FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference:	CHI/00HD/LSC/2019/0079
Property:	31 Burden Close, Bradley Stoke, Bristol BS32 8BL
Applicant:	Stephen Fackrell
Representative:	In Person
Respondent:	Merlin (Bradley Stoke) Management Company Limited
Representative:	J B Leitch Solicitors
Type of Application:	Section 27A and 20C of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002 (Liability to pay service charges) Tenants application for the determination of reasonableness of service charges for the years 2016 to 2019.
Tribunal Members:	Judge A Cresswell (Chairman)
Venue of Hearing:	On the papers
Date of Decision:	16 December 2019

DECISION

The Application

1. This case arises out of the Applicant tenant's application, made on 1 July 2019, for the determination of liability to pay service charges for the years 2016 to 2019 inclusive.

Summary Decision

2. Under Sections 19 and 27A of the Landlord and Tenant Act 1985 (as amended) service charges are payable only if they are reasonably incurred.

3. The table below sets out the heads of expenditure challenged by the Applicant and the sums which the Tribunal found to be reasonable and payable:

Disputed Heads of Expenditure	Sums Payable £ 2016/18	Sums Payable 2019
Accounts Preparation Fee	Nil	
Management Fee	£361.86	
	£371.99	
	£379.43	
Roof Repair		£2017.43

4. The Tribunal allows the Applicant's application under Section 20c of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002, thus precluding the Respondent from recovering its cost in relation to the application by way of service charge or administration charge.

Preliminary Issues

5. With the consent of the parties, the name of the Respondent has been amended to that of the Respondent landlord.

Inspection and Description of Property

6. The Tribunal has not inspected the property. The property in question is said to consist of a flat within a building of 6 flats.

Directions

7. Directions were issued on 8 October 2019. These directions provided for the matter to be heard on the basis of written representations only, without an oral hearing, under the provisions of Rule 31 of the Tribunal Procedure Rules 2013.

8. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration. This determination is made in the light of the documentation submitted in response to those directions.

9. The Tribunal has regard in how it has dealt with this case to its overriding objective:
The Tribunal Procedure (First-tier Tribunal)
(Property Chamber) Rules 2013

Rule 3(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes:

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d) using any special expertise of the Tribunal effectively; and

(e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Tribunal must seek to give effect to the overriding objective when it:

. (a) exercises any power under these Rules; or

. (b) interprets any rule or practice direction.

(4) Parties must:

. (a) help the Tribunal to further the overriding objective; and

. (b) co-operate with the Tribunal generally.

The Law

10. The relevant law is set out in sections 18, 19, 20C and 27A of Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002 and Schedule 11 Paragraph 5A Commonhold and Leasehold Reform Act 2002.

11. The Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums of money that are payable – or would be payable - by a tenant to a landlord for the costs of services, repairs, maintenance or insurance or the landlord's costs of management, under the terms of the lease (s18

Landlord and Tenant Act 1985 "the 1985 Act"). The Tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable insofar as it is reasonably incurred, or the works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.

12. Under Section 20C and Schedule 11 Paragraph 5A Commonhold and Leasehold Reform Act 2002, a tenant may apply for an order that all or any of the costs incurred in connection with the proceedings before a Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge or administration charge payable by the tenant specified in the application.

13. "*If the landlord is seeking a declaration that a service charge is payable he must show not only that the cost was incurred but also that it was reasonably incurred to provide services or works of a reasonable standard, and if the tenant seeks a declaration to the opposite effect, he must show that either the cost or the standard was unreasonable. In discharging that burden the observations of Wood J in the* ***Yorkbrook*** *case* **(Yorkbrook Investments Ltd v Batten** (1986) 19 HLR 25) *make clear the necessity for the LVT to ensure that the parties know the case which each has to meet and for the evidential burden to require the tenant to provide a prima facie case of unreasonable cost or standard.":* **Schilling v Canary Riverside Development PTE Limited** LRX/26/2005 at paragraph 15.

14. "*Once a tenant establishes a prima facie case by identifying the item of expenditure complained of and the general nature (but not the evidence) of the case it will be for the landlord to establish the reasonableness of the charge. There is no presumption for or against the reasonableness of the standard or of the costs as regards service charges and the decision will be made on all the evidence made available:* **London Borough of Havering v Macdonald** [2012] UKUT 154 (LC) Walden-Smith J at paragraph 28.

