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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BD/LSC/2013/0184**
Property	:	**28 Selwyn Court, Church Road, Richmond, TW10 6LR**
Applicant	:	**Selwyn Courts Residents Limited**
Representative	:	**Mr J Bates (Counsel)** **Mr R Evan (former Director)** **Miss D Preece (Solicitor-Brethertons)** **Mr D Harvey (Managing Agent-Huggins Edwards & Sharp)**
Respondent	:	**Mrs Anna Banham-Godfrey**
Representative	:	**In person**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Mr L Rahman (Barrister)** **Mr Roberts DipArch RIBA** **Mrs Hawkins Msc**
Date and venue of Hearing	:	**10.10.13 and 23.1.14,10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**25.3.14**

DECISION

Decisions of the Tribunal

(1) The Tribunal determines that the sum of £14,437.13 (£14,467.16 minus £5.88 and £24.15) is payable by the Respondent in respect of the service charges for the years 2008-2012.

(2) The Tribunal makes the determinations as set out under the various headings in this Decision.

(3) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

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 Respondent in respect of the service charge years 2008, 2009, 2010, 2011, and 2012. The total sum in dispute is £14,467.16

2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant was represented by Mr Bates (counsel) at the hearing and the Respondent appeared in person.

4. Immediately prior to the hearing the parties handed in further documents, namely, a skeleton argument and relevant authorities on behalf of the Applicant and an eight page bundle from the Respondent (letter, photographs, and a skeleton argument). The Respondent also submitted a further three pages of evidence in closing submissions (setting out her proposed payments).

The background

5. The Applicant has been the freeholder of the relevant property since 1996. The Applicant is a lessee-owned company, with the majority of the leaseholders owning a share of the company. There are 28 residential flats at the property. The Respondent has been the leaseholder of flat 28 since January 2008. The Respondent is a member of the company and was a Director between January 2008 and November 2011.

6. The property which is the subject of this application consists of 28 flats in a U shaped block of 4 and 5 stories dating from the 1930's and is situated in a Conservation Area. It is a concrete framed structure with reinforced concrete floors and flat roofed areas, which are covered in both asphalt and over-covered with felt in parts. The elevations are brick faced with steel window frames, there are a number of projecting balconies to individual flats. From photographs provided the block is showing weathering defects.

7. The Tribunal did not consider an inspection of the property was necessary nor would it have been proportionate to the issues in dispute.

8. The Respondent holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

9. At the start of the hearing the parties identified the relevant issues for determination as follows:

   (i) Whether the relevant service charge demands were issued, and if so, when?

   (ii) If the demands were served, whether they were valid?

   (iii) The reasonableness of the payment by the Respondent towards the cost of the heating, management fee, and the works that were carried out by the Applicant concerning the roof?

10. The Tribunal had already determined at an earlier hearing on 6.8.13 that the Respondents counter claim in the sum of £207,431.82, in respect of alleged breach of repairing covenants, will not be dealt with by this Tribunal as it was outside the Tribunals jurisdiction. The Tribunal would limit itself to the service charge dispute only.

11. Both parties agreed at the hearing the sum of £140.00, concerning costs incurred in breaking into Flat 23 due to a broken tap causing flooding in the flat below, was not payable (page 68 of the bundle). The Respondent therefore does not have to pay £5.88, the Respondents proportion that was due under the Lease (4.2%).

12. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

Were the service charge demands issued, and if so, when?

13. The Respondent states she first received service charge demands in October 2012 concerning the service charge for the period September 2012 to March 2013. She did not receive any earlier service charge demands or any reminders.

14. The Respondent relies upon evidence from Ms Beth Eden, who previously worked for the Applicants managing agent as a senior property manager. Ms Eden's witness statement, dated 11.4.13, on pages 241-244, states *"So far as I am aware none of these [service charge demands] were ever sent to ABG [the Respondent] and certainly not by me. I did not send ABG the statutory information and formal demands for payment of outstanding service charges because I was specifically instructed by Nick Harvey not to do so. This was as a result of ongoing dispute that ABG had...over the failure to carry out the remedial works...to the roof terrace Flat 28".*

15. Ms Eden stated in her email dated 24.5.13 to Nick Harvey (page 291) that she was instructed by Nick Harvey to not chase the Respondent for her arrears due to the ongoing problems with the roof and lighting, she personally never sent service charge demands to the Respondent, she did not know whether Accounts did or did not, however, it was highly likely that the demands were not sent out as they would highlight the arrears.

