FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference:	CHI/29UN/LSC/2022/0043
Property:	Ground Floor & Basement Maisonette Granville House Victoria Parade Ramsgate, Kent CT11 8DF
Applicants:	1) Graham Watkins 2) Janet M Watkins (nee Flint) 3) Douglas K Watkins 4) Janet M Watkins (nee Croft)
Representative:	Graham Watkins
Respondent:	Granville House RTM Company Limited
Representative:	LMP Law
Type of Application:	Section 27A and 20C of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002 (Liability to pay service charges) Tenants' application for the determination of reasonableness of service charges for the years 2017 to 2022 inclusive.
Tribunal Member:	Judge A Cresswell
Date and venue of Hearing:	24 October 2022 on the Papers

DECISION

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The Application

1. This case arises out of the Applicant tenants' application, made on 7 April 2022, for the determination of liability to pay service charges for the years 2017 to 2022 inclusive.

Summary Decision

2. The Tribunal has determined that the service charge demands for the years in question are limited to £750 per annum payable by the Applicants.
3. The Tribunal does not order the reimbursement of fees paid by Applicants.
4. The Tribunal refuses the Applicants' applications under Section 20c of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002.

Inspection and Description of Property

5. The Tribunal did not inspect the property. The property in question is described as a ground floor and basement maisonette, but is currently configured as two separate flats within a larger development.

Directions

6. Directions were issued on 29 June 2022. These directions provided for the matter to be heard on the basis of written representations only, without an oral hearing, under the provisions of Rule 31 of the Tribunal Procedure Rules 2013.
7. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration. This determination is made in the light of the documentation submitted in response to those directions.
8. The Tribunal has regard in how it has dealt with this case to its overriding objective:

   The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

   > Rule 3(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.
   >
   > (2) Dealing with a case fairly and justly includes:
   >
   > (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;

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

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

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

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

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

(a) exercises any power under these Rules; or
(b) interprets any rule or practice direction.

(4) Parties must:

(a) help the Tribunal to further the overriding objective; and
(b) co-operate with the Tribunal generally.

The Lease

9. The Applicants hold Flat 7 under the terms of a lease dated 7 March 2008, which was made between Abvale Limited as lessor and DDL 16 Limited as lessee.

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

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

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

15. *When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", to quote Lord Hoffmann in Chartbrook Ltd v Persimmon Homes Ltd [2009] UKHL 38, [2009] 1 AC 1101, para 14. And it does so by*

focussing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions. In this connection, see Prenn at pp 1384-1386 and Reardon Smith Line Ltd v Yngvar Hansen-Tangen (trading as HE Hansen-Tangen) [1976] 1 WLR 989, 995-997 per Lord Wilberforce, Bank of Credit and Commerce International SA (in liquidation) v Ali [2002] 1 AC 251, para 8, per Lord Bingham, and the survey of more recent authorities in Rainy Sky, per Lord Clarke at paras 21-30.

16. For present purposes, I think it is important to emphasise seven factors:

17. First, the reliance placed in some cases on commercial common sense and surrounding circumstances .... should not be invoked to undervalue the importance of the language of the provision which is to be construed. The exercise of interpreting a provision involves identifying what the parties meant through the eyes of a reasonable reader, and, save perhaps in a very unusual case, that meaning is most obviously to be gleaned from the language of the provision. Unlike commercial common sense and the surrounding circumstances, the parties have control over the language they use in a contract. And, again save perhaps in a very unusual case, the parties must have been specifically focussing on the issue covered by the provision when agreeing the wording of that provision.

18. Secondly, when it comes to considering the centrally relevant words to be interpreted, I accept that the less clear they are, or, to put it another way, the worse their drafting, the more ready the court can properly be to depart from their natural meaning. That is simply the obverse of the sensible proposition that the clearer the natural meaning the more difficult it is to justify departing from it. However, that does not justify the court embarking on an exercise of searching for, let alone constructing, drafting infelicities in order

to facilitate a departure from the natural meaning. If there is a specific error in the drafting, it may often have no relevance to the issue of interpretation which the court has to resolve.

19. The third point I should mention is that commercial common sense is not to be invoked retrospectively. The mere fact that a contractual arrangement, if interpreted according to its natural language, has worked out badly, or even disastrously, for one of the parties is not a reason for departing from the natural language. Commercial common sense is only relevant to the extent of how matters would or could have been perceived by the parties, or by reasonable people in the position of the parties, as at the date that the contract was made.

20. Fourthly, while commercial common sense is a very important factor to take into account when interpreting a contract, a court should be very slow to reject the natural meaning of a provision as correct simply because it appears to be a very imprudent term for one of the parties to have agreed, even ignoring the benefit of wisdom of hindsight. The purpose of interpretation is to identify what the parties have agreed, not what the court thinks that they should have agreed. Experience shows that it is by no means unknown for people to enter into arrangements which are ill-advised, even ignoring the benefit of wisdom of hindsight, and it is not the function of a court when interpreting an agreement to relieve a party from the consequences of his imprudence or poor advice. Accordingly, when interpreting a contract a judge should avoid re-writing it in an attempt to assist an unwise party or to penalise an astute party.

21. The fifth point concerns the facts known to the parties. When interpreting a contractual provision, one can only take into account facts or circumstances which existed at the time that the contract was made, and which were known or reasonably available to both parties. Given that a contract is a bilateral, or synallagmatic, arrangement involving both parties, it cannot be right, when interpreting a contractual provision, to take into account a fact or circumstance known only to one of the parties.

