FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**BIR/47UC/LIS/2020/0047** **BIR/47UC/LLC/2020/0006** **BIR/47UC/LLD/2020/0004**
Court Reference	**:**	**G2QZ374M County Court at Worcester**
HMCTS	**:**	**CVP**
Property	**:**	**Flat 2, St Andrews House, 38 Graham Road, Malvern, Worcestershire WR14 2HL**
Applicant	**:**	**Idris Davies Limited**
Managing Agent	**:**	**Taylor Clarke**
Representative	**:**	**SLC Solicitors & Mr Martin Horne of Counsel**
Respondent	**:**	**Mary Teresa Cronin & Richard Daniel Cronin**
Date of Transfer Order	**:**	**21st October 2020**
Type of Application	**:**	**1) To determine the reasonableness and payability of Service Charges (Section 27A Landlord and Tenant Act 1985)** **2) For an Order to limit the service charges arising from the landlord's costs of proceedings (Section 20C Landlord and Tenant Act 1985)** **3) For an Order to reduce or extinguish the Tenant's liability to pay an administration charge in respect of litigation costs (paragraph 5A of Schedule 11 of the Commonhold and Leasehold reform Act 2002)**
Tribunal	**:**	**Judge JR Morris** **Mr R Bryant-Pearson FRICS**
Date of Hearing	**:**	**10th March 2021**
Date of Decision	**:**	**14th April 2021**

DECISION

Covid-19 Pandemic: Remote Video Hearing

This determination included a remote video hearing together with the papers submitted by the parties which has been consented to by the parties. The form of remote hearing was Video. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing/on paper. The documents referred to are in a bundle, the contents of which are noted.

Pursuant to Rule 33(2A) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and to enable this case to be heard remotely during the Covid-19 pandemic in accordance with the Practice Direction: Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal the Tribunal has directed that the hearing be held in private. The Tribunal has directed that the proceedings are to be conducted wholly as video proceedings; it is not reasonably practicable for such a hearing, or such part, to be accessed in a court or tribunal venue by persons who are not parties entitled to participate in the hearing; a media representative is not able to access the proceedings remotely while they are taking place; and such a direction is necessary to secure the proper administration of justice.

Decision

1. The Tribunal determines that the disputed service charge of £745.86 for the year ending 31st December 2018 is reasonable and payable by the Respondents to the Applicant.

2. The Tribunal found that in the course of the hearing the Respondents admitted the amount of the Service Charge balancing payment of £253.92 to be reasonable and payable by the Respondents to the Applicant and therefore this is not within the Tribunal's jurisdiction pursuant to section 27A(4)(a) of the Landlord and Tenant Act 1985.

3. The Tribunal made no order under either Section 20C of the Landlord and Tenant Act 1985 or paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

The issues regarding payment of the Service Charge and Costs were heard by Judge Morris sitting alone as a Judge of the County Court, pursuant to amendments made to the County Court Act 1984 and the Decision and related Order are issued separately.

Reasons

Application

4. This Application is by way of transfer for the County Court of Claim number E4QZ3Y85 as follows:
    - On 12th February 2020 Claim No. E4QZ3Y85 was filed at the County Court Business Centre in the sum of £1,843.88 comprising a claim for £1,658.88, Court fee of £105.00 and legal representative's fee of £80.00.
    - On 20th February 2020 a Defence was filed.
    - On 6th March 2020 a Reply was filed.
    - On 7th May 2020 the Claim was transferred from the Small Claims Mediation Team to the County Court at Worcester
    - On 29th June 2020 the Claim by order was allocated to the Small Claims Track.
    - On 11th August 2020 District Judge Parry ordered a Preliminary Hearing.
    - On 17th September 2020 a Preliminary Review was held at which Deputy District Judge Coughlan sitting at the County Court in Worcester ordered the Claimant to file and serve a detailed breakdown of the sum of £999.78 claimed and also ordered a Preliminary Hearing.
    - On 21st October 2020 Deputy District Judge Edden sitting at the County Court in Worcester ordered:
        - The Applicant to confirm whether, as asserted by the Respondent in a letter dated 12th October 2020, a payment had been made by the Tenant of Flat 8 and if so when it was made, how much and to what it related.
        - The transfer of all the issues of the Claim to the First-tier Tribunal (Property Chamber).

5. The Tribunal finds that the transfer includes:

    1) A determination as to the reasonableness and payability of service charges pursuant to section 27A of the Landlord and Tenant Act 1985 and Administration Charges pursuant to Schedule 11 Commonhold & Leasehold Reform Act 2002.

    2) A determination whether the landlord's costs arising from the proceedings should be limited in relation to the service charge (section 20C of the Landlord and Tenant Act 1985) following an Application by the Respondents dated 30th December 2020. Other persons named as being affected are the following Tenants at St Andrews House, 38 Graham Road, Malvern, Worcestershire WR14 2HL:
    Mrs Juliette Evans Flat 1
    Mr Tim Willcocks Flat 3
    Mr Michael Dunsmore Flat 6
    Mr Scott Rayson Flat 8
    Mr Paul Thompson Flat 9

3) A determination whether to reduce or extinguish the Tenant's liability to pay an administration charge in respect of litigation costs (paragraph 5A of Schedule 11 of the Commonhold and Leasehold reform Act 2002) following an Application by the Respondents dated 30th December 2020.

6. In addition, the transfer includes contractual costs, court fees and interest to be dealt with by the First-tier Tribunal Judge sitting alone pursuant to amendments made to the County Court Act 1984 by which judges of the First-tier Tribunal are now also judges of the County Court. This means that in a suitable case, the judge can also sit as a judge of the County Court and can decide issues that would otherwise have to be separately decided in the County Court and this might result in savings in time, costs and resources. These matters will be dealt with in a separate written Decision and Reasons.

7. Directions were issued on 8th December 2020.

The Law

8. A statement of the relevant law is attached to the end of these reasons.

Description of the Property

9. The Tribunal was not able to make an inspection of the Property or the Development in which it is situated due to Government Coronavirus Restrictions. From the Statements of Case and the Internet the Tribunal finds that St Andrews House ("the House") is a two-storey period house converted into 6 flats numbered 1, 2, 3, 6, 8 and 9.

