FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AC/LSC/2019/0466 V**
Property	**:**	**11 Heathfielde, Lyttleton Road, London N2 0EE**
Applicant	**:**	**Errol Richard Shulman**
First Respondent	**:**	**Chalfords Ltd**
Representative	**:**	**Chesham & Co solicitors**
Second Respondent	**:**	**Heathfielde Maintenance Trustees Ltd**
Representative	**:**	**LMP Law Ltd**
Type of Application	**:**	**Liability to pay service charges**
Tribunal	**:**	**Judge Nicol** **Ms A Hamilton-Farey**
Date & Venue of Hearing	**:**	**11th & 19th June 2020** **By telephone/video conference**
Date of Decision	**:**	**22nd June 2020**

DECISION

Decisions of the Tribunal

(1) The Tribunal has concluded that the service charges to which the Applicant objects are payable.

(2) There shall be no order under section 20C of the Landlord and Tenant Act 1985 or paragraph 5A of the Commonhold and Leasehold Reform Act 2002.

Relevant legislative provisions are set out in the Appendix to this decision.

The Tribunal's Reasons

1. The Applicant is the lessee of the subject property, a 2-bedroom flat on the 3rd floor of a 6-storey (plus basement) purpose-built block of 19 flats with commercial premises (a medical centre and offices) on the ground floor.

2. The First Respondent is the freeholder of the building and the lessee of Flats 1 and 2. The Second Respondent is the management company, referred to as the Maintenance Trustee in the lease, which is both a party to the lease and tasked with management of the building. Lessees are members and directors of the Second Respondent.

3. The Applicant seeks to challenge the payability under his lease of certain service charges sought by the Second Respondent pursuant to section 27A of the Landlord and Tenant Act 1985 which are dealt with in turn below. The Second Respondent alleges that the Applicant was in arrears at the time he issued his application in the sum of £2,164.31, since when a further half-year's service charge of £2,164.80 was demanded on 25th March 2020.

4. The application was heard remotely on 11th June 2020, and continued on 19th June 2020, in accordance with arrangements brought in due to the COVID-19 pandemic. The hearing was attended by the Applicant by telephone (because he said he did not have any video facilities) and the following by video, using HMCTS's Cloud Video Platform:

    - Mr Jonathan Seres, lessee and director of the Second Respondent, spoke on behalf of the Second Respondent;
    - Mr Terence Firrell FRICS, the Second Respondent's retained surveyor and a witness;
    - Mr Mansur Ghose from Regency Management (Property) Ltd, the Second Respondent's managing agents;
    - Mrs Jennye Seres, Mr Seres's wife, and Mr Mark Pollack, another lessee, attended as observers; and
    - Mr Chris Green, a solicitor's agent, spoke for the First Respondent.

Applicant's Proposed Further Directions

5. Following a case management hearing on 21st January 2020 attended by all parties, the Tribunal issued directions as to the steps to be taken by the parties to prepare the case fairly and expeditiously for its final hearing. However, the Applicant sought further directions by an application made on 20th May 2020.

Witness Statement

6. Firstly, the Applicant filed and served a document dated 13th May 2020 which he labelled "Witness Statement" and sought permission to rely

on it. The Respondents requested that it be excluded because any witness statements should have been served in accordance with the directions by 27th April 2020.

7. For the most part, the statement does not give evidence but makes submissions. Most of the submissions are matters which the Applicant would be entitled to raise whether or not the statement were allowed in. The Respondents have had sufficient time to consider it. Although the statement is not in accordance with the directions, excluding it seems pointless and might result in injustice to the Applicant.

8. Having said that, the Tribunal will only take the contents of the statement into account to the extent that they address issues already raised, not the new ones referred to in the rest of the Applicant's proposed further directions addressed below.

Amendment to Statement of Case

9. The Applicant sought to amend his Statement of Case to challenge the validity of the service charge demands on the grounds that they were inaccurate and/or misleading to a reasonable recipient by representing that Regency were the agents of the First Respondent and/or failing to make clear to a reasonable recipient that Regency were the agents of the Second Respondent and the service charges were payable to the Second Respondent.

10. The Tribunal refuses such permission. It is too late and would result in an unnecessary adjournment of the final hearing.

