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

Case Reference : LON/00BE/LSC/2013/0130

Property : 32 Sunwell Close, London SE15 2TR

Applicant : The London Borough of Southwark

Representative : Ms E Bennett

Respondent : Mrs O Ojo

Representative : In person

Type of Application : For the determination of the
reasonableness of and the liability
to pay a service charge

Tribunal Members : Miss A Seifert FCI Arb
Mr T Johnson FRICS
Mrs L Hart

**Date and venue of
Hearing** : 4th July 2013 at 10 Alfred Place,
London WC1E 7LR

Date of Decision : August 2013

DECISION

Decisions of the tribunal

- (i) The tribunal determines that the sum of £6,167.10 was payable by the Respondent to the Applicant in respect of the estimated service charges for major works for the year 2011/2012.
- (ii) The tribunal determines that the sum of £1,729.64 was payable by the Respondent to the Applicant in respect of the estimated service charge for major works for the year 2012/2013.
- (iii) The Respondent has made payment on account to the Applicant in respect of the sums in (i) and (ii) above. The total amount due and payable by the Respondent to the Applicant as at the date of the hearing on 4th July 2013 was **£5,779.78**.
- (iv) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 ("the 1985 Act") so that none of the Applicant's costs of the tribunal proceedings may be passed to the Respondent through any service charge.
- (v) This matter is referred back to the Lambeth County Court.

The application

1. The Applicant, The London Borough of Southward ("the Council") seeks a determination pursuant to s.27A of the 1985 Act as to the amount of service charges payable by the Applicant in respect of the service charge years 1st April 2011 to 31st March 2012 and 1st April 2012 to 31st March 2013.
2. Proceedings were originally in the Northampton County Court under claim no. 2YM13943. The claim was transferred to the Lambeth County Court, and then in turn transferred to this tribunal, by order of District Judge Pearce dated 18th February 2013. .]
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The Applicant was represented by Ms Ezania Bennett, Income Enforcement Officer at the hearing. Ms Ojo appeared in person.
5. The hearing bundle included amongst other documents, a copy of the tribunal's Directions dated 26th March 2013; the Applicant's statement of case with appendices; the Respondent's statement in reply; the

Applicant's statement in response; general correspondence; and copies of the witness statements. Further documents were produced by both parties at the hearing.

6. Ms Anne Blackburn, Lead Designer; Mr Shaun Nicolson, Capital Works Officer; and Mr Paul Thomas, Contracts Manager, attended the hearing on behalf of the Council. They each confirmed the contents of their witness statements dated 21st June, 11th June and 21st June 2013 respectively, and gave additional oral evidence. We heard submissions from Ms Bennett.
7. Ms Ojo gave oral evidence. She provided a written summary of her submissions and made oral submissions.

The background

8. The subject property, 32 Sunwell Close, is a one bedroom flat, on the ground floor of 31-39 Sunwell Close, Peckham London SE15 2TR ("the building"). The building forms part of the Cossall Estate ("the Cossall Estate"), which comprises several blocks of flats in the London Borough of Southwark. A copy of the counterpart to the lease of flat 32 was included in the hearing bundle.
9. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
10. The property is subject to a lease dated 19th July 2004 ("the lease"), made between the Council as lessor and Ms Ojo as lessee, for the term of 125 years. The lease requires the lessor to provide services and the tenant to contribute towards their costs by way of a service charge. The specific provisions of the lease and will be referred to below, where appropriate.

The issues

11. The relevant issues for determination were as follows:
 - (i) The payability and/or reasonableness of estimated service charges for major works for the service charge years 1st April 2011 to 31st March 2012, and 1st April 2012 to 31st March 2013.
12. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Service charge item & amount claimed

