FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AW/LSC/2017/0308**
Property	:	**Flat 3 Sullivan Court, 109 Earls Court Road, London SW5 9RP**
Applicant	:	**Mr Richard Barclay**
Representative	:	**In person**
Respondent	:	**Cromwell Court (Redfield) Management Limited**
Representative	:	**Mr Dale-Harris of Counsel**
Type of Application	:	**For the determination of the liability to pay a service charge**
Tribunal Members	:	**Judge W Hansen (chairman)** **Mrs A Flynn MA MRICS**
Date and venue of Hearing	:	**8 January 2018 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**24 January 2018**

DECISION

Decisions of the Tribunal

(1) The Tribunal determines that the Applicant is liable to pay all the service charges and administration charges which are the subject of this dispute save for the sums of £777 and £426 relating to legal costs.

(2) For the avoidance of doubt, we determine that the Applicant is liable to pay the following sums:

2011: Emergency Lighting Works - £1146.73

2016: service charge - £2,205

2016: ASB law invoice -£288.60

2017: service charge - £2,643

2017: service charge - £2,643

(3) The Tribunal refuses the Applicant's application for an order under s.20C of the Landlord and Tenant Act 1985 in relation to the costs of these proceedings.

The Application

1. On 22 July 2017 the Applicant applied to the Tribunal for a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("LTA 1985") of his liability to pay various service charges and administration charges covering the years 2010-2017 and totalling £8,012.32. The relevant parts of the LTA 1985 are contained in the Appendix to this decision.

2. On 21 September 2017 a CMC took place before Judge Dickie at which Counsel for the Respondent applied to strike out the application in relation to a number of the charges being challenged on the basis that they had been the subject of a County Court judgment dated 26 November 2015 for £22,564.60 for debt and interest and £1,246.79 for costs. That judgment has not been appealed or set aside.

3. Judge Dickie gave the Applicant the chance to make representations on that application by 5 October 2017 which he did but to no avail. On 9 October 2017 Judge Sullivan struck out the application in relation to the sums which she identified in paragraph 2 of her Order.

4. On 24 October 2017 the Applicant filed an amended application by which he added challenges to service charges claimed for 2016 and 2017.

5. Against this background, the Respondent in paragraph 14 of its statement of case dated 27 November 2017 has helpfully identified the issues for determination in the light of these developments as being the following:

   A. 2011: Emergency Lighting works - £1146.73

   B. 2016: Interest to judgment date - £228.80

   C. 2016: service charge - £2,205 (not £2,643 as recorded in para 14)

   D. 2016: ASB law invoice - £777

   E. 2016: ASB law invoice -£288.60

   F. 2017: ABS law invoice - £426

   G. 2017: service charge - £2,643

   H. 2017: service charge - £2,643

<u>The Lease</u>

6. The Applicant is the lessee of Flat 3, a ground floor flat in a purpose-built block of flats. The block forms part of a development on the site

which comprises two blocks of flats ("the Development"). The Applicant holds under a lease dated 9 September 1988 ("the Lease"). The original parties to the Lease were Parkridge Investments Limited as lessor, the Respondent as the Management Company (and lessee of the common parts of the Development) and one Miss Chaudhary. The principal activity of the Respondent as identified in its accounts is to "*undertake the management and administration of the common parts of the estate at Cromwell Court, Cromwell Road London SW5 and Earls Court Road, London SW5 and the common parts of the blocks of flats and of the shop units on the estate*". The directors of the Respondent are SS Abrahim and W B Rouse. They, together with one F G Shriever III, are the managing trustees and hold all the issued shares in the Respondent company "*in trust so as to procure the company is conducted in the interests of the plot owners and the freeholder in accordance with the Declaration of Trust dated 25 February 1988*".