16. In oral evidence Ms Eden initially stated she was told by Nick Harvey to not send any demands or reminders to the Respondent and that she told the Accounts department to not send or chase service charge demands from the Respondent. Ms Eden then stated she only told the Accounts department to not send out reminders and that she did not say anything about issuing service charge demands and she did not know whether the Accounts department sent out service charge demands or not. Ms Eden then changed her evidence again and stated she told the Accounts department, on Nick Harvey's instructions, to not send out service charge demands.

17. Given the inconsistent oral evidence from Ms Eden and the inconsistency between Ms Eden's oral evidence and her email dated 24.5.13, the Tribunal did not find her evidence persuasive. The Tribunal preferred the evidence from Mr Harvey, which was consistent and was at one stage supported by Ms Eden, that the Accounts department sent out service charge demands. If there were arrears, Ms Eden as property manager would deal with reminders. Ms Eden was told not to send out reminders. Ms Eden could not say whether the Accounts department did or did not issue the service charge demands.

18. The Respondent relied upon comments that were made by Mr Cooper, one of the Appellants Directors, during an Annual General Meeting in

March 2013. The Respondent states Mr Cooper had stated during the meeting that service charge demands were not sent to the Respondent and that it was authorised by the then Company Secretary. The Respondent relies upon letters provided by two witnesses on pages 288 and 289. The Tribunal note both the witnesses, including the Company Secretary, state the Company Secretary had stated during the meeting that the assertion made by Mr Cooper was a lie and that the Company Secretary had not authorised that demands should not be sent to the Respondent. The Tribunal therefore does not find the letters on pages 288 and 289 to support the Respondents case.

19. The Applicant states the managing agents accounts department would generate and send out service charge demands automatically. If it decides to not send out a particular service charge demand then the relevant service charge demand would need to be consciously taken out from the mailing pool.

20. Mr Harvey stated that to the best of his knowledge service charge demands were sent out to the Respondent and to all the other leaseholders. None of the other leaseholders had claimed to not have received the service charge demands. There were no agreements or instructions from the Board to not send out service charge demands to the Respondent. The only agreement / instruction from the Board was to not send out "reminders" to the Respondent.

21. Mr Harvey states he is a partner at the Applicants managing agent, he is a professional member of the Royal Institution of Chartered Surveyors, having qualified in 1989, and has been primarily engaged in residential block management since 1987. They manage 230 different blocks, each containing on average 16 flats. Mr Harvey heads management and personally manages 6 blocks, including Selwyn Court. Knowing the consequences of not issuing a service charge demand, the Tribunal accepts Mr Harvey's evidence that he would not have failed to send service charge demands, although he accepts they did not send reminders.

22. The Tribunal note the Respondent has not provided any evidence in writing from the Board of Directors (of which she was an active member) or any letters from the managing agents, suggesting there was any agreement that she would not have to pay any service charges.

23. On the contrary, Mr Harvey had written a letter to the Respondent, dated 20.10.11 (page 126), stating he was 'formally' writing to the Respondent on behalf of the Board concerning outstanding service charges totalling £10,925.48 and that the Board wished to place 'on record' that at no time did they agree to suspending payment of service charges by the Respondent and that the unpaid sums were out of proportion to the issues raised by the Respondent. There is no evidence the Respondent had replied to this letter. When asked at the hearing

about this letter, the Respondent stated she ignored it. The Tribunal found this very surprising, given the Respondent responds to emails and letters sent to her, as evidenced by the various correspondence in the evidence before the Tribunal. Given the 'formal' allegations made against the Respondent in the letter, the Tribunal finds it would have been reasonable and sensible for the Respondent to have stated, if the Respondents claim is true, that she had not received any demands or that there was an agreement that she would not be pursued for any service charges until the roof repair had been addressed.

24. The Respondent states the Applicant is unable to provide copies of the service charge demands that were served. Mr Harvey stated at the hearing they did not keep copies of the actual demands that were sent out. The Tribunal does not find the absence of copies of the service charge demands in itself to undermine the Applicants case, although it is of relevance when considering the evidence as a whole. Failure to provide copies of the service charge demands does not in itself suggest that the demands were not issued just as the production of copies of the service charge demands would not have been evidence that they had necessarily been served.

25. Having considered all the evidence, the Tribunal is satisfied on the balance of probabilities, that the relevant service charge demands were sent to the Respondent as they fell due, but due to the ongoing problems with the roof, the arrears were not pursued by sending out reminders.

Were the service charge demands valid?

