11574

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	LON/00AZ/LSC/2015/0344
Property	:	2 Nita Court, 152 Burnt Ash Hill, London SE12 OLJ
Applicant	:	The Riverside Group Limited
Representative	:	Mr I Alderson, solicitor
Respondent	:	Ms J Akah-Douglas
Representative	:	No representation
Type of application	:	For the determination of the reasonableness of and the liability to pay a service charge
Tribunal members	:	Mr S Brilliant Mr P Roberts DipArch RIBA
Date and venue of hearing	:	3 March 2016 10 Alfred Place, London WC1E 7LR
Date of decision	:	21 March 2016

Decision of the tribunal

The tribunal determines that the Respondent is to pay the following sums in respect of the service charges for the following years:

1 April 2009 - 31 March 2010	£452.68
1 April 2010 - 31 March 2011	£549.56
1 April 2011 - 31 March 2012	£392.91
1 April 2012 - 31 March 2013	£462.34
1 April 2013 - 31 March 2014	£421.43
1 April 2014 - 31 March 2015	£401.22

The transferred issues

1. On 12 February 2015 the Applicant landlord commenced a claim for possession of 2 Nita Court, 152 Burnt Ash Hill, London SE12 OLJ ("the flat") against the Respondent tenant in the County Court at Bromley.

2. The Respondent is an assured tenant of the flat under a lease dated 28 January 1997 made between the Applicant's predecessor in title, English Churches Housing Group Limited, and the Respondent ("the lease").

3. The Applicant became the landlord in 2010.

4. The tenant pays a weekly rent and a weekly service charge. The service charge includes the cost of a limited number of services, but not the cost of any repairs. The claim for possession was brought on the grounds of rent and service charge arrears.

5. In an impressive defence and counterclaim dated 7 April 2015, the Respondent:

   (1) challenged the reasonableness of the service charges in the period 1 April 2009 to 31 March 2015.

   (2) denied that the service charge demands had been accompanied by the prescribed information;

   (3) counterclaimed for, amongst other things, damages for breaches by the Applicant of the repairing covenants in the lease and for acts of nuisance caused or permitted by the Applicant.

6. At a case management conference held on 20 July 2015, District Judge Thomas stayed the possession claim and the counterclaim for nuisance. In paragraph 3 of his order [151], he ordered:

"The issues relating to repair and service charge transferred to [the Tribunal]".

7. Since the learned District Judge expressly stayed the counterclaim for nuisance, but not the counterclaim for the breaches of the repairing covenants in the lease, it would appear that it was intended that the transfer would include at least part of the counterclaim for the breaches of the repairing covenants in the lease as well as the issues relating to service charges.

8. It may have been intended that the transfer would include the counterclaim for the breaches of the repairing covenants in the lease only in so far as those breaches, if proved, could be used as a set off against the claim for service charges.

9. As we explain in paragraphs 31-35 below, we have decided we have jurisdiction to determine the reasonableness and liability to pay the service charges in the period 4 October 2011 to 31 March 2015. The relevant legal provisions are set out in the Appendix to this decision.

10. But, as we explain in paragraphs 42-48 below, the breaches of the repairing covenants in the lease, if proved, cannot be used as a set off against the claim for service charges on the particular facts of this case. Further, we do not have a free standing jurisdiction to decide whether the Applicant has breached the repairing covenants in the lease.

11. Accordingly, the only issue we consider we have jurisdiction to decide on the transfer is the reasonableness of and the liability to pay the service charges in the period 4 October 2011 to 31 March 2015. It is for the County Court to determine whether the Applicant has breached the repairing covenants in the lease.

The hearing

12. The Applicant was represented by Mr Alderson. We are grateful to him for the very fair way in which he presented his case and for his grasp of the details of it.

13. The Applicant provided a witness statement from Mr Plenerleith, the Divisional Contracts Manager for the South and Central Division of the Applicant. He attended the hearing. He answered questions from the Tribunal in a helpful and measured manner. The Applicant also provided a witness statement from Ms Joura in the County Court proceedings. She did not attend.

14. The Respondent provided witness statements from herself, and two other lessees of Nita Court, Mr Smith-Campbell and Mr Lewis.

15. On 1 March 2016, two days before the hearing and well out of time for providing documents for the hearing, the Respondent provided her own bundle. We have not looked at any of the documents in it, apart from some of the photographs in order better to understand the layout of the development.