11. Secondly, the point is hopeless. The invoices are not misleading in the way suggested. No recipient would be in any doubt as to their liability for service charges or the method of payment (to a bank account run by the agents), even though the Second Respondent is not expressly mentioned.

12. As the Respondents pointed out, they are required under section 47 of the Landlord and Tenant Act 1987 to put the name of the First Respondent, as the landlord, on any service charge demands.

13. Also, the reasonable recipient is a person who would have been advised as to the tripartite nature of the lease on purchase and would have received the annual accounts, from which they would know that the Second Respondent is responsible for managing the property and collecting the service charges.

14. There are extant county court proceedings which the Applicant alleges were wrongly brought against him by the First Respondent rather than the Second Respondent which he says demonstrates that the Respondents are capable of being confused as to whose responsibility it is under the lease to collect the service charges but the consequences of that are for the county court, not the Tribunal.

Further disclosure

15. The Applicant sought further disclosure. The Tribunal also refuses this. Most of the disclosure (surveyors' reports, invoices and documents relating to consultation on major works) would be relevant to a challenge to the reasonableness of charges but the Applicant's challenge is instead to their payability under the lease.

16. The Applicant alleged that he needed documents describing major works carried out in 2017/18 so that he could check whether the First Respondent should have made a contribution in respect of the commercial premises (see further on this issue below) but the fact is that he put forward no reason to think he would find anything. In the Tribunal's opinion, the Applicant was seeking to conduct a fishing expedition which would be disproportionate to the issues and amounts in dispute.

17. The Applicant also sought documents to explain the legal and commercial relationship between the First Respondent and the occupiers of the commercial premises on the basis that this might affect the calculation of any benefit to the commercial premises arising from any works carried out by the Second Respondent. The Tribunal does not believe this disclosure could provide the information the Applicant seeks or is relevant to the issues in dispute.

Witness Statement from First Respondent

18. The First Respondent did not serve a witness statement. The Applicant sought to oblige them to do so. However, as Mr Green explained, the First Respondent does not wish to call a witness and so cannot be obliged to provide any witness statements.

Strike-out of allegations of non-payment

19. The Applicant sought that allegations relating to his alleged failure to pay service charges in the past should be struck out. The Tribunal would only take such an extreme step if the allegations clearly had no relevance at all. However, they may be relevant to costs and comprise part of the background to the current dispute. The Tribunal was certainly in no position prior to hearing the parties' full representations to say that they would be irrelevant.

Conclusion on the Applicant's proposed further directions

20. Therefore, the Tribunal refused all of the Applicant's proposed further directions other than granting permission for him to rely on his witness statement dated 13th May 2020. This was conveyed to the parties before the Tribunal continued with the substantive hearing on the afternoon of 11th June 2020.

Management Fees

21. The Applicant alleges that management fees of £5,000 in the 2017 and 2018 accounts are not payable in accordance with the lease which includes the following clauses:

B. **IN THIS LEASE**:-

(iv) "the surveyor" shall mean the Chartered Surveyor employed pursuant to sub-clause 5(a)(i) hereof

4. **THE MAINTENANCE TRUSTEE** shall retain out of the sums received by it in respect of the annual maintenance provisions aforesaid its remuneration calculated in accordance with sub-paragraph (b) of paragraph 2 of Part II of the Third Schedule hereto and shall pay the balance into a bank having the status of a trust corporation in an account named "Heathfielde Maintenance Fund" and shall hold such balance (hereinafter called "the Maintenance Fund" which expression includes the assets in the hands of the Maintenance Trustee for the time being representing such fund and the income thereof) upon trust to apply the same until the Perpetuity Date for the purposes specified in Clause 5 hereof

5. (A) THE Purposes aforesaid are:-

(i) To employ and pay the remuneration of a Chartered Surveyor (in this Lease called "the Surveyor") to manage the Building and its curtilage other than the Commercial Premises and to carry out such other duties as may from time to time be assigned to him by the Maintenance Trustee or are otherwise imposed on him by the provisions of this Lease the Surveyor may (but need not) be a member director or employee of the Maintenance Trustee or of the Lessor and his remuneration hereunder shall not be more than is reasonably commensurate with his services in relation to the Building