7. The term of the Lease was 99 years less one day from 24 June 1987. The Lease envisages that the Respondent will appoint a managing agent, as has happened. The managing agent is Quadrant Property Management Limited ("QML"). There is also provision for a service charge. Neither side has taken any particular point about the service charge machinery in the Lease and we can therefore summarise the position relatively succinctly. The tenant is liable to pay to the Respondent the Appropriate Percentage of the Annual Maintenance Provision (as defined in paragraph 2 of Part II to the Fifth Schedule) in two half-yearly instalments in advance with provision for a balancing payment or credit as the case may be at the end of the period. The original percentage was 1.56% but this has been very slightly varied as permitted by the Lease to 1.579% (see Part I of Fifth Schedule and QML letter dated 28 April 2011).

Preliminary Observations

8. Judge Dickie's order contained standard directions for resolving a service charge dispute of this kind, including directions that the tenant provide a schedule setting out the item and amount in dispute, full particulars of the reasons why the amount is disputed and the amount, if any, that the tenant would pay for the item in question. The directions also provided for witness evidence as to the facts relied on by the tenant and a statement setting out any legal submissions in support of the challenge to the service charges claimed.

9. The Applicant has provided a statement dated 24 October 2017 with exhibits and a Schedule which has been completed with the landlord's comments as per the usual practice.

10. However, the nature of the Applicant's challenge is somewhat different from the normal type of challenge that the Tribunal routinely encounters. Save in relation to the emergency lighting works, the Applicant has not directly challenged any specific element of the service charges claimed on the basis that they are not payable as a matter of law or are unreasonable in amount. He has provided no rival costings to support his challenge. The Tribunal invited the Applicant to proceed to develop his case in submissions by reference to the list of issues set out in paragraph 5 above. He did not do so. Instead he proceeded as per his witness statement which makes a series of allegations of general mismanagement against the Respondent and/or its QML, e.g. conflict of interest, lack of response, unauthorised access etc.

11. At paragraph 5 of his statement, the Applicant intimated that he wished to advance "*substantial*" counterclaims but at paragraph 6 he suggested that he did not have the necessary "*legal experience to evaluate the monetary value of [his] counterclaims*" and expressed the hope that "*the Tribunal judges might guide me on that matter*". As we explained to the Applicant, the Tribunal cannot advise a party as to how he should put his case. However, the overriding objective under the 2013 Procedure Rules is to deal with cases fairly and justly and in doing so to

avoid unnecessary formality. The Tribunal therefore attempted to understand how the Applicant wished to put his case. Initially, he disclaimed any intention to pursue a counterclaim and said that the essence of his case was the contention that, by reason of the facts and matters set out in his statement, the charges in question had not been reasonably incurred and/or related to services which were not of a reasonable standard. However, in his reply, the Applicant maintained that he was pursuing a counterclaim and that his counterclaim was a claim for damages against the Respondent for negligence, trespass, harassment and breach of the covenant of quiet enjoyment. However, he was not able to quantify any of his claims, beyond saying that the service and administration charges should be waived in the light of his counterclaim.

12. At paragraphs 42-43 of his statement, the Applicant said this:

> *"Whilst I am also aware that courts are run on procedures and points, I wish to point out that I can only help the judges in a limited way. Why? Because my grievances are in regards to the 'set-up' at Sullivan Court and the environment that has been created, and most specifically the nature of the relationships and the psychological effect this has on other residents but for this matter myself.*
>
> *I understand that this may not be helpful for settling a demand, point by point, but this is my only chance to explain to the courts (whilst on even ground) that there is something very wrong with the setup and environment there, in the way QML respond to routine enquiries, the non-existent relationship between the directors of Quadrant and the residents and the bias of the Chairman".*

13. The Applicant is right to the extent that his approach to this case has made it more difficult to identify the precise legal basis of his challenge but the Tribunal has done its best, in accordance with the overriding objective, to clarify with the Applicant the nature of his challenges and to resolve them in accordance with the evidence and submissions that we have heard.

14. Accordingly, we propose to use the sub-headings in the Applicant's witness statement as the principal list of factual issues requiring resolution before returning to the Respondent's list at paragraph 5 above.

