FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BK/LSC/2019/0066**
Property	**:**	**Flat 6, Thanet House, 29 Westbourne Terrace, London W2 3UN**
Applicants	**:**	**Ms Nohra Currie and Mr Robert Aird**
Representative	**:**	**In person**
Respondent	**:**	**Westbourne Property Management Limited**
Representative	**:**	**Mr Simon Allison of Counsel**
Type of Application	**:**	**For the determination of the liability to pay a service charge**
Tribunal Members	**:**	**Judge P Korn** **Mr H Geddes**
Date and venue of Hearing	**:**	**4th November 2019 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**19th December 2019**

DECISION

Decisions of the Tribunal

(1) The Applicants' share of Preside's £216.00 management fee in connection with the PG Construction works is not payable.

(2) The other actual or estimated service charge items challenged by the Applicants are all payable in full.

(3) The Applicants' cost applications under section 20C of the 1985 Act and under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 and their application for the reimbursement of the hearing fee are all refused.

Introduction

1. The Applicants seek a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("**the 1985 Act**") as to the payability of certain service charges.

2. The Applicants' challenge is to various service charge items in respect of the service charge years 2017 to 2019. At the start of the hearing the Applicants said that the management costs were no longer being challenged. It was agreed between the parties (certain items having previously been struck out by a Procedural Judge on 23rd August 2019) that the challenge was now limited to the following:-

- Preside's 10% works fee (Preside being the Respondent's managing agent)
- The reserve fund
- Legal and professional fees for 2018 and 2019
- Accounting costs
- Repairs to Bridge Club in 2018
- Unbloc Drainage Engineers Ltd invoices
- Anstow Limited invoices
- Subject Access Request ("**SAR**") costs for 2018
- Repairs and cleaning of caretaker's flat/vaults/roadway.

3. The relevant statutory provisions are set out in the Appendix to this decision. The Applicants' lease ("**the Lease**") is dated 15th October 2016 and was originally made between the Respondent (1) and Wren Projects Limited (2).

Refusal of request for adjournment

4. At the start of the hearing the Applicants requested an adjournment as they did not feel that they had received sufficient information from the Respondent.

5. The section 27A application itself is dated 13th February 2019 and therefore this case has already taken a long time to reach a final hearing. There are grounds for arguing that the Respondent was initially slow to provide certain information, but in our view the Respondent has now provided sufficient information to enable the Applicants to make their case. The fact that the Applicants have not made further, more specific, challenges on the basis of the copy invoices and other information supplied is a matter for them and is not a basis for delaying the final disposal of the case. In addition, having listened to Ms Currie's oral submissions we are satisfied that she has not identified any key issues on which the Applicants need – and are entitled to – further information in order to proceed.

6. Accordingly, taking into account in particular paragraph 3 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("**the Tribunal Rules**") which expresses the overriding objective of the Tribunal Rules, we consider that it would have been disproportionate and unjustified to delay the case further, that it would have been unfair on the Respondent to do so and that to do so would also have constituted an inappropriate use of the Tribunal's and the Respondent's resources. The adjournment request was therefore refused.

The disputed items

Preside's 10% works fee

Applicants' case

7. The Applicants state that Managed Properties Limited, t/a 'Preside', charged a 10% management fee in connection with some work carried out by PG Construction. The Applicants say that Preside was not involved in the management or supervision of this work at all and that it was the Applicants who managed PG Construction.

Respondent's case

8. The Respondent's position is that the terms of the Management Agreement between the Respondent and Preside entitle Preside to charge a 10% management fee. At the hearing the Respondent was unable to explain what Preside actually did in relation to these works.

The reserve fund

Applicants' case

9. Ms Currie said at the hearing that this challenge was now a challenge in relation to the works to repaint the elevation. She said that the section 20 consultation process was flawed as there was no reference to the surveyor's fees. Also, the figure of £13,026 was unreasonably high. On being asked by the Tribunal what would have been a reasonable amount Ms Currie said that it was difficult to know, but she directed the Tribunal to alternative quotes that she had sourced on an hourly rate basis.

