



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

Case Reference:	CHI/21UC/LSC/2021/0027
Property:	Flat 15, Park Gates, Chiswick Place, Eastbourne BN21 4BE
Applicants:	Anastasia Pilat & Rinat Bayramov
Representative:	Ms Daria Pilat
Respondent:	Park Gates (Eastbourne) Residents Limited
Representative:	Sussex Legal Consultants
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 2020 and 2021. Section 20ZA of the Landlord and Tenant Act 1985 Landlord's application for the dispensation of all or any of the consultation requirements contained in Section 20 Landlord and Tenant Act 1985
Tribunal Members:	Judge A Cresswell (Chairman) Mr C Davies FRICS
Date and venue of Hearing:	15 September 2021 by Video
Date of Decision:	20 September 2021

DECISION

The Application

1. This case arises out of the Applicant tenants' application, made on 10 January 2021, for the determination of liability to pay service charges for the years 2020 and 2021 and the Respondent landlord's application for the dispensation of all or any of the consultation requirements provided for by Section 20 of the Landlord and Tenant Act 1985. For ease of reference, the Tribunal will refer to Ms Pilat and Mr Bayramov as the Applicants and Park Gates (Eastbourne) Residents Limited as the Respondent throughout this Decision and will also use the term "the leaseholders" to refer to all of the leaseholders, who are themselves Respondents to the application for dispensation. References to Mr Pilat are to Mr Vladimir Pilat.

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. The Tribunal has determined that the Respondent landlord has demonstrated that the charges in question were reasonable and are payable by the Applicants.
3. The Tribunal has determined that the Respondent landlord has demonstrated that it is reasonable to dispense with the consultation requirements, and for that reason makes a determination dispensing with all of the consultation requirements. The dispensation is conditional upon the Respondent not seeking to recover its costs of these proceedings from the leaseholders by way of service charge or administration charge in this or any other year.

Preliminary Issues

4. There were a number of issues raised by the Applicants, which were not pursued at the hearing. Those issues, include a complaint about the quality of works to date (this is an application relating to an on-account payment and the reasonableness of on-account service charges is to be assessed as at the date when their payment was due **Knapper v Francis** [2017] UKUT 3 (LC)); transparency of financial operations, conflict of interest/undue influence, inadequate complaints procedure, intimidation of complaints (none of which are within the Tribunal's jurisdiction).
5. Those issues are not dealt with substantively in this determination.
6. **James Scicluna v Zippy Stitch Ltd & Ors** (2018) CA (Civ Div) (Longmore LJ, Underhill LJ, Peter Jackson LJ):

Where the parties to Tribunal proceedings had agreed a list of issues, the matters to be determined in the substantive hearing and on any appeal were properly to be limited to those agreed issues.

7. The agreed issues are liability to pay and the reasonableness of service charges in service charges years 2020 and 2021 and whether or not it is reasonable to dispense with the statutory consultation requirements, together with recovery of its costs by the Respondent from the service charge.
8. At the outset of the hearing, the parties agreed that it would not make sense for the Tribunal to consider Phase 2B of the proposed major works at the property and that Phase 2A should rather be considered.

Inspection and Description of Property

9. The Tribunal did not inspect the property, but was provided with photographic evidence and descriptions of the building.
10. The property in question consists of a large building set one road back from the seafront in Eastbourne comprising 56 flats.

Directions

11. Directions were issued on various dates. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration.
12. This decision is made in the light of the documentation submitted in response to those directions and the evidence and submissions made at the hearing. Evidence was given to the hearing by Adam Jordan and Charles Bramly, directors of the managing agent company, SHW, by Mr Vladimir Pilat, by other leaseholders, Alan and Anne-Marie Wilson, Janneke Mattson and Ian Cahill. Of the parties responding to the Tribunal's directions concerning the Section 20 consultation issue, 11 leaseholders supported dispensation and 5, including the Applicants, opposed it. At the end of the hearing, the parties told the Tribunal that they had nothing further to add.
13. 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

14. The relevant law in relation to service charges is set out in sections 18, 19, 20, 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.
15. 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.

16. 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 administrative charge payable by the tenant specified in the application.
17. In reaching its Decision, the Tribunal also takes into account the Third Edition of the RICS Service Charge Residential Management Code (“the Code”) approved by the Secretary for State under section 87 of the Leasehold Reform Housing and Urban Development Act 1993. The Code contains a number of provisions relating to variable service charges and their collection. It gives advice and directions to all landlords and their managing agents of residential leasehold property as to their duties. In accordance with the Approval of Code of Management Practice (Residential Management) (Service Charges) (England) Order 2009 *Failure to comply with any provision of an approved code does not of itself render any person liable to any proceedings, but in any proceedings, the codes of practice shall be admissible as evidence and any provision that appears to be relevant to any question arising in the proceedings is taken into account.*
18. In **Enterprise Home Developments LLP v Adam** (2020) UKUT 151 (LC):
 27. *In Yorkbrook Investments Ltd v Batten (1986) 18 HLR 25 Wood J, giving the decision of the Court of Appeal, addressed the issue of the burden of proof on the reasonableness of service charges. At page 34 he said this:*

“Having examined the statutory provisions we can find no reason for suggesting that there is any presumption for or against a finding of reasonableness of standard or costs. The court will reach its conclusion on the whole of the evidence. If the normal rules of pleadings are met, there should be no difficulty. The landlord in making his claims for maintenance contributions will no doubt succeed, unless a defence is served saying that the standard or the costs are unreasonable. The tenant in such a pleading will need to specify

the item complained of and the general nature – but not the evidence – of his case. No doubt discovery will need to be ordered at an early stage, but there should be no problem in each side knowing the case it has to meet, providing that the court maintains a firm hold over its procedures. If the tenant gives evidence establishing a prima facie case then it will be for the landlord to meet those allegations and ultimately the court will reach its decisions.”