Discussion and Conclusions

15. *Conflict of Interest*. There is a Residents Committee, not a recognised tenants' association, at Sullivan Court. Its chairman is Mr W Rouse who is a lessee at Sullivan Court. Mr Rouse is also a director of the Respondent. He acts as such in a voluntary and unpaid capacity. As noted above, there is a trust deed by which the managing trustees, of which Mr Rouse is one, are obliged *"to procure the company is conducted in the interests of the plot owners and the freeholder"*. The Committee hold regular AGMs. In order to become a member of the Committee you have to be voted in at an AGM. The Respondent is responsible for appointing the managing agents, QML, and the management contract under which QML were appointed has not been tendered out.

16. Against that background, the Applicant relies on the ARMA Consumer Charter (Articles I and VII in particular) and the RICS professional statement, Conflicts of Interest (1st edition, March 2017) to allege a conflict of interest against Mr Rouse arising out of the fact that as Chairman of the Residents Committee his duty is to protect and further the interests of the lessees, including considering putting the management contract out to tender, whereas as a Director of the Respondent, he has an interest, including a financial interest, in the status quo. The Applicant also complains that the Residents Committee is "improperly constituted" and contends that the managing agents have an obligation to assist in the formation of a properly constituted residents' association.

17. There are a number of difficulties with the Applicant's case on this point. Firstly, he founds his claim on alleged breaches by the Respondent of the ARMA Charter and RICS statement but it is clear that only a member of ARMA is bound by its Charter and only an RICS member or regulated firm is bound by the RICS professional statements. The Respondent is not a member of ARMA or an RICS member. In any event, the Applicant's case is based on assertion; there is no evidence to justify any conclusion other than that there is an entirely proper arm's length business arrangement between the Respondent and QML. Mr Rouse, whilst a director of the Respondent, is also a lessee and entitled to be a member or indeed the Chairman of the Residents Committee. In any event, there is a democratic mechanism, via the AGM, for pursuing any points about the membership of the Residents Committee. We are entirely satisfied that the Residents Committee is functioning as it should, in accordance with the democratic will of the lessees. We reject all the Applicant's allegations under this head on the facts.

18. In any event, there is no discernible nexus, or sufficiently close nexus, between this complaint and the service charges in dispute. The Applicant has not explained how this allegation, even if there were any substance to it, has given rise to any loss on his part or quantified such loss. It is too remote to justify any contention that the service charges in dispute were not reasonably incurred or reasonable in amount or not of a reasonable standard.

19. Even if there any substance in this complaint, which we reject on the facts, and even if the Applicant were able to articulate a viable and properly quantified cross-claim, which he is not, we would still have rejected any purported set-off on the basis that there is no sufficiently close connection between the cross-claim and the demand for payment and no injustice in allowing the Respondent to enforce its claim without taking into account the alleged cross-claim: see e.g. *Geldof*

Metaalconstructie NV v. Simon Carves Ltd [2010] 4 All ER 847 & *Continental Property Ventures Inc v. White* (LRX/60/2005).

20. *Lack of Response.* In general terms, the Applicant complains of a lack of response on the part of the Respondent and its managing agents to his routine inquiries, to reports from him of matters which required attention and a general lack of quality in the service they provide. There were a number of specific complaints made. Firstly, he complained about a letter from the Respondent's solicitors, ASB Law, dated 22 December 2016 in which they refused the Applicant's suggestion of a meeting between their client and the Applicant. The context was that the Respondent was seeking to be paid further arrears of service charge that it claimed to be owed against a background of significant past arrears that had compelled the Respondent to resort to court proceedings to recover those arrears. The Respondent perceived that this was another delaying tactic on the part of the Applicant and we do not consider that that was an unreasonable conclusion. In these circumstances, the Respondent was also entitled to be wary about face-to-face discussions which might be mis-construed and/or misrepresented. In any event, there was simply no obligation to agree to any meeting.

21. Secondly, the Applicant complained about the manner in which he had been confronted by Mrs Peacock who had threatened him with legal action for using "Airbnb" to sublet his flat and refused to discuss the matter face to face with him. Given that the allegations relating to subletting gave rise to potential breach of covenant issues, it was, in our view, entirely appropriate that this matter be dealt formally and in writing, rather than informally and off the record. We do not consider that the Applicant was singled out for special treatment. It was, at the time, a widespread problem in the block and the Respondent dealt with it appropriately, culminating in QML's letters dated 9 February and 16 May 2017 to all the lessees explaining that with effect from 1 June 2017 the Regulations in the Lease were to be amended in accordance with

the provisions therein permitting such amendments so "*no subletting will be permitted for a term of less than six months*".

