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LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER SECTION 27A OF THE LANDLORD AND TENANT ACT 1985**

Case Reference: LON/00BJ/LSC/2012/0483

Premises: 20A Louvaine Rd, London SW11 2AG

Applicant: London Borough of Wandsworth

Representative: Sharpe Pritchard, Solicitors

Respondent: Mr Daniel De Mello

Representative:

Date of hearing: 18 December 2012

Appearance for Applicant(s): Mr Jon Holbrook, Counsel

Appearance for Respondent: Mr Daniel De Mello

**Leasehold Valuation Tribunal: Martin Rodger QC, Mr P Tobin FRICS MCI Arb,
Mr J E Francis QPM**

Date of decision: 9 January 2013

Decisions of the Tribunal

- (1) The Tribunal determines that the net sum of £7,716.40 is payable by the Respondent in respect of the major works element of the service charges for the years 2010-2011, taking into account the sum of £1,750 which the Respondent is entitled to set off against his liability on account of breaches of covenant by the Applicant.
- (2) This matter should now be referred back to the Brentford County Court.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of major works carried out 20 Louvaine Road in 2010 in respect of which on 1.10.11 a service charge invoice numbered 0034510 was delivered to the Respondent who is lessee of Premises at 20A Louvaine Raod.
2. Proceedings were originally issued in the Wandsworth County Court under claim no. 2IR098844 on 16.01.12. By a defence dated 15.02.12 the Respondent disputed the claim in its entirety and claimed among other things that the Applicant had breached its repairing obligations under his Lease of the Premises and had caused damage to the Applicant.
3. The proceedings were transferred first to the Brentford County Court and then to this Tribunal, by order of District Judge Rowley on 13.07.12.
4. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

5. At the hearing the Applicant was represented by Mr Holbrook of Counsel and the Respondent (who arrived shortly after the commencement of the hearing) appeared in person.
6. At the commencement of the hearing the parties handed in further documents, namely a witness statement of Christine Zuest on behalf of the Applicant, and, on behalf of the Respondent, statements of Maruschka Loubser, Anureet Bhateja and Mr De Mello himself. The Tribunal read the statements but as they had been served very late, and as neither of the Respondent's additional witnesses was available to give evidence personally, the Tribunal gave little weight to the material contained in them.
7. Evidence was given to the Tribunal on behalf of the Applicant by Mr Mark Thorpe, a Building Maintenance Inspector with the Applicant's Housing Management Services Team. Mr Thorpe had had no involvement with the

major work undertaken in 2010, and his first involvement with the Building had been in August 2012 when he inspected the Premises and found the lower ground floor internal wall of the front bay very wet. The Respondent gave evidence personally and also relied on a report by his surveyor, Peter Hogan MRICS, of Hogan Associates Ltd, who had inspected the Premises in January 2012.

The background

8. The Premises which are the subject of this application are a self contained flat with their own separate entrance on the lower and upper ground floors of a late Victorian terraced house on three floors ("the Building"). The Premises include a rear addition with a flat roof.
9. The Tribunal inspected the Premises both internally and externally, and viewed the roof of the rear addition from the self contained flat on the first floor of the Building. The inspection took place before the hearing in the presence of the Respondent and representatives of the Applicant including Mr Thorpe who subsequently gave evidence. It was a dry day.
10. The Respondent holds a long lease of the Premises for a term of 125 years from 17.08.06. The lease includes covenants by the Applicant which require it to provide services including, in particular, to repair the exterior of the Building. The Respondent is required to contribute towards the cost of the services by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.
11. At the time of the Respondent's acquisition of the Premises in August 2006 he had identified the need for repairs to be carried out to the Building, and had been informed by the Applicant that work would be undertaken to the facade within a year. In December 2007 the Applicant had begun to consult on a draft specification of works, but the process of seeking tenders was delayed. It was not until 23.06.09 that formal notice was given under section 20 of the 1985 Act of the Applicant's intention to accept a tender from its own internal works department to carry out the necessary work at a cost of £15,200.
12. Scaffolding was erected in December 2009 but bad weather intervened and work was eventually undertaken between February and April 2010. The original specification was rather general and it was supplemented by a further contract instruction on 15.02.10. The original items are numbered 1-10 on a spread sheet at page 48 of the hearing bundle and the additional items appear un-numbered on the same document. Work was completed in April 2010 and an invoice dated 30.04.10 was raised by the Applicant's internal works department for £19,370.
13. The Respondent had lived at the Premises between 2006 and 2008 but had subsequently moved out and was not living there at the time the works were carried out. Very soon after the work had been done a surveyor instructed in