13. The amount claimed for estimated service charges for major works for the service charge year 2011/2012 in the invoice dated 1st October 2011 was £6167.10
14. The amount claimed for estimated service charge for major works for the service charge year 2012/2013 in an invoice dated 1st October 2011 was £1,729.64
15. The total sum for service charges claimed in the County Court proceedings for the above service charge years was the total figure of £7,031.92 plus interests and costs.
16. The tribunal was told by Ms Bennett at the hearing that Ms Ojo had made payments of £1,252.14 since the issue of the County Court proceedings. Ms Bennett said that the outstanding amount claimed due from Ms Ojo in respect of the estimate service charge claim for service charge years 2011/12 and 2012/13 at the date of the hearing was a total figure of £5,779.78 (excluding interest).
17. Ms Bennett submitted that the amount claimed was a reasonable estimated service charge for the major works for the years in issue. She added that the tenders submitted, based on a priced schedule of rates, were competitive. The end of year accounts in respect of the major works had not been finalised in respect of the service charge years in question as works within the defect period had not yet concluded. Other items of service charge expenditure, other than the major works, were charged separately and were not in issue.

Reasons for the tribunal's decision

18. By clause 2(3)(a) of the lease Ms Ojo covenanted to pay the service charges set out in the Third Schedule to the lease at the times and in the manner set out.
19. Under clause 7(1) of the Third Schedule Ms Ojo covenanted to contribute towards the Council's costs of, or incidental to the carrying out of all works required by sub-clause (2) to (4) of clause 4 of the lease.

The Council has an obligation under clause 4(2)-(4) of the lease to:

- (a) keep in repair the structure and exterior of the flat and the building, including drains, gutters and external pipes, and make good any defects affecting the structure;
- (b) keep in repair the common parts of the building; and

- (c) as often as may be reasonably necessary paint in a good workmanlike manner all outside parts of the building usually painted and all internal common parts of the building usually painted.
20. Under paragraph 7(6) of the Third Schedule Ms Ojo covenanted to contribute towards the Council's cost of or incidental to the maintenance and management of the building and the Cossall Estate (but not the maintenance of any other building comprised in the Cossall Estate.
21. Under paragraph 7(7) of the Third Schedule Ms Ojo covenanted to pay an administration fee at a rate of 10% of all the costs of making up the service charge demand.
22. Under paragraph 7(9)(i) of the Third Schedule Ms Ojo covenanted to contribute towards the Council's costs in the installation (by way of improvement) of double glazed windows (including the associated sills and frames) in replacement of any or all of the existing windows of the property and of the other flats in the building and in common areas of the building.
23. The mechanism for charging is also contained in the Third Schedule.

Paragraph 2(1). Before the commencement of each year the Council shall make a reasonable estimate of the amount which will be payable by the Lessee by way of service charge in that year and shall notify the lessee of that estimate.

Paragraph 2(2). The lessee shall pay to the Council in advance on account of service charge the amount of such estimate by equal payments on 1st April, 1st July 1st October and 1st January in each year.

Paragraph 4(1). As soon as practicable after the end of each year the Council shall ascertain the service charge payable for that and shall notify the less of the amount thereof.

Paragraph 4(2). Such notice shall contain or be accompanied by a summary of the costs incurred by the Council and state the balance due is any.

Paragraph 5(1). If the service charge for the year exceeds the amount paid in advance the lessee shall pay the balance to the Council within one month of the notice

Paragraph 5(2). If the amount paid in advance by the lessee exceeds the service charge for the year the balance shall be credited against the next advance payment or payments due from the lessee.

Paragraph 6(1). The service charge payable by the lessee shall be a fair proportion of the costs and expenses set out in paragraph 7 of the Third Schedule incurred in the year.

Paragraph 6(2) The Council may adopt any reasonable method of ascertaining the proportion and may adopt different methods in relation to different items of costs and expenses.