22. Sixthly, in some cases, an event subsequently occurs which was plainly

> not intended or contemplated by the parties, judging from the language of their contract. In such a case, if it is clear what the parties would have intended, the court will give effect to that intention. An example of such a case is Aberdeen City Council v Stewart Milne Group Ltd [2011] UKSC 56, 2012 SCLR 114, where the court concluded that "any ... approach" other than that which was adopted "would defeat the parties' clear objectives", but the conclusion was based on what the parties "had in mind when they entered into" the contract (see paras 17 and 22).
>
> 23. Seventhly, reference was made in argument to service charge clauses being construed "restrictively". I am unconvinced by the notion that service charge clauses are to be subject to any special rule of interpretation. Even if (which it is unnecessary to decide) a landlord may have simpler remedies than a tenant to enforce service charge provisions, that is not relevant to the issue of how one interprets the contractual machinery for assessing the tenant's contribution. The origin of the adverb was in a judgment of Rix LJ in McHale v Earl Cadogan [2010] EWCA Civ 14, [2010] 1 EGLR 51, para 17. What he was saying, quite correctly, was that the court should not "bring within the general words of a service charge clause anything which does not clearly belong there". (120. I agree, if by this it is meant that the court should lean towards an interpretation which limits such clauses to their intended purpose of securing fair distribution between the lessees of the reasonable cost of shared services.)

12. Lord Neuberger's final point above is a reference to the doctrine of "*contra proferentem*", which had been understood to require an ambiguity in a clause in a lease to be resolved against a landlord as "*proferor*".
13. The Seventh Schedule of the Lease provides that the Lessees shall pay the rent specified in the Ninth Schedule
    Paragraph 1.2:
    "Until completion of the Works as required by this Lease the Lessee shall pay to the Lessor by way of additional rent the sum of Seven Hundred and Fifty Pounds (£750) per annum as a contribution to the Service Charge by two equal payments on the 1st January and 1st July every year".

Paragraph 9.
9.1 Until the Works are completed to the Lessor's reasonable satisfaction in accordance with the Specification the Lessee shall not make any alterations or carry out any works to the Premises other than the Fire Precaution Works and the Works in accordance with the Specification
9.2 The Lessee shall not make any structural alterations or structural additions to the Premises without the previous written consent of the Lessor
9.3 The Lessee shall not make any alterations or carry out any works to the Patio other than those required to keep the Patio and the railings surrounding it in good repair and condition
9.4 The Lessee shall within one month from the date of this Lease commence the Fire Precaution Works and shall complete the Fire Precaution Works within two months thereafter entirely in accordance with the F P Specification in a proper and workmanlike manner and in accord with all local authority and statutory requirements to the reasonable satisfaction of the Lessor
9.5 Within nine months of the date of this Lease or such longer period as the Tenant may reasonably require to enable the Tenant to obtain all necessary local authority and statutory covenants to carry out the Works the Lessee shall commence the Works and shall complete the Works within nine months thereafter entirely in accordance with the Specification in a proper and workmanlike manner and in accordance with all Local Authority and Statutory Requirements to the reasonable satisfaction of the Lessor
9.6 The Lessee shall in any event not carry out the Works in accordance with the Specification until such time as the Lessee has obtained all planning consents and building regulation approvals required to enable the Lessee to carry out the Works in accordance with the Specification
Clause 1.3 states
"Once the works have been completed in accordance with the terms of this Lease the Lessee shall pay to the Lessor without deduction by way of further and additional rent a proportionate part of the expenses incurred by the Lessor in carrying out its obligations under the Eighth Schedule such further and additional rent (hereinafter called "the Service Charge") being subject to the following terms and provisions:
1.3.1 The amount of the Service charge shall be ascertained and certified by a Certificate ....signed by the Lessor's Auditors Accountants or Managing

Agents (at the discretion of the Lessor) acting as experts and not as Arbitrators annually and as soon after the 31st day of December in each year as may be practicable.

1.3.2 The Certificate shall contain a summary of the Lessor's expenses for the year to which it relates together with a summary of the relevant details forming the basis of the Service Charge and the Certificate shall be conclusive evidence for the purposes hereof of the matters which it purports to certify

1.3.3 The annual amount of the Service Charge payable by the Lessee shall be calculated by dividing the aggregate of the said expenses of the Lessor at the end of such year to which the Certificate relates by the aggregate of the rateable values (in force at the same date) of all the flats in the Flat Development and then multiplying the resultant amount by the rateable value (in force at the same date) of the Premises;

1.3.4 The expenses incurred by the Lessor in carrying out is obligations under the Eighth Schedule shall be deemed to include such reasonable expenses which are of a periodically recurring nature (whether regular or irregular) and including a sum of money by way of reasonable provision for anticipated expenditure as the Lessor its Accountants Auditors or Managing Agents may in their discretion allocate to the year in question as being fair and reasonable in the circumstances

1.3.5 The Lessee shall if required by the Lessor pay to the Lessor such sum in advance on the 1st day of January and the 1st day of July in each year on account of the Service Charge as the Lessor or its Auditors Accountants or Managing Agents (as the case may be) shall specify at their discretion to be a fair and reasonable interim payment