relation to a different matter commented unfavourably on the quality of the work and this prompted the Respondent to complain about it. In an e-mail dated 20.05.10 he questioned the quality of the new rendering and raised the issue of damage to the Premises by leaks through the front of the Building. He was informed that the work had not yet been passed as completed and that there would undoubtedly be snagging items to be attended to.

14. The Applicant gave the Respondent notice of his share of the cost of the works on 04.08.11 (although at that stage there was a small inaccuracy in the sum claimed). The service charge demand with which this application is concerned was then delivered on 01.10.11. There is no written record before the Tribunal of any complaint by the Respondent between the e-mail exchange in May 2010 and a note of a telephone conversation with the Applicant's service charge department on 1.11.11. It is the Respondent's evidence that he regularly complained by telephone about the damage caused to the Premises by water penetration, both before and after the completion of the works. That evidence is supported to some extent by the record of a telephone conversation on 01.11.11 which refers to other conversations with the head of the major works department who had agreed to investigate the complaints.
15. By the time the Applicant commenced proceedings in the County Court no further work had been done. After service of the Defence a contractor was instructed to inspect the rear addition roof but is said to have found nothing to report. Despite that apparently negative report a further inspection was undertaken by Mr Thorpe after the proceedings had been transferred to this Tribunal and he found that remedial work was required to the front bay and rear addition roofs, and to unblock a gully outside the front bay.
16. Notice of intention to carry out further work was given by the Applicant on 31.08.12 and that work was undertaken in November 2012, shortly before the hearing. It was common ground at the inspection and during the hearing that there had been no recurrence of the earlier water ingress since the completion of the latest remedial work.

The issues

17. In the County Court proceedings the Applicant sought the recovery of a total of £11,619.49 in respect of service charges claimed under 3 separate invoices, namely:
 - (i) an invoice dated 01.10.10 in respect of a service adjustment of £11.92 for the service charge year 2009/10, and an estimated charge of £471 for 2010/11.
 - (ii) An invoice dated 01.10.11 in respect of a service charge credit for 2010/11 and an estimated charge for 2011/12 together totalling £361.57.

- (iii) A further invoice dated 01.10.11 in respect of major works carried out in 2010/11 in the sum of £10,775, which was accompanied by a summary of estimated costs explaining that the sum demanded was an estimate only and was subject to a subsequent audit.
18. At the start of the hearing Mr Holbrook explained that the only matter remaining in issue was the invoice for the major works. He submitted a short skeleton argument in which he identified the three issues for determination as being:
- (i) Whether the costs of the major works were reasonably incurred and whether the work was of reasonable quality.
 - (ii) Whether the Respondent was entitled to a set off arising out of water penetration to the front bay of the Premises.
 - (iii) Whether the Respondent was entitled to a set off arising out of water penetration to the rear addition roof of the Premises.
19. In relation to the cost of works issue the Respondent narrowed the items of work and charges which he disputed to the following items taken from the spread sheet at page 48 of the hearing bundle:
- (i) Stone work repairs to the front facade, including repairs to external render - £1,200
 - (ii) Stripping of felt to the rear addition roof and re-felting - £600
 - (iii) External decoration to previously painted surfaces - £3,850
 - (iv) Scaffolding - £5,600
 - (v) Front bay roof repairs - £600
 - (vi) Rebuilding of gable wall - £2,700
 - (vii) Additional scaffolding - £1,100
20. The Respondent confirmed that he was content to pay the charges claimed in respect of the remaining items on the spread sheet. He did not dispute the cost of works, provided the work itself was of reasonable quality. His complaint concerning the items he identified was that the work had been of poor quality and had had to be redone in certain areas, and that scaffolding costs had been increased by delays. He was supported in his complaint by the general conclusions of his surveyor, Mr Hogan, who summarised his views in the following sentence:

“... the quality of the works carried out are very poor and the scope of works clearly inadequate to reasonably maintain the asset physically while also maintaining its market value.”