28. *Much has changed since the Court of Appeal’s decision in Yorkbrook v Batten but one important principle remains applicable, namely that it is for the party disputing the reasonableness of sums claimed to establish a prima facie case. Where, as in this case, the sums claimed do not appear unreasonable and there is only very limited evidence that the same services could have been provided more cheaply, the FTT is not required to adopt a sceptical approach. In this case it might quite reasonably have taken the view that Mr Adam had failed to establish any ground for thinking the sums claimed had not been incurred or were not reasonable, which would have left only the question whether any item of expenditure was outside the charging provisions.*
19. *“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.*
20. The Upper Tribunal reiterated in **Knapper v Francis** [2017] UKUT 3 (LC) that the Tribunal can make *its own assessment of the reasonable cost*.
21. The relevant statute law is set out in the Annex below.

Section 20 Landlord and Tenant Act 1985 Limitation of service charges: consultation requirements

22. The provisions of section 20 apply where a landlord enters into a contract to carry out qualifying works.
23. They provide that if the consultation requirements have not been complied with or dispensed with by a Tribunal, the amount of the relevant costs incurred on carrying out the works or under the agreement which may be recovered through the service

charge is limited to the “appropriate amount”. The application of the provisions is regulated by the *Service Charges (Consultation Requirements) England Regulations 2003*).

24. “The appropriate amount is –
in respect of qualifying works, £250 per tenant.
25. *Service Charges (Consultation Requirements) (England) Regulations 2003*
Schedule 4 Part 2 (Qualifying Works – no public notice)

There are three stages of consultation:

1. Pre-tender stage Notice of intention

30-day consultation period. This notice must be sent to each leaseholder that will be asked to contribute towards the costs through their service charges, and the RTA if there is one. This notice must:

describe in general terms the works or services to be provided, or specify a reasonable place and hours at which a description can be inspected free of charge;

if the contract includes qualifying works, state the landlord's reasons for considering it necessary to carry out those works;

inform each leaseholder and the RTA that they have 30 days from the date of the notice in which to make written observations, specifying where they should be sent, and by what date;

inform leaseholders that they have the right to nominate a contractor that they feel should be invited to tender for the work and that they have 30 days in which to make their nomination.

If facilities to provide copies of the description of the contract are not made available at the times at which the description may be inspected, then copies must be provided free to any tenant on request.

Duty to have regard to observations

The landlord must have regard to any observations made.

Estimates

The landlord will then seek estimates from its chosen contractors but must also try to obtain estimates from contractors nominated by leaseholders and/or an RTA. Criteria on which contractors nominated by tenant and/or a

RTA should be invited to tender are set out in the previous section relating to Nomination of Contractors from leaseholders and RTAs.

2. Tender stage Preparation of landlord's proposals

the landlord shall prepare at least two proposals (estimates) as to the services, goods, works etc;

at least one of the proposals must be from a contractor wholly unconnected with the landlord;

furthermore, if nominations are received, the proposals must also include:

an estimate from a contractor nominated by a leaseholder (if obtained);

an estimate from a contractor nominated by a RTA (if obtained).

Notification of landlord's proposals

30-day consultation period.

1. The landlord must give notice of the proposals to each leaseholder and to the RTA (if there is one).

2. Each proposal must contain:

a statement of the relevant matters;

a statement of name and address of each party to the proposed agreement apart from the landlord;

any connection (apart from the proposed agreement) between the party and the landlord;

the leaseholder's estimated contribution where reasonably practicable;

otherwise, the cost for the building or the premises where reasonably practicable;

otherwise, the current unit cost, hourly or daily rate, where reasonably practicable.

where the landlord's proposal is to appoint an agent to be responsible for the management of the property, each proposal must contain a statement indicating:

whether the proposed agent is or is not a member of a professional body or trade association and, if so, which one; and

whether the proposed agent does or does not subscribe to any code of practice or voluntary accreditation scheme relevant to the functions of managing agents.

the provisions for the variation of any amount under the proposed agreement;

the intended duration of the agreement;

a summary of any observations received by the due date and the landlord's response to those observations.

3. The notice must include a copy of each proposal or specify a reasonable place and hours where they can be inspected.

4. If facilities to provide copies of the proposals are not made available at the times at which the proposals may be inspected, then copies must be provided free to any leaseholder on request.

5. The notice must:

invite the making in writing of observations on the proposals;

specify the address to which the observations must be sent;

state when the 30-day period for consultation ends;

inform that all observations must be received by that date.

The Schedule provides no obligation to make all of the estimates received available for inspection, only those relating to the proposals made to the leaseholders. However, it would be good practice to make all estimates available for inspection if they were not one of the proposals put to lessees.

Duty to have regard to observations

The landlord must have regard to any observations made by the due date.

3. Award of contract

Notification of the award of contract

21-day response period. Within 21 days of entering into the agreement, the landlord must send a notice to each leaseholder and the RTA which:

states the reasons for awarding the contract, or giving the place and hours where those reasons may be inspected; and

gives a summary of the observations received on the proposals and respond to them or specify a place and hours at which that summary and response may be inspected.

If facilities to provide copies of the statement, observations and landlord's response to the observations are not made available at the times at which they

may be inspected, then copies must be provided free to any leaseholder on request. This notice is not required where the contract has been awarded to:

a nominated contractor; or

the lowest tender.

26. Under **Section 20ZA of the Landlord and Tenant Act 1985** (as amended), the Tribunal has jurisdiction to make a determination dispensing with all or any of the consultation requirements, where an application has been made by the landlord, “if satisfied that it is reasonable to dispense with the requirements.”