16. The Respondent did not attend the hearing, nor did any of her witnesses, although she had been notified of the hearing date. So far as we are aware no explanation was given for this. The Respondent is a solicitor, admitted in 2008, and practising as a director of Hillary Cooper Law Limited. We are aware that she has suffered serious health challenges in recent years. But her General Practitioner's letter dated 3 February 2016, received by the Tribunal on 1 March 2016, simply asked for reasonable adjustments to be made to enable her to commence employment.

17. The Respondent did not ask for an adjournment and there were no grounds for giving one. We were satisfied that it was in the interests of justice to proceed.

The background

18. The property which is the subject of this application ("the flat") is on the ground floor of a purpose built block of 20 flats erected in the 1960's ("Nita Court"). There is another block of 16 flats ("Dianne Court") in the same development. They share communal grounds and services. There is a roadway running between the blocks. Each block has a bin store located within a ground floor alcove in the building which holds 3 large bins or paladins for the rubbish. There is a rubbish chute within each building connecting to the bin store. The communal grounds include flower beds and grassed areas.

19. 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.

The lease

20. As we have said in paragraph 2, the Respondent is an assured tenant of the flat under the lease.

21. Clause 2(a) of the lease provides for a weekly charge. This has 2 components:

    (1) Rent of £48.40.

(2) Other charges of £7.54.

22. It is provided that the total weekly charge is £55.94, ie the total of the rent and the other charges.

23. Clause 2(c) provides that the rent includes an element for the provision of services of £7.54 per week.

24. This is poor drafting. The element for the provision of services clearly refers back to the "other charges" mentioned in clause 2(a). The element for the provision of services is the service charge, and we shall refer to it as such. It is additional to the rent, and not included within it. Together these sums comprise the weekly charge.

25. Clause 2(d) expressly provides for the rent to be increased. After the first increase the Respondent can apply to the Tribunal for it to determine a market rent under the Housing Act 1988. The lease does not expressly provide for the service charge to be increased.

26. Clause 2(f) provides that the Applicant shall provide the services listed in Appendix A in connection with the flat. There is no Appendix A. But written at end of the lease in manuscript are the relevant services:

(1) Communal cleaning.

(2) Communal lighting.

(3) Palladins.

(4) Door entry.

27. As already explained, the cost of repairs by the Applicant does not fall within the service charge. The Applicant is under an obligation to carry out repairs under s.11 Landlord and Tenant Act 1985 and cannot recover the cost of them from the Respondent.

28. The lease provides no mechanism for operating a variable service charge, but the parties, and the Applicant's predecessor in title, have by their conduct over the last 19 years agreed upon a mechanism. Each year the Respondent is sent a s.13 Housing Act 1985 notice increasing not only the rent but also providing a figure for the service charge for the following year. This figure is based on the budget for the next year.

29. Thus in the year ending 31 March 2012, the budget for each of the 20 flats in Nita Court was for £9.84 per week [85]. This figure is contained in the s.13 notice [205]. Each year a balancing exercised is carried out whereby previous shortfalls or surpluses are dealt with. We are satisfied that in

these circumstances the lease, as operated by the parties, does include a variable service charge within s.18 Landlord and Tenant Act 1987.

The preliminary issues

30. The Applicant raised 6 preliminary issues:

    (1) Can the Respondent challenge service charges prior to 4 October 2011 in the light of a consent order dated 11 November 2011?

    (2) How much of the dispute transferred to the Tribunal relates to rent, and how much to service charges?

    (3) Has the Applicant complied with the statutory requirements relating to consultation and the provision of information?

    (4) Does disrepair (if any) entitle the Respondent to set off damages against the service charges, and if so how much?

    (5) Does the lease entitle the Applicant to recover by way of the service charges costs for managing and administering the services it is required to provide?

    (6) Were the service charge demands sent by the Applicant accompanied by the prescribed information?

Can the Respondent challenge service charges prior to 4 October 2011 in the light of a consent order dated 11 November 2011?

31. The answer to this is no.

32. In 2011 the Applicant commenced a claim for arrears of rent and service charges against the Respondent in the County Court at Bromley. It was compromised by an order made on 11 November 2011. It was a Tomlin order [102-103]. The Respondent agreed to clear the remaining balance of her arrears which stood at £5,291.02 as at 3 October 2011. The amount being claimed against the Respondent each week was £88.98 [182]. This included £9.84 per week service charge [205].

33. As at 3 October 2011 the remaining balance of the arrears of £5,291.02 included the service charges then due, as well as the rent then due.

34. Mr Alderson relies on s.27A (4)(a) and (c) Landlord and Tenant Act 1985 which provides that no challenge can be made to service charges in respect of a matter which has been agreed or admitted, or subject to the determination of the court. We accept his submission that the Respondent has agreed to pay the service charges up to and including 3

October 2011.