1.3.6 If the Lessor shall omit an expense in any year from the Certificate it shall not be precluded from including that expense in a subsequent year"

The Eighth Schedule

Part I

Lessor's Covenants

Subject to the due performance by the Lessee of his obligations to pay the Service Charge:

1. The Lessor will whenever necessary maintain repair redecorate and renew the main entrances halls landings lifts lift gear and staircases inner court and other

parts of the Flat Development enjoyed or used by the Lessee in common as aforesaid and also keep them clean tidy and (as appropriate) neatly cultivated

2. The Lessor will so far as practicable keep clean and reasonably lighted and carpeted the main entrances common passages landings staircases and other parts of the Flat Development so enjoyed or used by the Lessee in common as aforesaid

3. The Lessor will in 2008 and in every third year thereafter decorate the external parts of the Flat Development in a proper and workmanlike manner

4. The Lessor shall keep proper books of account of all costs charges and expenses incurred by it in carrying out its obligations under this schedule and an account shall be taken in each year during the continuance of the demise of the amount of the said costs charges or expenses incurred since the date of the commencement of the term hereby demised or of the last preceding account as the case may be and from this the Certificate shall be prepared for the purposes of Clause 1 of the Seventh Schedule

5. The Lessor will pay any rates including water rates taxes and outgoings (if any) payable on the Reserved Property

6. The Lessor shall expend such sums as are right and proper for the maintenance and management and running of the Flat Development including in particular but without prejudice to the generality of the foregoing any expenses incurred in rectifying or making good any inherent structural defect in the Property and interest paid on any money borrowed by the Lessor to defray any expenses incurred by it as specified in this Schedule and any other legal or other bona fide costs incurred by the Lessor in taking or defending proceedings (including any arbitration) arising out of any lease of any part of the flat Development of any claim by or against any lessee or tenant thereof or by any third party against the Lessor as owner or occupier of any part of the Flat Development

The Eighth Schedule

Part II

Additional Lessor's Covenants

Subject to the due performance by the Lessee of his obligations to pay the Service Charge:

1. The Lessor will whenever necessary maintain repair and renew:

1.1 the external walls and structure and in particular the foundations roof chimney stacks gutters and rain-water pipes joists or beams of the Property

1.2 the gas and electric and waterpipes drains cables wires in under or upon the Property and enjoyed or used by the Lessee in common with the Lessees of the other flats in the Flat Development

2. The Lessor will at all times during the said term (unless such circumstances shall be vitiated by any act or default of the Lessee or of the lessee or occupier of any other flat in the Flat Development) insure and keep insured the Property on a comprehensive basis including loss or damage by fire and such other risks (if any) as the Lessor shall think fit with such well established insurance company as the Lessor may from time to time prescribe in the full reinstatement value of the Property for such sum (inclusive of the Architect's and Surveyor's fees) as the Lessor shall think fit and whenever required produce to the Lessee the policy or policies of such insurance and the receipt for the last premium for the same and will in the event of the Property or any part thereof being damaged or destroyed by fire or otherwise as soon as reasonably practicable apply the insurance monies payable in respect thereof in the repair rebuilding or reinstatement of the Property and the Lessee and his mortgagee if any shall be entitled to have their interest indorsed on such policy

3. The Lessor will meet one-sixth of the cost of the expenses incurred under paragraph 1 and 2 of this part of the Eighth Schedule (those being expenses incurred in respect of the whole of the Property as opposed to the Flat Development)

Reserve Funds

14. The Tribunal first makes the point, relevant to its findings in respect of the Reserve Fund, that it is the terms of the lease which are paramount when determining the rights and duties of the Respondent in respect of the Reserve. The lease is the contractual agreement of the parties. Nowhere else is the term “Reserve Fund” defined specifically for these parties. Whilst the RICS Code gives guidance to landlords about Reserve Funds, it is guidance only and cannot alter the clear terms of a lease. It is, however, very important that a landlord complies with law and with the RICS Code in its identification of particular items of future expenditure, their

costing and the calculation of the sums required proportionately from the tenants to meet those future costs, together with the holding of the sums gathered in trust and earning interest and the regular assessment of the composition and costing of the Reserve Fund plans.

15. A Reserve Fund ensures that tenants effectively save for future costs so that there are no “nasty surprises”, but also that the costs of items are shared by those who use or have the benefit of them; as an example, the cost of a roof included within a Reserve Fund will be shared proportionately by 2 tenants in proportion to the number of years of their enjoyment. That said, tenants do not want, and should not be required, to pay more into a Reserve Fund than is reasonably required.

16. In reaching its current Determination, the Tribunal also takes into account the Third Edition of the RICS Service Charge Residential Management Code (“the Code”) approved by the Secretary for State under section 87 of the Leasehold Reform Housing and Urban Development Act 1993 and effective from 1 June 2016. Of particular note to the issues here are the following extracts from the Code:

7.5 Reserve funds (sinking funds)

The lease often provides for the landlord to make provision for future expenditure by way of a ‘reserve fund’, or ‘sinking fund’. You should have regard to the specific provisions within the lease that may, for example, provide for a general reserve fund(s) for the replacement of specific components or equipment.

The intention of a reserve fund is to spread the costs of ‘use and occupation’ as evenly as possible throughout the life of the lease to prevent penalising leaseholders who happen to be in occupation at a particular moment when major expenditure occurs. Reserve funds can benefit both the landlord and leaseholder alike by ensuring monies are available when required for major works, cyclical works or replacing expensive plant.

