and all pricing components, the draft contract or heads of terms sufficient to show termination rights, variation clauses, fees, and pass-through terms, full details of any broker or intermediary involvement and all commissions, referral fees, or consultancy charges (whether paid by the supplier or otherwise), with confirmation that no undisclosed commission will be recovered from tenants; (b) disclosure of a like-for-like benchmark or at least three comparable quotations for the same product type and term length, and a short written justification for selection; (c) prohibition on hidden add-ons, broker commission, consultancy fee, introduction fee, internal management uplift, or other non-energy add-on that may be recovered from tenants unless disclosed in advance and supported by evidence enabling a proper challenge; (d) break rights and exit strategy; (e) ongoing transparency and auditability; (g) protection of tenants' rights to challenge payability, reasonableness, apportionment and accounting under section 27A of the Landlord and Tenant Act 1985 and related statutory provisions.

The law

- 20 In the circumstances of the present case, the consultation requirements are set out in Schedule 2 to the 2003 Regulations (which applies to qualifying long term agreements for which public notice is required under regulation 5(2) of the 2003 Regulations). It is appropriate to set out Schedule 2 in full –

Notice of intention

1(1) The landlord shall give notice in writing of his intention to enter into the agreement—

- (a) to each tenant; and
- (b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall—

- (a) describe, in general terms, the relevant matters or specify the place and hours at which a description of the relevant matters may be inspected;
- (b) state the landlord's reasons for considering it necessary to enter into the agreement;
- (c) where the relevant matters consist of or include qualifying works, state the landlord's reasons for considering it necessary to carry out those works;
- (d) state that the reason why the landlord is not inviting recipients of the notice to nominate persons from whom he should try to obtain an estimate for the relevant matters is that public notice of the relevant matters is to be given;
- (e) invite the making, in writing, of observations in relation to the relevant matters; and

- (f) 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.

Inspection of description of relevant matters

- 2.(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 relevant matters 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 relevant matters

- 3. Where, within the relevant period, observations are made, in relation to the relevant matters by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

Preparation of landlord's proposal

- 4.(1) The landlord shall prepare, in accordance with the following provisions of this paragraph, a proposal in respect of the proposed agreement.
- (2) The proposal shall contain a statement—
 - (a) of the name and address of every party to the proposed agreement (other than the landlord); and
 - (b) of any connection (apart from the proposed agreement) between the landlord and any other party.
- (3) For the purpose of sub-paragraph (2)(b), it shall be assumed that there is a connection between the landlord and a party—
 - (a) where the landlord is a company, if the party is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
 - (b) where the landlord is a company, and the party is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
 - (c) where both the landlord and the party are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;
 - (d) where the party is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or
 - (e) where the party is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.
- (4) Where, as regards each tenant's unit of occupation, it is reasonably practicable for the landlord to estimate the relevant contribution to be incurred by the tenant attributable to the relevant matters to which the proposed agreement relates, the proposal shall contain a statement of that contribution.
- (5) Where—
 - (a) it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (4); and
 - (b) it is reasonably practicable for the landlord to estimate, as regards the building or other premises to which the proposed agreement relates, the total amount of his expenditure under the proposed agreement,the proposal shall contain a statement of the amount of that estimated expenditure.

(6) Where—

(a) it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (4) or (5)(b); and

(b) it is reasonably practicable for the landlord to ascertain the current unit cost or hourly or daily rate applicable to the relevant matters to which the proposed agreement relates, the proposal shall contain a statement of that cost or rate.

(7) Where it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (6)(b), the proposal shall contain a statement of the reasons why he cannot comply and the date by which he expects to be able to provide an estimate, cost or rate.

(8) Where the relevant matters comprise or include the proposed appointment by the landlord of an agent to discharge any of the landlord's obligations to the tenants which relate to the management by him of premises to which the agreement relates, each proposal shall contain a statement—

(a) that the person whose appointment is proposed—

(i) is or, as the case may be, is not, a member of a professional body or trade association; and

(ii) subscribes or, as the case may be, does not subscribe, to any code of practice or voluntary accreditation scheme relevant to the functions of managing agents; and

(b) if the person is a member of a professional body trade association, of the name of the body or association.

(9) Each proposal shall contain a statement of the intended duration of the proposed agreement.

(10) Where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, the proposal shall contain a statement summarising the observations and setting out the landlord's response to them.

Notification of landlord's proposal

5.(1) The landlord shall give notice in writing of the proposal prepared under paragraph 4—

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall—

(a) be accompanied by a copy of the proposal or specify the place and hours at which the proposal may be inspected;

(b) invite the making, in writing, of observations in relation to the proposal; and

(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.

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

Duty to have regard to observations in relation to proposal

6. Where, within the relevant period, observations are made in relation to the landlord's proposal by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

Landlord's response to observations

7. Where the landlord receives observations to which (in accordance with paragraph 6) he is required to have regard, he shall, within 21 days of their receipt, by notice in writing to the person by whom the observations were made, state his response to the observations.