10. There is a single water meter to the House and the consumption is apportioned according to the percentage specified in the respective Leases. The Apportionments are as follows:

Flat	Contribution %
1	15
2	22
3	27
6	6.5
8	22.5
9	7
Total	100

11. At the Hearing the Tribunal asked the parties how the contribution was calculated e.g., upon floor area of each Flat, number of bedrooms, number and size of bedrooms as being related to occupancy or any other basis. Neither party could be sure as to the number of bedrooms in each Flat except that the Property was a one-bedroom Flat but had the second largest contribution of 22% allocated to it. It was therefore deduced that the contribution was based upon the internal floor area.

The Lease

12. A copy Lease for the Property was provided. The Lease dated 28th April 1975 is between (1) Gwendoline Mary Winwood ("the Lessor") and (2) Eve Mary Beeching ("the Tenant") and is for a term of 999 years from 23rd April 1975 at a ground rent of £1.

13. The Freehold Reversion of the Lease was assigned to Idris Davies Limited, the Applicant, on 2nd May 1991 as evidenced by the Official Copy of the Register, Title Number HW70898 provided. The Leasehold interest was assigned on 10th July 2015 to Mary Teresa Cronin and Richard Daniel Cronin, the Respondents, as evidenced by the Official Copy of the Register, Title Number HW48641 provided.

14. The relevant provisions of the Lease of the Property are as follows:

15. Clause 1

…paying by way of further or additional rent from time to time a sum or sums of money equal to one twenty-two per cent of the amount which the Lessor may expend in effecting or maintaining insurance of the House against loss or damage by fire and such other risks (if any) as the Lessor thinks fit as hereinafter mentioned such last-mentioned rent to be paid without any deduction on the yearly day for payment of rent next ensuing after the expenditure thereof

16. Clause 3(1)

The Tenant hereby covenants with the Lessor that the Tenant and other persons deriving title under her will throughout the said term hereby granted:

(a) pay the said rents at the times and in manner aforesaid without any deduction whatsoever except as aforesaid

(b) pay all rates taxes assessment charges impositions and outgoings which may at any time be assessed charged or imposed upon the demised premises or any part thereof or the owner or occupier in respect thereof and in the event of any rates taxes assessments charges impositions and outgoings being assessed charged or imposed in respect of the premises of which the demised premises form part to pay the proper proportion of such rates taxes assessments charges impositions and outgoings of such rates taxes assessments charges and impositions and outgoings attributable to the demised premises

(c) maintain uphold and keep the demised premises …all walls sewers drains pipes cables wires and appurtenances thereto belonging in good and tenantable repair and condition

(d) permit the Lessor and her duly authorised surveyors or agents with or without workmen and others upon giving three days notice in writing

at all reasonable times to enter into and upon the demised premises or any part hereof for the purpose of viewing and examining the state and condition thereof and make good any defects decays or want of repair of which notice in writing shall be given by the Lessor to the Tenant and for which the tenant may be liable hereunder within three months after the giving of such notice

(f) to pay all expenses (including Solicitor's costs and surveyor's fees) incurred by the Lessor incidental to the preparation and service of notice under Section 146 of the Law of Property Act 1925 notwithstanding that forfeiture is avoided otherwise than by relief granted by the Court

17. Clause 4

The Tenant hereby covenants with the Lessor and with and for the benefit of the owners and lessees from time to time during the currency of the term hereby granted of any other flats comprised in the House that the tenant will at all times hereafter during the said term

(2) contribute and pay on the signing hereof the sum of … and on each subsequent First day of January to pay such sum as shall be Twenty-two per cent of the costs expenses outgoings and matters mentioned in the Fourth Schedule for the preceding year such sum to be certified by a qualified accountant if so required by the Tenant

18. Clause 5

The Lessor hereby covenants with the Tenant as follows: -

(4) that (subject to contribution and payment as hereinbefore provided) the Lessor will maintain and keep in good order and substantial repair and condition
- *(i) the main structure of the House …*
- *(ii) all such gas and water pipes drains and electric cables and wires…*
- *(iii) the cellars main entrance passages, landings …*

(5) that (subject as aforesaid) the Lessor will so far as practicable keep suitably carpeted and furnished clean and reasonably lighted the passages landings and staircases and other parts of the House so enjoyed or used by the Tenant in common aforesaid

(6) that (subject as aforesaid) the Lessor will so often as reasonably required decorate the exterior of the House

19. Fourth Schedule – Costs Expenses Outgoings and Matters in Respect of which the Tenant is to Contribute

1. All costs and expenses incurred by the Lessor for the purposes of complying or in connection with the fulfilment of her obligations under sub-clauses (4) and (5) and (6) of Clause 5 of the Lease

2. *All rates taxes and outgoings (if any) payable by the Lessor in respect of the gardeners room roads paths forecourts and gardens of the House*

3. *All electricity payable in respect of the use of the gardeners' room*

4. *The cost of hire and maintenance of such firefighting equipment as the Lessor may deem suitable to the House*

5. *The cost of all legal fees incurred by the Lessor in dealing with any matter relating to the House as a unit*

6. *All management costs including accountants' fees incurred by the Lessor in connection with carrying* out the terms of this Lease

Evidence

20. A hearing was held by video conferencing on 10th March 2021 which was attended by Mr Martin Horne of Counsel representing the Applicant, Mr John Clarke, Managing Agent for the Applicant and Mr Richard Cronin and Mrs Mary Cronin, the Respondents and their son Mr Chris Cronin who occupies the Property.

Service Charge

Tribunal's Preliminary Finding re Apportionment of Water Charge

21. From the knowledge and experience of the Tribunal members, at the time the House was converted into flats, which is understood to be in or around 1975 which is the commencement date of the Lease term, it was not common for residential properties to have a metered water supply. It is likely that a meter was not installed for the House until after the Water (Meters) Regulations 1988 made under the Public Utility Transfers and Water Charges Act 1988 and the Water Industry Act 1991 which provided the legislative framework for metered water services for domestic customers.

22. Prior to 1990 the charge for water services for most residential properties was based upon the rateable value of the property which they served and in the present circumstances each of the Flats would have been billed separately on this basis. This opinion of the Tribunal is substantiated by reference in clause 3(1)(i) to "*water rates*".