It is, therefore, considered good practice to hold reserve funds where the leases permit. If the lease says the landlord ‘must’ set up a fund, then this must be done. Neglecting to have a fund when the lease requires one could be deemed to be a breach of the terms of the lease. No attempt to collect funds for a reserve fund should be made when the lease does not permit it.

Where there is no provision in the lease for reserve funds, there is no entitlement to create or hold one, and any money collected for such a purpose can be demanded back by the leaseholders. In these circumstances, or where the current provisions are likely to prove inadequate, you should make leaseholders aware and encourage them to make their own long-term saving provisions towards the estimated expenditure. You should also consider recommending to your client that consideration be given to discussing with leaseholders the benefits of a variation to the leases to allow for a reserve fund to be set up.

You should also recommend your clients to have a costed, long-term maintenance plan that reflects stock condition information and projected income streams. This should
be made available to all leaseholders on request and any potential purchasers upon resale.

The level of contributions for simple schemes should be assessed with reference to the age and condition of the building and likely future cost estimates. On more complicated developments, the assessment should reference a comprehensive stock condition survey and a life-cycle costing exercise, both undertaken by appropriate professionals.

The usual method of working out how much money is to go into the fund each year, assuming the lease/tenancy agreement does not make any other provision, is to take the expected cost of future works, including an allowance for VAT and fees, and divide it by the number of years which may be expected to pass before it is incurred. The level of contributions should be reviewed annually, as part of the budget process, and the underlying survey information should be reviewed at appropriate intervals. This will vary for each scheme depending on complexity, age, condition and the relative size of funds held.

If after the termination of any lease there are no longer any contributing leaseholders, any trust fund shall
be dissolved and any assets comprised in the fund immediately before dissolution shall, if the payee is the landlord, be retained by them for their own use and benefit, and in any other case, be transferred to the landlord by the payee. Again this is subject to any express terms of the lease relating to

distribution, either before or at the termination of the lease.

17. The Tribunal finds that the assertion by the Applicants as to the collection of a Reserve Fund came very late in the day, indeed in their response to the Respondent's case. That meant that the Respondent was unable to respond to it. Given the Tribunal's main finding on payability of the Service Charge detailed below, the Tribunal merely refers to the guidance in the RICS Code and the need for the RTM company Respondent to pay heed to that guidance when assessing the contribution of leaseholders to a reserve fund.

18. The Respondent does not appear, on the basis of the papers available to the Tribunal, to have approached the requirements for a Reserve Fund in an approved or constructive manner. There was no evidence available to the Tribunal to show that any particular items of future expenditure had been identified as of major significance, had been costed and a calculation been made of the sums required proportionately from the tenants to meet those future costs. Nor was there any evidence to show that the tenants had been involved by the Respondent in such an exercise. Nor was there sufficient evidence before the Tribunal so as to allow it sensibly to attempt to calculate what reasonable sums could be demanded from the Applicants by way of Service Charge towards a Reserve Fund. That being the case, the Tribunal has avoided attempting any such calculation.

The Law

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

20. The Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums of money that are payable – or would be payable - by a tenant to a landlord for the costs of services, repairs, maintenance or insurance or the landlord's costs of management, under the terms of the lease (s18 Landlord and Tenant Act 1985 "the 1985 Act"). The Tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable insofar as it is reasonably incurred, or the works to which it related are of a

reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.

21. Under Section 20B of the 1985 Act, if any of the costs taken into account in determining the amount of the service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, the tenant is not liable to pay those costs, unless during the 18 month period the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

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

23. In reaching its Decision, the Tribunal also takes into account the Third Edition of the RICS Service Charge Residential Management Code ("the Code") approved by the Secretary for State under section 87 of the Leasehold Reform Housing and Urban Development Act 1993. The Code contains a number of provisions relating to variable service charges and their collection. It gives advice and directions to all landlords and their managing agents of residential leasehold property as to their duties. In accordance with the Approval of Code of Management Practice (Residential Management) (Service Charges) (England) Order 2009 *Failure to comply with any provision of an approved code does not of itself render any person liable to any proceedings, but in any proceedings, the codes of practice shall be admissible as evidence and any provision that appears to be relevant to any question arising in the proceedings is taken into account.*

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

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

26. In **Price v Mattey** and others (2021) UKUT 7 (LC), the Upper Tribunal considered a case where the demands simply stated £z. Only the budget calculation showed that £z was the wrong proportion. “The demands seek payment of costs that are not recoverable under the lease, being in excess of the proportion for which the tenant is liable; they are valid demands, and the FTT had jurisdiction under section 27A to permit the landlords to recover only what the lease entitled them to.”

27. **Fairman and Others v Cinnamon (Plantation Wharf) Limited** (2018) UKUT421: “it is not an inquisitorial tribunal but makes its decision based upon the issues, arguments and evidence before it. Whilst it no doubt could of its own volition make inquiries and raise issues and call for evidence not ventilated by either party, if it does not do so it in my judgment is not open to a party to appeal the decision on the basis of issues and arguments which had not been put before it or, indeed, complain.”

28. The relevant statute law is set out in the Annex below.

The Dispute

The Applicants

29. The Applicants present legal advice they have received, which they say (wrongly) is partly to the effect that there can be no increase in service charges until new leases are issued.