Daejan Investments Limited v Benson and others [2013] UKSC 14:

The correct question is whether, if dispensation was granted, the respondents would suffer any relevant prejudice, and, if so, what relevant prejudice, as a result of the failure to comply with the Requirements.

The purpose of the Requirements is to ensure that tenants are protected from paying for inappropriate works, or paying more than would be appropriate.

In considering dispensation requests, the LVT should focus on whether the tenants were prejudiced in either respect by the failure of the landlord to comply with the Requirements.

45. Thus, in a case where it was common ground that the extent, quality and cost of the works were in no way affected by the landlord's failure to comply with the Requirements, I find it hard to see why the dispensation should not be granted (at least in the absence of some very good reason): in such a case the tenants would be in precisely the position that the legislation intended them to be – ie as if the Requirements had been complied with.

The Requirements are a means to the end of the protection of tenants in relation to service charges. There is no justification for treating consultation and transparency as appropriate ends in themselves. The right to be

consulted is not a free-standing right. As regards compliance with the Requirements, it is neither convenient nor sensible to distinguish between a serious failing, and a minor oversight, save in relation to the prejudice it causes. Such a distinction could lead to uncertainty, and to inappropriate and unpredictable outcomes.

The LVT has power to grant dispensation on appropriate terms, and can impose conditions on the grant of dispensation, including a condition as to costs that the landlord pays the tenants' reasonable costs incurred in connection with the dispensation application.

*Where a landlord has failed to comply with the Requirements, there may often be a dispute as to whether the tenants would relevantly suffer if an unconditional dispensation was granted. **While the legal burden is on the landlord throughout, the factual burden of identifying some relevant prejudice is on the tenants. They have an obligation to identify what they would have said, given that their complaint is that they have been deprived of the opportunity to say it. Once the tenants have shown a credible case for prejudice, the LVT should look to the landlord to rebut it and should be sympathetic to the tenants' case.***

Insofar as the tenants will suffer relevant prejudice, the LVT should, in the absence of some good reason to the contrary, effectively require the landlord to reduce the amount claimed to compensate the tenants fully for that prejudice. This is a fair outcome, as the tenants will be in the same position as if the Requirements have been satisfied.

This conclusion does not enable a landlord to buy its way out of having failed to comply with the Requirements, because a landlord faces significant disadvantages for non-compliance. This conclusion achieves a fair balance between ensuring that tenants do not receive a windfall, and that landlords are not cavalier about observing the Requirements strictly.

27. In **Francis v Phillips** [2014] EWCA Civ 1395:

29. *The real protection afforded by the 1985 Act to residential tenants is that all service charges must be reasonable and reasonably incurred under section 19. This is the sensible way to control routine works of repair and*

maintenance which are unlikely to be the subject of a detailed plan in advance.

36. *It is not in issue that the question of what a single set of qualifying works comprises is one of fact. It is a multi-factorial question the answer to which should be determined in a commonsense way taking into account all relevant circumstances. Relevant factors are likely to include (i) where the items of work are to be carried out (whether they are contiguous to or physically far removed from each other); (ii) whether they are the subject of the same contract; (iii) whether they are to be done at more or less the same time or at different times; and (iv) whether the items of work are different in character from, or have no connection with, each other. I emphasise that this is not intended to be an exhaustive list of factors which are likely to be relevant. Ultimately, it will be a question of fact and degree. Robert Walker LJ said that, on the facts in Martin's case, the fact that all the works were the subject of one contract was a factor which decisively pointed to the conclusion that there was a single set of works in that case. It seems to me that the judge must have had in mind such an approach when he said at para 362 that he had considered "the nature, extent and timing of the works as undertaken and proposed to be undertaken".*

39. *The criticism that the judge adopted a subjective approach is misplaced. The lessors were entitled to carry out the work that they were obliged to carry out in such sequence and such manner as they chose (provided that they complied with their contractual obligations). That was a decision for them. It can be described as subjective in the sense that it reflected their state of mind and their intentions. But the critical question for the judge was whether the work planned by the lessors constituted a single or multiple set of qualifying works. That was an objective question. He did not apply a subjective test to that question.*

66. *What constitute qualifying works for the purposes of the relevant provisions of the 1985 Act is a question of fact to be determined objectively. The Judge expressly stated (in para. [357]) that the decision was one of fact to be determined objectively on all the evidence. I do not accept that it was inconsistent with such a test to have regard to the way that the appellants actually conducted their affairs and planned their work to the Estate (as*

defined in the Lease). I agree with the Master of the Rolls' description (in paragraph [36] above) of factors relevant to determining which works are comprised in any particular set of qualifying works. The way in which the works were planned and the lessor's reasons for the way they were implemented are also of relevance, even if not decisive. The Judge considered all the relevant factors and had the benefit of a site visit and oral and other evidence. There is no basis for saying that his findings of fact on this issue were flawed by an error of principle or were so wayward that they could not properly be reached by any judge having regard to the admissible evidence.

28. In **OM Property Management Limited v Hughes** (2014) UKUT 0009 (LC):

.....there is no provision in the 1985 Act for leaseholders to be relieved of their liability to pay service charges on the grounds of incompetent or inefficient administration which has not caused demonstrable prejudice.

It is clearly appropriate, as the appellant recognises, that the dispensation be on condition that the leaseholders' reasonable expenses incurred in connection with the section 20ZA application to the LVT should be reimbursed.

.....and I will make that payment a condition of dispensation.

29. In **23 Dollis Avenue (1998) Ltd v (1) Nikan Vejdani (2) Nahideh Echrighi** (2016) UKUT (Lands):

A failure to comply with the Service Charges (Consultation Requirements) (England) Regulations 2003 could be relevant to the reasonableness of a service charge to be paid under the Landlord and Tenant Act 1985 s.19(2), but it was simply one factor to be considered. In the instant case, the non-compliance consisted in the fact that the estimate on which the service charge demand was based included work which went beyond that initially proposed; the amount demanded would be reduced by excluding that extra work.

