



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

Case reference : LON/00AZ/LSC/2017/0128

Property : 65 Hurstbourne Road, London,
SE23 2AA

Applicant : Mr Morris Herzog

Representative : Mr Richard Taylor, Goldland
Management (managing agents for
landlord)

Respondent : Miss Deidre Carrott

Representative : In Person

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

Tribunal members : Judge Robert Latham
Mr Anthony Harris, LLM FRICS
FCIArb

Hearing & Venue : 5 September at 10 Alfred Place,
London WC1E 7LR

Date of decision : 29 September 2017

DECISION

Decision of the Tribunal

- (1) The Tribunal determines that no sum is payable by the Respondent in respect of the service charges which are claimed.
- (2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge

- (3) Since the Tribunal has no jurisdiction over ground rent or county court costs and fees, this matter should now be referred back to the Clerkenwell & Shoreditch 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 payable by the Respondent. The claim relates to 65 Hurstbourne Road (the “flat”).
2. Proceedings were originally issued in the County Court Business Centre under claim No.C1QZ6M7W. The claim was transferred to the Clerkenwell and Shoreditch County Court. On 27 March 2017, Deputy District Judge Brafield transferred the proceedings to this tribunal. The total claim is for £7,033.17.
3. On 2 May 2016, this Tribunal gave Directions. The Tribunal identified that that the following service charges are in dispute:
 - (i) Invoice 1589, dated 12 May 2014, in respect of works carried out to the roof: £333.50;
 - (ii) Invoice 2185, dated 6 August 2016, in respect of the cost of replacing the roof: £5,635.00;
 - (iii) Invoice 2348, dated 1 September 2016, in respect of pointing to the chimney stack: £434.67;
 - (iv) Invoice 2382, dated 1 October 2016, for a management charge of £250 for the period 24 June 2016 to 23 June 2017: £250.
4. This Tribunal has no jurisdiction in respect of the sums claimed for ground rent. The invoices include the following amounts in respect of ground rent: 1589: £60 and 2382: £80. This aspect of the claim is referred back to the County Court.
5. Neither of the parties complied with the Directions. Each blamed the other for their failure to do so.
 - (i) Paragraph 1 of the Directions required the Applicant to send the Respondent a breakdown and explanation of the service charge items demanded and copies of the section 20 consultation documents by 16 May. The Applicant stated that it had sent the documents on 17 May; the Respondent asserted that she had not received these. On 14 June, the Applicant sent the Respondent a second set which was received.

(ii) Paragraph 2 required the Respondent to serve her Statement of Case and any documents upon which she intended to rely by 27 June. The Respondent's Statement of Case is set out in a letter dated 3 July (at D29). On 23 June (D24), she had sent the Tribunal a letter which enclosed a number of documents including a Section 20 Notice of Estimates dated 24 October 2015 which she stated that she had received in March 2015. Whilst the Respondent had sent the Applicant a copy of the letter, she had not enclosed the bundle of her documents. In her letter, the Respondent made it clear that she did not consider that the Applicant had made adequate disclosure in respect of the service charge demands in dispute. The Applicant was put on notice of the evidential problems that he could face should he not make full disclosure.

(iii) Paragraph 3 of the Directions required Applicant to serve the Respondent with Response together with any documents upon which he intended to rely by 27 June. The Applicant's Response is set out in a document dated 18 July 2017. The Applicant has not provided any of the invoices or estimates in respect of the service charge items in dispute.

(iv) Paragraph 4 of the Directions permitted the parties to file witness statements. Neither has chosen to do so, despite the evident factual disputes which we are required to determine.

(v) Paragraph 5 required the Applicant to prepare a bundle of documents which was paginated and indexed. The Respondent prepared a bundle but this was neither paginated nor indexed. The copy that he sent to the Respondent differed from that sent to the Tribunal. At the start of the hearing, the Tribunal ensured that all parties had the same bundle of documents and agreed the pagination.