30. They have been in negotiation with the landlords for new leases, having created two flats from the premises, but now intend to recreate the single maisonette.

31. The terms of the lease limit service charge demands to £750 per annum.

32. The Respondent refused attempts to settle the matter without coming to the Tribunal.

33. The Respondent cannot collect the service charge because of the effect of Section 96(6)(a) Commonhold and Leasehold Reform Act 2002, having said that “*only residential leaseholders qualify to be members of the GHRTM*".

34. It is agreed that the property was advertised and purchased as two derelict storerooms for conversion into a ground floor and basement maisonette.

35. They emphasise that *'Works must be in accordance with the Specification'*. The definition of specification in the Oxford English Dictionary is *'Specification Of Works means the agreed written document signed by the Parties which shall set out the Premises where the Services shall be carried out, the scope of the Services'*

36. The intention of the parties was to create a lease that allowed for the development of the area Ground Floor and Basement Maisonette. In all references the premises are described as such.

37. The works cannot be complete until they comply with that Specification and that Specification is approved by the Lessor, those works being the formation of a Ground Floor and Basement Maisonette.

38. Caselaw points to the above conclusion and provides the following guidance:

a) Any commercial common sense and surrounding circumstances, such as the delay caused by the construction of two flats, should not be allowed to interfere with the interpretation of the lease itself, which refers to the completion of a Ground Floor and Basement Maisonette.

b) The natural meaning in the lease of the specification and its completion can only refer to the Ground Floor and Basement Maisonette.

c) The fact that the contractual arrangement of the lease has turned out financially disadvantageous for the Granville House RTM Company is not a reason for departing from the natural language of the lease.

d) The lease should be interpreted to identify what has been agreed - completion of the works by construction and approval of the specified Ground Floor and Basement Maisonette, not what should have been agreed.

e) To suggest that the works are complete with the occupation of an unspecified, unapproved construction is a "special rule of interpretation" which should not be done.

f) The unexpected delay in the construction of the Ground Floor and Basement Maisonette was unforeseen by all parties and is no reason to re-write the contractual obligation of the lease to redefine what is meant by completion of the works.

39. Clause 1.2 of the lease provides for a fixed figure of £750.00pa as an additional rent as contribution to the service charge. Clause 1.3 provides for further and additional rent once the works are complete in accordance with the lease, which the Applicants agree is the method of calculation once the works are complete in accordance with the specification.

40. The works are not complete until they comply with the specification.

41. It should be noted that after the lease was incepted on 7 March 2008, a planning application was submitted to Thanet District Council Planning Department and

approved (ref F/TH/08/1270, registered on 24 October 2008 - which have been downloaded from the Thanet District Council Website and are reproduced on pages 507-514 of the bundle) for the "change of use and conversion of the basement and ground floor to 1no. self-contained maisonette". This application relates to a previous expired consent F/TH/91/0992 with the same planning reference. Other than the lease itself, there is no known separate description of a specification of the works. The Applicants suggest that, on the balance of probability, the approved planning application, given around the same time as the creation of the lease, is most likely to correspond to the specification.

42. The Applicants refer the Tribunal to page A 194 of their Stated Case, in which the Landlord states: "*we have not given consent for the splitting of the two flats'*. It is clear that the only consent in place by the Landlords is that of a maisonette, in accordance with the provisions of the lease.

43. The Applicants have never contended that the lease provides for completion of the works fundamental to granting of leases to the flats. In fact, they agree the lease does not specify this. It does, however, specify that the works are to be in accordance with the specification approved by the Landlord in clause 30.

44. The lease does not need an artificial interpretation applied such as is suggested by the Respondent, since it clearly says that a Ground Floor and Basement Maisonette should be constructed.

45. The Applicants disagree with the Respondent in the assertion that occupancy of the properly defines completion of works. As previously stated, the lease itself is quite clear that works will be completed when an approved specification of a Ground Floor and Basement Maisonette has been constructed.

46. The Respondent acknowledges that works were carried out without the approval of the Landlord. The lease requires both the approval of the Landlord and construction of a Ground Floor and Basement Maisonette for the works to be complete.

47. The fact that the Applicants may be in breach of the lease is not relevant to the points of law in this case. The Applicants currently have the agreement in principle of the Landlord that any breach will not be pursued because they are in the process of rectification.

48. The Applicants refer to point 43 of the Respondent's Stated Case. As previously stated and explained, the Applicants have fulfilled their obligation to pay service charges under clause 1.2 of the lease currently in force.

49. The Applicants contend that the eighteen-month rule in Section 20B of the 1985 Act should apply because the demands apply to two flats and are therefore not in accordance with the terms of the lease: Upper Tribunal (Lands Chamber) court case **Price V Mattey & Ors** (2021] ukut 7 (LC).

50. The Applicants have acted promptly and reasonably at all times since they made their application to the Tribunal. The Respondent's representative, however, has wasted costs, both in putting difficulties in the way of the Applicants during the Tribunal process and in making two applications to a judge for mediation, delays that were quickly refused, first of all for not giving reasons for the first request, and secondly for attempting to obtain a delay when all parties had indicated beforehand their availability.

51. It is general principle of Tribunal proceedings that each party pays its own costs. An order under paragraph 5A of Schedule 11 of CLARA 2002 prevents this principle from being violated, particularly since the Applicants have, as indicated above, behaved reasonably.