26. The Respondent states the demands were invalid as they do not show the name and address of the landlord as required under s.47(1) of the Landlord and Tenant Act 1987.

27. The Applicant states the address provided on the service charge demands were the address of the managing agents. An example of the service charge demand appears on page 347. It states "*L/L: Selwyn Court Residents Ltd, C/O Huggins Edwards & Sharp, 11-15 High Street, Gt Bookham, KT23 4AA*". The Applicant states that is the address from which the Applicant carried on its business and was in any event now the Applicants registered office since 2011.

28. The Respondent relies upon the case of Beitov Properties Ltd v Martin [2012] UKUT 133 (LC), where the Upper Tribunal held that in the case of a company, the service charge demand was required to provide the company's registered office or the place from which it carries on business.

29. The Tribunal note the absence of any evidence from the Respondent, having been an active member of the Applicants Board of Directors, to show the Applicant carried on business from any other address or that the Applicant did not carry on its business from the same address as its managing agent.

30. Alternatively, the Tribunal is satisfied the Respondent has now been provided with the name and address of the Applicant. An invalidity that arises by virtue of a failure to comply with the requirements of s.47(1) can be corrected and can be corrected with retrospective effect, even if more than 18 months has elapsed, as provided by s.47(2), which states that where a tenant is given such a demand but it does not contain any information required by virtue of subsection (1), then the service charge shall be treated as not due by the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant (Johnson v County Bideford Ltd [2012] UKUT 457 (LC)).

31. The Tribunal are satisfied the service charge demands satisfied, or alternatively now satisfy, s.47 of the Landlord and Tenant Act 1987.

32. The Tribunal is satisfied the service charge demands were accompanied by a summary of the rights and obligations as required under s.21B of the Landlord and Tenant Act 1985. The Respondent has not raised this point in her "Opening Skeletal Summary". The Applicant states they were sent with the demands and an example is provided on page 226. In any event, it would be difficult for the Respondent to argue to the contrary, given her claim that she never received the service charge demands at all.

Is the Respondent liable to pay towards the heating costs?

33. The Respondent did not take issue with whether the actual costs were reasonable or not. Both parties agreed the only issue was whether the Respondent was liable, under the terms of the lease, to pay anything towards the cost of the heating.

34. The property has two oil fired boilers in the basement which supplies hot water and central heating. Originally, the supply was to all the flats. Over the years some flats had added extra heating in some of the rooms which did not have central heating. Mr Harvey stated some of the flats had totally independent heating, i.e. they were totally independent from the communal system.

35. The Respondent stated her own flat was not connected to the communal system since 1997 or so. The original radiators and pipe works had been removed. The Respondent purchased her flat in 2008. The Respondent states she should not have to pay anything as she does

not receive any benefit from the supply of hot water from the communal system.

36. Neither party knew why the Flat was disconnected from the communal system.

37. The Respondent accepts that under the terms of the lease the Applicant is required to provide heating. The Respondent accepts that if the Applicant is unable to recover the cost of the heating as a service charge, the cost has to be paid by the members of the Applicant company, which included the Respondent. The Respondent understands that if the costs cannot be recovered as a service charge from the 28 flats, then as one of the 24 shareholders / members of the Applicant company, the Respondent would pay an increased amount.

38. Both parties referred the Tribunal to the lease.

39. The Tribunal finds as follows. Under Clause 2(iii) the Respondent is under an obligation to pay the Applicant a proportionate part of the expenses and outgoings incurred by the Applicant in the provision of services.

40. Under Clause 3(4)(v) the Applicant is obliged to provide and maintain, unless prevented by mechanical or other breakdown or failure of fuel supply or other cause beyond the control of the Applicant, a good and sufficient constant supply of hot and cold water to the Flat where this is at the date hereof supplied and also an adequate supply of heating in the hot water radiators and to remedy any mechanical breakdown so soon as maybe possible in the hot water and central heating systems.

41. The Tribunal finds the Applicant is required to provide the service and does in fact provide the service to the Respondents Flat, notwithstanding the Respondent is not connected. The lease does not state that the Flat needs to benefit from it.

42. The Respondent purchased the Flat in its disconnected state and nothing was done at the time of the purchase to vary the lease. There is no evidence that anything had been done to vary the lease at the time the flat was disconnected from the communal system.

43. The Tribunal finds the Respondent is liable to pay towards the fuel costs and the costs of maintaining the boilers.

Are the management fees reasonable?