22. Thirdly, the Applicant complained about the lack of response to a number of emails he had sent requesting the sort code and account number for the service charge account. These details were readily available to the Applicant on the face of the service charge demands so there is simply nothing in this point. It serves to reinforce the impression of delaying tactics on the part of the Applicant. Insofar as the Applicant had also requested the service charge accounts for 2016, the Respondent explained in an email dated 20 February 2017 that they were not yet ready. When they were ready, at the end of March 2017, they were supplied. The Applicant complained about the timeliness of these responses, and referred to paragraph I of the ARMA Charter which emphasises the need for a timely and professional service but we are not persuaded that there was anything unprofessional or unreasonable about the timescales involved. None of this provides a defence to non-payment.

23. In any event, there is no discernible nexus, or sufficiently close nexus, between this complaint and the service charges in dispute. We repeat our observations in paragraphs 18 and 19 above.

24. *Unauthorised Access (trespass and negligence).* This complaint alleges that the Respondent's agents accessed the Applicant's terrace in order to effect repairs without notification and without consent. The position is that in or about March 2017 there was a suspected leak from the Applicant's terrace into the car park below. The problem was urgent because water was entering the air ducts which would lead to corrosion of the air handling equipment if not attended to promptly. QML instructed a contractor who conducted some initial investigatory work on the Applicant's terrace. The Applicant accepted that he was notified of the need for some work to be done on his terrace by the Head Porter. Although the Applicant says in his witness statement at paragraph 48

that Jim, the head porter, did not ask permission, he accepted in evidence before the Tribunal that he gave consent to access, presumably in response to a request for Jim, and we so find. The Applicant suggests that any consent he gave was limited or qualified in some way, but we are not satisfied that it was. Workmen came and went over a number of days; on some occasions the Applicant was in whilst on others he was out, returning to find workmen working on his terrace. He complained that he was not extended the usual courtesies in terms of notification about these visits because he was a service charge defaulter. We reject this complaint. He had been asked for permission to access the terrace to effect repairs. He had granted his consent. The workmen were in fact able to access the terrace without going through the flat and did so, so any inconvenience was kept to a minimum. The Lease (paragraph 2 of the Second Schedule) contains provision for the Respondent and its agents to enter the flat for the purposes of effecting repairs and for the lessee to permit such entry (paragraph 20 of the Third Schedule). We are satisfied that reasonable notice, insofar as this was required, was given having regard to the need to attend to the repairs urgently. We reject any complaint of trespass or negligence or breach of the covenant of quiet enjoyment. None of this provides a defence to non-payment.

25. In any event, there is no discernible nexus, or sufficiently close nexus, between this complaint and the service charges in dispute. We repeat our observations in paragraphs 18 and 19 above.

26. *Night Porter Incident.* The complaint here is that the night porter, who was at the time a gentleman called Fabian Etemewei, effectively assaulted the Applicant on Christmas Eve 2016. The Applicant does not suggest he was physically attacked but claims that the porter *"aggressively came at me, stopping millimetres from my face, and shouting at the top of his voice, 'get back in your f****** flat' and dared me to complain when I threatened to report him".*

27. The porter was not an employee of the Respondent or QML. He was a contractor supplied by an agency. It is to be noted that the porter has made a detailed statement denying any assault and giving a very different account of the incident. We do not consider that we need to resolve the dispute as to what happened. What matters is how the Respondent dealt with the incident once there had been a complaint by the Applicant on 25 January 2017. His complaint was acknowledged. His consent was sought to the Respondent's proposal that his letter be forwarded to the agency. QML engaged with the porter's employer regarding this issue and sought confirmation that he had been appropriately trained. Certificates were provided. Ultimately the Respondent and/or QML decided not to use his services again and communicated this fact to the Applicant on 30 January 2017. None of this provides a defence to non-payment.