35. Although this is not a s.27A application, the same approach should apply in a transferred case. It is no more than an expression of the long established principles, capable of more elegant expression in Latin, that there must be finality in litigation and that a party cannot reopen and reargue a point already agreed or decided against him or her in previous litigation. So we are only concerned with considering the 4 service charge years ending 31 March 2012 to 31 March 2015 inclusive.

How much of the dispute transferred to the Tribunal relates to rent, and how much to service charges?

36. The Tribunal has no jurisdiction over rent. The amounts of annual service charge demanded which are transferred is as follows:

1 April 2009 - 31 March 2010	£419.96 [81]
1 April 2010 - 31 March 2011	£482.70 [83]
1 April 2011 - 31 March 2012	£479.06 [85]
1 April 2012 - 31 March 2013	£458.97 [87]
1 April 2013 - 31 March 2014	£469.55 [91]
1 April 2014 - 31 March 2015	£486.59 [95]

These are the budgeted figures. But in making our determination below as to the reasonableness and liability to pay, we have considered the actual cost of the services for each year as is the usual practice.

Has the Applicant complied with the statutory requirements relating to consultation and the provision of information to tenants?

37. The answer to this is yes.

38. s.20 Landlord and Tenant Act 1985 imposes consultation requirements on landlords in respect of qualifying works or qualifying long term agreements. Qualifying works are defined in s.20ZA(2) as works on a building. It does not require consultation in respect of services unless they are qualifying agreements.

39. None of the 4 matters provided by the Applicant under the lease set out in paragraph 23 above constitutes works on a building. They are all services. For example, as HH Judge Marshall QC said in Paddington

Walk Limited v The Governors of the Peabody Trust [2010] L&TR 6 in respect of window cleaning:

"Window cleaning may be "work" and even "work on a building" but it is not, in my judgment, "works on a building". Works on a building comprise matters that one would naturally regard as being "building works" and it does not seem to me that window cleaning naturally falls within that concept".

40. The Applicant accepts that the contract for the communal cleaning is a qualifying long term agreement as defined in s.20ZA(2). We are satisfied that the Applicant has complied with its obligations under schedule 2 to the Service Charge (Consultation etc) (England) Regulations 2003 which are applicable where public notice is required. The Applicant provided the relevant information to the Respondent on 13 May 2011 [515-518] and on 20 December 2011 [488-489].

41. There is no evidence of any breach of the Applicant's duties to supply information on request as required by s.21.

Does disrepair (if any) entitle the Respondent to set off damages against the service charges, and if so how much?

42. The answer to this is no.

43. s.176A Commonhold and Leasehold Reform Act 2002 provides:

(1) Where, in any proceedings before a court, there falls for determination a question which the First-tier Tribunal or the Upper Tribunal would have jurisdiction to determine under an enactment specified in subsection (2) on an appeal or application to the tribunal, the court—

(a) may by order transfer to the First-tier Tribunal so much of the proceedings as relate to the determination of that question;

(b) may then dispose of all or any remaining proceedings pending the determination of that question by the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal, as it thinks fit.

44. The relevant enactment in subsection (2) in these proceedings is the Landlord and Tenant Act 1985.

45. It is now established that where the Tribunal is considering the reasonableness of and liability to pay a service charge, it can, where

appropriate, set off against the service charge general damages which could have been recovered in the County Court for breach of covenant.

46. In Continental Property Ventures Inc v White [2006] 1 EGLR 85 HH Judge Rich QC said:

> "I accept that the Tribunal has jurisdiction to determine claims for damages for breach of covenant only in so far as they constitute a defence to a service charge in respect of which the Tribunal's jurisdiction under s.27A has been invoked".

47. The Tribunal has no jurisdiction in relation to disrepair in these proceedings as there are no service charges relating to repair or works on the building. We do not have a free standing jurisdiction to decide whether the Respondent has breached the repairing covenants in the lease.

48. Accordingly, in our judgment the Respondent cannot set off against the cost of any of the 4 services provide under the lease any claim for disrepair she might have in the County Court proceedings in these proceedings.

Does the lease entitle the Applicant to recover by way of the service charges costs for managing and administering the services it is required to provide?

49. The answer to this is yes.

50. We were referred to a line of cases consisting of London Borough of Brent v Hamilton (2006) LRX/51/2005, Norwich City Council v Marshall (2008) LRX/14/2007 and Palley v London Borough of Camden [2010] UKUT 469 (LC) which establish the following principle.

51. Even though a lease does not contain an express reference to management charges, this does not mean that such charges are irrecoverable. If, for example, the communal parts are to be cleaned, as well as someone being paid to do the actual work, someone will have to arrange for the work to be done, check that it has been done and arrange for payment to be made.