15. The lessee is obliged to identify the costs which s/he disputes and to give reasons for his/her challenge. The landlord is expected to produce evidence which justifies the costs and answers the lessee's challenge. If the lessee succeeds in persuading the Tribunal that the costs should be reduced, the Tribunal will expect him/her to produce evidence of the amount by which the landlord's costs should be reduced. It is a key element of the section 27A determination process (**The Gateway (Leeds) Management Ltd v (1) Mrs Bahareh Naghash (2) Mr Iman Shamsizadeh** [2015] UKUT 0333 (LC)).

16. The Upper Tribunal reiterated in **Knapper v Francis** [2017] UKUT 3 (LC) that the Tribunal can make *its own assessment of the reasonable cost.*

17. Where a party does bear the burden of proof:

"*It is common for advocates to resort to [the burden of proof] when the factual case is finely balanced; but it is increasingly rare in modern litigation for the burden of proof to be critical. Much more commonly the task of the tribunal of fact begins and ends with its evaluation of as much of the evidence, whatever its source, as helps to answer the material questions of law… It is only rarely that the tribunal will need to resort to the adversarial notion of the burden of proof in order to decide whether an argument has been made out….: the burden of proof is a last, not a first, resort.*" (Sedley LJ in **Daejan Investments Ltd v Benson** [2011] EWCA Civ 38 at paragraph 86).

18. The relevant law is set out below and in the schedule below:

Tenant consultation

Under Section 20 Landlord and Tenant Act 1985, landlords must consult with tenants before carrying out work which will cost each tenant over £250.

Service Charges (Consultation Requirements) (England) Regulations 2003
Schedule 4 Part 2 (Qualifying Works – no public notice)

- Notice of intention to undertake works to be given to each tenant and any recognised tenants' association, describing (or specifying a place and hours at which a description may be inspected free of charge (which arrangements must be reasonable)), in general terms, the proposed works; explain why the works are necessary; identify the people from whom the landlord proposes to get an estimate.

- invite written observations and give address to which they may be sent, state period for delivery (which is 30 days from date of notice) and date when that period ends

- invite nomination of a person from whom the landlord should try to obtain an estimate

- Landlord must have regard to any observations made and must try to obtain an estimate from nominated persons (or some of them). The landlord must have regard to the observations he receives. This does not mean he is obliged to follow or act on the comments, but, if challenged later at the Tribunal on the reasonableness of the costs, he will need to show that he has taken them into account or explain why he did not.

- Landlord must then prepare at least two proposals for provision of the works, at least one from a person wholly unconnected with him and including any estimate received from a nominated person

- each proposal must state for each party to the proposed agreement the party's name and address and any connection with the landlord ("connection" is defined in regulation 5(6)) and must give estimate of total cost or rate of charges.

- if the relevant matters include the proposed appointment of a managing agent, the landlord must state whether the agent is a member of a professional body or trade association or subscribes to any code of practice

- written notice of the proposals to be given to each tenant and recognised tenants' association, setting out the details of the proposed works (or giving details of arrangements for inspection) and the likely costs; include a statement setting out the estimated cost of the proposed work specified in at least two of the estimates, and state where the

estimates are available for inspection; and include a summary of the tenants' observations received by the landlord in response to the first notice, and the landlord's response to them; and invite observations from the tenants (within 30 days).

- landlord must have regard to any observations made. The landlord must have regard to the observations he receives. This does not mean he is obliged to follow or act on the comments, but, if challenged later at the Tribunal on the reasonableness of the costs, he will need to show that he has taken them into account or explain why he did not.

- After entering into the contract, the landlord must within 21 days give notice to each tenant and recognised tenants' association giving his reasons for making that contract and summarising any observations that were made, or providing arrangements for inspection of same, and his response to them. This requirement does not apply if he has entered into contract with a nominated person or one who submitted the lowest estimate.

Ownership and Management

19. The Respondent is the owner of the freehold. The property is managed for it by First Port Property Services Limited.

The Lease

20. The Applicant holds 31 Burden Close under the terms of a lease dated 30 June 1989, which was made between Wimpey Homes Holdings Limited as lessor and Robert John Plummer as lessee.