21. The Respondent also asked the Tribunal to determine the value of any set off to which he was entitled as a result of breaches of the repairing obligations in the Lease which he attributed to the Applicant. The specific breaches identified by the Respondent were:
- (i) defects in the roof over the front bay which had caused water penetration to the living room on the upper ground floor;
 - (ii) defects in the damp proofing treatment at the base of the wall of the front bay which had caused the interior of the wall of the front bedroom on the lower ground floor to be damp; and
 - (ii) defects in the roof over the rear addition which had caused water penetration to the bathroom and hallway on the upper ground floor.
22. At the start of the hearing the Tribunal raised with Mr Holbrook the absence of certification of the service charge for the major works, an issue which had been identified by the Respondent in paragraph 2 of his Defence to the County Court proceedings and which was then said on his behalf to be a complete answer to the Applicant's claim. Mr Holbrook declined to make submissions on the point and objected that it had not been repeated in the Respondent's statement of case which the Tribunal had directed should be produce to identify the issues he wished to have determined. Mr Holbrook's approach seemed to the Tribunal to be legalistic and unmeritorious, and appeared to take advantage of the fact that the Respondent was no longer professionally represented. The point had been clearly raised by the Respondent in the Defence, the issues in which were transferred to the Tribunal by the County Court. The onus of satisfying the Tribunal that *any* service charge was payable was on the Applicant, and proof of compliance with the contractual machinery for certifying a charge was a necessary step in making out the Applicant's claim. The point was therefore one for the Applicant to deal with, whether or not it was raised by the Respondent.
23. In the event the Tribunal concluded that the absence of certification was not fatal to the Applicant's claim in respect of the costs of the major works. The invoice dated 01.10.11 was described as an estimate subject to a later audit and although it now represents the full amount of the cost which the Applicant seeks to recover in respect of the major works, the only basis on which the Applicant was entitled to raise the charge at the time it did was as an estimated sum for the current financial year. The requirement of certification under the Lease applies to the accounts which the Applicant should draw up at the end of the financial year, and a certificate is not a condition of the recovery of sums on account.

24. 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.

Render repairs to the front facade

25. The Tribunal determines that the amount payable in respect of repairs to the front facade, including the additional rendering to the area around the entrance, and the window reveals, which were added to the original specification in February 2010, is £1000.
26. By section 19(1) of the 1985 Act where costs are incurred in carrying out works they may only be taken into account in determining the amount of a service charge payable if the works are of a reasonable standard. The Tribunal's view, in agreement with Mr Hogan's, is that the work to the front facade was not carried out to a reasonable standard. The quality of the render repairs was poor, and the Respondent's suggestion that it had been carried out by a "young apprentice" appeared credible. The render had not been properly smoothed and the areas in which repairs had been undertaken were very obvious; it was, as the Respondent complained, an "eyesore". The final result was in very marked contrast to the finish achieved on the adjoining building, and did not meet the contract specification which required that finished work be regular in appearance.
27. The amount payable by the Respondent in respect of the render works is limited by the standard achieved. The work was not valueless, as the Respondent's evidence was that render had been falling off the building, which is no longer the case. The life expectancy of the repair is likely to be limited in comparison to a more competent job.
28. The aggregate of the three rendering items included in the Applicant's claim is £2,050. The Respondent considered that the work was worth £200.
29. Taking into account the quality of the work the Tribunal considered that £1,000 was an appropriate figure to allow for the three items.