28. In any event, there is no discernible nexus, or sufficiently close nexus, between this complaint and the service charges in dispute. We repeat our observations in paragraphs 18 and 19 above.

29. *Dangerous projectiles being thrown from 5th Floor*. The complaint relates to events in or about August 2017 when objects were discarded or thrown from a flat above the Applicant's flat which deposited themselves on his terrace. There were a variety of objects including (but without limitation) cigarette butts, paper tissue and children's toys. Some were heavy and could have caused injury but thankfully did not. The parties differ in their explanation as to how the problem was resolved. The Applicant says he reported the incidents on a daily basis but nothing was done. He says that he therefore did the detective work and traced the source of the projectiles to Flat 35. He said that he showed the projectiles to the owner of Flat 35 and the problem stopped immediately, on or about 20 August 2017. The Respondent says that it investigated the complaint and traced the problem to Flat 17 on the second floor. The residents of that flat were then requested to vacate, it is said. The Applicant complains about the response from the

Respondent and/or QML; he says "*I received some individual yet ineffective support from the porters. QML sent a representative after two weeks to the management office. I happened to be there and he informed me that there was nothing they could do and it had been passed to solicitors. I charge QML again with being totally negligent, failing to support me in lieu of service charge arrears/dispute*". Again we are not persuaded that this complaint provides any defence even if we resolve it on the basis of the facts that the Applicant alleges. However, beyond accepting that projectiles were discarded from above and landed on the Applicant's terrace, as vouched for by the photographs, we do not accept his account. There is an email dated 27 November 2017 from Jim to QML which says this: "*It was the 8th of August Mr Barclay complained about tissues and cigarette ends and small dinky toys being thrown down on his terrace. I complained to the agent and they were moved to another flat*". In the light of this, we find that appropriate action was taken by the Respondent and/or QML to investigate the problem and that it was resolved reasonably promptly. None of this provides a defence to non-payment.

30. In any event, there is no discernible nexus, or sufficiently close nexus, between this complaint and the service charges in dispute. We repeat our observations in paragraphs 18 and 19 above.

31. <u>*Threats to Ownership*</u>. In the Scott Schedule, the Applicant additionally complained that the Respondent was improperly "*threatening to take my flat, through lease forfeiture and to deny or block any application for extension of my lease*". In his oral submissions he submitted that this was a breach of the covenant of quiet enjoyment. We reject this complaint. On the Respondent's case, there are significant arrears of service charge and there have been one or more potential breaches of covenant relating to sub-letting. If and when the Applicant is in breach of covenant, he is potentially at risk of forfeiture. There is nothing improper in bringing this to the attention of the Applicant in circumstances where the Respondent alleges that he is in breach of

covenant. As regard the Applicant's request for a lease extension, such request has been informal and not pursuant to the statutory regime in the Leasehold Reform Housing and Urban Development Act 1993. There is nothing to stop the Applicant making such an application if he considers that he has a statutory entitlement to a lease extension. However, the Respondent is perfectly entitled to reject any informal approach on the basis that the Applicant is in breach of the terms of his lease. We have already dealt with the position in relation to sub-letting above.

32. For completeness, we refer to one other incident in respect of which the Applicant complained that he had been subject to unwarranted threats. This related to the presence of planter pots on his terrace wall. The wall belongs to the Respondent. It has placed some pots on the wall at intervals along the wall. The Applicant put some further pots of his own in the gaps so as to form, in effect, a continuous screen. QML complained and gave the Applicant 7 days in which to remove his pots and threatened him with costs. Whilst the wall belongs to the Respondent, as observed above, so that the Respondent was entitled to control what was placed on the wall, it was not obvious to the Tribunal why the Applicant's plant pots were forbidden; insofar as the issue was one of health and safety, they looked no more dangerous than the existing pots.

33. That said, none of this provides a defence to non-payment. In any event, there is no discernible nexus, or sufficiently close nexus, between this complaint and the service charges in dispute. We repeat our observations in paragraphs 18 and 19 above.

34. *Other Issues.* We repeat paragraphs 8-14 above. We return to the list of issues identified in paragraph 5 above.