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

The Hearing

7. The Applicant was represented by Mr Richard Taylor of Goldland Management, the managing agents for the Applicant. Mr Taylor described Goldland Management as a medium sized business. However, when the Tribunal asked whether some documents could be made available, he had stated that he was not sure that there would be anyone in the office. He questioned why the Tribunal had inquired about the size of his business. Mr Taylor stated that he had worked for the managing agents for three years. He is not professionally qualified. He gave evidence in support of the Applicant's case. We did not find him to be an impressive witness. We sensed that he sought to provide answers which he thought would advance the Applicant's case, rather than to provide an accurate history of the issues in dispute. He has not

managed the property with the care that we would have expected of managing agents. He had not inspected the property either before or after the works. We regret to record that we found him equally careless with the facts. We reject his evidence on a number of important issues.

8. The Respondent appeared in person. She is a document production specialist with CMS Cameron Mckenna. She works nights. She came to the tribunal with a well ordered file with original documents relating to her flat. Although we find that Miss Carrott's recollection is faulty on some points, we accept her as a witness of truth.
9. In presenting their cases and in giving evidence, both parties seemed more concerned to score points against the other rather than to make an objective presentation of their cases. It was apparent that considerable ill will has developed between Miss Carrott and Mr Taylor. Miss Carrott apologised for her outbursts, explaining that she had worked the previous night. We found Miss Carrott to be the more reliable witness and generally preferred her evidence.
10. At the hearing, Miss Carrott produced the planning consent, dated 24 July 2013, relating to the conversion works carried out by the Applicant. This included a number of plans prepared by Bashkal & Associates, who were the architects engaged by the Applicant. These documents are uncontroversial. However, they provide important background evidence to the issues that we are required to determine.
11. The Applicant's case would have been advanced had Mr Taylor been able to produce the estimates and invoices relating to the service charge items in dispute. We have had regard to the letter from Paul Anderson, of South East London Roofing, dated 1 May 2017 (at B1). We are surprised that he was not called to give evidence and can give limited weight to this letter.

The Lease

12. The flat is a ground floor flat in a late Victorian semi-detached property. The accommodation consists of four rooms and a bathroom. The flat could provide two bedrooms, but the Respondent has decided to have separate kitchen, living and dining rooms.
13. The lease is dated 25 March 1981. It is granted for a term of 99 years from 25 December 1980. In 1985, Miss Carrott acquired the leasehold interest.
14. When the lease was granted, it seems that the upstairs flat (65A Hurstbourne Road) was occupied by a Rent Act Protected tenant. This may explain the simplistic nature of the Applicant's lease. The upstairs flat initially was similar in size to the demised flat. However, in 2013,

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14. When the lease was granted, it seems that the upstairs flat (65A Hurstbourne Road) was occupied by a Rent Act Protected tenant. This may explain the simplistic nature of the Applicant's lease. The upstairs flat initially was similar in size to the demised flat. However, in 2013,

the roof space was converted to provide four additional rooms, namely two bedrooms, a bathroom and a box room. On 29 November 2013, the upstairs flat was leased for a term of 125 years.

15. The ground floor tenant is demised the front garden and half of the garden at the rear. There are no common parts, apart from a path to the side of the property.
16. By Clause 4(4), the landlord covenants to repair and maintain the envelope of the property, namely the roof, walls, and foundations, and the ceiling joists above the flat. The landlord's covenant does not extend to the windows.
17. The tenant's covenants are set out in the Fourth Schedule. By paragraph 27, the tenant covenants to pay one half of the landlord's costs in carrying his repairing covenants under Clause 4(4).
18. There is no requirement for the landlord to maintain service charge accounts. Clause 4(4) rather provides that the tenant is required to contribute 50% of any anticipated expenditure based on an estimate obtained by the landlord. Should the final cost of such works differ from the estimate, the landlord is required to make the appropriate reconciliation.
19. There is no provision in the lease for the landlord to employ managing agents. This is not unusual for this type of property given the limited scope of the services that the landlord is obliged to provide. Woodfall "Landlord and Tenant" states the consequences of such an omission: "As a general rule the cost of employing managing agents will not be recoverable by way of service charge unless the lease expressly so provides" (paragraph 7.170).