21. The construction of a lease is a matter of law and imposes no evidential burden on either party: (**(1) Redrow Regeneration (Barking) ltd (2) Barking Central Management Company (No2) ltd v (1) Ryan Edwards (2) Adewale Anibaba (3) Planimir Kostov Petkov (4) David Gill** [2012] UKUT 373 (LC)).

22. When considering the wording of the lease, the Tribunal adopts the guidance given to it by the Supreme Court:

Arnold v Britton and others [2015] UKSC 36 Lord Neuberger:

15. When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", to quote Lord Hoffmann in Chartbrook Ltd v Persimmon Homes Ltd [2009] UKHL 38, [2009] 1 AC 1101, para 14. And it does so by focussing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions. In this connection, see Prenn at pp 1384-1386 and Reardon Smith Line Ltd v Yngvar Hansen-Tangen (trading as HE Hansen-Tangen) [1976] 1 WLR 989, 995-997 per Lord Wilberforce, Bank of Credit and Commerce

International SA (in liquidation) v Ali [2002] 1 AC 251, para 8, per Lord Bingham, and the survey of more recent authorities in Rainy Sky, per Lord Clarke at paras 21-30.

Accounts Preparation Fee 2016, 2017, 2018

The Applicant

23. The Applicant complains that a separate charge for "Accounts Preparation Fee" first appears in the service charge for the year ending 31 December 2016 (£159) and then in subsequent years (£630 and £661.50). This work had previously been included within the Management Fees and appeared to be creative accounting.

The Respondent

24. The Respondent avers that the charge is payable in accordance with the terms of the lease and the Applicant has failed to show that the charge is unreasonable in sum.

The Tribunal

25. The Respondent used far too many words and documents to present its case.

26. The Tribunal agrees that the charge is one payable under the terms of the lease; indeed, the Applicant does not challenge this.

27. However, the Respondent is entitled to charge only once for this service. The Tribunal notes that there was no separate charge in the year 2015; that the Management Fee increased by 5% next year, on top of which £159 was charged for an Accounts Preparation Fee; that the following year, the Management Fee increased by 5% and the Accounts Preparation Fee increased to £630.

28. The Respondent says that the charge of £159 for the year 2016 was a mistake as it was too low.

29. The Respondent also points out the functions leading to the Management Fee. The Tribunal notes that these include "*Accounting - budgeting, accounts production, payment of suppliers, etc*", "*A dedicated client account who will prepare and finalise the year end accounts including liaising with external auditors*" and "*Providing and Sending Accounting Information for Independent Auditors*". If this function is included within the Management Fee and there was no charge separately for it before 2016 and there was an increase above inflation of the Management Fee and a separate charge for Accounts Preparation Fee, the Tribunal can only conclude that the only mistake here was made by the Respondent in charging at all separately for a fee already included within the Management Fee. Accordingly, the Tribunal finds that the charge for an Accounts Preparation Fee was not reasonable and is not payable. The Respondent cannot have the monies twice.

Management Fee 2016, 2017, 2018

The Applicant

30. The Applicant complains that the year on year increases in the Management Fee are not reasonable because the expenditure to be recovered under the lease is predetermined and recurring costs. Accordingly, any increase should accord with inflation, i.e. nearer to 2%.

The Respondent

31. The Respondent avers that the Management Fee is recoverable under the terms of the lease.

32. The managing agent does a range of works for the fee, as exemplified by various lists.

33. The sum charged is reasonable for the works done.

34. The Applicant has failed to show by comparators that the sums charged are not reasonable.

The Tribunal

35. The Tribunal wonders why there are so many lists of works conducted by the managing agent. One list would enable the tenants to know what they were getting for their money.

36. The Tribunal would expect to see management fees of around £200 to £250 + VAT for properties of this nature where the managing agent is looking after 6 properties in the same location, rather than the over £400 inclusive of VAT charged. However, the Applicant has failed to provide any local comparators and it would be dangerous for the Tribunal to make a finding based solely upon its own experience. Where the Tribunal does, however, find in the Applicant's favour is in relation to the annual increases in the Management Fee, where the Respondent has failed to give any cogent reason for the 5% annual increase. There being no cogent reason for a 5% annual increase in the Management Fee, the Tribunal accordingly finds that a 5% increase is not a reasonable charge to make of the tenants. It finds that the increase should be limited, in the absence of any cogent reason, to the rate of inflation for the years to December in question, being (taken from the Office for National Statistics) 1.6%. 2.8% and 2% respectively.