44. The Respondents contribution towards the management fees were as follows (approximately); 2009=£256, 2010=£378, 2011=£252, 2012=£268, and 2013=£277 (estimate).

45. The Tribunal finds, applying its own knowledge and experience of such matters, for a 1930's block which is not in a particularly good state of repair and therefore having high maintenance demands, the management fees charged for each year were towards the lower end of the scale.

46. The Tribunal note that for the years ending 2009, 2010, and 2011, the Respondent, as a Director of the Board until November 2011, approved the fees and was not critical of the fees or the service. For example, the Respondent stated in her email dated 22.7.2009 (page 173) "Firstly, thanks to Nick for his tireless efforts in trying to resolve these problems". When asked about this letter at the hearing, the Respondent stated it was just flattery to get the best out of the managing agents. The Respondent stated she did not actually believe that Mr Harvey had done a good job. The Tribunal were not impressed with the Respondents answer. The Tribunal are satisfied the Respondent was pleased with the work being done by Mr Harvey. This is also reflected in the Respondents oral evidence that the Board of Directors had voted to approve the fees.

47. The fee for the year ending 2010 is high compared to the other years because fees were paid for the old and new managing agents. The initial annual fee was not "pro ratio" due to significant input from the new and current managing agents prior to their formal appointment (Mr Harvey's witness statement, page 29). The Tribunal note that the Directors of the Board, which included the Respondent, approved the fee for that year.

48. The Tribunal finds the management fees for each of the relevant years were reasonable and are payable.

Is the Respondent liable to pay towards the works concerning the roof and were the costs reasonable?

49. The Respondent identified four invoices at the hearing on day one, all linked to the roof. The Respondent confirmed on the second day of the hearing that she did not challenge any other works.

50. The Respondent challenged the **invoice for the sum of £1,287.80** from Hendersons Building Services Ltd (page 99 of the supplementary bundle). The Respondent put it to Mr Harvey during his oral evidence that the works had not been done. Mr Harvey stated it was before he and his firm had taken over management of the property. However, he referred the Tribunal to page 437 of the bundle, which is a copy of an

email from the Respondent, which he states confirms the works were done.

51. The Tribunal note the invoice is dated 28.4.08. Both parties confirm the invoice was settled on 21.4.2009. According to the invoice, the work involved an application of watco asphalt gap filler and agrypol on the main roof and burnt in splits and application of agrypol solution to the entire green mineral roof area above Flat 28. To the roof terrace below, the lifting of decking, removal of rotten timber below the decking, sweeping, and cleaning. The work required two men working over two days and the invoice included the cost of the materials.

52. The email from the Respondent is dated 13.5.08 and is under the heading "Re: Roof Leaks". It raises various issues but clearly states "*Firstly, the temporary patch repairs to the main part of the roof, executed by Hendersons, will suffice for the immediate future...*".

53. The Tribunal finds the works had clearly been done. As stated in the email, the patch works repairs would suffice for the immediate future. The email does not state that the payment should not be made. Using the Tribunals own knowledge and experience of such matters, the Tribunal finds the amount charged, for the works that were carried out, were not unreasonable.

54. The Respondent challenged the **invoice for the sum of £3,979.25** (page 86 of the supplementary bundle). The invoice is dated 18.9.09 and clearly sets out the roof repairs and the additional works. The Respondent stated at the hearing the works were done to a very bad standard, the roof was still leaking, and it was not value for money. The Respondent also stated at the hearing that she had told Mr Harvey to hold back £1,500.00.

55. Mr Harvey stated he thought the work was done to a reasonable standard and it was value for money. He states he paid the invoice in full because so far as he was concerned, the job had been done and he was being chased by the contractor. Mr Harvey stated that an email from the Respondent at the time indicated the Respondent agreed the roof work was done to a good standard. Mr Harvey accepts that the works were carried out to deal with the leaks into Flat 27 below but water was still leaking into Flat 27. He states it was a valid decision at the time to carry out the specified works. One of their building surveyors also stated it was the appropriate step to take at the time. Mr Harvey stated in oral evidence it was the obvious thing to do at the time and the Applicants Board agreed, as confirmed by the minutes of the Board Meeting, held on 20.8.09 (page 570).

56. The Tribunal note the email from the Respondent, dated 12.10.09 (page 587). It states "*Whilst I was horrified to discover that the problem with water ingress into Flat 27, was not in fact the roof terrace, and that*

there wasn't really anything wrong with it in the first instance, we must now move on....Therefore, in order to close this particular episode, I feel that we should accept the terrace part of the contract, as finished".