The Duty to Consult

20. The consultation procedures required by Section 20 of the Act are set out in Schedule 4, Part 2, of the Service Charge (Consultation Requirements) (England) Regulations 2003 ("the Consultation Regulations"). They were enacted to ensure that tenants are protected from paying for inappropriate works or from paying more than would be reasonable.
21. They apply where any tenant is required to contribute more than £250 in respect of any qualifying works. The requirements have been helpfully summarised by Lord Neuberger in *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854 at [12]:

Stage 1: Notice of intention to do the works

Notice must be given to each tenant describing the works, or saying where and when a description may be inspected, stating the reasons for the works, specifying where and when observations and nominations for possible contractors should be sent, allowing at least 30 days. The landlord must have regard to those observations.

Stage 2: Estimates

The landlord must seek estimates for the works, including from any nominee identified by any tenants.

Stage 3: Notice about estimates

The landlord must issue a statement to tenants with two or more estimates, a summary of the observations, and its responses. Any nominee's estimate must be included. The statement must say where and when estimates may be inspected, and where and by when observations can be sent, allowing at least 30 days. The landlord must have regard to such observations.

Stage 4: Notification of reasons

Unless the chosen contractor is a nominee or submitted the lowest estimate, the landlord must, within 21 days of contracting, give a statement to each tenant of its reasons, or specifying where and when such a statement may be inspected.

22. Where a landlord fails to comply with these requirements, Section 20(7) limits the amount of the relevant contribution that the landlord is able to recover to £250. Adherence to these requirements is not an end in itself. Section 20ZA(1) gives the Tribunal to dispense with these requirements:

“Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.”

The Background

23. On 17 December 2012, the Applicant acquired the freehold interest in the property at auction for £225,000. The transfer was registered on 22 February 2013 (D13). Miss Carrott explained that Peter, the sitting tenant, had died some 12 months earlier. Mr Taylor asserted that the tenant was still in occupation and he was adamant that his colleague had met the tenant. The auction particulars clearly record that the first floor flat was vacant.

24. On 28 January 2013, Seddons, the Solicitor for the vendor, Mountview Estates PLC, wrote to Miss Carrott informing her of the sale. Miss Carrott denied that she had received this letter. We suspect that her recollection is faulty.
25. The Applicant proceeded to enlarge the first-floor flat which had consisted of two bedrooms, reception room, kitchen, dining room and bathroom. Bashkal & Associates, architects, drew up plans for a roof extension with two bedrooms, a box room and a bathroom. Two double glazed UPVC were to be installed in the rear of the roof with roof tiles to match the existing. Three Velux windows were to be installed in the front and side roof slopes. Again, the plans specified that roof tiles were to match the original. On 24 July 2013, Lewisham LBC granted planning permission for this development.
26. On 16 April 2013 (at D15) Carpenters Rose, Solicitors for the Applicant, wrote to Miss Carrott stating that their client was about to commence works. It is to be noted that this was more than three months before planning permission was granted. Mr Taylor told us that no specification of works was prepared. The works were not supervised by either the architect or a surveyor. There was no formal building contract. Mr Taylor told us that the cost of the works was some £40,000.
27. There is no evidence as to the state of the roof either before or after these very extensive works. On 29 November 2013, the Applicant granted a 125 year lease in respect of the upper maisonette. This lessee has played no part in these proceedings. However, it is apparent that she has been proactive in connection with the leaks that have affected her newly converted maisonette.

Invoice 1589 (12.5.14): £333.50

28. The first invoice which we are asked to consider is dated 12 May 2014 (at D2). £333.50 is claimed, namely 50% of £667.00 in respect of "works carried out to the roof".
29. The Applicant did not comply with the consultation requirements. We note that at the Directions Hearing, Mr Taylor had told the Procedural Judge that he had complied (see A9). Mr Taylor rather told us that he did not comply because the works were urgent. He stated that the landlord had notified Miss Carrott of the proposed works. Miss Carrott denied this. We accept her evidence. The Applicant has been unable to produce this letter, any estimate or any invoice in respect of these works.
30. We disallow this claim. These works were executed within six months of the roof extension. We cannot be satisfied that the works did not

arise from defective workmanship in connection with the roof extension or as a direct consequence of these works.