37. Using the inflation figures, the resultant corrected charges for 2016, 2017 and 2018 are £2171.15, £2231.95 and £2276.59 respectively or £361.86, £371.99 and £379.43 for the Applicant.

Roof Repair 2019

The Applicant

38. The Applicant says that there is no provision in the Lease for a levy of tenants to cover the cost of repairs of the roof.

39. The Respondent should have ensured there was a sufficient sum in the Reserve Fund.

40. If the repairs are required because of storm damage, which he believes to be the case, the cost should have been met by a claim against the property insurance as provided for in the lease.

The Respondent

41. The Respondent says it has complied with the statutory requirements for consultation for these major works, even though they are not presently applicable.

42. The cheapest quotation was selected.

43. This was not an insurable event, but rather a matter of maintenance.

The Tribunal

44. The Respondent gives a misconceived explanation of why the consultation requirements for major works are not applicable, when clearly they are applicable and appear to have been properly complied with by the Respondent.

45. The Respondent has selected the cheapest quotation.

46. The Applicant's concerns are rather about his having to pay a large sum when either a Reserve Fund should have been available to meet the costs or it could have been covered by an insurance claim. The Respondent has said that there was insufficient within the Reserve Fund to meet the costs and that the repairs are a matter of maintenance; there is no evidence before the Tribunal which could gainsay either of those statements.

47. The Tribunal is satisfied that a charge can be made for repair of the roof in accordance with paragraph 1 of the Fifth Schedule to the Lease: "*To keep the Common Parts in a good state of repair and condition*", the Common Parts being defined in Clause 1 of the Lease as : "*the main structure of the Buildings ….*" and payable as part of the Service Charge in accordance with Part 11 of the Sixth Schedule: "*The sums spent by*

the Management Company in and incidental to the observance and performance of the covenants on the part of the Management Company contained in the Fifth Schedule….".

48. The Respondent appears to have gone through a proper course of consultation and chosen the cheapest quotation. There is nothing on the face of the cheapest quotation to cause concern that it is not a reasonable sum for the works entailed; indeed, the Tribunal noted that it is less than half of the other quotation received during the consultation process.

49. Accordingly, the Tribunal finds the charge for the roof repair to be payable in accordance with the terms of the lease and reasonable.

50. Although the lease, in clause 1 of Part 1 of the Sixth Schedule, envisages a call for payment "*as soon as reasonably practicable after the first day of January in every year*", it can be argued that the call for payment towards the major works was made as soon as reasonably practicable because the sum was not known until the tender exercise was complete. Whether or not the Respondent ought to have anticipated major works better and thereby had a stronger Reserve Fund, the charge still falls to be paid by the tenants.

Section 20c and Rule 13 Costs and Paragraph 5A Application

51. The Applicant has made an application under Section 20C Landlord and Tenant Act 1985 and Schedule 11 Paragraph 5A Commonhold and Leasehold Reform Act 2002 in respect of the Respondent's costs incurred in these proceedings.

52. The relevant law is detailed below:

Section 20C Landlord and Tenant Act 1985: Limitation of service charges: costs of proceedings

(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 … … residential property tribunal, ….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.

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

Commonhold and Leasehold Reform Act 2002 Schedule 11

Paragraph 5A Limitation of administration charges: costs of proceedings

(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

(3) In this paragraph—

(a) *"litigation costs"* means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and
(b) *"the relevant court or tribunal"* means the court or tribunal mentioned in the table in relation to those proceedings.

Proceedings to which costs relate

First-tier Tribunal proceedings

"The relevant court or tribunal"

The First-tier Tribunal

53. The Tribunal first examines the lease to determine whether the Applicant is able to recover its costs via the Service Charge in accordance with the lease. The Tribunal finds that the lease does permit the recovery of legal costs, being paragraph 9 of Part 11 of the Sixth Schedule: "*The costs incurred by the Management Company in bringing or defending any actions or other proceedings against or by any person whatsoever.*"

54. In considering an application under Section 20C, the Tribunal has a wide discretion, having regard to all relevant circumstances. It follows a similar course when considering administration charges. "Its purpose is to give an opportunity to ensure fair treatment as between landlord and tenant, in circumstances where even although costs have been reasonably incurred by the landlord, it would be unjust that the tenant or some particular tenant should have to pay them." "In my judgement the only principle upon which the discretion should be exercised is to have regard to what is just and equitable in all the circumstances. The circumstances include the conduct and circumstances of all parties as well as the outcome of the proceedings in which they arise." (**Tenants of Langford Court v Doren Ltd** (LRX/37/2000).