57. The Tribunal note the email from the Respondent to Mr Harvey (page 400 of the bundle). It is dated 28.10.09 (well over a month after the works had been carried out) and states "*I am delighted to report that the work has been finished and to a good standard despite our problems. There are two minor issues which need to be addressed prior to paying the invoice. The first, one of my panama loungers has a broken stretcher, missing leg at the back support, broken dowel joints- damage caused presumably whilst being hoisted onto the roof. If these repairs could be seen to since this lounger is quite unsafe. The final issue- the umbrella stand has been laid in the centre...hence it protrudes in the middle of the walkway...in reality it is only 6 boards out therefore if...it could move back 6 boards towards the outside wall, I will be happy.*"

58. Using the Tribunals own knowledge and experience of such matters, the Tribunal finds the amount charged under the invoice, for the works that were carried out, were reasonable.

59. The Tribunal accepts it was reasonable to carry out the works. It appeared to be the obvious step to take so far as Mr Harvey was concerned. One of their building surveyors also agreed. The fact the leaks remained does not necessarily mean it was not reasonable to carry out the works. At the time, it was a reasonable course of action. The Board also agreed with the proposed works and did not suggest any further or alternative reports prior to making any decision on whether the works should go ahead.

60. The Tribunal accepts the work was done to a reasonable standard. The roof was not leaking. This was confirmed in the email from the Respondent dated 28.10.09 and the further email dated 12.10.09, where the Respondent accepts the leak was from elsewhere.

61. Given the two emails from the Respondent, the Tribunal finds it was reasonable for the invoices to be paid in full.

62. The Respondent challenged the **invoice for the sum of £575.00** for the decking work (page 82 of the supplementary bundle). The Respondent states the re-decking was done poorly. The Respondent stated at the hearing that she did not have any complaints about the wood, but the way in which they were re-laid. The Respondent states she incurred a cost of £3,500.00 in getting a carpenter in to check every single board because they were not nailed and screwed properly. The Respondent has shown photographs of the way in which the decking was re-laid. Mr Harvey stated in response that the decking was

originally laid without consent and that the maintenance of the roof was difficult due to the decking being placed over it. He believed the decking, which was 15 years old, did not look bad.

63. The Tribunal found the issue concerning whether the decking was laid with or without consent was not of significance so far as these proceedings were concerned. The decking had been there for many years, the Applicant was aware of the decking, and there is no evidence before the Tribunal that any steps were taken to have it removed. The Tribunal did not hear much evidence from either party on the issue. On balance, the Tribunal accepts the decking may not have been re-laid in its original state and was poorly executed therefore the Tribunal finds the sum of £575.00 should be struck off from the service charge. Consequently, the Respondent is not required to pay her proportion of that sum, namely, £24.15 (the Respondents proportion is 4.2% under the terms of the Lease). This Tribunal is not dealing with the Respondents counter-claim.

64. The Respondent challenged the October 2009 **invoice for the sum of £1,100.00 plus VAT** for the scaffolding (page 85 of the supplementary bundle). The Respondent stated at the hearing that she did not challenge the actual cost of the scaffolding. Her argument was that it was an unnecessary expense, in that if the September 2009 work (concerning the £3,979.25 invoice) had been done properly, it would not have been necessary to incur these additional costs.

65. The Tribunal have already found it was reasonable to carry out the September 2009 works and the works were done to a reasonable standard. It therefore follows, the Tribunal find the costs of the scaffolding were reasonable and payable.

Application under s.20C and refund of fees

66. The Applicant did not make any applications at the hearing concerning the refund of any fees.

67. At the hearing, the Respondent applied for an order under section 20C of the 1985 Act to disallow the Applicant from recovering its costs in connection with these proceedings through the service charge account. The Respondent stated she had attempted to negotiate with the Applicant and therefore it would be unfair to charge her. The Respondent voluntarily and without any prompting told the Tribunal that she was willing to pay half the outstanding balance. The Applicant stated it is a lessee owned company without any other asset. The majority of the items in the service charge were not disputed yet the Respondent had not made any contributions whatsoever towards any of those undisputed items.

68. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines the Applicant acted reasonably in connection with the proceedings and was successful on almost all the disputed issues, therefore the Tribunal decline to make an order under section 20C.

Name: Mr L Rahman (signed electronically) **Date:** 25.3.14

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 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.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

(aa) in the case of proceedings before a residential property tribunal, to that tribunal;

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

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.