24. It was submitted in the Council's statement of case, that in order to comply with its obligation set out in the lease, the Council specified works to be carried out to the building and other buildings on the Cossall Estate based on reports that had been commissioned. The works to the buildings were undertaken to deal with life expired component parts and planned maintenance. The scope of works included new windows to residential and communal areas.
25. The contract was undertaken as part of the Council's partnering agreement, A & E Elkins Ltd being the contractor selected to undertake the works to the buildings. The contract was based on the priced schedule of rates as previously submitted by way of winning tender. A copy of the condition survey, the window survey and the specification of works were included in the hearing bundle, attached to the statement of case and marked "C", "D" and "E" respectively.
26. The Council submitted that it had complied with the consultation requirements set out in section 20 of the 1985 Act as amended. The following notices had been served: A Notice of Intention dated 17th November 2008; a Notice of Proposal dated 22nd January 2010; a further Notice of Intention dated 4th January 2011. Copies of the notices were included in the hearing bundle. The Council previously had applied to the tribunal for dispensation in respect of some or all of the requirements of section 20, which application had been granted.
27. Ms Ojo questioned the manner in which the service charge costs were apportioned between the leaseholders.
28. Ms Bennett referred to Paragraph 6(1) and 6(2) of the Third Schedule to the lease. The service charge payable was a fair proportion of the costs and expenses set out in Paragraph 7 of the Third Schedule incurred in the service charge year. The Council could adopt any reasonable method of ascertaining the proportion and could adopt different methods in relation to different items of costs and expenses.
29. In respect of apportionment of charges, the Applicant's statement of case it was stated that for the Cossall Estate Refurbishment Contract (the major works contract), the Council used a bed weighting method, whereby each property was assigned a bed-weighting of 4 units with an additional unit for each bedroom. Ms Ojo's flat has one bedroom

attracting a bed-weighting of 5 units (ie. 4 unites plus 1 bedroom). There are 52 units in the building and Ms Ojo's contribution is 5/51.

30. Ms Bennett referred to the Notice of Intention dated 4th January 2011 (pages 164 to 168 of the hearing bundle). Under the sub-heading 'Your estimated service charge', it was stated that the Council's partnering contractor, A & E Elkins had estimated the cost of the major works to the Cossall Estate to be £3,612,004.83. Attached to the notice was a calculation spread sheet that summarised the works and costs proposed for the building. It was stated that 'Your rechargeable-block-cost is £70,986.87', that Ms Ojo was required to pay a proportion of these costs. The notice continued:

'You have a 1 bedroom property and are therefore assigned 5 units. There is a total of 51 units allocated to your building. Your proportion of the cost of works to your building is then

$$\frac{5}{51} \times £17,986.87 = £6,959.50'$$

31. In addition to £6,959.50 for the major works to her building, Ms Ojo was also charged a proportion of the cost of work for 'heating plant room'. The works in respect of the Plant Room were set out on page 175 of the hearing bundle. Her proportion of the cost of that work, calculated by dividing the cost by the number of properties on the Cossall Estate connected to the system, was £51.85.
32. The lease made provision for charging of an administration fee of 10% and the tribunal considers that a charge for professional fees of 9.12% for a contract of this nature is not unreasonable.
33. It was confirmed by Ms Bennett at the hearing that Mrs Ojo had only been charged for her proportion of the major works to the building and not for major works on the rest of the Cossall Estate.
34. The total estimated charge to Ms Ojo for her proportion of the major works to her building and for her proportion of the cost of works to the plant room was £7,011.34. Added to this was her proportion of professional fees charged at 9.12% and an administration charge of 10%. The total estimated charge to Ms Ojo for the major works, works to the plant room, professional fees and administration fee was £8,415.86.
35. The Council spread this cost over three service charge years. The Council's letter to Mrs Ojo dated 1st October 2011 described various choices in manner of payment.
36. The service charge invoice for major works dated 1st October 2011 was enclosed with the above letter. This stated that her total contribution to

the estimated charge for the Cossall Estate 2 Refurbishment contract was £8,415.85. The payments relevant to the current application were:

- Due in year one - £6,16.10 (1 April 2-11 to 31 March 2012) payable in full on 1 April 2012
 - Due in year two - £1,729.64 (1 April 2012 to 31 March 2013) Payable by four equal instalments (April 1 2012, July 1 2012, October 1 2012 and January 1 2013)
37. This made a total of £7031.92 was shown on the Particulars of Claim in the County Court proceedings. As previously stated part of this sum has been paid and the figure claimed as outstanding at the date of the hearing was £5,779.78.
38. Ms Ojo submitted that her flat 32 was not included in the major works contract. The Council did not give her any documents or an opportunity to compare their charges with any other contractor or assess the quality of the work done. The Council had failed to provide written evidence of the work that was needed or photographs of the work. She considered that the cost of the work to her flat was exorbitant for a one bedroom flat as this was just for a front and back door, a kitchen, bedroom and small bathroom window.
39. In his witness statement Mr Nicholson stated that he is employed as a Capital Works Officer in the Council's Home Ownership Services. He is responsible for various issues to do with capital works programmes, including the service of notices in compliance with section 20 of the 1985 Act and the construction of service charges for major works.
40. In respect of the Cossall Estate 2 Refurbishment Contract which included the work carried out at flat 32 Sunwell Close. The Capital Works Group drafted and served the consultation documents in accordance with the requirements of section 20. The Notices of Intention was issued on 4th January 2011. He had delivered the Notices of Intention to the correspondence addresses of the leaseholders on that date. The notices included a summary of the observations received and the responses given. The Notice of Intention also informed the leaseholder of the tender process and the estimates received, and provided the estimated contribution required from the leaseholder calculated using the block cost and the bed-weighting method. The Council received 10 observations following the serving of the Notices of Intention. No observations were received in respect of flat 32.
41. In his additional oral evidence Mr Nicholson described how he and a work colleague hand delivered the Notice of Intention to the flat, 32 on 4th January 2011. He also posted a copy of the Notice of Intention to Ms Ojo's correspondence address. He explained in respect of hand delivery, that if he had been unable to deliver the notice by this method he would

have made a note that he could not deliver it. There was no such note in respect of flat 32. The spread sheets (block cost calculation sheet for 31-39 Sunwell Close, and Plant Room costs calculation - pages 174 and 175 of the hearing bundle) were included with the Notice of Intention. He provided a copy of a Statement of Delivery signed by himself and his colleague confirming that the Notice of Intention was served at the flat on 5th January 2011.

42. Mr Nicholson said that the estimated costs covered the full specification. The defects period had recently expired. There would be an adjustment in the final service charge account for the major works so that this reflected the works actually undertaken and costs actually incurred. He expected that this would be available in the next two months following the hearing.
43. Ms Ojo questioned why the notice was served at flat 32 as she had provided her correspondence address to the Council. Mr Nicholson said that this was the normal practice of the Council as leaseholders change their correspondence addresses.
44. She said that the notice that she received did not include the spread sheets at pages 174 and 175 of the Council's hearing bundle. The first time she saw these documents was when the hearing bundle was served. Further, even if she had received these documents at the time claimed, she could not have responded as her mother was unwell, after which she became ill. Ms Ojo provided a letter dated 11th May 2012 from King's College Hospital. When she received the invoice she had contacted Carl Jenson at the Council. She referred to a series of emails in the hearing bundle in May and June 2012 in respect of payments.
45. Mrs Ojo said that there is a separate annual service charge for items other than the major works, which she has paid. In respect of the major works she submitted that many of the works itemised on the spread sheets did not apply to her flat or had not been carried out. She referred specifically to works carried out to the heating system a few years prior and questioned why she was being charged again under the heading of works to the plant room.
46. In response Mr Nicholson explained that the costs set out on the spread sheet on page 174 only applied to the building, 31 to 39 Sunwell Close. The other blocks on the estate have similar sheets.
47. However, the Plant Room costs on page 175 were spread over all the blocks on the Cossall Estate connected to the system. The estimated cost of the works to the Plant Room was £14,083.63 and there were also a small proportion of non-specific costs. There were 396 properties to which these works applied. Ms Ojo's charge was £51.95 based on a division of the cost by the number of properties. Works that had previously been carried out were to the communal heating system. The

proposed work was not the same as it was work was to the building around the plant. Mr Nicholson said that in any event the works to the Plant Room under the current contract were omitted and would not be charged for in the final year end accounts.