Stripping of felt to the rear addition roof and re-felting

30. Work was required to re-felt the roof of the rear addition. Until August 2012 the Applicant's tenant of the flat on the first floor of the Building had access to the rear addition roof, and damage had been caused to the previous surface. The Applicant has recently carried out work to block off the access to the roof, by replacing a door with a window.
31. The original specification included stripping off the felt roof, re-felting in 2 layer finish and finishing all edge and flashing details. Given the size of the roof it appeared to the Tribunal that the tendered sum of £600 which the Applicant

now seeks to recover made no allowance for a layer of bitumen or stone chippings to provide a more durable finish (which were not specified), nor for the flashings (which were).

32. The Respondent's evidence was that before the major works were undertaken in early 2010 there had been no problem of water penetration through the rear addition roof, but that since then there had been regular staining and at times water dripping on to the floor in the rear entrance hall and bathroom at the junction between the rear addition and the main wall of the Building; there had been at least one occasion in 2010 when the quantity of water entering the Premises had been sufficient that it percolated through the floor and damaged decorations and a light fitting in the lower ground floor. These problems had been made worse by work carried out in August when the door was removed and a window installed. The Tribunal observed on its inspection that the ceiling and wall were heavily stained by water.
33. The Respondent objected to paying anything for the re-felting work on the grounds that it had created a more serious problem than had previously existed. The Tribunal agrees and determines that no sum is payable in respect of the re-felting which was done to a poor standard and failed to provide a water proof surface to the rear addition.

External decoration to previously painted surfaces

34. The cost claimed in respect of external decoration was £3,850. The Respondent objected to paying more than £500.
35. The Tribunal concluded that the standard of external decoration was reasonable, with the exception of the boundary wall which had not been properly prepared. This formed a small part of the total job, but it made a poor impression.
36. The Tribunal's decision is that an appropriate sum to allow for the external decoration is £3,750.

Scaffolding and additional scaffolding

37. The total cost of scaffolding included in the service charge is £6,700, of which £1,100 was the additional cost of a scaffold tower required to undertake work to rebuild part of the gable wall which was added to the original specification in February 2010.
38. The original tendered sum for scaffolding had been £5,600, at a time when the tenderer estimated that the work would take 5 weeks to complete. That figure did not seem unreasonable to the Tribunal since the front and rear of the building would have required to be scaffolded to enable the decoration and rendering to be carried out. Although the work took much longer to complete

than had been expected, and the scaffold was in place from December 2009 to April 2010, this did not result in an additional charge by the contractor. The only additional scaffolding charge was in respect of the rebuilding of the gable wall, which could not have been done without scaffolding. The Tribunal did not consider the addition of £1,100 to be unreasonable.

39. The Tribunal's decision is therefore that the full sum of £6,700 is recoverable in respect of the cost of scaffolding.

Front bay roof repairs

40. The Respondent's evidence was that the roof of the front bay had leaked at upper ground floor level when he acquired the Premises in 2006. A small amount of repair work had first been carried out by one of the Applicant's staff from a ladder in 2007, after which the Respondent had undertaken a comprehensive redecoration of the Premises prior to letting them. Despite these works there had continued to be a problem with the front bay roof and staining of the decorations. The Respondent insisted that he had regularly telephoned the Applicant to complain; one such complaint was recorded by the Applicant's service charge department in September 2009. When the major works were carried out the additional contract instruction issued in February 2010 included a reference to front bay roof repairs. Whatever these works consisted of, they had not cured the problem and between 2010 and August 2012 the ceiling below the front bay roof continued to be stained and, at times of heavy rainfall, water dripped from the ceiling on to the floor. In August 2011 the Premises experienced what the Respondent described as a flood which damaged flooring and a table and eventually the plaster ceiling below the bay partially collapsed. Further remedial work was carried out by the Applicant shortly before the Tribunal hearing and at the time of the inspection the Tribunal observed the damaged ceiling but was told that no further water ingress had been experienced since the more recent works.
41. Although the chronology of the Respondent's evidence was sometimes difficult to follow, and there were very few documents to provide contemporaneous confirmation, the Tribunal broadly accepted the Respondent's account of the episodes of water penetration and his complaints to the Applicant. The Tribunal concluded that there had been a need for repairs to the front bay roof since 2007, but that the work done in 2010 had at best made no difference and at worst had exacerbated the problem of water penetration.
42. The Tribunal concluded that the work carried out to the front bay roof in 2010 could not have been of a reasonable standard, and that no benefit having been achieved by it, no part of the cost of £600 charged for it could form part of the service charge.