Ownership and Management

30. The Respondent is the owner of the freehold. The property is managed for it by Stiles Harold Williams Partnership LLP, SHW.

The Lease

31. The Applicants hold Flat 15 under the terms of a lease dated 2 October 2001, which was made between Eastbourne (Park Gates) Investments Limited as lessor and Mrs M H Shepherd as lessee.
32. 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)).
33. 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.

34. Clause 5.2.3 of the Lease allows the landlord to require sums in advance on account of the Maintenance Contribution, adjustment being made when the actual expenditure is later certified.

Roof Works £155,444 and the Cost of the Works

The Applicants

35. The Applicants submitted that the Respondent had failed to complete a Section 20 consultation in respect of a substantial part of the works. They argued that the sums due from a leaseholder should, accordingly, be substantially reduced.
36. The Notice of Intention dated 19 June 2019 for the latest stage of works in 2020-2021 indicated scope of works "*Phase 2 external repairs/decoration and structural repairs to the main building elevations not included in Phase 1 consisting of the lawn facing, pond facing and garage driveway facing elevations*".
37. It was not in a prescribed form.
38. The Notice was not received by them, but a copy was provided by SHW in March 2020 upon request. No evidence is offered of the posting of the Notice or its means of delivery.
39. The Notice dated 19 June 2019 did not include site drawings/sketches or clear description of areas where the work is to be undertaken.
40. The Oxford dictionary definition of "*elevation*" is "*one side of a building*". There is no indication on the Notice that the full scope of works is ready and available for review and observations at a place during specified hours.
41. The Section 20 Notice of Estimates provided a summary of Estimates, but again without full description so as to highlight the full scope and specification upgrades. There was provision for the inspection of the full estimates at the offices of SHW during the working week.
42. The Notice of Intention omits about 50% of the intended works. A comparison of the estimates against the short description of the intended works reveals substantial "additional" works, being:

Additional Works	Sovereign	Booker & Best Construction
1. Roof Repairs	155,444.00	163,081.10
2. Bridge Repairs	45,030.00	18,000.00
3. Provision of New Water Main	48,800.00	43,200.00
Subtotal	249,247.00	224,281.10

43. No written support for these additional works had been shared with the leaseholders.

44. Previous discussions with leaseholders have no bearing on the legal requirements of the Section 20 consultation process. Many cannot attend annual meetings and even the most recent minutes prior to the Notice of Intention provided no details of the works proposed.
45. Having seen the estimates, the Applicants' representative wrote to the Respondent on 9 March 2020 suggesting it did not proceed with the tender without an interim meeting with the leaseholders.
46. The additional works were only reviewed by the Respondent following 2 open letters by Mr Pilat to leaseholders, resulting in substantial savings of some £100,000 or about 15% of the total project value.
47. The additional works should have been the subject of a Section 20 consultation.
48. The Applicants say that the Respondent's case that the works are necessary due to a lack of work since the 1950s is not correct as there has been substantial work on the property between 2008 and 2010, and earlier in 2001.
49. The roof in question is used by 2 penthouse flats only. The work was assessed by a Chartered Surveyor using a cherry picker, when there is access by stairs. No specialist roofing contractor was involved in a roof survey. There were no reports of leaks and there is an industry warranty of 20 years for such works, the penthouses being built in 2001. The scope of works and high end materials are outside the scope of the "structural" repair requirements in the specification.
50. During the Annual Meeting on 25 May 2018 attended by 23 residents, Mr. Jordan of Stiles Harold Williams identified the phasing by the areas that require the most urgent work:
"Phase 1: Spring 2019: this will be the main block facing the car park.
Phase 2: March 2020: this will be the rest of the main block.
Phase 3: Spring 2021: this will be the North Block."
51. The minutes of the 2018 Annual Meeting cited by the Respondent mention "roof" works but there is no attribution of the works to any particular phase of the project. Roof works were in fact included in Phase 1 scope completed in September 2019 at the cost of £57,055 net excluding SHW fees and VAT. The amount of £41,495 net for "felt covered roofs, projecting bay, renewal of asphalt surfaces" would be sufficient to cover at least 690 square metres or even the total roof area estimated 738m² given economies of scale at the market price of £60/m² net. Taking into account the substantial cost of roof works and the lengthy stay of specialist

contractors on the roof level in summer 2019, it would be reasonable to assume that all the roof works were completed at Phase 1. This point was also indicated in a written exchange with the Directors by another leaseholder.

52. Whilst further aspects of the project were discussed during the Annual Meeting on 24 May 2019, the attendance of the Annual Meeting on 24 May 2019 included 27 residents (or 22 out of 57 flats). The minutes of the Annual Meeting were sent out by the Directors by email dated 27 July 2019, over 2 months after the Annual Meeting on 24 May 2019, over 1 month after the date of the Notice of Intention on 19 June 2020 and 8 days after the end of 30 days consultation period related to the Notice of Intention.
53. Generally, and applicable to all items challenged by the Applicants, are the following issues.
54. The Respondent approached 5 general builders for tenders. Only 2 tendered. Booker and Best Ltd, a bidding contractor, had previously carried out works to the entrance bridge and pond in 2017. The work then completed was poor in quality, used inferior materials and was overpriced.
55. The specification “Schedule of Works” had no sketches or site drawings to indicate with precision where the works were required. There were no surveys included for the roof, bridge over pond or water piping, save for the concrete survey. There were no quantitative calculations of any kind to indicate, for instance, the surface areas of roof/projecting roof surfaces, the number of rainwater outlets, the number of windows in communal areas, etc.
56. The winning contractor’s tender was mathematically incorrect by the addition of some £3,329 net of on costs.
57. The prices quoted for the individual tranches of work varied considerably and yet the totals for the 2 bidders were only £8,560.28 apart before on costs. There were some variations of double or triple charges within the individual tenders as the below table shows:

Description of Work	SOVEREIGN	BOOKER & BEST
Preliminaries	32,700.00	80,316.51
Contingency Sum	12,500.00	12,500.00
Schedule of Works		
General Health & Safety, Scaffolding/ Access etc	57,222.00	54,725.00

Felt covered roofs	59,183.00	83,417.00
Renewal of asphalt surfaces	68,902.00	31,857.50
Rainwater goods	988.00	1,492.00
Replacement handrails & balustrading	11,900.00	26,827.07
Concrete repairs	10,460.00	38,000.00
Lintel replacement	5,700.00	3,487.50
Zinc cladding repairs	1,000.00	1,000.00
Brickwork repairs	7,150.00	5,738.00
Render repairs	2,020.00	1,625.00
Steam cleaning	23,050.00	9,750.00
Leadwork	7,771.00	15,000.00
Communal areas window replacement	16,832.00	20,000.00
Provision of new water main	48,800.00	43,200.00
Bridge repairs	45,030.00	18,000.00
Renewal of mastic	41,420.00	16,755.00
External Redecorations	34,034.00	51,610.00
Undecorated concrete washdown	Inc.	1,500.00
Paving	Inc.	1,750.00
TOTAL	£486,662.00	£498,551.28

58. Certain changes were made between the Scope of Works and the Tender Analysis. Those changes were not clearly disclosed in the tender analysis and not disclosed to the residents as variation of specification:
- Communal windows "repairs" changed to communal windows "replacement" at £16,832.
- Entrance bridge: handrails & balustrades from "316 marine grade steel and a powder coated finish" changed to "brushed stainless steel handrail with TuffLAM glazing insert between balustrades" at £45,030.
59. The latter item is an example of extravagant specification. Replacement handrails and balustrading in "brushed stainless steel handrail with TuffLAM glazing insert between balustrades" estimated at £38,727 net excluding SHW fees and VAT for installation on the roof terrace accessed exclusively by 2 penthouse flats.
60. A timely questioning of the relevant line items based on surveyor's experience with current market rates could have changed the tender outcome.

61. The works completed were generally completed by specialist contractors engaged by the winning bidder, but this led to the costs being loaded by the costs of Sovereign's supervision.
62. The Applicants themselves sought quotations from independent third-party contractors that operate in the area in respect of scaffolding and access costs, roof costs and bridge rail costs. In respect of scaffolding, the quotation from the same company providing scaffolding for the project was £64,776 less before on costs. In respect of roof costs, the quotation was £150,360 less. In respect of bridge rail costs, the quotation was £42,552 less than the original tender price and still £5,645 less than the revised figure.
63. The Applicants also raise issues with the quality of the works completed, but this is an application about an on-account charge, such that the Tribunal can only be concerned with the state of knowledge of the Respondent at the time the money was demanded of the leaseholders.

The Respondent

64. The Respondent submits that the application should relate only to Phase 2A and be subject to Section 19(2) of the 1985 Act. As an advance service charge, it must be assessed as at the date when the payment was due, 17 March 2020.
65. The landlord's decision-making process was reasonable. The works plainly needed to be done, and there was no basis for delaying them. The application for advance payment was not premature. Even if (which is denied) the landlord did not comply fully with the s.20 procedure, it plainly attempted to do so.
The amount demanded was reasonable, being based on a bona fide estimate of the cost of the works. It is also to be noted that the landlord took careful consideration of the tenants' likely cashflow situation in phasing the works over number of years. Any alleged failure to comply with the consultation requirements (which failure is denied) would simply be one factor to be considered in deciding the reasonableness of the amount demanded. It would not limit the amount payable in advance to £250.
sum.
66. The sum of £6,165 has not been demanded. It is not a service charge within the meaning of Section 18(1) as it is not "an amount payable by a tenant", so that there can be no application under Section 27A(1) in relation to it. This is not an

application under Section 27A(3). In any event, there is therefore no sensible basis upon which the Tribunal could assess reasonableness of this sum. The question of what sum ought reasonably to be paid as an advance service charge on a particular date necessarily depends on circumstances existing at that date. Unless and until it has been demanded, that question cannot be answered. It is not difficult to identify many factors which might increase or decrease amount actually demanded in due course, and therefore any determination now as to its reasonableness would be otiose.

67. The Applicants have been a joint shareholder in the Respondent since at least 23 March 2019. As such they were entitled to (but did not) attend the Annual General Meeting of the Respondent on 24 May 2019. All leaseholders were invited (whether or not they were shareholders), so that they could all be involved in the process.
68. In any event, they received the Minutes thereafter, which explained the process by which the entire building was to be renovated. A survey of all the building had been completed, and a concrete survey of the infrastructure had been obtained. Since the costs of all the works would be high, it would be completed in 3 phases:
 - (a) Phase 1 Everything from top to bottom of the main building facing the car park, including preventative maintenance.
 - (b) Phase 2 - 2020 from the garden (lawn side), round to the front, finishing at the chimney.
 - (c) Phase 3 - 2021 the north block.The work would include 'replacing/repairing concrete and steel due to age and water ingress, the flat roof will be renewed, works completed on the drains and general redecoration'.
69. When the Applicants received the Notice of Intention on 19 June 2019, therefore, they knew, or ought to have known, that the Phase 2 works referred to included the works referred to in the Minutes. In any event, the wording of the Notice of Intention is wide enough to encompass such works. If in doubt, they could have contacted the Respondent.
70. The question of whether the works were necessary is not relevant. The amount payable is key in a Section 27A application and should be "no greater amount than is reasonable is payable."
71. The works were necessary as shown by a survey of the building of 16 May 2017.
72. At the AGM on 25 May 2018, Adam Jordan detailed the proposed external works:

A full survey of the building and structure had taken place. The concrete specialist identified urgent works and these works were included with the repairs to the pond/bridge. We now need to plan the external works to the building that has been identified by both surveys, including refurbishment and decoration. It has been agreed to do the work in phases to help with the costs and give everyone time to raise the funds that will be levied. The phasing has been determined by the areas that require the most urgent work.