55. *"An order under section 20C interferes with the parties' contractual rights and obligations, and for that reason ought not to be made lightly or as a matter of course, but only after considering the consequences of the order for all of those affected by it and all other relevant circumstances."*
"The scope of the order which may be made under section 20C is constrained by the terms of the application seeking that order…;
"The FTT does not have jurisdiction to make an order in favour of any person who has neither made an application of their own under section 20C or been specified in an application made by someone else".
(**SCMLLA (Freehold) Limited** (2014) UKUT 0058 (LC)). "In any application under section 20C it seems to me to be essential to consider what will be the practical and financial consequences for all of those who will be affected by the order, and to bear those consequences in mind when deciding on the just and equitable order to make." (**Conway v Jam Factory Freehold Limited** (2013) UKUT 0592 (LC)).

56. The Tribunal also follows the guidance in **Avon Ground Rents Ltd v Child** [2018] UKUT 02014.

57. **Avon Ground Rents Ltd v Child** [2018] UKUT 02014 (LC), Mr Justice Holgate:
58. Had the para. 5A jurisdiction been available to the Respondent in the litigation before the County Court and the FTT in the present case, it may well be that those bodies would have considered it "just and equitable" to reduce the Respondent's contractual liability to pay the legal costs that the Appellant had incurred in relation to that litigation to an amount which was proportionate to the sums in dispute, the

issues involved and the level of representation appropriate to deal with those matters (and not simply by reference to whether costs had been incurred reasonably and were reasonable in amount). We recognise that this would have effected an alteration to the parties' contractual position, but that is the very purpose of the para. 5A jurisdiction.

65."In the present case there was no dispute before the FTT or before us that it was appropriate for the Appellant to incur the costs of legal representation. In other cases, this will primarily be a matter for the FTT (or a District Judge applying s.51 of the 1981 Act) to address. However, it should not be thought that we condone this practice. The procedure before the FTT is intended to be relatively informal and cost-effective. The legal principles for assessing the reasonableness of service charges are well-established and clear. In many cases there will be no issue about the relevant principles to be applied, and their application will not be so difficult as to make legal representation essential or even necessary. In such cases a representative from the landlord's managing agents should be able to deal with the issues involved. After all, those agents will have been directly involved in the decisions taken pursuant to the lease to provide services, to set annual budgets and estimated charges, to incur service charge costs and to serve demands for service charges. Where that is so, a court may reach the conclusion that it was unreasonable for the costs of legal representation to be incurred, whether in whole or in part. Under CPR 44.3 to 44.5 such a conclusion would be compatible with a clause in a lease providing for the recovery of costs on an indemnity basis."

58. The Tribunal notes that the Applicant has been mostly successful in his submissions, identifying a charge which should not have been made, the Accounts Preparation Fee, achieving the reduction of a second charge, the Management Fee, and properly calling for an examination as to whether the Respondent could make the extra levy for the roof repairs and highlighting the inadequacy of the Reserve Fund. Taking a rounded view, the Tribunal allows the application under Section 20C of the Landlord and Tenant Act 1985. It directs that the Respondent's costs in relation to this application are not to be regarded as relevant costs to be taken into account in determining the amount of the service charge for the Applicant for the current or any future year.

59. The Tribunal allows for the same reasons the application under Paragraph 5A and makes an order extinguishing any liability of the Applicant's to pay litigation costs incurred by the Respondent. The Tribunal also notes, in so concluding, that it can see no reason why the Respondent felt the need to employ solicitors when Managing Agents familiar with the property were already engaged.

A Cresswell (Judge)

APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

ANNEX

Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002

18 Meaning of "service charge" and "relevant costs"

(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.

19 Limitation of service charges: reasonableness

(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 provision 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.

27A Liability to pay service charges: jurisdiction

(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 postdispute 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.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration
agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject of an application under subsection (1) or (3).
(7) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.