(v) Unless prevented by any cause beyond the control of the Maintenance Trustee to keep such staff to perform such services as the Maintenance Trustee shall think necessary in or about the Building but so that neither the Maintenance Trustee nor the Lessor shall be liable to the Tenant for any act default or omission of such staff

(xvii) To supply and demand such other services for the benefit of the Tenant and the other tenants of flats in the Building and to carry out such other repairs and such improvements works and additions and to defray such other costs (including the modernisation or replacement of plant and machinery) as the Maintenance Trustee shall consider necessary to maintain the Building as a block of first class residential flats or otherwise desirable in the general interests of the Tenants

(B) If any time the Maintenance Trustee shall consider that it would be in the general interest of the tenants of flats in the Building so to do the Maintenance Trustee shall have power to discontinue any of the matters specified in sub-clause (A) of this clause which in the opinion of the Maintenance Trustee shall have become obsolete unnecessary or excessively costly provided that in deciding whether or not to discontinue any such matter the Maintenance Trustee shall consider the views and the wishes of the majority of the tenants of the flats in the Building

THE THIRD SCHEDULE above referred to

PART II

Computation of annual maintenance provision

2. The annual Maintenance Provision shall consist of:

(b) The remuneration of the Maintenance Trustee which shall be an amount equal to Six per centum of the sum calculated in accordance with paragraph (a) hereof after deducting from the sum so calculated the remuneration of the Surveyor

22. The Second Respondent has a chartered surveyor, Mr Terence Firrell FRICS, on a £500 annual retainer but also employs managing agents, Regency Management (Property) Ltd, to carry out the day-to-day management (Mr Firrell is also a consultant for Regency). The Second Respondent has taken its 6% of the Maintenance Provision (subject to Mr Firrell's remuneration) as referred to in clause 4 but has applied it to exceptional expenditures such as additional car parking.

23. The Applicant alleges that the lease only permits the Second Respondent to employ a chartered surveyor, which Regency admittedly is not, but not a managing agent. The Second Respondent points out that this would be inordinately expensive which is why they have gone with standard property management practice of employing professional managing agents. The Applicant makes no complaint of the service Regency provides.

24. The Applicant relied on the Tribunal's decision in *Esposito v Anand* (Flat B, 37 Canadian Avenue; case ref: LON/00AZ/LSC/2019/0133). At paragraphs 62-65 the Tribunal cited *Embassy Court Residents Association v Lipman* [1984] 2 EGLR 60 and decided that there was no clause in the lease which permitted the recovery of managing agents' or accountants' fees. The Applicant claimed that this showed that managing agents' fees were not recoverable in the absence of express provision in the lease. The Tribunal rejects this submission. For managing agents' fees to be recoverable through the service charge, there does need to be provision in the lease, but that need not include the words "managing agent" or any synonym.

25. However, in the current case, clause 5(A)(i) does provide for the employment of a managing agent, albeit one who is a Chartered Surveyor. The Applicant asserted that "managing agent" and "Chartered Surveyor" were mutually exclusive terms but that is plainly wrong as a matter of ordinary language. While a managing agent might not be a Chartered Surveyor and vice versa, it is possible to be both.

26. The fact is that there is nothing in the lease prohibiting the delegation of the Surveyor's duties. So long as there is a chartered surveyor fulfilling the objectives of clause 5(A)(i) of the lease, the Tribunal is satisfied that it is permissible under the lease for management to be delegated to agents to whatever extent is expedient.

27. Even if that were not the case, clause 5(A) contains two sub-clauses, both of which, in the Tribunal's opinion, permit the employment of managing agents. Firstly, sub-clause (v) empowers the Maintenance Trustee to employ staff. The Applicant suggested that "staff" referred only to employees but the Tribunal sees no reason why it should not extend to contractors.

28. Secondly, sub-clause (xvii) grants the Maintenance Trustee the discretion to obtain services for the benefit of the tenants and to maintain the block to suitable standards. The employment of managing agents clearly meets that definition.