48. Mrs Blackburn is employed by the Council as a Lead Designer, a role that she has held for 19 years. She has a BSc in building surveying. Mrs Blackburn said that the following works were included within the Cossall Estate 2 Refurbishment Contract in the survey:
- Major redecorations (e.g. railings, pipes, walls etc)
 - Roof works
 - Brickwork repairs
 - Window repair or replacement
 - Mechanical and electrical works
 - Additional repairs to building fabric where required
49. She added that she inspected the works after practical completion and produced a list of defects for the contractor to remedy. She inspected the site subsequently to ensure that the defects had been remedied and said that the works were completed to a reasonable standard.
50. Not all of the works which were the subject of the estimated charge had been carried out and there would be an adjustment in the final accounts. She said that there had been a change of administration and change of policy which led to certain items being omitted from the major works contract after the estimates were sent out to the leaseholders. In respect of roofing works, on inspection it was found that minimal works were required to the tiled parts. Works were carried out to the guttering soffit boards and fascia boards. The Plant Room works were omitted completely. However, it had been prudent to include works, later omitted, in the specification. For example, the roofing survey was undertaken from the ground and until an inspection was carried out when the scaffolding was erected, it was not certain what works were needed.
51. Mrs Blackburn referred to the spread sheet at page 174 and identified the works that were not carried out. She confirmed that all of the works on the Plant Room spread sheet were omitted. The decision to omit the works was taken early on in the contract period. No revised estimates were sent to the leaseholders as there were no substantial changes to the contract itself.
52. Two properties had had permission from the Council to change the windows. Other windows had been replaced but the leaseholders could not provide documents to show that this was in accordance with the Council's specification and some were not in good condition as they had been misused as the hinges were broken. Overall for the remaining

leaseholders on the Cossall Estate the windows varied from fair to poor condition.

53. A condition survey report for the Cossall Estate was dated August 2010. Mrs Blackburn also referred to a survey of the properties that the Council had had access to. This included flats 19 and 31 Sunwell Close. Works were proposed to standardise future cyclical repairs. A letter about access had been sent to the flat.
54. Mr Thomas is employed by the Council as a Contract Manager. He was not personally involved in the day to day management of the major works contract. There were similar blocks on the Cossall Estate. Generally, windows were renewed to provide a uniform appearance. It also helps with maintenance because parts will be in stock. In respect of the lateral mains and fuse (Ryefield distribution) boards, the main power lines taking electricity from the street to the properties, he said that the properties on the Cossall Estate were built 40 or 50 years ago. Electrical consumption had increased. The lateral mains had to be renewed. However this work, once done, would not be seen.
55. In her closing submissions, Ms Bennett said that the estimated charges were in accordance with the lease and was a fair and reasonable estimated charge. Any works not undertaken will be omitted from the final account and adjustments made to the service charge accounts. She submitted that the estimated costs were reasonable and the costs were fairly apportioned.
56. Mrs Ojo's concerns included the following:
 - Overall the estimated costs were uncalled for and unreasonable in the economic, financial, national and global situation.
 - In respect of the condition survey in 2010, it was noted that there was no evidence of any problems in respect of the roof structure and finishes and none of the residents had reported a roof leak. The life of the structural component could reasonably be expected to extend into several decades and there was no evidence of any problems.
 - The Council did not need to replace her patio door and window in the w.c. Ms Ojo submitted that flat 32 has a patio door and a front door. The Council officers who showed her the flat in 1994, informed her that her patio door had just been replaced with a new double glazed door due to vandalism. Double glazed doors were not in every flat. The broken window in the w.c. had been replaced with a double glazed window. She submitted that neither the patio doors, nor the window in the w.c., had needed replacement.