The Respondent

52. The Respondent says that the Respondent, Granville House RTM Company Limited, acquired and have exercised the right to manage Granville House since around June 2008.

53. In accordance with section 96 of CLARA 2002 the Respondent carries out the management functions at Granville House, which include the services as detailed in the Eighth Schedule of the lease dated 07/03/2008 ('the Lease').

54. The Property was derelict when it was purchased by the Applicants. The Lease is a development lease as it provides for the Property's development and the provisions thereafter.

55. The Respondent instructed Cockett Henderson to act as their managing agents for the period 2009 to 2021.

56. The Applicants acquired the Property in and around 10/03/2014. The Applicants developed the Property into 2 Flats; flat 7 and flat 7a ('The Flats'), without the approval of the Landlord. To the best of the Respondents knowledge The Flats were completed in 2016 and thereafter occupied.

57. The Applicants are now converting The Flats to a singular flat as a result of being unable to agree the premium payable to the Landlord for separate leases of The Flats.
58. The Respondent from 2017 to 2022 in accordance with Clause 1.3 of the Lease, demanded from the Applicants a proportion of the service charge that had been incurred yearly.
59. The Works referred to in Clause 1.2 and 1.3 are specified in the Tenth Schedule of the Lease:
"*The works required to enable the Premises to be occupied as a residential unit in family occupation in accordance with the Specification*"
60. The Specification referred to in the Tenth Schedule of the Lease is defined at Clause (1) of the Lease:
“"*the Specification" means the specification of works approved by the Lessor such approval not to be unreasonably withheld or delayed required to carry out the Works*"
61. The Respondent advises the Tribunal how to approach interpretation of the lease and quotes from relevant caselaw.
62. The Works are now completed as the Property has been developed and is occupied.
63. The Applicants contend that the Works have not been completed and therefore there has been no trigger of Clause 1.3 of the Seventh Schedule of the Lease, namely on the basis that The Flats have not acquired separate leases. On this point, for clarification, the Lease does not provide that completion of the Works is fundamental to the granting of leases of The Flats. What the Lease does specify is that the Works are in accordance with the Specification approved by the Landlord.
64. There is no Specification available.
65. Despite the Specification being absent, the Lease is clear on its contractual interpretation of the Works. The Lease specifies that the Works are such works that will enable the Property to be occupied as a residential unit in family occupation in accordance with the Specification. Once this has been accomplished the Works have been completed.
66. The Lease clearly contemplates that completion of the Works is when the Property becomes occupied, Flat 7 is occupied by Applicants 3 and 4 and Flat 7a is occupied by tenants. It is the Respondent’s understanding and belief that the Applicants now

wish to convert The Flats into one singular flat as a result of the issues arising from obtaining separate leases and access to The Flats.

67. Neither the Applicants nor the Tribunal can rewrite the provisions of service charge because a factor that has been catered for (in this case the completion of the Works) has developed in a different way, as stated in **Arnold v Britton**. In light of this, one may interpret the Tenth Schedule to allow the Property to be developed into a singular flat only. Despite this the Applicants continued to develop The Flats, this should not limit the Applicants' liability to pay a proportion of all the service charge. The Applicants made the decision to continue the Works without approval of the Landlord and those Works have now been completed and The Flats are occupied.

68. Further evidence of interpretation as to the completion of the Works can be identified at Clause 18.2 of the Lease. The Lease prohibits the Applicants from assigning, transferring subletting or parting with possession of the Property until the Works have been completed.

69. The Lease is a developmental lease and was drafted with the intention to be sufficient for pre- and post-developmental works to the Property. The Lease provides a simple, clear and concise intention as to the service charge provisions as follows:

    i) The Property was to be developed into a residential unit for occupation
    ii) Whilst the Property was being developed, the Applicants were liable to pay service charge in the sum of £750.00; a fixed rate because the Property, whilst being developed, would not have had the benefit of all the services being provided to Granville House
    iii) Once the Works to develop the Property had been completed, the Applicants would be liable to pay a proportionate amount of all the service charge because as a result of the completion of the Works the Property could be occupied, benefiting from all the services at Granville House.

70. It is clear from the Applicants' conduct and actions: the Applicants completed the Works, The Flats are occupied, and the Applicants have sublet Flat 7a, that the principles of this case have been met and the intent of Clause 1.3 of the Seventh Schedule of the Lease have been triggered.

71. On the Applicants' own contention that the Works have not been completed, they are in breach of Clause 18.2 of the Lease because they are subletting Flat 7a.

72. As a result of the above, it is apparent that the Works have been completed because the Applicants have sub-let and occupied The Flats in accordance with the Tenth Schedule and Clause 18.2 of the Lease. The intent of the Lease and the definition of the Works have been satisfied which triggers Clause 1.3 of the Seventh Schedule of the Lease. The Applicants' argument that completion is affected once separate leases for The Flats have been obtained fails because there was never an intention in the Lease for separate leases to be obtained. If the Specification exists, which is doubtful, it is very unlikely that it would refer to completion of the Works being conditional to separate leases being obtained. The Lease works as a developmental lease and makes provision for when the Property has been developed to move in line with the rest of the flats at Granville House.