29. The Applicant argued alternatively that the Maintenance Trustee's remuneration referred to in clause 4 and paragraph 2(b) of the Third Schedule is intended under the lease to compensate the Maintenance Trustee specifically for carrying out day-to-day management tasks. The Tribunal is satisfied that this is not the correct interpretation of the lease. The word for the money reserved to the Second Respondent as the Maintenance Trustee is "remuneration" which is not apt to describe money applied to defray management costs. Further, the remuneration for the Surveyor, whose job is specified as being for management, is separated out and is not to be paid from the Maintenance Trustee's remuneration.

30. The Applicant said that his interpretation could be implied from the circumstances at the time his lease was created. His lease specifies the Maintenance Trustee to be two individuals, one of whom was a lessee. The Tribunal does not accept that this supports his claim that the Maintenance Trustee's remuneration was for management:

    a. Those who run the management of a building have many tasks to carry out without necessarily being involved with the kind of day-to-day management usually done by agents. It is entirely unsurprising that a lease would provide for trustees to be remunerated for their work as trustees. There is no necessary implication that the remuneration must be for carrying out day-to-day management.

    b. Similarly, the Applicant alleged that the mere fact that one of the trustees was also a lessee indicated that that lessee was meant to be

involved in day-to-day management. However, a lessee can contribute to the Maintenance Trustee the perspective of a service-charge payer, which is useful in itself and is in no way limited to being involved in day-to-day management.

c. The original leases for all 19 flats in the building were granted in 1968. According to one of the original leases shown to the Tribunal, the Maintenance Trustee at that time was a corporate body, not one or more individuals. Even if the Applicant were right that the involvement of a lessee couild imply that they are to carry out day-to-day management, that was not the situation at the time the leases were first created.

31. The Applicant argued that it would be "unfair" for the Second Respondent not to apply the remuneration to defray management costs. This is already answered in sub-paragraph a. of the preceding paragraph but the Applicant went further to point out that, if the managing agents' fees were permitted to be included in the service charge, the remuneration would be increased accordingly. He said this was also unfair but that is to misunderstand the intention of the lease. The remuneration is measured as a percentage of other expenditure. This is clearly not a precise reflection of any effort expended by the Maintenance Trustee at any time. It is intended as an approximate analogue and contains within it the possibility that the remuneration may increase or decrease according to costs rather than the Maintenance Trustee's activities.

32. The Second Respondent argued that, if the above points were not decided in their favour, it should be possible to imply a term into the lease permitting the employment of a managing agent. The Tribunal has doubts that this is possible but, in any event, it is unnecessary in the light of the above findings.

33. Therefore, the Applicant's objections to the management fees fail.

Fee to Hampstead Garden Suburb Trust

34. The service charges include an annual fee payable to the Hampstead Garden Suburb Trust. This fee is payable by the First Respondent in accordance with the scheme of management for the Hampstead Garden Suburb provided for under clause 4 of the transfer granting their predecessor-in-title the relevant land.

35. Clause 2(B) of the lease provides for the lessee to pay all existing and future charges of any description in respect of the flat or imposed on the Lessor. The HGST fee clearly comes within this clause. Such charges are not recoverable under the lease as part of the service charge but they are recoverable as an administration charge from each lessee.

36. Clause 5(A)(iv) provides for the lessee to pay all existing and future charges of any description in respect of the entirety of the Building and such charges are recoverable as a service charge. The Applicant objects

that the HGST fee is not payable in respect of the entirety of the Building. The Tribunal does not understand that allegation as the fee relates to all parts of the Building. The Second Respondent may recover it through the service charge. Of course, there cannot be double-recovery under both clauses but the Applicant did not allege that there had been.

Contribution from commercial premises

37. Clause 9(I) of the lease provides:

> Where any expenditure by the Maintenance Trustee is in the opinion of the Maintenance Trustee of benefit both to the flats in the Building on the one hand and to the Commercial Premises on the other hand the Lessor shall pay to the Maintenance Trustee at such time as the Maintenance Trustee shall require a sum (hereinafter called "the refund") to the intent that the tenants of flats in the Building shall be relieved from the burden of such expenditure to the extent of the refund representing such proportion of the said expenditure as the surveyor from time to time in writing certify to represent a fair and proper proportion having regard to the extent to which the same is of benefit to the Commercial Premises together with a sum equal to Six per cent of the refund (being the remuneration of the Maintenance Trustee in respect thereof)

38. Mr Firrell, in his role as surveyor under the lease, has apportioned the Second Respondent's expenditure between the residential and commercial premises from time to time as the potential for doing so has arisen. For example, at around the end of 2014 water began penetrating through the canopy to the residential entrance. The water continued to the forecourt and into the basement garage, the latter being exclusively used by the commercial premises. He split the eventual repair costs of £7,854 in the proportions of 65% to the commercial parts and 35% to the residential parts. Effectively, the service charge payers were relieved of 65% of the expenditure.