Phase 1: Spring 2019: this will be the main block facing the car park.

Phase 2: March 2020: this will be the rest of the main block.

Phase 3: Spring 2021: this will be the North Block.

Phase 1 works has been tendered and a cost of £315,000 has been proposed (this is an all in price including contingency). However, this is subject to a cladding survey which the Fire Officer has recommended following the Grenfell Tower fire. This will be done before the external works commence and depending what the survey finds the price may alter if changes are recommended.

AJ detailed the works that will be completed:

This includes replacing and refurbishing areas/items that have come to the end of their life; putting right essential areas and general decorating. This includes flat roofs, brickwork, concrete, asphalt and the deck roof including updating hand rails according to health and safety regulations. This does not include internal works.

AB explained once we have a complete price for the work, an element of the reserve fund will be used towards costs with the remainder being raised through a levy (to estimate what your levy could be use your service charge % apportionment). A S20 consultation notice will be issued next detailing the final estimate costs for the works. Once all the funds are in place SHW will instruct the preferred contractor.

73. The Notice of Intention was sent to all tenants. It was required by the relevant statutory instrument to 'describe, in general terms, the works proposed to be carried

out'. It did so comply. In any event, in the covering letter dated 19 June 2019 to the Applicants (and the other tenants), the managing agent explained:

As you will most likely be aware the Phase 1 external & structural repairs, to the Main Block car park facing elevations at Park Gates, are presently underway onsite.

We are however writing regarding the Phase 2 external & structural repairs, which will attend to the remaining elevations of the Main Block - being the lawn facing, pond facing and garage driveway facing elevations.

74. It was clear from all of the above that the refurbishment would include the roof in either or both of Phase 1 or 2.
75. The Notice of Estimates too was compliant with the legal requirements and the Respondent had regard to the observations on behalf of the Applicants.
76. The schedule of works included the concrete survey and 2 specifications for the roof works.
77. The whole point of the tendering process is to commission the necessary works at a reasonable market price, which was achieved.
78. Adam Jordan of SHW said that his company was instructed to manage the property in 2014. It carried out a full inspection in October 2015 and then produced a schedule of planned maintenance. As a result, a concrete survey was obtained in April 2017. The property had not been well maintained and substantial works were required in 2 planned phases.
79. Phase 1 was completed about June 2019.
80. He was responsible for producing the schedule of works for Phase 2, sending out the Notice of Intention and receiving the tenders and completing a Tender Analysis Report, following which he recommended that Sovereign be awarded the contract.
81. He was responsible for sending out the Notice of Estimates. The works were broken down into 2 phases, Phases 2A and 2B.
82. He responded to comments from the leaseholders.
83. Phase 2A was completed on 5 February 2021 in the sum of £221,983.85, reflecting significant savings of about £55,338 achieved by renegotiations and mini-retenders with sub-contractors.

84. It is no longer intended to proceed with the water main replacement, thus negating relevant costs. Also, the bridge works have been deferred.
85. Phase 2B has been consulted upon, but no demands have yet been made, and no works yet instructed. Retendering is likely due to the passage of time.
86. He had roof reports and recommendations from a specialist roofing company and, as a Chartered Surveyor himself, he is able to oversee and inspect such works.

The Tribunal's Consideration and Decision

1. The Tribunal adopted the approach advised in **Francis v Phillips** above and took a commonsense approach, examining all of the relevant factors.
2. The works intended here as part of Phase 2 were extensive repairs and maintenance to a large building. SHW had liaised throughout with the Directors of the landlord Respondent company and had completed a Planned Maintenance Schedule for them in 2015. There was no evidence available to the Tribunal to show that this Schedule had ever been shared with all leaseholders.
3. The Applicants assert that they did not receive the Notice of Intention when sent to all leaseholders on 19 June 2019. The Respondent asserts that the Notice was sent out by post to all leaseholders and that no others reported that they had not received that Notice. Their file contains the copy of the Notice letter sent to the Applicants. None of the leaseholders at the hearing reported not receiving that notice, but one, Mr Cahill, did bring to the Tribunal's attention that reply forms sent by some leaseholders had not been received by the Tribunal. The Tribunal is faced, therefore, with the submission by Mr Pilat that his relatives did not receive the Notice set against the Respondent's record of sending out the Notice to all leaseholders, including the Applicants, and the confirmation that other leaseholders did receive the Notice. The Tribunal is unable, on the basis of the evidence, to find that the Applicants were provided with the Notice.
4. Section 7 of the Interpretation Act 1978 is relevant to service of a Section 20 Notice (**Akorita v 36 Gensing Road Limited** (2009) Upper Tribunal). Section 7 provides that certain notices are deemed to have been served if they have been sent by ordinary post, unless the contrary is proved: Where an Act authorises or requires any document to be served by post (whether the expression "serve" or the expression "give" or "send" or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly

addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

5. In **London Borough of Southwark v Akhtar** (2017) UKUT 0150, the Upper Tribunal; said this:

82. A legal presumption like the one in s 7 has the effect of reversing the burden of proof. Once the landlord has proved that the notice was properly addressed, pre-paid and posted it has nothing further to do – unless the contrary is proved. If the contrary is proved, then the landlord must, as it were, go the long way round and actually prove service without the help of the presumption and must therefore convince the tribunal on the balance of probabilities that the notice was actually received. But it is only required to do that if the contrary is proved, and not if the contrary is merely asserted.