23. After 1990, metering was seen by some as a cheaper alternative to a charge based on rateable value and this may well have been the case here. Therefore, on the balance probabilities at some time after 1990 a decision was made to which the Tenants of the Flats in the House at the time were, presumably, privy, to install a single water meter for the House, and to apportion the cost of water services on the same basis as the Service Charge.

24. The Tribunal examined the Lease and found that there are three clauses that relate to the payment for services in the broader sense. These are:

Clause 1, which requires Tenants "*to pay the Landlord a sum or sums of money equal to one twenty-two per cent of the amount which the Lessor may expend in effecting or maintaining insurance*";

Clause 4 (2) which requires the Tenants *"on each subsequent First day of January to pay such sum as shall be Twenty-two per cent of the costs expenses outgoings and matters mentioned in the Fourth Schedule for the preceding year"* (The Fourth Schedule makes no mention of water charges or rates in respect of the Flats);

Clause 3(1)(b) which requires the Tenants to *"pay all rates taxes assessment charges impositions and outgoings which may at any time be assessed charged or imposed upon the demised premises or any part thereof or the owner or occupier in respect thereof and in the event of any rates taxes assessments charges impositions and outgoings being assessed charged or imposed in respect of the premises of which the demised premises form part to pay the proper proportion of such rates taxes assessments charges impositions and outgoings of such rates taxes assessments charges and impositions and outgoings attributable to the demised premises"*.

25. Clauses 1 and 4(2) specifically refer to 22% for the Property. Clause 3(1)(b) refers to pay "*a proper proportion"*. The Tribunal took the view that Clause 3(1)(b) related to the water charge and that prior to the installation of the meter for the House a proper proportion would have been based upon the Property's rateable value. On the installation of the meter the Tenants must have agreed that a proper proportion would be 22% in line with Clauses 1 and 4(2). The presence of such an agreement whether expressly or impliedly made is evidenced by the water charge being included as a head of expenditure of the Service Charge and apportioned in the same manner for some time without disagreement by the Respondents. The Tribunal is of the opinion that this agreement is a collateral to the Lease.

26. The Tribunal stated the above at the hearing and the parties raised no objection to the Tribunal's view. Therefore, the Tribunal found that the Respondents were liable to pay 22% as a proper proportion, pursuant to Clause 3(1)(b), of the total metered Water Charge for the House.

27. For the information of the parties there are several different methods whereby a particular head of expenditure of a service charge, such as water, may be calculated. For example, it may be agreed that a collective water charge may be apportioned equally, or according to floor area, or the number of bedrooms, or occupancy. The Tribunal understands that the water company as a statutory undertaker is obliged to supply and install a separate meter for each hereditament unless it is unreasonably costly or difficult to do so, in which case it is for the water company to assess the amount payable.

28. Taking into account these methods the Tribunal found from its knowledge and experience the basis of the apportionment in accordance with the percentages as set out the lease to be unreasonable despite the fact that the floor area is not necessarily an indication of the likely amount of water to be consumed by the occupants of each flat.

Tribunal's Preliminary Finding re amount in dispute

29. The Applicant's claim in the County Court was for arrears of service charges of £999.78. The Respondent's Defence is that a proportion of the service charge is unreasonable and so not payable. The issue for the Tribunal is to determine the reasonableness and payability of that proportion of the service charge.

30. From the Service Charge accounts for the year ending 31st December 2018 the Total Service Charge costs were £10,369.75 (including Water Charge but excluding the Car Parking Licence cost of £830.00 as this is then charged to each of the 6 F lats which use a car parking space) of which the Respondent's proportion was 22%.

22% of total costs (excluding the Car Parking Licence)	£2, 281.35
Car Parking Licence Fee for Flat 2	£138.33
Expenditure for year attributed to Flat 2	£2,419.68
Less estimated charge paid in advance	£1,419.92
Balancing Charge payable by Flat 2	£999.76

31. From the Respondent's Defence the amount of the Service Charge disputed as being unreasonable is the proportion of the £3,838.41 water charge head of expenditure attributable to Flat 2. In particular the Respondent objects to the inclusion in this amount of the water bill of £3,454.60, which is in excess of the usual usage cost. The cost in 2017 was £384.27 and in the notes of a Tenant's Meeting held on 1st August 2019 the Managing Agent had assessed a charge of £448.18 for 2018.

32. The proportion of the £3,838.41 cost of water in the Service Charge attributable to Flat 2 is 22% which is £844.45 of the total cost. At a Preliminary Review Deputy District Judge Coughlan sitting at the County Court in Worcester ordered the Applicant/Claimant to file and serve a detailed breakdown of the sum of £999.78 claimed i.e., what was the amount or amounts that the Respondent was objecting to in the Service Charge. Unfortunately, The Respondent's Solicitor's letter of 30th September 2020, on page 153 of the Bundle, failed to provide this information, notwithstanding the previous correspondence from the Respondents dated 8th February 2020.

33. It was apparent to the Tribunal that the Respondents objected to the sum of £844.45 as being unreasonable and from their written and oral submissions they were under the impression that the whole of the balancing payment was attributable to the excess water charge. In fact, by their withholding the whole of the balancing charge they were failing to pay £155.33 of costs in respect of which, they confirmed at the hearing, they had no objection. Given that the Respondents accepted the Managing Agent's assessment on 1st August 2019 of £448.18 as being the water charge that might be expected for 2018, the sum in dispute is further reduced by £98.59 (being 22% of £448.18).

34. At the hearing that Respondents confirmed that subject to the Tribunal's calculation the only sum in dispute was the reasonableness of the water charge in so far as it substantially exceeded what had been paid in past years on the basis that the excess usage had been as a result of a leak. The outstanding amount of £999.78 was therefore reduced, firstly, by £155.33, as relating to

costs other than water, and secondly by £98.59, as being the charge in line with past years usage, giving a sum in dispute of £745.86.

35. The Tribunal therefore found that its determination only related to the reasonableness of the water charge of £745.86. The amount of the Service Charge balancing payment of £253.92 being agreed and therefore not within the Tribunal's jurisdiction.