31. Further, the landlord did not comply with the consultation requirements. The Respondent has been prejudiced by the landlord's failure to do so and it would be inappropriate to grant dispensation. The Respondent was afforded no opportunity to consider whether these works were properly required or to comment on the cost of the works. This would have reduced the sum that the Applicant is entitled to claim to £250. For reasons stated above, we have decided that this claim should be disallowed in its entirety.

Invoice 2185 (6.8.16): £5,635

32. The Invoice is at D5. The Respondent is required to pay 50% of the total bill of £11,270. The works are described: (i) Remove existing roof; fit new breathable roofing felt; fit new zinc valley to front roof slope; lay new Eternin man made slates; fit new stepped flashings to main parapet front wall; repoint rear chimney stack - £8,900; (ii) Remove existing wooden fascias, soffits and guttering and replace with white UPVC: £900; (iii) A management fee of 7.5% is added - £1,450.
33. Mr Taylor asserted that the landlord had complied with the statutory consultation procedure. Miss Carrott responded that the procedure was fatally flawed.
34. Mr Taylor relies on a Stage 1 Notice of Intention dated 16 October 2015 at D8. The proposed works are described as "(a) fix/replace existing roof; (b) repair/replace guttering as needed". Mr Taylor stated that there had been some defect in the date specified in the Stage 1 Notice of Intention and that a second notice had been served. He stated that this had been accompanied by a covering letter explaining the defect. However, he was unable to produce a copy of this letter.
35. Mr Taylor stated that estimates were subsequently obtained from South East London Roofing in the sum of £9,800 and Concept 3 Construction in the sum of £14,330. He relies on a Stage 3 Notice about Estimates dated 23 March 2016 at D10. He was unable to produce copies of either of the estimates.
36. Mr Taylor produced two recorded delivery receipts. One item was delivered on 17 October 2015 and was signed for by Miss Carrott. The second item was posted on 23 March 2016 and was delivered on 4 April 2016. Again this was signed for by Miss Carrott. Both items were delivered from the Royal Mail Forest Hill Delivery Office.

37. Miss Carrott denied that she had received the Notice of Intention dated 16 October 2015. We are satisfied that her recollection is faulty. We find that it was delivered by the Royal Mail on 17 October 2015.
38. Miss Carrott also denied that she had seen the Notice of Estimates dated 23 March 2016 at D10. She rather produced another version of the Notice, dated 24 October 2015. She had sent a copy of this version to the Tribunal on 23 June 2017. At the hearing, she produced the original of this letter to which was stapled the envelope in which it was received. This was produced from her well kept folder. The envelope is dated 23 March 2016. On 24 March 2016, the Royal Mail left a P739 Notice relating to "KP 7923 1029 9GB". The receipt from the Royal Mail produced by Mr Taylor records that this was the item which was "delivered" on 4 April 2016.
39. We accept the evidence of Miss Carrott that this was the Notice of Estimates which she received. This is an odd document. It is dated 24 October 2015. However, it states that the consultation period in respect of the notice of intention "ended on the 16th November 2015". The Notice states that the consultation period in respect of this Notice "will end on 23rd April 2015". This makes more sense if the notice was posted on 23 March 2016, albeit that the year would be wrong.
40. If it was posted on 23 March 2016, it most unlikely that Mr Taylor would have drafted and posted a second notice on the same day. We accept the evidence of Miss Carrott that she did not receive a copy of this second version of the Notice. We are therefore driven to the conclusion that the second version (at D10) was concocted to deceive this Tribunal. Mr Taylor had recognised that the Notice that he had in fact sent was incomprehensible given that the dates specified therein were mutually inconsistent. He had drafted the original notice in haste and had taken no care to ensure that it was either accurate or comprehensible. This reflects the casual approach that he has adopted in connection with the management of the property. Having recognised that the notice was flawed, he decided to concoct a perfected version for this Tribunal. This finding casts doubt on the veracity of the whole consultation process.
41. The first question that we must ask is whether the Applicant has satisfied us that these works did not arise from defective workmanship in connection with the roof extension or as a direct consequence of those works. We cannot be so satisfied. The Applicant has failed to produce any report as to the state of the roof prior to the execution of the roof extension in 2013. These works were executed within two years of the roof extension being completed. If the roof had been at the end of its life in 2015, it must have been close to its end in 2013. No reasonable landlord would have spent £40,000 on a roof extension without renewing the roof. Further, the purchaser who acquired the lease of the upstairs maisonette in November 2013 would have been likely to have