6. The Respondent knew well in advance of the hearing that the Applicants were denying receipt of the Notice of Intention. Notwithstanding that, their witnesses were unable to say other than that there was a copy of the relevant letter on file and that it would not have been sent by recorded delivery and yet they believe it would have gone out in the post. The Respondent has fallen short of proving that the Notice was prepaid and posted on the basis of the evidence presented. The challenging attitude of the Applicants generally suggests strongly to the Tribunal that they would have acted (via Mr Pilat) upon the Notice had they received it.
7. The Applicants argue that the Notice of Intention does not actually say that roof works are intended as part of the works. The Tribunal finds that to be a correct assertion, but somewhat irrelevant in the case of the Applicants given the finding that the Notice was not received by them. So far as the other leaseholders are concerned, that issue is relevant. How, from the description of the works given in the Notice, could leaseholders, who had not attended the 2018 AGM and only received its minutes, be aware that *Phase 2 external repairs/decoration and structural repairs to the main building elevations not included in Phase 1-consisting of the lawn facing, pond facing and garage driveway facing elevations* included roof works?
8. Paragraph 1(2) of Schedule 1 of The Service Charges (Consultation Requirements) (England) Regulations 2003 says: *The notice shall–*

(a) describe, in general terms, the relevant matters or specify the place and hours at which a description of the relevant matters may be inspected; No place or hours were detailed where a description of the relevant matters may be inspected.

9. The Respondent says, however, that the roof works were discussed at the AGMs of 2018 and 2019 and that, even if the Applicants did not attend those meetings, they were made aware of what was discussed when they received the minutes. The Tribunal cannot agree with that assertion, however, because the reference to roof works in the 2018 minutes was solely associated with Phase 1; the 2019 minutes were not distributed until 27 July 2019, which post-dated the period for representations under the Notice of Intention.
10. The Respondent has not concentrated on the needs of each individual leaseholder and has made assumptions of knowledge based upon their own state of understanding.
11. The Tribunal had to wade through 2 bundles containing more than 1200 pages in total to try to seek clarity.
12. The Respondent was not well prepared for the hearing.
13. Despite the Tribunal allowing a late application for Mr Jordan to give evidence at the hearing, he was unable to answer some basic questions and had to defer to Mr Bramly. This was illustrative of a lack of clarity of the part of the Respondent. For instance, when asked whether the Respondent intended to retender Phase 2B, Mr Jordan said that it was very likely to be the case only for Mr Bramly to interject that he thought they had agreed to move forward with the chosen contractor on the basis of the costings agreed.
14. The consultation was on the basis of Phase 2 of the works. This was then split into Phase 2A and 2B, the leaseholders were told in a letter of 4 February 2020. The only clue given to leaseholders as to what was to be in Phase 2A and 2B was a plan attached to that letter (in fact a photograph) with red and blue lines drawn upon it. The red lines were said to show Phase 2A and the blue lines 2B. The Tribunal can easily see how such little detail could be confusing to those leaseholders not “in the know”. The Tribunal struggled to identify what was included in Phases 2A and 2B from the photograph; why the respondent would send out a photograph showing the wrong colours for each of the phases is a situation detailed in Mr Jordan’s witness statement made on 26 August 2021 as an administrative error, and is also puzzling.

15. What was included in Phases 2A and 2B was important information for the leaseholders because they were going to be asked to contribute large sums towards the costs in 2 tranches. The Tribunal asked what it perceived to be a very simple question of Mr Jordan, was the £7,449.08 demanded of the Applicants for Phase 2A? Astonishingly, Mr Jordan was unable to answer this and he deferred to Mr Bramly, who himself was unable to answer without checking his computer records.
16. “Did Phase 2A include “roof”, “bridge repairs” and “water mains”?” It did include roof, but not the other 2, said Mr Jordan. These were issues complained of by the Applicants and yet they had to wait until the hearing for this clarity. Mr Pilat had identified that these 3 elements of work, which were not evident from the Notice of Intention amounted to about 50% of anticipated expenditure on Phase 2. Roof works alone were said to amount to main contractor’s costs of some £155,440 of Phase 2 proposals plus on costs. In the event, Phase 2A costs were £221,983.85 plus on costs, with the roof works representing some £60,000 of that sum.
17. The next question, therefore, the Tribunal having found a failure by the Respondent to correctly follow the Section 20 statutory procedure in relation to the roof works only (concentrating on Phase 2A), and finding, in the absence of any claim to the contrary, that the Applicants were otherwise aware of the general nature of the intended major works, is whether the leaseholders were prejudiced as a result.
18. The Tribunal finds that the Phase 2A roof works were necessary. The Tribunal heard that the asphalt surface had been on the roof for 30 or more years against a life span agreed by the parties as some 20 years or so. The Tribunal heard that on another wing of the building, the roof had started to fail, with leaks to 2 flats. The Tribunal endorses an approach by the landlord of not waiting for a failure before replacing the roofing surface, particularly when scaffolding had been erected for other major works. Accordingly, the Tribunal finds that the works were necessary.
19. Were the roof works costed at a reasonable level? The Respondent used a specialist company to detail the works (and subsequently used another specialist at a lower cost to perform the works). It was clear from the Planned Maintenance Schedule that replacement of the surface was required and the Tribunal has found above that that was the case.
20. The Applicants have sought to demonstrate that scaffolding could have been contracted at a lesser price, but the comparison chosen was not like for like either in

the nature of the building or the composite elements of the contract, such that the Tribunal cannot rely upon it.