36. At the hearing both parties addressed the Tribunal on the points raised. As stated, the Respondents confirmed the amounts in dispute as found by the Tribunal. Counsel for the Applicant submitted that notwithstanding the Tribunal's finding the amounts continued to be outstanding.

Applicant's Case

37. The Applicant submitted a Statement of Case supported by a Witness Statement of Mr John Clarke, Managing Director of the Managing Agent (referred to hereafter as "the Managing Agent").

38. The Managing Agent provided the accounts of the actual costs for the years ending 31st December 2017 and 2018.

Year Ending 31st December	**2018**	**2017**
Items	**£**	**£**
General Repairs and Maintenance	1,345.00	1,733.45
Fire Risk Assessment	0	185.00
Fire Systems Maintenance	80.50	0
Grounds Maintenance	1,530.00	1,142.71
Water	3,838.41	384.28
Electricity & Lighting	143.24	67.08
Insurance	940.60	848.23
Car Parking Licence	830.00	830.00
Independent Accountant's Fee	360.00	180.00
Major Works: Wall Works	0	7,800.00
Professional Fees Insurance Valuation	252.00	0
Managing Agent's Fees (Standard)	1,360.00	1,200.00
Sundry Items	520.00	3.00
Total	**11,199.75**	**14,373.76**

39. The Expenses attributed to Flat 2 for the year ending 31st December 2018 are:

Total costs of £11,199.75 less £830.00 Car Parking	£10,369.75
22% of total costs	£2, 281.35
Car Park Licence £138.33 per flat	£138.33
Expenditure for year attributed to Flat 2	£2,419.68
Less estimated charge paid in advance	£1,419.92
Balancing Charge payable by Flat 2	£999.76

40. The Applicant claimed as follows:

Balancing Charge	£999.78
Interest	£53.70
Legal Costs (including VAT)	£605.40

Court Issue Fee	£115.00
Legal Representative's Costs	£80.00
Total	£1,853.88

41. The main reason for the increase in expenditure compared with the estimated service charge is the Water Bill for 2017 included in the service charge for 2018.

42. The Property and other Flats within the House do not have their own water meter and therefore the Water Bill is paid by the Applicant. It is not possible to ascertain the exact amounts of water used specifically by the property or other properties using the same water meter. Therefore, the cost is apportioned in accordance with the percentage specified in the Leases for each Flat.

43. The Managing Agent said that he and the Applicant had investigated whether the excess water consumption resulted in a leak in Flat 8 but this could not be proven.

44. The Applicant provided a copy of the Water Bill issued on 15th June 2018. The previous bill was for £474.28 and was paid on 18th May 2017. The costs payable were:

From 27th April 2017 to 21st October 2017 = 177 days	£2,724.29
From 21st October 2017 to March 2018 = 162 days	£716.64
From 1st April 2018 to 4th April 2018 – 3 days	£13.67
Total Outstanding	£3,454.60

45. The Applicant included in the Bundle at page 156 the order dated 17th September 2020 following a Preliminary Review at which Deputy District Judge Coughlan sitting at the County Court in Worcester ordered the Claimant to file and serve a detailed breakdown of the sum of £999.78 claimed. The Applicant stated that it complied with the instruction on 30th September 2020 and the letter setting out the breakdown of the sums demanded is at page 153 of the Bundle. In particular it is noted that the Water Bill is a large part of the balancing charge but it includes increases in expenditure on Fire System Maintenance, Grounds Maintenance, Electricity and Lighting, Insurance, Independent Accountant's Fee, Professional Fees, Managing Agent's fees, and Sundry Items, although these are tempered by decreases in expenditure on General Repairs and Maintenance, Fire Risk and Assessment.

46. The Applicant included in the Bundle at page 95 the order dated 21st October 2020 following a preliminary hearing at which Deputy District Judge Edden sitting at the County Court in Worcester ordered the Applicant to confirm whether, as asserted by the Respondent in a letter dated 12th October 2020 (at page 350 of the Bundle) a payment had been made by the Tenant of Flat 8 and if so when it was made, how much and to what it related. The Applicants replied by letter dated 3rd November 2020 stating that a payment of £3,900.00 was made to the Applicant on 21st May 2020 by the Tenant of Flat 8 in settlement of Claim Number G25YJ402. The claim related to the Balancing Charge of £1,022.56 in respect of the year ending 31st December 2018 as per the accounts on page 132 of the Bundle. The payment also

included further service charge and ground rent arrears, legal costs and interest due under the terms of the Lease.

47. The Applicant replied to the Respondent's Defence reiterating their original Statement of Case.

48. At the hearing Counsel confirmed the Applicant's Statement of Case and the findings of the Tribunal set out above.

49. At the hearing the Managing Agent confirmed his witness statement. He added that he did not know of the water usage until the letter from Severn Trent dated 21st October 2017. The Managing Agent notified all the Tenants on 7th November 2017 and took daily readings. It was assumed that the leak was in the external pipe between the meter and the House. The Agent said that the reason for making this assumption was that there was no sign of water coming from an overflow pipe outside the House. It was subsequently found that the overflow was not related to a defective float valve in a water storage tank but to the WC cistern of Flat 8 which overflows into the toilet pan.

50. The Managing Agent called out a plumber to help determine where the leak was coming from. From the plumber's inspection it appeared to be coming from one of the Flats. He observed that water was flowing through the inspection chamber for the sewer serving Flats 3, 8 and 9. The Managing Agent said he asked the Tenants to check whether or not they had a leak. All replied saying they did not except the Tenant of Flat 8. The Tenant of Flat 8 informed the Agent that he had repaired a faulty ballcock in a toilet cistern on 4th December 2017 and by mid-December the readings were normal.

51. The Managing Agent said that he had engaged in correspondence with Mr Dunsmore, the Tenant of Flat 6, which is included in the Respondents' supporting documents. Advice was obtained from Payton's Solicitors as to whether or not an action may lie against the Tenant of Flat 8 and was advised that: "*you are right, you do not have evidence other than circumstantial, that he is responsible or indeed what the additional cost may have been. The threat of legal action might be persuasive but my view is that a court claim is likely to fail.*"

Respondents' Case

52. The Respondents did not provide a written Statement of Case. The Tribunal therefore sought to determine their submissions from the Defence statement and attached documents in particular the letter dated 8th February 2020 to the Applicant's Solicitors on page 267 of the Bundle which it asked the Respondents to confirm at the hearing.