35. *A. 2011: Emergency Lighting works - £1146.73*. We accept paragraphs 18-30 of the Respondent's statement of case. There is nothing in the

single point raised by the Applicant by way of objection to this item (*"the invoice is not in the name of Cromwell Property Management, and not their client or freeholder"*). The costs were incurred by QML on behalf of their employer, the Respondent as is clear from the invoices and certificates at pages 77-82 in the bundle. This sum is payable.

36. *B. 2016: Interest to judgment date - £228.80.* This formed part of the sum for which the Respondent has a county court judgment. The matter is closed and has already been struck out.

37. *C. 2016: service charge - £2,205 (not £2,643 as recorded in para 14).* Insofar as there is a challenge, the basis of that challenge is the series of points dealt with above in paragraphs 15-33. We reject any challenge on that basis. Save for that challenge, there is no specific individualised challenge to the reasonableness or payability of this sum. Even if there had been any substance to the various complaints made, they would not have provided a defence for the reasons set out in paragraphs 18 and 19 above.

38. *D. 2016: ASB law invoice - £777.* This item is not pursued by the Respondent and is therefore not payable.

39. *E. 2016: ASB law invoice -£288.60.* We are satisfied this sum is payable and reasonable arising as it does out of work done to obtain payment of the judgment sum from the mortgagee (see page 150).

40. *F. 2017: ABS law invoice - £426.* This relates to a letter sent to the Applicant that is not in the bundle. It apparently relates to the Airbnb issue but in the absence of further evidence to explain and justify the charge we do not allow this claim. The invoice at page 236 is not sufficiently informative to justify the charge.

41. *G. 2017: service charge - £2,643.* Insofar as there is a challenge, the basis of that challenge is the series of points dealt with above in paragraphs 15-33. We reject any challenge on that basis. Save for that

challenge, there is no specific individualised challenge to the reasonableness or payability of this sum. Even if there had been any substance to the various complaints made, they would not have provided a defence for the reasons set out in paragraphs 18 and 19 above. This sum is payable in full.

42. *H. 2017: service charge - £2,643.* Insofar as there is a challenge, the basis of that challenge is the series of points dealt with above in paragraphs 15-33. We reject any challenge on that basis. Save for that challenge, there is no specific individualised challenge to the reasonableness or payability of this sum. Even if there had been any substance to the various complaints made, they would not have provided a defence for the reasons set out in paragraphs 18 and 19 above. This sum is payable in full.

43. For the reasons set out above, we are satisfied that the Applicant is liable to pay all the service charges and administration charges which are the subject of this dispute, save for the sums of £777 and £426 relating to legal costs. Save in respect of those two items, we are satisfied that there is no substance to any of his complaints. There is no proper evidence to support any challenge to the reasonableness of the costs claimed and there is no sustainable case to support the contention that the charges have not been reasonably incurred or that the services provided have not been of a reasonable standard. The Applicant has no viable counterclaim, cross-claim or set off, whether for negligence, trespass, harassment or breach of covenant of quiet enjoyment. We repeat paragraphs 18 and 19 above.

44. Finally, we are not going to leave this matter without making this observation: we have rejected the Applicant's complaints and found him liable to pay virtually all the service charges and administration charges which are the subject of this dispute. This should not be a cause for celebration on the part of the Respondent. It is clear that the relationship between the parties has entirely broken down. Matters

cannot continue like this. Unless the parties attempt to work out some kind of modus vivendi, they will be back in this Tribunal or the County Court for the next round of litigation before very long. This is not a sensible way of carrying on. It is not a sensible use of anyone's time or money. It is incumbent on both sides to attempt to work out a better way of co-existing and we would urge them to do so.

Other Applications

45. The Applicant made an application for an order under s.20C of the 1985 Act. The Tribunal has a discretion in the matter which must be exercised having regard to what is just and equitable in all the circumstances: *Tenants of Langford Court v. Doren Ltd* (LRX/37/2000). In view of our conclusions above, it would not be just and equitable to make an order under s.20C. There were no other applications made to us at the hearing.

Name: Judge W Hansen **Date:** 24 January 2018

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.