52. Management input is, accordingly, required to facilitate the discharge of the Applicant's obligation to provide services. Since the Applicant can only act in these respects through employees it will have to incur expenditure on all these tasks. If it does incur such expenditure, the Respondent will be liable to pay a reasonable part of it.

Were the service charge demands sent by the Applicant accompanied by the prescribed information?

53. The answer to this is yes.

54. The service charge demands for the years we are concerned with are at [205-226]. We are satisfied that they contain the summaries of rights and obligations required by s.21B Landlord and Tenant Act 1985.

Summary of the service charges

55. In the Scott Schedule the parties were directed to prepare the service charges are divided into 11 categories, although not every category arises in every year:

(1) Communal cleaning.

(2) Communal lighting.

(3) Light bulbs.

(4) Refuse disposal.

(5) Door entry system.

(6) Window cleaning.

(7) Pest control.

(8) Garden and grounds maintenance.

(9) Fire-fighting maintenance.

(10) TV aerial depreciation.

(11) Management charge.

Communal cleaning

56. Following the tendering of the communal cleaning contract, it was awarded to Pinnacle Housing Limited in 2012. The cleaners are responsible for the cleaning of the inside of the common parts, including mopping the floors, and for sweeping out the bin stores. They attend twice a week.

57. In respect of each of the 4 service charge years with which we are concerned, the Respondent asserts that the work was not carried out to a reasonable standard and that the costs were unreasonably incurred.

58. The Respondent refers in her witness statement to an incident on 2 July 2012 between some of the lessees in Nita Court and a cleaner because of poor cleaning. She also complains that on 8 January 2013 the cleaners were failing to clean communal areas but marking their work sheet as if they had. Mr Smith-Campbell complained about a lack of deep cleaning in his witness statement.

59. Mr Plenerleith in his witness statement explains that Communal Area Officers visit Nita Court once week, except when on leave or attending training. He has visited Nita Court about five times since he took up his post in February 2014, and from what he has seen the services provided are of a reasonable standard.

60. It was explained to us that deep cleaning, when provided, was not charged to the service charge.

61. The Respondent and her witnesses failed to attend the hearing, so the Applicant has had no opportunity to test their evidence. No photographic evidence of any failure to clean the common parts was provided with the witness statements.

62. We are not persuaded that the communal cleaning as described above was not carried out to a reasonable standard in any of the relevant service charge years.

63. There is no evidence to suggest that the cost of the communal cleaning, which was put out to tender, is unreasonably high. Accordingly, we find that the cost of the communal cleaning described in paragraph 56 is recoverable in the relevant service charge years.

Communal lighting

64. The Respondent contends that the charges for the service charge years ending 31 March 2013, 31 March 2014 and 31 March 2015 were unreasonably incurred.

65. The Respondent has not explained why these charges were unreasonably incurred, and has not put forward any alternative quotations.

66. Accordingly, we find that the cost of the communal lighting in the relevant service charge years is recoverable.

Light bulbs

67. These are described, not very illuminatingly, as "Furniture" or "Communal furniture" in the Scott Schedule. Unsurprisingly, the Respondent questions why the costs of furniture are being included

within the service charge. Now the Tribunal has been informed that these costs are part of the communal lighting, we find that they are recoverable and reasonable in amount.

Refuse disposal

68. As we have said there are 3 palladins in each of the bin stores. The lessees of Nita Court keep the bin store locked, but the lessees of Dianne Court fail to do so, which causes untidiness. The chute in each block empties into a palladin, which can overflow when it becomes full. There is a problem with fly tipping generally on the development. The palladins are emptied by the local authority in the usual way.

69. The cleaners do not clear away rubbish and unwanted items which have not been put in the palladins but which have been dumped elsewhere on the development. They do sweep up the bin areas, but will not unblock the chutes. In order to clear rubbish and unwanted items which have been dumped on the estate, the Applicant uses Clearway Environmental Services (UK) Limited ("Clearway") which attends within 24 hours of being called out.

70. In respect of each of the service charge years with which we are concerned, the Respondent asserts that the work was not carried out to a reasonable standard and that the costs were unreasonably incurred. The Respondent does not argue that the cost of refusal disposal falls outside the service charge altogether.

71. In each of the years the cost being claimed is that of the services provided by Clearway. The Respondent complains of over flowing bins and fly tipping. But we are satisfied from what Mr Plenerleith told us, which the Respondent was unable to challenge as she did not attend the hearing, that the Applicant takes all reasonable steps to do the best it can in the circumstances about these problems. There is no evidence to suggest that the costs of Clearway are unreasonably high.