53. The Respondents are of the opinion that the cost of water in the service charge of 2018 was unreasonable. They submit that the increased cost of water for the year 2017 was due to a leak from the ballcock of the toilet cistern in Flat 8.

54. As the leak came from a specific flat, Flat 8, and not from the common parts the Respondents submitted that the Tenant of that Flat should pay the amount of the water bill that exceeded the usual past usage and not the Leaseholders of the other Flats.

55. To support the contention that the leak was from a specific Flat, the Respondents refer to the following correspondence:

56. 26th June 2018 email from the Managing Agent to the Respondents:

"The water [bill] has come through to us for the period 27th April 2017 to 4th April 2018 which covers the period of time that we had the water leak which we were working on to resolve in December 2017. We believe that approximately 5m3 (5000 litres) of water was being used per day compared to a normal usage of approximately 0.5m3 (500 litres) per day based on average readings from previous bills.

We are confident that we identified the course of the leak and work was done to fix this and we are now getting readings in line with what we would expect for normal usage. However, please could you confirm whether or not you had any work done to fix leaks (or abnormal water usage) during the dates of 27th April 2017 – 4th December 2017 or know of any leaks from any other part of the building."

57. 24th June 2019 email from the Managing Agent to Tenants including the Respondents:

"I have become dissatisfied with the level of service I'm getting from the solicitor we have asked to look over the case regarding the water leak and feel that we're not progressing quickly. Therefore, I have approached another solicitor who is based in Malvern to obtain their opinion. The previous solicitor was instructed to look over the case to whether it would be something they could take on and we have not incurred any costs, however, I can't guarantee the same for this new solicitor but should be having a conversation with him tomorrow where we will discuss terms and the way forward."

58. 2nd August 2019 email re Meeting held on 1st August 2019 with attachment of Meeting Notes from the Managing Agent to the Tenants including the Respondents:

"Please find attached the notes from the meeting that was held last night regarding the required maintenance at the property."

Relevant passage in Meeting Notes:

"**Water Bill**

The water leak that was discovered and investigated last year was due to a toilet cistern leaking and the necessary repairs were carried out. Since the repairs, water usage has gone down to normal levels

The subsequent bill has arrived which totals £3,454.60 and we have apportioned some to the whole of St Andrews House (£448.18) and the rest to the apartment which had the leak."

59. 24th September 2019 email from Managing Agent to Respondents with attachment of Invoice for Balancing Payment of £999.78 together with Service Charge Statement of payments and accruals for Flat 2.

60. 26th September 2019 email from Respondents to Managing Agent:

"I thought we had got over this vexatious claim for monies for the water bill.

As we have stated on every occasion, you have no claim against us for the old water bill run up by the leak in Flat 8 (back in 2017 I think it was?) when it was not rented out/lived in.

We cannot be held liable as the leak with Flat 8 (ballcock valve I think it was?) was nothing to do with Flat 2. There is no such joint and several liability. You need to chase Flat 8 for the money."

61. 15th October 2019 email from the Managing Agent to Michael Dunsmore, Leaseholder of Flat 6, providing:
- Information in respect of the water usage in past years and for the period 27th April 2017 – 4th December 2017 and that it was believed that the excess water was due to a leak in Flat 8.
- Advice from a solicitor asked to look over the case which stated as follows:
  "I assume that you have approached the leaseholder and told him what you have told me but that he does not accept that he is responsible for the higher charge. And you are right, you do not have evidence other than circumstantial, that he is responsible or indeed what the additional cost may have been. The threat of legal action might be persuasive but my view is that a court claim is likely to fail."

62. 16th October 2019 email from Michel Dunsmore to the Managing Agent
The email itemised the evidence regarding the excess water usage, considering whether it was caused by the leak in Flat 8 and whether it should be pursued as follows (the following is a summary):
1. The detail and cost of the excess usage from Severn Trent
2. Managing Agents Notes/statement to say that Flat 8 had a toilet cistern leak fixed on 4th December 2017 and then readings on 5th and 6th December 2017 showing the water usage going back to normal levels.
3. The other leaseholders could provide witness statement that there were no leaks from their flats during the period from the 12th October 2016 to 6th December 2017.
4. To check that the toilet cisterns and hot water header tanks for every flat except number 8, overflows vent outside would be noticed.

Information to be obtained was also addressed. This was:
Who fixed the leak in Flat 8?
What was the water flow before the repair?
Was the Flat occupied?

TCL proposed that the leaseholders should make any claim, rather than the Applicant or its Agent, because it was they who had suffered the loss.

63. 18th October 2019 email from the Managing Agent to Michael Dunsmore:
The Managing Agent said he believed that (the following is a summary):
- The toilet cistern was overflowing into the toilet pan and then down the drain so if there was an overflow pipe it would not have shown up
- The owner of Flat 8 fixed the leak himself

It was added that all the evidence was circumstantial and it might be argued that the exceptionally large bill was down to exceptional usage rather than a leak.

64. 21st October 2019 email from Michael Dunsmore to the Managing Agent doubted this latter point by reference to the meter readings.

65. 19th November 2019 email from Michael Dunsmore to the Managing Agent setting out further considerations as to whether the leak in Flat 8 was the cause of the excess water bill (the following is a summary).

(1) the Manging Agent had asked a builder to check the drains for evidence of leaks and the builder had noted much water flowing along the drain through the inspection chamber outside Flat 9. This would appear to indicate that the water could only come from Flat 8 and 9 and that Flat 9 was not using water at that time. Other possibilities needed to be explored as possibly could be rain.
(2) Managing Agent would have made a note of builder's visit
(3) Managing Agent's email of 26th June 2018 asked Tenants to check for leaks. All Tenants except that of Flat 8 confirmed there were no leaks.
(4) Excess water consumption ceased following visit by Tenant of Flat 8 to the property.

66. 22nd November 2019 email from the Managing Agent to Michael Dunsmore clarifying points that it was a plumber rather than a builder who visited. The meeting with the plumber was not recorded as it was a request to see if he could locate the leak prior to possible engagement.