73. The Applicants are contractually obligated to make payment of their proportion of all the service charge.

74. It cannot be fair or reasonable that the Applicants have, without approval of the Landlord, developed the Property into The Flats, completed the Works (without a Specification), occupied The Flats to then only be limited to pay £750.00 per annum of all the service charge. The Flats now have the benefit of the services conducted at Granville House and it is unfair on the other leaseholders of Granville House for the Applicants to withhold their proportion of all the service charge. In addition, the Applicants' actions satisfy the criteria set down within the Lease and it would be detrimental to the Respondent, the other leaseholders and to Granville House, for a shortfall to be incurred as the Respondent is a non-profit organisation and there is no provision within the Lease to deal with such a circumstance.

75. The Tribunal is asked to make no order as to Section 20C of the Act and Paragraph SA of Schedule 11 of CLRA 2022.

The Tribunal

76. The Tribunal has been presented with a collection of documents, not all of which are relevant to the issues before it. It has recorded above only those submissions relevant to the issues.

77. In their application, the Applicants ask: (1) Under the Lease, schedule seven, can Service Charges be levied above the stated figure of £750.00pa without an amendment to the Lease or a New Lease or Leases?

(2) If additional Service Charges can be levied, at what level can they be charged and who would calculate these?

78. As always, the answer to these questions is to be found primarily within the lease itself. Sometimes, people advise upon the basis of incomplete information and that certainly appears to be the case here as nobody has yet looked at the whole lease in context in reaching their various opinions.

79. Collins Dictionary defines a maisonette as follows: "*A maisonette is a flat that usually has a separate door to the outside from other flats in the same building. Many maisonettes are on two floors."*

80. When the Applicants purchased two "derelict" units of the larger development on 10 March 2014, they took on the duty to convert those two units into a maisonette. Section 23(1) of the Landlord and Tenant (Covenants) Act 1995 ("the 1995 Act") provides the framework for the transmission of covenants on assignment to the effect that all covenants and obligations between Lessor and Lessee are enforceable between the landlord and tenant for the time being, and that rights and obligations under covenants should pass on assignment.

81. The duty to convert is clear from any reading of the lease. How could the maisonette described otherwise be accomplished? The conversion is clearly what "the works" entailed. The Respondent prays in aid the Tenth Schedule, "*The works required to enable the Premises to be occupied as a residential unit in family occupation in accordance with the Specification",* as meaning that the works have been accomplished by the creation of two flats, but this ignores the fact that the lease does not allow the creation of two flats and that the wording of the Tenth Schedule refers to "a residential unit", i.e. singular unit. The Tribunal cannot find that something unlawful, as the development appears to be (no apparent planning consent, no apparent approved Fire Precaution works), the Applicants nor the Respondent suggesting that the works done accorded with the specification, the works not being completed certainly "*to the reasonable satisfaction of the Lessor"* could represent what the lease intended. Indeed, the Respondent specifically says that there was no consent for what the Applicants did.

82. The Specification for the works is not known, but is very likely to be represented by the 2008 application for planning consent for the conversion of the two units into a single maisonette included in part within the Applicants' Response to the Respondent's Response. The Oxford English Dictionary definition of Specification

of Works detailed by the Applicants above refers primarily to the agreement between the commissioner of works and the contractor, but would likely have been here agreed by vendor and purchaser as part of the contract of sale. The significant issue here, however, is that the Lease's definition of "*the Specification*" *means the specification of works* ***approved by the Lessor*** *such approval not to be unreasonably withheld or delayed required to carry out the Works* (the Tribunal's emphasis added).

83. Whilst the Specification for the works is not known, the works were to be subject to Paragraph 9 of the Seventh Schedule to the lease, requiring the lessee to do Fire Precaution Works (none are advanced by either party); not to make any structural alterations without the consent of the lessor (no consent is advanced by either party); to complete the works within a specified time with local authority permissions and consents (none are advanced by either party); to complete certainly "*to the reasonable satisfaction of the Lessor*" (not advanced by either party). The Respondent points to the Applicants subletting part of the premises, but this is a breach of paragraph 18.1 of the Seventh Schedule, not of 18.2 as suggested by the Respondent, the latter paragraph only, referring to the whole premises, being subject to completion of the works. Paragraph 18.1 is breached whether or not the works are completed, which further demonstrates that the creation of two sets of premises could not be any part of the Specification of Works and that subletting a part of the premises, as the Applicants are said to have done, is a fundamental breach of the lease.

84. It would appear, therefore, that the Applicants are in breach of lease, thus providing the Respondent with an avenue for a claim for damages. This Tribunal is not so concluding and nor is it advising the Respondent to pursue such a claim as that is a matter for their own advice. It might be that this is a Pyrrhic victory for the Applicants, who could possibly pay more for their suspected breach of lease than they save in service charge costs.

85. Clearly, however, the works have not "*been completed in accordance with the terms of this lease*", so that paragraph 1.3 of the Seventh Schedule cannot become operative. That means that the annual sum of Service Charge payable for the property is and remains £750 per annum.

86. A word or two about the flat.

87. Under the terms of the lease, there is only one flat, the "*Ground Floor and Basement Maisonette, Granville House Victoria Parade Ramsgate Kent shown edged red on the Plan "A""*. Work by the Applicants to create two flats out of the premises does not alter that clear fact. Accordingly, the Respondent should demand £750 per annum from the "*Ground Floor and Basement Maisonette, Granville House Victoria Parade Ramsgate Kent shown edged red on the Plan "A""*, whatever that premises is currently numbered. **Price v Mattey & Ors** is not authority for any other conclusion.