21. The Applicants have argued that the materials could have been purchased at a considerably lesser cost than was agreed to be paid, but again, the Tribunal was not satisfied that all of the constituents of the contract could be seen in the comparison chosen.
22. This leads on to a further element of the Applicants' case, where they seek to dissect the different elements of the Respondent's overall contract with Sovereign and suggest that some elements could have been sourced much more cheaply.
23. Here, the Tribunal from its own knowledge is led to support the arguments raised by the Respondent at the hearing. Landlords engaging contractors for major works will invariably look to engage a single contractor. It would be a more costly exercise to separate all of the work elements out and seek to engage individual contractors for those elements. In any event, the Construction and Design Management Regulations 2015 require the appointment of a principal contractor where more than one contractor is involved.
24. The contractor will engage specialist subcontractors to effect discreet portions of the major works. Different contractors will show differing charges for the different element of the major works; whilst a landlord is expected to be aware of those differences and to check costings with the contractors, this is not an opportunity for bargaining on the individual elements before acceptance of the tenders as that would destroy the tender process. Contractors may load individual elements and yet seem below cost on other elements; the role of the landlord is to assess the overall cost, which is then added to its knowledge of the skills, availability and ability to perform the works in making its overall decision. Here the Respondent chose the cheaper of the 2 tenders and did not choose the contractor that the Applicants criticised for previous work.
25. On the one hand, the Applicants criticise the Respondent for not asking specialists to assess the necessary works and on the other hand, they criticise the Respondent for using specialist contractors under the umbrella of the main contractor. It is quite normal for the main contractor to supervise the work of a subcontractor and charge for that service.
112. The Tribunal is required to apply the guidance of the Supreme Court in **Daejan Properties Limited v Benson** (2013) UKSC and finds that the tenants were not,

on the basis of the evidence presented to it by the parties, prejudiced by the failure by the landlord to consult. It is apparent that the landlord knew of the legal requirement to consult. The guidance of the Supreme Court requires the Tribunal to measure the prejudice rather than simply disallow all costs above £250 per flat. The tenants here were not prejudiced on the basis suggested by the Applicants on a consideration of their submissions seen in the light of the available evidence.

113. The Tribunal looks at the submissions made and does not embark on its own search for other possible breaches of legislation or forms of prejudice.
114. The Tribunal determined that the dispensation requested by the Respondent landlord be provided. The Tribunal, accordingly, allows full dispensation to the landlord from the consultation requirements of Section 20. The Tribunal makes clear that it was not asked to and does not make any finding as to the reasonableness of the works.
115. That dispensation is conditional, however, upon the Respondent not seeking to recover its costs of these proceedings from the leaseholders by way of service charge or administration charge in this or any other year.
116. The Applicants are also concerned that windows were replaced rather than repaired and that a balustrade on the roof was changed after the Notice of Intention to a higher specification.
117. In respect of the windows, the Tribunal was told that these were communal Crittall windows and that the decision to replace was made on a cost benefit analysis because they would have required repainting, they did not shut correctly and they were inefficient at retaining heat, all factors of relevance. The leaseholders knew, in any event, that there was an intention to address the windows and the cost involved has not been shown to the Tribunal to be an unreasonable one.
118. In respect of the balustrades, the Tribunal heard evidence that these were needed to replace an unsafe structure as part of the roof works; they would last longer than cheap alternatives. The Tribunal can well appreciate the view of the Applicants that the work would be more to the benefit of the owners of the penthouses, but also notes the evidence of Mr Wilson that they form part of an escape route for other residents and would be safer for them. It can often be the case that a communal part of a building will be used by a very limited number of the residents of the building and yet be paid for by all; that is a part of living in a shared building and is a factor dealt with by the lease, the contract between the landlord and all of the tenants.

119. Although, in their submissions, the Applicants had appeared to suggest that there was not sufficient detail in the specification of works of the materials required, Ms Pilat confirmed that that was not a part of their case.
120. Given the above findings, the Tribunal finds that the sum of £7,449.08 was a reasonable sum to demand as an on-account service charge for Phase 2A of the major works. The Tribunal makes no findings as to the quality of the works nor the subsequent reasonableness of their ultimate costs.

Section 20c and Paragraph 5A Application

121. The Applicants have 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.
122. They ask the Tribunal to consider ensuring these are not passed on to them.
123. The Tribunal finds in favour of the Applicants on this issue because that is a condition of the dispensation granted above. The Tribunal would have made such an order in any event, given that the Applicants are entirely innocent of any blame for the position they find themselves in, whereas the Tribunal believes that the communication by the Respondent could have been better and earlier. It was not until the hearing of this application that there was any real clarity. The stark realisation of the extent of and cost of the works came very late in the day to people, some of whom have been placed in a financial predicament.

RIGHTS OF 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 by email to rpsouthern@justice.gov.uk 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

Section 20 Limitation of service charges: consultation requirements

(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) a leasehold valuation 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.

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.

Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 read as follows:

Rule 13.—(1) The Tribunal may make an order in respect of costs only—

(a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;

(b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—

(ii) a residential property case,

or (iii) a leasehold case; or

(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

(3) The Tribunal may make an order under this rule on an application or on its own initiative.

(4) A person making an application for an order for costs—

(a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and

(b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.

(5) An application for an order for costs may be made at any time during

the proceedings but must be made within 28 days after the date on which the Tribunal sends—

(a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or

(b) notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.

(6) The Tribunal may not make an order for costs against a person (the “paying person”) without first giving that person an opportunity to make representations.

(7) The amount of costs to be paid under an order under this rule may be determined by—

(a) summary assessment by the Tribunal;

(b) agreement of a specified sum by the paying person and the person entitled to receive the costs (the “receiving person”);

Schedule 11, Part 1, Paragraph 5A Commonhold and Leasehold Reform Act 2002

(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