67. Plans and photographs of the inspection chambers were provided by the Applicant indicating that waste water flows into the chambers as follows:

Chamber A Flat 1, chamber B Flat 2, chamber C Flats 2 and 6 and chamber D Flats 3, 8 and 9. No water was flowing into chamber A, B, and C. At the time of the inspection prior to 4th December 2017 water was only flowing into chamber D from the pipe serving Flat 8.

68. 18th November 2019 letter from SLC the Applicants Solicitors to the Respondents which stated as follows (abridged):

"Unfortunately, in the absence of concrete evidence of where the water leak came from, our Client was left with little alternative but to recharge a share of the Water bill to each of the Leasehold owners.

Our Client contacted Severn Trent to request a reduction in the bill as they believed there had been a leak in the building. Occasionally a utility company will assist in such situations, however, Severn Trent responded to our Client on 20/09/2018 confirming they were unable to reduce the bill.

Our Client has contacted their Insurance Company to see if the policy would cover them for the unexpected bill but were told it would not.

In an attempt to settle this matter, without the need for litigation, our client is willing to make payment of 50% of our legal costs. Matter would be settled on payment of £1,149.78."

69. At the Hearing the Respondents made it clear that they did not understand why after the findings from the inspection by the plumber brought in by the Managing Agent and their own findings, the notes of the Meeting in August and the correspondence between the Managing Agent and Mr Dunsmore no action was taken against the tenant of Flat 8. Instead, action was being taken against them for non-payment of a sum for which they did not think they were liable.

70. The Respondents confirmed what they had stated in their Defence and the correspondence particularly the letter of 8th February 2020 in response to a letter dated 30th September 2019 from the Respondent's Solicitors which gave Notice of Intention to commence legal proceedings as the basis for a determination under section 81 Housing Act 1996 as required before a notice under section 146 Law of Property Act 1925 can be served for forfeiture of the lease which was in contemplation of the Applicant. The Respondents' letter is summarised as follows:

71. The Respondents noted that the Applicant's Solicitors had said that there was no evidence of where the water leak came from. The Respondents said that it was known that the leak came from Flat 8 and this had been confirmed by the Managing Agent. Reference was made to the Tenants' Meeting held on 12th November 2019 during which the Agent's initial investigation in December 2017 found the inspection chamber for the sewer pipe serving the North Wing was seen to have free flowing water in it from Flat 8, whereas the inspection chamber for the sewer pipe serving the South Wing in which the Property (Flat 2) did not. It was also acknowledged that the water company, Severn Trent, had contacted the Managing Agent regarding water used between 12th October 2016 and 6th December 2017. The owner of Flat 8 admitted that a toilet cistern leak in the Flat was repaired on 4th December 2017.

72. The Respondent said that the owner of Flat 8 was negligent by not checking the flat whilst it was empty and/or failed to engage with his tenants regarding the importance of reporting the leak. The Respondents said they did not believe they were responsible for the negligence of the Flat owner or the tenant occupying the Flat 8. The Respondents also said that they considered the Applicant and the Managing Agent were negligent in not insuring the House for such a foreseeable event and should investigate the matter, obtain concrete evidence and bring the responsible person to account.

73. The Respondents stated that they did not consider they were liable for the cost for the excessive water charge.

74. At the Hearing the Respondents referred to the hearing that took place on 21st October 2020 before Deputy District Judge Edden sitting at the County Court in Worcester in which it was ordered that the Applicant confirm whether, as asserted by the Respondent in a letter dated 12th October 2020, a payment had been made by the Tenant of Flat 8 and if so when it was made, how much and to what it related.

75. The Respondents said that they believed that the Tenant of Flat 8 had paid the Applicant for the water bill and that the result of the current proceedings would amount to a double payment for the same bill

76. In response, Counsel for the Applicant, referred the Tribunal to a letter from the Applicant's Solicitor dated 3rd November 2020 to the Court in compliance with the Judge's Directions. The letter stated (abridged) that:

77. A payment of £3,900.00 had been received from the owners of Flat 8 on or around 21st May 2020 with reference to a Court Judgement in Claim number G25YJ402. It included the balancing payment of £1,022.56 in respect of Flat 8 and included further service charge and ground rent arrears together with legal costs and interest.

78. Counsel confirmed that there was no double payment and that the current Claim remained outstanding.

Decision re Service Charge

79. The Tribunal considered all the evidence adduced and submissions made.

80. First, it looked at the Lease. As stated above and for the reasons given, it found that the Respondents were liable to pay 22% as a proper proportion, pursuant to Clause 3(1)(b), of the total metered Water Charge for the House. The Tribunal considered whether the obligation under Clause 3(1)(b) was subject to any proviso.

81. In effect, the Respondents submitted that the proviso is that the apportionment should be altered where an excessive amount of water is used or wasted due to the negligence of one of the Tenants. Applying the submission to the Lease the respondents were saying that one of the Tenants was in breach of Clause 2 or 3 by failing to maintain the plumbing in that Tenant's Flat causing a financial loss to the Tenants of other Flats.

82. Under Clause 2 each of the Tenants covenant with the Landlord and the other Tenants to "*observe and perform the restrictions set forth in the First Schedule*". The Tribunal found that none of the 9 restrictions applied so as to make a Tenant liable for any financial loss caused by failing to maintain the plumbing and so using a large amount of water.

83. Under Clause 3(1)(c) each of the Tenants covenants with the Landlord to "*maintain uphold, and keep the demised premises*", other than any parts of

the House to be maintained by the Landlord, including "*sewers drains pipes*" in good and tenantable repair and condition. Therefore, although under this provision of the Lease the Landlord could take action against another Tenant who fails to maintain their Flat, another Tenant cannot. Such action by the Landlord would be to put the Flat in repair pursuant to Clause 3(1)(d), but it would not extend to seeking recompense on behalf of a Tenant for loss suffered as a result of the disrepair. That would be a matter between the Tenant in breach and the Tenant who had suffered some damage resulting from the disrepair.

84. The Tribunal found that neither of these Lease provisions entitled the Respondent, as a Tenant, to withhold payment of the water or service charge, or to enable either the Landlord or a Tenant to claim against another Tenant for the cost of excessive use of water.