39. Prior to Mr Firrell's appointment, the buildings insurance was split 80% to the residential part and 20% to the commercial part. This has continued but Mr Firrell is in the process of reviewing it. There has been a delay while further property measurements were held up by the restrictions brought in due to the COVID-19 pandemic but the Second Respondent intends to credit the Applicant if the review results in a different apportionment.

40. The Applicant alleged in his Statement of Case that no such contribution had been paid by the First Respondent. That is simply factually incorrect as such a contribution has been specifically acknowledged in the 2018 accounts.

41. The Applicant also complained that the First Respondent made no contribution for directors' and officers' liability insurance. This is

actually unsurprising as the directors and officers in question are those of the Second Respondent. It is not expenditure from which the commercial premises benefit.

42. Similarly, the Applicant complained about the First Respondent's lack of contribution to the engineering insurance but this relates to the lift from which, again, the commercial premises do not benefit.

43. The Applicant identified major works expenditure of £68,706 plus surveyors fees of £5,804 to which the First Respondent made no contribution. The Second Respondent pointed to an email dated 17th September 2019 from LMP Law in which this was explained to the Applicant: "The works listed in the accounts relate to maintenance that in no way benefits the commercial unit, they have no access to the lift, nor have they had their external parts decorated."

44. The Applicant asserted that this amounted to a "bare assertion" which, instead, should be supplemented by a letter from the surveyor containing detailed reasons and evidence in support. He relied on the Supreme Court's judgment in *Braganza v BP Shipping Ltd* [2015] UKSC 17; [2015] 1 WLR 1661 wherein it was held that, where contractual terms gave one party to an employment contract the power to exercise a discretion or form an opinion as to relevant facts, it was not for the court to make that decision for them, but where the decision would affect the rights and obligations of both parties there was a conflict of interest and the court would seek to ensure that the power was not abused by implying a term in appropriate cases that the power should be exercised not only in good faith but also without being arbitrary, capricious or irrational in the sense in which that term was used when reviewing the decisions of public authorities.

45. Further, the Applicant asserted that the word "benefit" in clause 9(I) should be given a broad meaning, including enhancement of market value. He said the surveyor's aforementioned letter should contain details of the alleged benefit, including the amount of any increase in property value.

46. Unfortunately, the Applicant has over-complicated a relatively simple contractual provision aimed at ensuring an equitable apportionment of any expenditure affecting both the residential and commercial premises. The benefit in question does not extend to any benefit at all, however defined. Reading clause 9(I) carefully, the Tribunal is satisfied that the benefit referred to is the additional expenditure incurred by the Second Respondent in providing the relevant service to the commercial parts as well as the residential parts. Extending it to any change in property values would require disproportionate expenditure on expert advice and complex calculations.

47. Mr Firrell also pointed out that cyclical maintenance such as the major works being considered here did not enhance the value of the property rather than simply maintaining it.

48. By the Tribunal's definition, the application of clause 9(I) to some matters will be extremely simple. For example, if the major works were not carried out to any part of the commercial premises, then there was no benefit to apportion. In that context, the "bare assertion" referred to in paragraph 22 above is a sufficient explanation why the First Respondent was not asked to contribute to those major works.

49. Further, the Applicant had no reason, whether from reading the specification of works made available to him during the requisite consultation, observations of the works while being carried out or after completion or a previous pattern of poor management, to think that any decision about the application of clause 9(I) was questionable or even wrong. As referred to above, his request for relevant documents was not made because he had any reason to anticipate finding something awry but because he wanted to look for something.