- Her flat was not included in the condition survey. She had not been asked for access to the flat nor had she received a questionnaire in respect of condition. If she had been asked she would have given access if this had been requested.
 - She did not accept that the Notice of Intention had been served / that the Notice of Intention contained the information on the spread sheets.
 - Scaffolding was not required for her flat to be assessed as it is on the ground floor.
 - Various works included in the spread sheets did not apply to her building.
 - The Council might have done some refurbishment but had failed to provide written evidence of the work which needed to be done or photographs.
 - There were personal mitigating factors which had made it impossible for her to contact Home Ownership services. Since July 2012 when she was aware of the bill, she had asked the Council for details of the works to her flat. She had not been provided with copies of the documents on pages 59 to 122 (condition survey, window survey, specification of works) until these proceedings.
57. Having considered the evidence and submissions as a whole, the tribunal concludes that the estimated service charges for 2011 and 2012 were reasonable.
58. The estimated charges were in respect of works that were anticipated to be carried out to the building of which flat 32 forms part. At the time that the estimated service charge was assessed by the Council, the anticipated works were those contained in the specification of works, a copy of which was included in the hearing bundle. This was prepared following a condition survey in 2010 and the window survey. The window survey referred to properties that the Council had inspected including two flats in the building. The Council did not inspect Ms Ojo's flat. Ms Ojo said that the Council did not ask to inspect, Mrs Blackburn said that she sent a letter about this to the flat, but not to Ms Ojo's correspondence address. Either way, the tribunal does not consider that an inspection of the flat would have had a material effect on works specified, as the overall intention was to replace the windows in the buildings, whether or not any individual window including patio doors, were in disrepair.
59. The tribunal accepts the evidence of Mr Nicholson, supported by the Statement of Delivery, that the Notice of Intention with enclosed documents was hand delivered to the flat on 4th January 2012. The

tribunal also accepts his evidence that a copy of the Notice of Intention and enclosures was posted to Ms Ojo at her correspondence address on or about the same date.

60. Ms Ojo's lease was provided as a sample lease of the flats in building. Under the terms of the lease the flats demised excluded "all external windows and doors and window and door frames the exterior walls roof foundations and other main structural parts of the building".
61. As noted above, Paragraph 7(9)(i) of the Third Schedule of the lease contained a covenant to contribute towards the Council's costs in the installation (by way of improvement) of double glazed windows (including the associated sills and frames) in replacement of any or all of the existing windows of the property and of the other flats in the building and in common areas of the building.
62. The justification for the works was to achieve uniformity of appearance across the Cossall Estate, and to facilitate cyclical maintenance and repairs, for the availability of spare parts. The windows across the Cossall Estate varied in condition from reasonable repair to fair to poor repair. Some windows had been replaced previously without consent.
63. Other items were included in the spread sheet of calculations of the estimated service charge for the building. As described in the evidence, some of these works were later removed from the works undertaken. Some of the works undertaken, such as the works to the lateral mains and fuse (Ryefield distribution), were not observable once completed.
64. Reasons given for the omission of some of the work included change of policy and reconsideration after inspection following erection of the scaffolding. In respect of the Plant Room spread sheet of calculations, the tribunal accepts the evidence that this was not a duplication of previous works.
65. The tribunal has given careful consideration to Ms Ojo's submissions. It is not relevant that the flat is a ground floor flat, or the state of repair of the particular windows in that flat. The assessment of the works and estimated costs is in respect of the building as a whole, in the context of the buildings on the Cossall Estate. The tribunal notes Ms Ojo's personal circumstances with sympathy, but these do not affect the calculation of and payability of the service charges under the lease.
66. The Council have confirmed at the hearing that credit will be given to Ms Ojo in respect of the costs of works included in the estimated service charge calculations which were not carried out.

67. The decision in this case relates to the estimated service charge only. Full details of the works undertaken and costs actually incurred were not before the tribunal.

The tribunal's decision

68. The tribunal determines that the amount payable in respect of the estimated service charges for major works for 2011 /2012 was £6,167.10, and for 2012/2013 was £1,729.64.
69. Taking into account the payments made towards the above sums by Ms Ojo, the total amount due and payable by Ms Ojo to the Council for estimated service charges for the major works for 2011/ 2012 and 2012/2013 is £5,779.78 (subject to any further payments made by Mrs Ojo since 4th July 2013).

70. Section 20C of the 1985 Act

71. In respect of section 20C of the 1985 Act, Ms Bennett stated that the Council would not be adding the Council's costs incurred in connection with these proceedings to the service charge.
72. Although the Council indicated that no costs would be passed through the service charge, for the avoidance of doubt, the tribunal nonetheless determines that in all the circumstance of this case that it is just and equitable for an order to be made under section 20C of the 1985 Act, so that the Council may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

The next steps

73. This matter should now be returned to the Lambeth County Court.

Name: A Seifert

Date: 11th August 2013

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to a leasehold valuation 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 a leasehold valuation 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.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.