85. Secondly, the Tribunal considered the collateral agreement between the Landlord and the Tenants regarding the installation of the water meter and apportionment of the water charge. There was no evidence of any express agreement oral or written, but there must be some agreement implied by conduct if not expressed that the "*proper proportion*" in Clause 3(1)(b) in accordance with the Service Charge apportionment and the water charge would be administered by the Landlord's Managing Agent. It was noted that the water bill is addressed to "St Andrews Residents Association" which indicates that the Tenants at some time had collectively accepted the responsibility of paying the metered water charge in lieu of the charge based on rateable value. The Respondents have raised no objection to this arrangement since they became Tenants in 2015.

86. In the absence of any evidence of an express agreement the Tribunal considered what terms might be implied on the balance of probabilities and to give business efficacy to the agreement. In particular, taking into account the Respondents' Statement of Case, the Tribunal considered whether the collateral agreement contained a term which enabled a Tenant to withhold payment or for a Tenant who had used a large amount of water to be held liable for its cost over and above the agreed Service Charge apportionment.

87. From the address on the bill the Tribunal found that it would be a term of the agreement that the Tenants were liable for payment. To give business efficacy to such an agreement, a term providing for an apportionment such as the Service Charge percentage contributions would be required and must have been agreed at some stage, expressly or by conduct. The Tribunal could find no basis for any other necessary implied terms relevant to this case. Any term requiring one Tenant to be held liable for the cost over and above the agreed Service Charge would require evidence of an express provision, of which there was none.

88. In making this latter finding the Tribunal took into account that in agreeing the apportionment the Tenants at the time should have been aware that there would be periods when Tenants of one or other of the Flats would not be resident but would still be liable for their share of the water charge. Also, as the apportionment was based on floor area and not occupancy or quantity of water used, there should have been an awareness that some Flats would have

more occupants than others and some Tenants would have a life style resulting in a much higher use of water than others. In addition, there should have been an awareness of the possibility that incidents would occur causing leaks, such as in this case, resulting in a high use of water. In all these circumstances the Tenants have accepted that they all shared the liability in accordance with the agreed apportionment.

89. The Tribunal found that neither the Landlord nor the Tenants had an action against the Tenant of Flat 8 for the amount of the water bill that exceeded previous years under either the Lease or any collateral agreement with regard to the installation of the meter and the subsequent apportionment of the charge under Clause 3(1)(b) of the Lease. The Defence of the Respondents to the payability of the Water Charge under the Lease must, therefore, fail.

90. The legal advice obtained by the Managing Agent appeared to be with reference to an action for negligence against the Tenant of Flat 8 for a breach of a duty of care in allowing a leak to go unchecked and so incurring cost to the other Tenants. The correspondence between the Managing Agent and Mr Dunsmore, the Tenant of Flat 6, appeared to be on that basis. Mr Dunsmore suggesting that if any action was to be taken against the Tenant of Flat 8 for the water charge, it should be by the Tenants who had suffered the loss and not the Landlord. Whether any action beyond that which could be taken under the Lease was outside the Tribunal's jurisdiction.

91. Thirdly, the Tribunal considered the reasonableness of the disputed amount which for the reasons given it found to be a total of £3,386.36 (£3,838.41 less agreed usual amount of £414.18) of which the Respondents' share is £745.86.

92. The Tribunal found that in the absence of evidence to the contrary the water bill from Severn Trent represents the actual cost of the water service provided. So far as the collective liability of the Tenants is concerned, the Tribunal finds that the cost has been reasonably incurred.

93. In considering the individual liability of the Respondents, they, together with the other Tenants, including the Tenant of Flat 8, share the water cost in the agreed amounts. The Tribunal therefore finds that the disputed cost of £745.86 is in the circumstances reasonable. Even if the leak resulting in the water charge was as a result of negligence or other legal liability, the Respondents would still be responsible for their share of the charge. Whether or not there is any possible claim against the Tenant of Flat, who is alleged to have caused the high charge, is not a matter for determination by the Tribunal.

94. In determining the reasonableness of the disputed charge, the Tribunal took into account whether any action could have been taken by the Applicant or its Managing Agent to mitigate the disputed water charge. The Tribunal noted that the Managing Agent was not aware of the increased water consumption until the letter from Severn Trent dated 21st October 2017 by which time the 'damage' had already been done. The Managing Agent notified all the Tenants on 7th November 2017 and took daily readings. It was assumed that the leak was in the external pipe between the meter and the House as there was no external indication of an overflow pipe venting. The Managing Agent called

out a plumber to help determine where the leak was coming from. It was after this that it was believed to be an internal leak in one of the Flats and by mid-December the readings were normal and any leak was fixed. The Tribunal is of the opinion that the consumption could not have been better mitigated by the Managing Agents.

95. The Tribunal therefore determines that the disputed water charge of which the Respondents' share is £745.86 is reasonable and payable by the Respondents to the Applicant, the Applicant having paid the charge on behalf of the Tenants.

96. With regard to the amount claimed, the Tribunal found that the letter from the Applicant's Solicitor dated 3rd November 2020 to the Court in compliance with the Judge's Directions confirmed that there was no double payment and that the current Claim remained outstanding.

97. The Respondents asked the Tribunal why the matter had not come before the Tribunal when they disputed the charge. The Tribunal drew the Respondents' attention to the Summary of Tenants' Rights and obligations served with every Service Charge Demand under section 21B of the Landlord and Tenant Act 1985. This document draws the attention of tenants to the Lease and to the right for a tenant to apply to a tribunal to determine whether or not a service charge is reasonable and payable. In the present circumstances, taking into account the Respondents' defence, it would have been appropriate for them to have made an application to the Tribunal for a determination on receipt of the demand rather than waiting to be pursued for non-payment of the disputed amount by the Applicant on behalf of the other Tenants.

Submissions re Section 20C & Paragraph 5A of Schedule 11

98. The Respondents applied for an order under section 20C of the Landlord and Tenant Act 1985 that the landlord's costs arising from the proceedings should be limited in relation to the service charge and for an order under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 to reduce or extinguish the Tenant's liability to pay an administration charge in respect of litigation costs.