Supplementary information

8. Where a proposal prepared under paragraph 4 contains such a statement as is mentioned in sub-paragraph (7) of that paragraph, the landlord shall, within 21 days of receiving sufficient information to enable him to estimate the amount, cost or rate referred to in sub-paragraph (4), (5) or (6) of that paragraph, give notice in writing of the estimated amount, cost or rate (as the case may be)—

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

21 Under section 20ZA of the Landlord and Tenant Act 1985, the Tribunal has jurisdiction to dispense with all or any of the consultation requirements in relation to any qualifying long term agreement 'if satisfied that it is reasonable' to dispense with the requirements.

22 The leading authority on dispensation with the statutory consultation requirements (albeit (i) relating to qualifying works rather than qualifying long term agreements, (ii) relating to qualifying works for which public notice was not required and (iii) relating to retrospective dispensation) is the decision of the Supreme Court in *Daejan Investments Limited v Benson* [2013] UKSC 14 ('*Daejan*'), in particular the principles set out by Lord Neuberger at paragraphs 41-72.

23 At paragraphs 41-46, Lord Neuberger stated –

[41] ... [T]he circumstances in which a section 20ZA(1) application is made could be almost infinitely various, so any principles that can be derived should not be regarded as representing rigid rules.

[42] So I turn to consider section 20ZA(1) in its statutory context. It seems clear that sections 19 to 20ZA are directed towards ensuring that tenants of flats are not required (i) to pay for unnecessary services or services which are provided to a defective standard, and (ii) to pay more than they should for services which are necessary and are provided to an acceptable standard. The former purpose is encapsulated in section 19(1)(b) and the latter in section 19(1)(a). The following two sections, namely sections 20 and 20ZA, appear to me to be intended to reinforce, and to give practical effect to, those two purposes. This view is confirmed by the titles to those two sections, which echo the title of section 19.

[43] Thus, the obligation to consult the tenants in advance about proposed works goes to the issue of the appropriateness of those works, and the obligations to obtain more than one estimate and to consult about them, go to both the quality and the cost of the proposed works.

...

[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 [First-tier Tribunal] 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.

...

[46] I do not accept the view that a dispensation should be refused ... solely because the landlord seriously breached, or departed from, the requirements. That view could only be justified on the grounds that adherence to the requirements was an end in itself, or that the dispensing jurisdiction was a punitive or exemplary exercise. The requirements are a means to an end, not an end in themselves, and the end to which they are directed is the protection of tenants in relation to service charges, to the extent identified above. After all, the requirements leave untouched the fact that it is the landlord who decides what works need to be done, when they are to be done, who they are to be done by, and what amount is to be paid for them.

24 At paragraphs 53-64 he stated –

[53] The respondents contend that, on an application under section 20ZA(1), the [First-tier Tribunal] has to choose between two simple alternatives: it must either dispense with the requirements unconditionally or refuse to dispense with the requirements. ...

[54] In my view, the [First-tier Tribunal] is not so constrained when exercising its jurisdiction under section 20ZA(1): it has power to grant a dispensation on such terms as it thinks fit – provided, of course, that any such terms are appropriate in their nature and their effect.

...

[58] ... [W]here it is appropriate to do so, it seems clear to me that the [First-tier Tribunal] can impose conditions on the grant of a dispensation under section 20(1)(b). In effect, the [First-tier Tribunal] would be concluding that, applying the approach laid down in section 20ZA(1), it would be ‘reasonable’ to grant a dispensation, but only if the landlord accepts certain conditions. ...

[59] I also consider that the [First-tier Tribunal] would have power to impose a condition as to costs – eg that the landlord pays the tenants’ reasonable costs incurred in connection with the landlord’s application under section 20ZA(1).

...

[64] ... [A] party seeking a dispensation under section 20(1)(b) ... is claiming what can be characterised as an indulgence from a Tribunal at the expense of another party. Accordingly, in so far as the other party reasonably incurs costs in considering the claim, and arguing whether it should be granted, and, if so, on what terms, it seems appropriate that the first party should pay those costs as a term of being accorded the indulgence.

25 At paragraph 69 he stated –

[69] ... [I]t is worth remembering that the tenants’ complaint will normally be ... that they were not given the requisite opportunity to make representations about proposed works to the landlord. Accordingly, it does not appear onerous to suggest that the tenants have an obligation to identify what they would have said, given that their complaint is that they have been deprived of the opportunity to say it. Indeed, in most cases, they will be better off, as, knowing how the works have progressed, they will have the added benefit of wisdom of hindsight to assist them before the [First-tier Tribunal], and they are likely to have their costs of consulting a surveyor and/or solicitor paid by the landlord.

26 And at paragraph 74 he concluded –

[74] All in all, it appears to me that the conclusions which I have reached, taken together, will result in (i) the power to dispense with the requirements being exercised in a proportionate way consistent with their purpose, and (ii) a fair balance between (a) ensuring that tenants do not receive a windfall because the power is exercised too sparingly and (b) ensuring that landlords are not cavalier, or worse, about adhering to the requirements because the power is exercised too loosely.

Discussion

27 The issue for the Tribunal is whether any material prejudice would be caused to the tenants if the Tribunal grants dispensation so that the Applicant is not required to comply fully with the consultation requirements set out in Schedule 2 to the 2003 Regulations. The Tribunal should focus on the extent, if any, to which the tenants would be prejudiced the failure of the landlord to comply with those requirements.