Respondent's case

10. Mr Allison for the Respondent said that the repainting works had not actually been challenged by the Applicants in the Scott Schedule. In any event, there was no legal obligation to consult in relation to professional fees. Furthermore, the Applicants had only raised the consultation point for the first time at the hearing.

Legal and professional fees for 2018 and 2019

Applicants' case

11. The Applicants submit that these fees are not recoverable as a matter of construction of the Lease.

Respondent's case

12. Mr Allison submitted at the hearing that this point had not been properly pleaded. In any event, it was important to note that the category was not restricted to legal costs and could cover any professional costs. The Respondent was relying on Clause 3(B) of the Lease, the relevant part of which read as follows: *"The Lessees hereby further covenant with the Managers that the Lessees will … pay … all other costs and expenses incurred in the management of the said building of which the Flat forms a part …"*. Mr Allison also referred the Tribunal to the Supreme Court decision in *Arnold v Britton (2015) UKSC 36* as regards how leases should be construed, particularly in the context of the cost of management being intended to be self-funding.

13. In addition, Mr Allison noted that in the Scott Schedule the Respondent had stated that the amounts challenged under this heading for 2018 and 2019 were only estimated amounts.

Accounting costs

14. The 2017 accounting costs being challenged by the Applicants are actual charges, whereas the ones for 2018 and 2019 are estimated charges. The Respondent confirmed at the hearing that they related to the cost of preparing the service charge accounts.

15. The Applicants' argument was that the accounts should have been prepared by the managing agent, Preside, as part of the management fee. The Respondent disagreed and commented that accounting costs were plainly a cost of management and recoverable under the Lease.

Repairs to Bridge Club

Applicants' case

16. The Applicants state that leaseholders should not have to pay the cost of carrying out repairs to the interior of this unit.

Respondent's case

17. The Respondent's position is that the damage was caused by a leak from the common parts. The relevant two invoices are in the hearing bundle.

Unbloc Drainage Engineers Ltd invoices

18. At the hearing Ms Currie said that there have been regular blockages affecting Flat 6 from the outside and yet the Applicants have been required to pay for the cost of dealing with these blockages. In response, Mr Allison for the Respondent said that this point had not been pleaded as part of the Applicants' statement of case.

19. Ms Currie was then invited by the Tribunal to go through the copy invoices in the bundle and to clarify exactly what the Applicants' challenge was. In the event, she did not have any specific challenge to any particular invoice.

Anstow Limited invoices

Applicants' case

20. The Anstow invoices in the hearing bundle related to remedial damp proofing works, and the Applicants' first objection was that there were two invoices for the same work and therefore that either there had been duplication or the work had needed to be re-done because it had not been carried out properly the first time.

21. In addition, Ms Currie felt that the hourly rate was too high and that the work should not have taken more than 4 hours.

Respondent's case

22. In response the Respondent said that the first invoice related to the 2016/17 year whereas the second invoice related to late 2018. The scope of works changed as between the two dates as it was a developing approach. An hourly rate of £120 was considered to be reasonable, and in any event it was not just about hourly rates – the issue was whether the overall charge was reasonable.

SAR costs

General

23. These costs relate to legal fees incurred by the Respondent in responding to subject access requests made under the General Data Protection Regulation ("**GDPR**") by the Applicants and also by Livia Bernardini (a leaseholder in the neighbouring building), in dealing with a complaint to the Information Commissioner's Office made by Ms Currie, and in dealing more generally with data protection advice to the directors of the Respondent company.

Applicants' case

24. The Applicants' position is that these costs could have been completely avoided and that the level of charge was unreasonable. No quotes were obtained from other firms and the useful documents were redacted for no explained reason.

25. At the hearing Ms Currie said that the Respondent incurred unnecessarily high costs as it could have supplied a complete copy of the structural surveyor's report at the first time of asking rather than a heavily redacted version.