99. The Respondents said that the mediation was abortive because the Solicitors were only able to discuss legal costs and not the water bill. They said they had tried to settle the matter but they felt that they were not being listened to. They said they had received no explanation as to why they should pay for another tenant's water consumption and that their argument was not given any credence. They were just told they had to pay. They said there was no meeting to discuss or consider their concerns. They said that throughout they had made it clear why they did not believe they were liable for the excess water bill. No mention was ever made that the amount outstanding was a balancing payment part of which was for costs other than the water bill.

100. Firstly, Counsel for the Applicant referred the Tribunal to paragraph 5 of the Fourth Schedule of the Lease as authority for the Landlord to include legal costs as part of the Service Charge and to Clause 3(1)(f) as authority for the Landlord to claim its legal costs against the Respondents specifically.

101. Secondly, he pointed out that the section 20C Application form listed the other Tenants in the House but there was no authority from them showing that they were joined in the Application. Counsel referred to *Plantation Wharf Management Ltd v Fairman & Ors* [2019] UKUT 236 (LC) in which it was held that Section 20C, Landlord and Tenant Act 1985 allows a First-tier Tribunal to order that some or all of the costs incurred by a landlord in First-tier Tribunal proceedings cannot be recovered from the leaseholders through the service charge. However, it was added that where an application under section 20C is made by one leaseholder such order is only applicable to that leaseholder unless it can be shown that the applicant leaseholder has the authority to apply on behalf of all the other leaseholders.

102. Thirdly, Counsel submitted that as the matter of costs should be dealt with as part of the County Court Proceedings therefore paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 should not be considered by the Tribunal.

103. The Respondents confirmed that they did not have that authority.

104. Counsel for the Applicant referred the Tribunal to the attempt at mediation and the Solicitors' letters requesting payment and offers to settle.

Decision re Section 20C & Paragraph 5A of Schedule 11

105. Leases may contain provisions enabling a landlord to obtain the costs incurred in proceedings before a tribunal or court either through the service charge or directly from a tenant. Where the lease contains these provisions, the costs of the proceedings could be claimed by a landlord under either lease provision but not both. The difference between the two was referred to in the *Freeholders of 69 Marina St Leonards on Sea v Oram & Ghoorun* [2011] EWCA Civ 1258.

106. The provision enabling a landlord to claim its costs through the service charge might be seen as collective, in that a tenant is only liable to pay a contribution to these costs along with the other tenants as part of the service charge. Under section 20C of the Landlord and Tenant Act 1985 a tribunal may, if it is satisfied it is just and equitable, make an order that a landlord's costs, either in part or whole, cannot be re-claimed through a service charge.

107. The provision enabling a landlord to claim its costs directly from a tenant might be seen as an individual liability, whereby a tenant alone bears the landlord's costs of the proceedings. Under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 a tribunal may, if it is satisfied it is just and equitable, make an order that a landlord's costs, either in part or whole, cannot be re-claimed directly from a tenant.

108. First the Tribunal considered the three submissions made by Counsel for the Applicant. The Tribunal agrees that paragraph 5 of the Fourth Schedule of the Lease is authority for the Landlord to include legal costs as part of the Service Charge and that Clause 3(1)(f) is authority for the Landlord to claim its legal costs against the Respondents. The Tribunal also agreed that it must follow

Plantation Wharf Management Ltd v Fairman & Ors [2019] UKUT 236 (LC) and since the respondents did not have the authority of the other Tenants to apply for an order under section 20C if any order was made it could only apply to the Respondents. The Tribunal further agreed that the liability of the Respondents for costs was a matter to be dealt with by the County Court and an order under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 should not be considered by the Tribunal.

109. Secondly the Tribunal considered whether to make an order under Section 20C of the Landlord and Tenant Act 1985. The Tribunal found that it would not be just and equitable to exempt the Respondents from paying a share of legal costs included in a Service Charge resulting from proceedings in which they were the only Tenants involved.

110. The Tribunal therefore made no order under either Section 20C of the Landlord and Tenant Act 1985 or paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

Judge JR Morris

APPENDIX 1 - RIGHTS OF APPEAL

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

2. 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.

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

4. 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 2 – THE LAW

The Law

1. The relevant law is contained in the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002.

2. Section 18 Landlord and Tenant Act 1985
   (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, improvement 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 of which the service charge is payable.
   (3) for this purpose
      (a) costs include 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 period

3. Section 19 Landlord and Tenant Act 1985
   (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.

4. Section 21A Withholding of service charges
   (1) A tenant may withhold payment of a service charge if—
      (a) the landlord has not provided him with information or a report—
         (i) at the time at which, or
         (ii) (as the case may be) by the time by which,
         he is required to provide it by virtue of section 21, or
      (b) the form or content of information or a report which the landlord has provided him with by virtue of that section (at any time) does not conform exactly or substantially with the requirements prescribed by regulations under that section.

(2) The maximum amount which the tenant may withhold is an amount equal to the aggregate of—
  (a) the service charges paid by him in the period to which the information or report concerned would or does relate, and
  (b) amounts standing to the tenant's credit in relation to the service charges at the beginning of that period.

(3) An amount may not be withheld under this section—
  (a) in a case within paragraph (a) of subsection (1), after the information or report concerned has been provided to the tenant by the landlord, or
  (b) in a case within paragraph (b) of that subsection, after information or a report conforming exactly or substantially with requirements prescribed by regulations under section 21 has been provided to the tenant by the landlord by way of replacement of that previously provided.

(4) If, on an application made by the landlord to the appropriate tribunal, the tribunal determines that the landlord has a reasonable excuse for a failure giving rise to the right of a tenant to withhold an amount under this section, the tenant may not withhold the amount after the determination is made.

(5) Where a tenant withholds a service charge under this section, any provisions of the tenancy relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

5. Section 21B Notice to accompany demands for service charges

(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of a service charge, which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

(5) Regulations under subsection (2) may make different provision for different purposes.

(6) Regulations under subsection (2) shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

6. Section 27A Landlord and Tenant Act 1985

(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 arbitration agreement to which the tenant was a party

(c) has been the subject of a determination by a court

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

7. 20C Landlord and Tenant Act 1985

Limitation of service charges: costs of proceedings.

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal or the First-tier 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 the county court;

(aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;

(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

(ba) in the case of proceedings before the First-tier Tribunal, to the 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 the 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.

Limitation of administration charges: costs of proceedings

5A(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.