had the property surveyed. He or she would have been unlikely to have proceeded with the purchase of a newly converted maisonette if the roof had been at the end of its natural life.

42. Further, we are satisfied that the consultation process was seriously flawed. In response to questions from the Tribunal, Mr Taylor stated that no specification of works had been prepared and that the estimate from South East London had been obtained from the upstairs tenant. The impression that we were given was that builders attended the property and then quoted for what they considered to be necessary to put the roof in a proper state of repair. This was wholly unsatisfactory in respect of works which were to cost in excess of £10,000. The Tribunal have not been provided with either of the estimates that were allegedly received. It ill beholds a party who has concocted a notice about Estimates to ask the Tribunal to dispense with the consultation requirements. We are not willing to do so.
43. Had we determined this issue on the defects in the consultation procedure, we would have reduced the sum that the Applicant is entitled to claim to £250. However, for reasons stated above, we have decided that this claim should be disallowed in its entirety.
44. This invoice includes a management fee of 7.5% in respect of which 50% (£725) is claimed against the Respondent. We disallow this as the lease does not permit the landlord to recover a management charge. In any event, we note that there was no reference to any management charge in either version of the Notice about Estimates. Finally, even had a management charge been permitted, we would have disallowed it because of the inadequate manner in which this contract was managed.

Invoice 2384 (1.9.16): £434.67

45. This invoice is dated 1 September 2016 and is for “the final works at 65 Hurstbourne Road” (at D6). Mr Taylor told us that these works related to pointing to the chimney stack and work to the flashings. These works were executed whilst the scaffolding was still in place. Miss Carrott stated that she had no knowledge of these works.
46. The Applicant has failed to produce any estimate or invoice in respect of these works. He failed to comply with the statutory consultation procedures. He did not comply with the terms of the lease in that he failed to alert the tenant in advance of the proposed works and the estimate that he had obtained in respect of the same. For these reasons, we disallow this claim.

Invoice 2382 (1.10.16): £250

47. This invoice is dated 1 October 2016, and is for £250. Mr Taylor told us that this was for a management fee for the period 24 June 2016 to 23 June 2017. We disallow this as the lease does not permit the landlord to recover a management fee.

Summary of Rights and Obligations

48. An issue arose during the course of the hearing as to whether the demands for the service charges had been accompanied by the requisite summary of rights and obligations. Mr Taylor's evidence was initially that all the demands would have been accompanied by the requisite information. He then conceded that some may have omitted this. Miss Carrott's evidence was initially that none of the demands had been accompanied by the requisite information. However, when she checked her file, she conceded that some had contained the relevant information. In particular, she produced the original of the demand at D7 to which the relevant information was attached.
49. The Tribunal is satisfied that whilst a number of demands did not include the requisite information, a number did. Whilst a service charge would not become payable if the initial demand did not contain the requisite information, it would become payable once the requisite information is provided. We are satisfied that the Applicant has now provided the Respondent with the requisite information.

Application under Section 20C and Refund of Fees

50. At the end of the hearing, the Applicant made an application for a refund of the fees that he had paid in respect of the hearing pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Having heard the submissions from the parties and taking into account the determinations above, the tribunal does not order the Respondent to refund any fees paid by the Applicant.
51. At the hearing, the Respondent applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Applicant may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Judge Robert Latham
29 September 2017

Rights of Appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

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 21B

- (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.
- (2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
- (3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.
- (4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.
- (5) Regulations under subsection (2) may make different provision for different purposes.
- (6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are

limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

- (a) complied with in relation to the works or agreement, or
- (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 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 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.