Respondent's case

26. The Respondent agrees that these costs could have been avoided but considers that the fault lies with the Applicants. In the Respondent's submission the costs are recoverable under the Lease as costs incurred in the management of the building as the requests were made directly in relation to management issues at the building. The Respondent, whose sole function is to manage the building,

had no option but to respond as set out in the detailed witness statement of Ms Susan Hall referred to below. The Respondent notes that the Lease is a tripartite lease and expresses the view that it would have been intended that the management company under the Lease should be able to recover all reasonable costs incurred in managing the building.

27. Compliance with GDPR is compulsory for all companies and it is a cost of management. The Respondent has referred the Tribunal to the Upper Tribunal decision in *Bretby Hall Management Company Ltd v Pratt (2017) UKUT 70* by way of analogy.

28. At the hearing Mr Allison said that Livia Bernardini's subject access request had related to a neighbouring building and that the total cost had been apportioned equally between the two buildings as this seemed fair and reasonable. The sum of £4,901.00 which was being challenged by the Applicants was just the estimated amount for 2018. The estimated amount for 2019 was not being challenged.

29. The context of the subject access requests was some proposed alterations to the two buildings, about which the Respondent held certain information in its capacity as the company managing the buildings. Therefore it was clearly the case – in the context of construing the Lease – that the Respondent was dealing with the subject access requests as part of its management responsibilities. It has no other source of income apart from the service charges; it merely manages the two buildings.

Applicants' follow-up points

30. Ms Currie said that the Respondent has a commercial arm in that it rents out some commercial space. Also, the Applicants' subject access requests were only made in desperation and the information should have been provided much earlier.

Ms Hall's evidence

31. Ms Hall is a partner in the Intellectual Property Team at Clarke Willmott LLP Solicitors and had primary responsibility for responding to the subject access requests. She has given a witness statement in relation to this issue which sets out her experience, the legal background, the chronology of events and the cost issues.

32. In cross-examination she accepted that one issue which arose as a consequence of the subject access requests that were made was whether the Respondent needed to improve its GDPR compliance generally. As regards Ms Currie's implication that she was only seeking a full copy of the surveyor's report, Ms Hall said that if that was the case why did she ask for the Respondent to supply a huge amount of other documentation/information as well.

33. Ms Hall accepted that she did not write to Ms Currie warning her of the possible cost consequences of making such a wide-ranging subject access request, but she did not consider that she had a duty to do so and she was also affected by the very aggressive nature of Ms Currie's request.

34. The Tribunal asked Ms Hall whether in her opinion a person making a subject access request could be charged indirectly for a proportion of the cost of complying with the request through a service charge. She said that the point had been discussed but that no firm conclusion had been reached.

Repairs and cleaning of caretaker's flat/vaults/roadway

35. At the hearing Ms Currie queried why leaseholders should have to pay towards these costs, especially when the Respondent received income from these areas.

36. In response Mr Allison for the Respondent said that the Respondent simply did not know to which items Ms Currie was referring, although it was possible that one sum of £163.80 being referred to related to the cost of clearing leaves from the roadway and in principle this should be recoverable. As far as the Respondent could tell, the items other than the £163.80 did not form part of the actual service charge for 2017 and therefore at most they formed part of the basis for the estimated service charges for 2018 based on an entry on a ledger.

Tribunal's analysis and determination

Preside's 10% works fee

37. The Applicants have argued that Preside did no work for this fee as PG Construction were managed by the Applicants themselves. The Respondent has argued that Preside was entitled to a fee under the general terms of the Management Agreement, but this is rather to miss the point. The Management Agreement is a contract between the Respondent and Preside, and even if it is the case that Preside is entitled to be paid under that contract it does not follow that the Applicants or any other leaseholders are obliged to reimburse the Respondent.

38. The Respondent was unable to confirm in a credible manner that Preside did any work at all in return for its 10% of the PG Construction fee and it therefore follows that – as between the Respondent and the Applicants – the fee was not reasonably incurred for the purposes of section 19 of the 1985 Act and that the Applicants' share of that £216.00 charge is not payable.