Rebuilding of gable wall

43. The evidence about the rebuilding of the gable wall was very limited. It had appeared in the additional contract instruction in February 2010 and had been undertaken at a cost of £2,700. The Respondent did not dispute that the work had been done but suggested only that it could have been done at a lower cost of £700. No criticism was made of this element of work by the Respondent's surveyor and no basis was given by the Respondent for his alternative figure.
44. The Tribunal concluded that the work to rebuild part of the gable wall was reasonable and had been undertaken at a reasonable cost. The sum to be taken into account in calculating the service charge was therefore the full cost of £2,700.

Conclusion on cost of major works

45. The total cost of the items which the Respondent did not dispute (being items 3-8 and 10 in the original specification, and the fanlight, sash window and epoxy resin repairs added in February 2010) was £2,870.
46. The cost of the remaining disputed items found by the Tribunal totals £14,150, as follows:
- Repairs to external render - £1,000
 - Stripping of felt to the rear addition roof and re-felting - £0
 - External decoration to previously painted surfaces - £3,750
 - Scaffolding and additional scaffolding - £6,700
 - Front bay roof repairs - £0
 - Rebuilding of gable wall - £2,700
47. The aggregate of the undisputed and disputed sums is £17,020, to which supervision fees of 5.5% totalling £936 are to be added.
48. The Tribunal therefore determines that the total cost to be taken into account in determining the service charge payable in respect of the major works is £17,956.
49. The Respondent's contribution to this cost, at 52.72%, is £9,466.40, subject to any set off.

Set off

50. The Respondent claimed to be entitled to set off against the sum due from him the amount to which he would be entitled in damages on account of failures by the Applicant to comply with its repairing obligations under the Lease. The Tribunal has no jurisdiction to award damages for breach of contract but, in determining the sum payable by the Respondent in respect of service charge, it can give effect to any equitable set off which would amount to a defence against the liability to pay the service charge.
51. The Respondent relied on the Applicant's failure to repair the front bay roof, the rear addition roof (both of which had been the subject of repeated remedial work) and to cure dampness around and below the window in the lower ground floor front bedroom.
52. The Tribunal was satisfied on the Respondent's evidence that the front bay roof had been in a state of disrepair from at least 2007 to November 2012; patch repairs carried out in 2007 had made little difference, and whatever work had been done in early 2010 had made the problem worse. At least from 2010 until November 2012 water entered the first floor living room, and in August 2011 part of the ceiling collapsed at a time of particularly heavy rain.
53. The Tribunal was also satisfied that water had entered the Premises at the junction of the rear wall and the roof of the rear addition from the time of the major works in early 2010 until remedial works were carried out in November 2012. At times of heavy rain water entering the Premises at this point penetrated to the lower ground floor.
54. Both the front bay roof and the rear addition roof were parts of the Building within the possession of the Applicant (in the sense that they had not been demised) and in respect of which the Applicant covenanted by clause 4(b) and paragraph 2 of the Fourth Schedule to the Lease "*well and substantially to repair cleanse uphold support and maintain the exterior of the Block ... and all structural parts thereof*".
55. The Tribunal did not find that it was established that the problem of dampness in the lower front bedroom was attributable to any lack of repair on the part of the Applicant. The Respondent's evidence was that he had carried out chemical damp proofing after he acquired the Premises in 2006, but that the contractor had declined to guarantee the work. On inspection it appeared to the Tribunal that the most likely explanation of the problem is that it is caused by rising damp rather than water penetrating through the wall of the building. In his brief report Mr Hogan, the Respondent's surveyor, described the problem as "rising damp". Mr Thorpe had carried out tests in October 2012 which had not demonstrated any passage of water through the exterior wall. The alternative suggestion, that the problem had been caused by a blocked gully in the party wall in the front garden into which water from the roof of the adjoining building discharged, was no more than speculation, and did not

seem to be consistent with the pattern of dampness reported on both sides of the window.