88. The service charge is properly payable to the Respondent as the Right to Manage Company under Section 96 Commonhold and Leasehold Reform Act 2002; the Applicants are qualifying tenants, such that Section 96(6)(a) does not avail them.

89. The Tribunal is not required, given its finding above, to go on to look at some of the other issues between the parties as they do not arise at present. However, it may be profitable to comment on some.

90. The methods used by the Respondent to apportion the Service Charge are open to question. The calculation by Jeremy Parkin of Bradstowe appears to be the best starting point; the suggestions of any impropriety on his part by the Applicants is unwarranted as it is unsupported by any evidence whatsoever. The Tribunal believes that the approach taken by Mr Parkin is the only sensible way forward, using an aggregation of the rateable value of the two units. However, he based his assessment upon the proportion the premises represented of the whole building. It appears he was not told that, under the terms of the lease, the Respondent was to remain responsible for a proportion of the costs, such as in the Eighth Schedule detailed above.

91. Mr Parkin assessed the overall rateable value of the property as 8,311, but the figure of 7,256 is used on the service charge demands without explanation as to whether the value of the pub has been deducted to reach this figure or some other calculation has resulted in the reduction.

92. Then the letter from Mr Galliers of 4 August 2022 further muddies the waters, and introduces a share for the premises of 1.91%. Although this figure is substantially below the figure calculated by Mr Parkin, it is the one that the Respondent is now seemingly attached to. As the Applicants point out, however, this figure, which shows no workings, appears to be based on Council Tax, not rateable value, as required by

the lease. There is also some reason to doubt Mr Gallier's expertise as his stated qualification is not one to be expected to suggest such relevant expertise.

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

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

94. The relevant law is detailed below:

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

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

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

Commonhold and Leasehold Reform Act 2002 Schedule 11 Paragraph 5A Limitation of administration charges: costs of proceedings

(2) 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.

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

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

Proceedings to which costs relate

First-tier Tribunal proceedings

"The relevant court or tribunal"

The First-tier Tribunal

Rules 13 and 3 The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules"):

Rule 13 (2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

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

Section 20C

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

96. "*An order under section 20C interferes with the parties' contractual rights and obligations, and for that reason ought not to be made lightly or as a matter of course, but only after considering the consequences of the order for all of those affected by it and all other relevant circumstances."*
"The scope of the order which may be made under section 20C is constrained by the terms of the application seeking that order...;
"The FTT does not have jurisdiction to make an order in favour of any person who

has neither made an application of their own under section 20C or been specified in an application made by someone else".
(**SCMLLA (Freehold) Limited** (2014) UKUT 0058 (LC)). *"In any application under section 20C it seems to me to be essential to consider what will be the practical and financial consequences for all of those who will be affected by the order, and to bear those consequences in mind when deciding on the just and equitable order to make."* (**Conway v Jam Factory Freehold Limited** (2013) UKUT 0592 (LC)).

97. The Tribunal has weighed up the relevant factors here. It notes that the Applicants were substantially successful in their challenge to the payability of the increased service charges, but notes also that the Applicants do not come to the Tribunal with "*clean hands*", despite earlier attempts to settle the matter, having created two flats where the lease allowed for one only and then avoiding paying the increased service charge demand by their breach of the lease and unlawful development, which, in turn, has placed a greater burden on the other tenants and put the Respondent in the position of having to seek monies from another approach to their breach of their lease. Additionally, the Applicants chose to seek to besmirch the professionalism of Mr Parkin without any evidence for their unsupported assertion, nor any alternative demonstration of a basis for calculation of the rateable value of the premises.

98. There is also the element of the correct approach to apportionment detailed above, which required exploration, and the details recorded about the reserve fund collection.

99. Taking a rounded view, the Tribunal refuses the application under Section 20C of the Landlord and Tenant Act 1985. It directs that the landlord's reasonable costs in relation to this application may be regarded as relevant costs to be taken into account in determining the amount of the service charge for the current or any future year.

Paragraph 5A

100. For the same reasons the Tribunal refuses the Applicants' application under Section 20C above. The Tribunal refuses also their application under Paragraph 5A, so that the reasonable costs incurred by the Respondent in connection with the proceedings before the Tribunal may be regarded as relevant costs to be taken into account in

determining the amount of any administration charge payable by the Applicants in this or any other year.

Fees

101. In **Cannon v 38 Lambs Conduit LLP** (2016) UKUT371 (LC), the Upper Tribunal ordered the reimbursement of fees where *the tenants have succeeded on the principal substantive issue.*

> *"Reimbursement of fees does not require the applicant to prove unreasonable conduct on the part of an opponent. It is a matter for the tribunal to decide upon in the exercise of its discretion, and (as with costs orders) the tribunal may make such an order on an application being made or on its own initiative."*

102. When all that is recorded above is weighed in the balance, the Tribunal finds that it would not be appropriate to order the Respondent to reimburse the Applicants the fees paid by them.

RIGHTS OF APPEAL

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

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

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

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

ANNEX

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

Section 20B Limitation of service charges: time limit on making demands

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge."

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

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

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

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

19 Limitation of service charges: reasonableness

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

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

27A Liability to pay service charges: jurisdiction

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

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

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

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

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

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