The reserve fund

39. The Applicants claim that the Respondent did not fully follow the section 20 consultation process, but they did not raise this point until the hearing and have failed adequately to explain why it was only raised for the first time at the

hearing. This alone is sufficient reason to reject the Applicants' argument on this point, as it is self-evidently procedurally unfair for a party to raise a wholly new point on the day of the hearing itself, particularly where as here there is no evidence of any credible reason as to why the point could not have been made earlier in written submissions. In any event, we agree with the Respondent that the section 20 consultation requirements are restricted to qualifying works and do not cover professional fees.

40. As regards the cost, there is a serious lack of detail in the Applicants' challenge and in their analysis of the reasonableness of the cost and therefore we do not accept this argument either.

41. Finally, the challenge is expressed to be to the reserve fund rather than to the cost of the works themselves, and therefore there is at least a question as to whether the challenge is misconceived and whether – for example – it should have been framed as a claim for breach of trust for improper use of reserve fund monies. As such, it would be an issue in respect of which this Tribunal would have no jurisdiction in the absence of a specific order that the Tribunal Judge hear this part of the case sitting as a County Court Judge under the 'deployment pilot scheme'.

42. Accordingly, the Applicants' challenge to the reserve fund fails.

Legal and professional fees

43. The evidence indicates that the amounts being challenged in both 2018 and 2019 are only estimated amounts, not actual amounts, as final accounts had not been prepared for either year when the Applicants' challenge was made. It is obvious why there are no actual accounts yet for 2019, as this year has not yet ended, and even in relation to 2018 it is not so surprising that only estimated amounts were available as at the date of the Applicants' application, given that the application was lodged back in February.

44. As the challenge is only to estimated amounts it cannot be a challenge to the reasonableness of the actual amounts incurred. Instead, the challenge is under section 19(2) of the 1985 Act and so the issue is simply whether it was a reasonable estimate.

45. The Applicants have offered no evidence to show that the estimate itself was unreasonable, for example the Applicants have not argued that the estimate was very much higher than previous actual charges and then coupled that argument with a challenge to the Respondent to justify the sharp increase. They have, though, questioned whether these sums are recoverable as a matter of construction of the Lease itself, and this is a perfectly proper challenge.

46. As regards the Lease construction issue, the first point to make – as Mr Allison himself has said – is that the category specified by the Respondent covers any professional fees, not just legal costs. With that in mind we can turn to the

wording of the clause relied on by the Respondent. It relies on Clause 3(B) of the Lease, the relevant part of which reads as follows: *"The Lessees hereby further covenant with the Managers that the Lessees will … pay … all other costs and expenses incurred in the management of the said building of which the Flat forms a part …"*. In the context of a management company whose only source of income is the service charge payable by leaseholders, it seems to us to be self-evident – particularly in the light of Lord Neuberger's judgement in *Arnold v Britton* – that the words *"all other costs and expenses incurred in the management of the … building"* are wide enough to cover professional fees incurred in managing the building. This would be the case, in our view, even in relation to a modern lease, but we consider that it applies all the more so to a 1971 lease which was drafted in an era when these issues were typically not spelt out in great detail.

47. Accordingly, these estimated charges are payable in full.

Accounting costs

48. The Applicant has made an assertion that the managing agents should prepare the accounts as part of its management fee. This is a very weak argument. The Respondent is perfectly entitled to use a suitably qualified person to prepare the accounts as long as the cost is reasonable, and indeed it is hard to see how the accounts could have been prepared by the managing agents in the absence of the necessary qualifications to perform this role. There has been no challenge to the amount of these costs, which in the absence of any evidence to the contrary, we consider to be reasonable. We also agree with the Respondent that the cost is recoverable as a matter of interpretation of the Lease.

49. Accordingly, the 2017 actual charges and the 2018 and 2019 estimated charges are payable in full.

Repairs to Bridge Club

50. In principle the Applicants raise a reasonable point in that repairs to, and redecoration of, the interior of a unit would not normally be a service charge item. However, if the Respondent is correct and the repair/redecoration was made necessary by a leak from the common parts of the building then this will form part of the service charge in the absence of any other arguments as to why it should not.