56. The Applicant's covenant does not require that it improve the condition of the exterior walls of the Building to eliminate inadequacies in their design. The wall may require some additional chemical damp proofing treatment but the Applicant has not covenanted to provide such treatment and its omission to do so would not amount to a breach of covenant.
57. The defence advanced by Mr Holbrook on behalf of the Applicant in answer to the evidence of water penetration through the roof at the front and rear of the building was that the Applicant had never been given notice of the need for repair. The Tribunal had no hesitation in rejecting that defence.
58. The rear addition and front bay roofs were in the possession of the Applicant at all times. Although its obligation was to repair, rather than to keep in repair, once the Building fell into a state of disrepair the Applicant was bound by its covenant to put the problem right. That obligation was not dependent on the receipt of notice, because the Applicant was at all times in a position to keep itself informed of the condition of the Building, never having parted with possession of the structure and exterior. In any event even if its covenant was dependent on notice we are satisfied that the Applicant had sufficient notice of the condition of the relevant parts of the Building to trigger its obligation to put right the defect which we have found existed.
59. In 2007 the Applicant began consulting on a schedule of repairs and carried out ineffective work to the front bay roof, and was therefore aware of its condition. In October 2009 its service charge collection team recorded the Respondent's complaint of water ingress which, we are satisfied, was not the first or last occasion on which such complaints were received. In February 2010 the Applicant specified further work to the front bay roof which, once again, failed to cure the problem.
60. Serious water penetration through the rear addition roof was first experienced after the major works were carried out in that area. The Applicant was therefore aware of the condition of that part of the Building. We are again satisfied that there was regular complaint by the Respondent after that work was undertaken.
61. We therefore conclude that the Applicant was in breach of its repairing obligations in respect of the front bay roof and the rear addition roof with the consequences recorded in paragraphs 52 and 53 above.
62. The Respondent's evidence was that he had redecorated the affected parts of the Premises from time to time, and had repaired the ceiling, all of which he estimated had cost between £1,750 and £2,000. He had allowed his tenant a reduction in her rent of £450 on one occasion while he redecorated after water

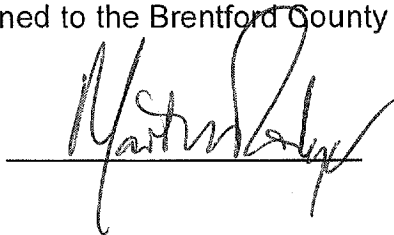
had entered the front bay roof. Further redecoration was now required, after more recent water damage.

63. The object of an award of damages for breach of a landlord's repairing covenant (or the quantification of a set off) is, so far as money can do so, to put the tenant in the position he would have been in if the breach had not occurred. In the case of a tenant who is not personally in occupation that will require reimbursement of expenditure incurred, or income foregone.
64. In the absence of any documents confirming the expenditure by the Respondent on redecorating the Premises the Tribunal felt it necessary to adopt a cautious approach to the quantification of the set off, particularly as part of that expenditure related to the lower ground floor front bay, which we are not satisfied can be attributed to any default by the Applicant. The figures mentioned by the Respondent do not in themselves appear unrealistic, and taking into account the rental allowance to the tenant and the need for further remedial work, the Tribunal determined that £1,750 was the appropriate figure to compensate the Respondent for the damage sustained as a result of the Applicant's breaches of covenant.
65. Accordingly the sum of £1,750 is required to be set off against the Respondent's liability to pay £9,466.40 for service charges in respect of the major works, giving a net liability of £7,716.40.

The next steps

66. The Tribunal has no jurisdiction to determine issues concerning interest or the costs of the county court proceedings. This matter will therefore now be returned to the Brentford County Court.

Chairman:



Martin Rodger QC

Date: 9 January 2

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 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 leasehold valuation 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 a leasehold valuation tribunal;
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation 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.