28 It is important to note the parameters of Schedule 2 of the 2003 Regulations –

(i) Schedule 2 does not provide for the nomination of contractors by tenants: Schedule 2 qualifying long term agreements are subject to public tender;

- (ii) compliance with the Schedule 2 consultation requirements does not require the landlord to provide much of the detailed information that Zofija Topalova and Robert Vernon ('the objectors') argue should and would be provided;
 - (iii) compliance with the Schedule 2 consultation requirements would therefore not address many of the issues raised by the objectors in their submissions.
- 29 It is also important to note the parameters of the *Daejan* principles. Lord Neuberger states that sections 19 to 20ZA of the Landlord and Tenant Act 1985 are directed towards ensuring that tenants of flats are not required (i) to pay for unnecessary services or for services which are provided to a defective standard, and (ii) to pay more than they should for services which are necessary and are provided to an acceptable standard.
- 30 Since it is difficult to argue that the supply of gas and electricity is an unnecessary service (or a service that save in exceptional circumstances can be provided to a defective standard), in the present case the only relevant purpose of compliance with the consultation requirements is to ensure that tenants are not required to pay more than they should for gas and electricity.
- 31 The Tribunal accepts the premise of the application that full compliance with the consultation requirements in Schedule 2 to the 2003 Regulations would almost certainly frustrate the Applicant's endeavours to secure more favourable rates for the supply of gas and electricity that are potentially available through longer term contracts.
- 32 In the view of the Tribunal the risk of the contract price leading to tenants paying more than they should for gas and electricity is significantly reduced by the public tender procedure.
- 33 In any event, contrary to the arguments of the objectors, the Tribunal is of the view that section 27A of the Landlord and Tenant Act 1985 provides an effective means for the tenants to challenge costs for gas and electricity that have not been reasonably incurred and thereby to protect the tenants against any potential relevant prejudice.
- 34 In the circumstances, the Tribunal determines that it is appropriate to grant the application for dispensation from the consultation requirements in Schedule 2 to the 2003 Regulations.
- 35 The Tribunal should comment briefly on some of the other arguments and observations made by the objectors –
- (i) the Applicant's application clearly relates to qualifying long term agreements for the supply of gas and electricity and the dispensation is limited to such agreements only;
 - (ii) Mr Vernon has failed to offer any compelling argument for excluding personal utility charges from the dispensation;
 - (iii) the Tribunal determines that the historic criticisms of the Applicant referred to by Mr Vernon are not relevant to the issues raised by the present application;
 - (iv) the Tribunal determines that there is no substance in the argument that, in relation to the supply of gas and electricity, the Applicant is both a buyer and a seller: in relation to all services provided to tenants by landlords, under the terms of the tenancy agreements the landlord procures and pays for the services and the tenants reimburse the costs through the service charge;

- (v) some of Mr Vernon’s proposed ‘safeguards’ in the event that the Tribunal grants dispensation are incompatible with the public tender procedure (for example, identity of proposed supplier, provision of three comparable quotations).

Decision

- 36 The Tribunal determines that it is appropriate to grant the Applicant’s application for dispensation from the consultation requirements set out in Schedule 2 to the 2003 Regulations in respect of qualifying long term agreements for the supply of gas and electricity to the Applicant’s social housing schemes.
- 37 However, the dispensation is subject to conditions. Those conditions are –
- (i) that the Applicant shall upload to the Applicant’s website (providing to tenants the relevant URL address) copies of contracts entered into by the Applicant for the supply of gas and electricity to the Applicant’s housing developments;
 - (ii) that, if not incorporated into the contracts, the Applicant shall upload to the website full details of fees payable in connection with the contracts, including but not limited to all commissions, referral fees or consultancy charges;
 - (iii) that the Applicant shall maintain on the website up-to-date comparative data relating to energy prices and details of its position on break clauses and exit strategy;
 - (iv) that the Applicant shall maintain continued engagement with tenants through updates, surveys and other appropriate means.
- 38 The Tribunal also orders that the costs of the application for dispensation shall not be charged to the tenants through the service charge or otherwise.
- 39 In accordance with paragraphs 14 and 15 of the Tribunal’s Directions dated 3 November 2025 –
- (i) the Tribunal will send a copy of this Decision to the Applicant and every Respondent who has returned the Reply Form attached to the Directions;
 - (ii) in addition, the Applicant shall place a copy of this Decision on the Applicant’s website within seven days of receipt and shall maintain it there for at least three months; and the Applicant shall place a prominent link to the Decision on its home page.

Appeal

- 40 If a party wishes to appeal this Decision, that appeal is to the Upper Tribunal (Lands Chamber). However, a party wishing to appeal must first make written application for permission to the First-tier Tribunal at the Regional office which has been dealing with the case.
- 41 The application for permission to appeal must be received by the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- 42 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(s) for not complying with the 28-day time limit. The Tribunal will then consider the reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

- 43 The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking.

30 March 2026

Professor Nigel Gravells
Deputy Regional Judge