51. The first invoice is actually addressed to the Bridge Club and is headed "Re: Water Ingress – Ground Floor Back Bridge Room". The second invoice contains a narrative which begins "Attended site on emergency call following major leak from above into common parts". Whilst arguably both invoices could be slightly clearer, neither invoice was prepared in anticipation of there being an argument at a tribunal hearing as to whether the cost falls within the service charge, and on the basis of the Respondent's evidence and the copy invoices supplied we are satisfied on the balance of probabilities that the damage in both cases was

caused by a problem emanating from the common parts and therefore that the cost properly forms part of the service charge.

52. Accordingly, in the absence of any other basis for the challenge, these charges are payable in full.

Unbloc Drainage Engineers Ltd invoices

53. At the hearing Ms Currie raised a point which had not been raised as part of the Applicants' statement of case. She was then invited to clarify what the Applicants' challenge was to each individual invoice, but she did not have any specific challenge. It therefore appeared to the Tribunal that the challenge to the Unbloc invoices had fallen away, but in any event in the absence of any credible challenge to these costs our determination is that they are payable in full.

Anstow Limited invoices

54. The Respondent has provided a credible explanation as to why there are two separate invoices. As to the amount payable, the Applicants have no relevant expert knowledge and have offered no independent evidence or credible basis for their assertion that the cost is too high. Whilst we have a slight concern about the Respondent's reference to a developing approach to sorting out the damp issue, the Applicants' challenge is simply too weak and we are therefore satisfied – on the balance of probabilities on the basis of the evidence before us – that these charges are payable in full.

'SAR' costs

55. We have considered the written and oral submissions made by the parties, the relevant copy correspondence and Ms Hall's witness evidence on which she was cross-examined at the hearing.

56. We consider Ms Hall's witness evidence to be very credible, and she came across well at the hearing. The evidence, in our view, shows Ms Currie to have taken a very aggressive and disproportionate approach to the SAR issue. Faced with Ms Currie's unreasonable stance, we accept that the Respondent had no real choice but to act in the way that it did. As to the amount of the costs, whilst a large figure has been referred to as being the total amount of expenditure, the only amount which has actually been challenged is the estimated charge for 2018 of £4,901.00 which – subject to our comments below – we consider to be a reasonable estimate of legitimately incurred SAR costs for 2018.

57. As to the amount of the SAR costs in total, the only challenge before us is a challenge to the estimated charge for 2018 of £4,901.00 and therefore it would be inappropriate for us to make a determination as to whether the total amount of SAR-related charges actually incurred is reasonable and would be payable if a challenge were to be mounted in respect of the whole of the actual charges as

and when the service charge accounts for the relevant years have been finalised and audited.

58. As to whether the charges are recoverable under the Lease, there are two separate issues. First of all there is the question of whether they are recoverable in principle as a matter of construction of the terms of the Lease. The Respondent relies on Clause 3(B) of the Lease, as it does in the context of professional fees. Again, the relevant part of this clause reads as follows: *"The Lessees hereby further covenant with the Managers that the Lessees will … pay … all other costs and expenses incurred in the management of the said building of which the Flat forms a part …"*. For much the same reasons as given in relation to professional fees, we consider that this wording is wide enough to cover SAR costs. The Respondent had no choice but to comply with the subject access requests and in complying with those requests it was acting in its capacity of managing the building. It has no, or virtually no, sources of income aside from the service charges and it would not be able to manage the building effectively if it was unable to recover these sorts of fees.

59. The Respondent has cited the decision of the Upper Tribunal in *Bretby Hall Management Company Limited v Christopher Pratt (2017) UKUT 0070* in support of its position. In our view, there are certain differences between the facts of that case and the facts of the present case which do not make that decision especially compelling as support for the Respondent's position. However, for the reasons already given we consider that had the original parties to the Lease known what subject access request costs were when they entered into the Lease they would have regarded it as self-evident that such costs would form part of the cost of managing the building and that as such they would be recoverable under the service charge.