72. Accordingly, we find that the cost of refuse disposal in the relevant service charge years is recoverable.

Door entry system

73. The service charges for the years ending 31 March 2012 and 31 March 2015 include the costs of repairs to the door entry system. The Respondent asserts they were not carried out to a reasonable standard or were not reasonably incurred. There is no evidence to support these allegations. We find these costs recoverable.

Window cleaning

74. Window cleaning is treated by the parties as part of the communal cleaning. In respect of each of the service charge years with which we are concerned, the Respondent asserts that the work was not carried out to a reasonable standard and/or that the costs were unreasonably incurred.

75. The Respondent in her witness statement refers to complaining about poor window cleaning in an email sent on 11 December 2012. The Respondent did not attend the hearing to amplify that. The evidence falls far short of our being able to find that the work was not carried out to a reasonable standard. The costs were reasonably incurred. We find these costs recoverable.

Pest control

76. It is conceded by the Applicant that these costs are not recoverable.

Garden and grounds maintenance

77. Garden and grounds maintenance is treated by the parties as part of the communal cleaning. In respect of each of the service charge years with which we are concerned, the Respondent asserts that the work was not carried out to a reasonable standard and/or that the costs were unreasonably incurred.

78. The Respondent in her witness statement complains about fly tipping. The Applicant does not cause the fly tipping, and Clearway are called in to deal with it. The other services provided consist of cutting the grass and maintaining the flower beds twice a month, as well as collecting litter. This is carried out by Mighty Landscapes Limited. The evidence falls far short of our being able to find that the work was not carried out to a reasonable standard. The costs were reasonably incurred. We find these costs recoverable.

Fire-fighting maintenance

79. It is conceded by the Applicant that these costs are not recoverable.

TV aerial depreciation

80. The lease does not provide for the cost of a TV aerial to be recovered by way of the service charge. The Respondent accordingly objects to paying these costs, which are the written down capital cost of the new aerial which had to be installed in 2010. We were told that if the Respondent had not agreed to the new aerial being installed, she would not have been connected to it. The Respondent was consulted before the installation and she allowed contractors into the flat to complete the connection. We accept the Applicant's argument that the parties have agreed to a

variation in the lease whereby the cost of the new aerial is recoverable.

Management charge

81. As explained in paragraphs 49-52, these charges are recoverable in principle. From our knowledge and experience, we consider 15% to be a reasonable charge.

Conclusion

82. We are taking the figures from the Scott Schedule which in turn reflect the actual charges. The figures in paragraph 30 of the Applicant's statement of case are taken from the budget figures.

83. In respect of the service charge year ending on 31 March 2010, the Respondent's share for the whole year is £452.68 [17]. As explained above, the Respondent is not entitled to challenge the service charges prior to 4 October 2011. The amount recoverable is accordingly £452.68.

84. In respect of the service charge year ending on 31 March 2011, the Respondent's share for the whole year is £549.56 [20]. As explained above, the Respondent is not entitled to challenge the service charges prior to 4 October 2011. The amount recoverable is accordingly £549.56.

85. In respect of the service charge year ending on 31 March 2012, the Respondent's share for the whole year is £405.00 [24]. The Applicant's concede £4.29 for pest control [26] and £7.80 for fire-fighting maintenance [26]. The amount recoverable is accordingly £392.91.

86. In respect of the service charge year ending on 31 March 2013, the Respondent's share for the whole year is £542.54 [28]. The Applicant's concede £80.20 for fire-fighting maintenance [30]. The amount recoverable is accordingly £462.34.

87. In respect of the service charge year ending on 31 March 2014, the Respondent's share for the whole year is £454.66 [31-33]. The Applicant's concede £33.23 for fire-fighting maintenance [33]. The amount recoverable is accordingly £421.43.

88. In respect of the service charge year ending on 31 March 2015, the Respondent's share for the whole year is £486.59 [34-37]. The Applicant's concede £20.64 for pest control [35] and £46.28 for fire-fighting maintenance [36]. The amount recoverable is accordingly £399.52.

89. As requested, we make an order requiring the Respondent to reimburse to the Applicant the whole of any fee paid by the Applicant in these

proceedings. The Applicant reserved its positon in respect of any other application regarding costs until it had received the decision.

Name: Simon Brilliant **Date:** 21 March 2016

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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 the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
   (a) the person by whom it is payable,
   (b) the person to whom it is payable,
   (c) the amount which is payable,

(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

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

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

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

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

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) the appropriate 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 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

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.