50. For the second day of the hearing, the Applicant provided written submissions dated 17th June 2020. For the most point, they simply reduced to writing submissions already made. However, he also made a further point based on section 27A(6) of the Landlord and Tenant Act 1985, *Windermere Marina Village Ltd v Wild* [2014] UKUT 163 (LC); [2014] L&TR 30, *Gater v Wellington Real Estate Ltd* [2014] UKUT 561 (LC); [2015] L&TR 19 and *Oliver v Sheffield City Council* [2017] EWCA Civ 225; [2017] 1 WLR 4473.

51. As the headnote to Windermere puts it, where a covenant in a lease provided for a fair proportion of the landlord's expenditure in providing services to be determined by a surveyor appointed by a landlord, that part of the covenant was rendered void by s.27A(6) of the Landlord and Tenant Act 1985, as it had the effect of providing for the manner in which an issue capable of determination under s.27A(1) was to be determined. The Applicant argued that clause 9(I) was similarly void so that the Tribunal had to determine the appropriate apportionment of all expenditure between the residential and commercial parts of the building in which his flat is located. The Tribunal rejects this submission because:

(a) Clause 9(I) is not concerned with the apportionment of service charges and, therefore, none of the authorities quoted by the Applicant are on point. Instead, his lease provides for him to pay a fixed 5.28% of the relevant expenditure. Clause 9(I) assists in the calculation of the expenditure, not the Applicant's share of it.

(b) Clause 9(I) does not purport to be a binding method of determination. If the Applicant had challenged the reasonableness of any sums in the service charge accounts on the basis that the refund under clause 9(I) had been too small, the Tribunal would have been able to consider that issue without rendering clause 9(I) void or necessarily coming up with its own calculation.

(c) The nature of the apportionment under clause 9(I) varies in accordance with each relevant item of expenditure. The Applicant does not dispute

that the apportionment on one item may be different from that on another, depending on the relevant circumstances. However, if the Applicant were right that there was no power under the lease for the Second Respondent to determine the apportionment and that only the Tribunal could do that, the parties would be bound to attend the Tribunal every time the issue arose.

52. The Applicant's challenge to the Second Respondent's application of clause 9(I) was not about whether any specific calculation had been unreasonable but whether the Second Respondent's process in doing so was lawful. The Tribunal is satisfied that it is so lawful.

Costs

53. The Applicant applied for orders under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 that the Respondents should not be permitted to recover their costs of these proceedings through the service charge or as an administration charge under the lease. The main factors which the Tribunal must take into account are as follows:

(a) If the lease permits legal costs to be recovered, then that is a contractual commitment by both parties which the Tribunal must respect.

(b) The Tribunal does not follow the rule in court that the loser should pay the winner's costs but who has succeeded on the main issues is relevant. In that context, the Applicant has failed on all issues.

(c) The costs of these proceedings have been incurred because the parties took their dispute to litigation. Parties should always try to avoid litigation where possible by taking steps to narrow the issues between them. A party which does not do so makes it more likely that there will be litigation and higher costs than would otherwise be the case. The Respondents' position was adequately set out in a letter dated 11th July 2018 and an email dated 17th September 2019 from LMP Law and has not changed since. The Applicant was fully entitled to raise questions but, if he had taken the answers properly on board, he would not have commenced these proceedings. Moreover, he has been persistently late in paying his service charges. His engagement with the Second Respondent to try to narrow the issues has been mostly non-existent or inconsistent in that when one question is answered, he comes up with a new question or perspective. He continued with this right up to and into the hearing, making a late application for further directions and even suggesting in his final submissions that there should be an adjournment for him to obtain expert evidence.

54. In the circumstances, the Tribunal sees no reason to make either order. Therefore, the Tribunal refuses to make any order under section 20C or paragraph 5A, although the Applicant retains the right to challenge the

payability and reasonableness of any charges made at a later date in respect of such legal costs.

55. The Applicant indicated that he might want to consider an appeal and both Respondents indicated that they might want to apply for an order for costs under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. All parties reserved their position until after they had seen this determination.

Name: Judge Nicol **Date:** 22nd June 2020

Appendix 1 – 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 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
- (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
- (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
- (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

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

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.

(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 the appropriate 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.