60. However, there is another issue. Although neither party has brought any legal authority on this point and although this Tribunal is a Residential Property Tribunal and not one specialising in GDPR or subject access requests, as we understand the position a person or organisation is not entitled to charge a fee for complying with a subject access request unless the request is manifestly unfounded or excessive or the person making the request asks for further copies of the relevant data, in which case one can charge a reasonable fee for the administrative costs of complying with the request: see *paragraph 5 of Article 12 of the GDPR*. Whilst the Respondent has expressed concerns about the Applicants' approach to this whole issue, it has not sought to argue that the nature of their approach to the issue entitles the Respondent to charge them a fee to cover the administrative costs of complying with the request.

61. This then leads to the question of whether the Respondent can charge the Applicants a proportion of the total cost indirectly through the service charge. No authority has been brought by either party on this point either. As stated above, we are satisfied that the charge is one that can in principle be put through the service charge as it is a cost of management and the relevant clause in the Lease is wide enough to cover it. But can the Applicants be required to pay their share? This is a difficult question to determine in an area as complex as GDPR

in the absence of any legal authority having been brought. However, we are required to make a determination and in our view the Respondent is entitled to charge the appropriate service charge proportion of these costs to the Applicants under the Lease. It is not a direct charge to the Applicants in their capacity as the people making the request, but rather it is an indirect charge in respect of a proportion of the cost through the service charge in the Applicants' capacity as receivers of management services. As service charge payers, the Applicants have an interest in the building being properly managed and a corresponding responsibility to pay their share of the cost of that management. If the Respondent were unable to charge a proportion to the Applicants it would be left with a shortfall and it would not be able to make up that shortfall simply by charging a larger proportion to other leaseholders. As already noted, the Respondent has no, or virtually no, other sources of income. For these reasons, we do not consider that the GDPR envisage the manager of a building being unable to recover the full cost of complying with an SAR through the service charge.

62. Therefore, in conclusion, the estimated SAR costs for 2018 are payable in full.

Repairs and cleaning of caretaker's flat/vaults/roadway

63. The Applicants' challenge is unfocused and unclear. The evidence suggests that there is in fact only one actual charge being challenged. The Respondent says that this charge relates to the cost of removing leaves from a roadway and the Applicants are simply not in a position to provide a coherent explanation as to why this charge – or any other charge potentially falling under this heading – should not be payable. Therefore, this challenge fails.

Cost Applications

64. The Applicants have made cost applications under section 20C of the 1985 Act and under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. They have also applied for reimbursement of the hearing fees under paragraph 13(2) of the Tribunal Rules.

65. Aside from on one minor point, the Applicants have lost comprehensively. Whilst they might be able to argue that the Respondent was slow in some respects to comply with the Tribunal's directions, we do not accept the Applicants' claim that the Respondent has been obstructive throughout and that they have not had the necessary information to be able to make their case. On most issues their case has been weak and unfocused and it would have benefited from input from a legal adviser, although we do appreciate that this would have involved their incurring legal costs. Specifically in relation to the subject access requests, whilst neither party seems to have behaved perfectly it appears to us that the scale of the costs incurred by the Respondent owes much more to Ms Currie's aggressive and uncompromising approach to the issue than to any failings on the Respondent's part.

66. Accordingly, all of the Applicants' cost applications are refused.

67. Any further cost applications must be submitted to the Tribunal within **14 days** after the date of this decision and any response that a party wishes to make to any further cost application made by the other party must be submitted to the Tribunal within **28 days** after the date of this decision.

Name: Judge P Korn **Date:** 19th December 2019

RIGHTS OF APPEAL

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

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

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

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

APPENDIX

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

   and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
   (a) the person by whom it is payable,
   (b) the person to whom it is payable,
   (c) the amount which is payable,
   (d) the date at or by which it is payable, and
   (e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
   (a) the person by whom it would be payable,
   (b) the person to whom it would be payable,
   (c) the amount which would be payable,
   (d) the date at or by which it would be payable, and
   (e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
   (a) has been agreed or admitted by the tenant,
   (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
   (c) has been the subject of determination by a court, or
   (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.