FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BC/LSC/2023/0045**
Property	**:**	**Woburn Court** **Bedford Road** **South Woodford** **London E18 2RS**
Applicant	**:**	**Mr Philip Caplan**
Representative	**:**	**None**
Respondents	**:**	**Woburn Court Freehold Limited** **&** **Woburn Court Management (Redbridge) Limited**
Representative	**:**	**Mr Bhavesh Parmar** **Ms Sura Al-Qassab**
Type of application	**:**	**Determination of the reasonableness and payability of service charges pursuant to S27A Landlord & Tenant Act 1985**
Tribunal members	**:**	**Mr I B Holdsworth FRICS MCIArb** **Ms Alison Flynn MA MRICS** **Ms Niamh O'Brien**
Date and venue of Hearing	**:**	**25 October 2023** **10 Alfred Place, London WC1E 7LR**
Date of Decision **Slip Rule amendments**	**:**	**15 November 2023** **Revised 22 December 2023**

DECISION

At the request of the respondents and having consulted the applicant and respondent, certain clerical mistakes, accidental slips and omissions in the original decision are corrected in this amended decision, under rule 50 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. However, not all the comments of the parties have led to corrections; and,

importantly, none of the changes affects the substantive decisions of the tribunal or the outcome of the proceedings.

Decisions of the Tribunal

a. The Tribunal determines that the collection of the monies by the Respondents for the reserve fund was incorrectly demanded. A refund of these monies is not required as the Applicant accepts the monies were allocated to reasonable and payable expenditure under lease provisions.

b. The Tribunal concludes that the service charge for upgrading the carpark is payable and reasonable. They also deduce the installation of the electric gates was agreed between the parties and the Tribunal has no jurisdiction in agreed matters.

c. The administrative and legal costs arising from variation of the lease are payable and reasonable.

d. The Tribunal do not make a s.20C Order to restrict the charges payable by the Applicant arising from this application.

e. No Award of Rule 13 costs is made.

1. The Application

1.1 The Applicant sought a determination pursuant to s.27A of the Landlord & Tenant Act 1985 ('the 1985 Act') and Schedule 11 to the Commonhold & Leasehold Reform Act 2002 ('the 2002 Act'), as the amount payable as a service charge and the reasonableness of the administration charges for years 2017-2023.

1.2 The Applicant made an application to the Tribunal dated 25 January 2023. Directions were subsequently issued on 7 March 2023, and these identified the following issues to be determined, whether:

- The lease allowed for a reserve fund to be collected through the service charge and whether it had been properly held over the disputed period.
- Service charges are payable in respect of garages at the property.
- The landlord had failed to comply with the consultation requirements under s.20 of the 1985 Act in respect of the appointment and fees paid to the managing agents in 2020/21.
- The costs for resurfacing of the carpark were reasonably incurred in 2023.
- A service charge for the installation of electronic gates was payable under the lease.

- The costs of preparing an application for the variation of the lease were payable and/or reasonably incurred during the service charge years 2021-2023.

- An Order under s.20C of the 1985 Act and paragraph 5A of Schedule 11 to the 2005 Act should be made.

- An Order for the reimbursement of application and/or hearing fees should be made.

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2. The Hearing

2.1 A hearing was held on 25 October 2023. The Applicant, Mr P Caplan attended the hearing and represented himself.

2.2 The Respondents were represented by Mr Bhavesh Parmar and Ms Sura Al-Qassab, both of whom are Directors of Woburn Court Management (Redbridge) Limited ('**WCM**') and Woburn Court Freehold Company Ltd (**WCFC**).

2.3 All parties answered questions posed by the Tribunal.

3. The Property

3.1 The subject property comprises a purpose built block of 24 flats built-in the 1970s.

3.2 There is a single storey block of self-contained garages to the rear of the flats. The garages are connected to the public highway via a communal roadway.

3.3 The property also includes communal gardens and bin storage.

4. Preliminary matters

4.1 The Tribunal referred to the Directions prepared by Judge Percival in which he required the Joint Applicant Mr Arun Varma to sign a statement of truth as part of the application.

4.2 The Tribunal was told that Mr Varma had not submitted a signed statement and he therefore did not qualify as a Joint Applicant in this Application.

4.3 The Tribunal also referred to Direction (3) that required any leaseholder intent on joining the s.20C application must inform the Tribunal by letter or e mail of their wish to be included within the application seeking an Order. The Tribunal were told no leaseholder had sought to apply and therefore these parties are not included in the s.20c application. The only qualifying person is therefore Mr Caplan of Flat 20, Woburn Court, Bedford Road, South Woodford, London E18 2RS.

4.4 After questioning Mr Caplan, the Tribunal confirmed that the application referred solely to Flat 20 and no other dwelling at the property.

4.5 Prior to the start of the hearing the Tribunal asked the parties to review the matters in dispute. The Tribunal were told the Respondents had confirmed to Mr Caplan that any monies collected for the reserved fund were held in a separate named bank account. Bank statements were adduced to Mr Caplan. The Applicant accepted this assurance and withdrew this issue in dispute.

4.6 The Applicant also confirmed that he had no legal interest in the garage, as it was his son who was the leaseholder of the separate garage in the self-contained and detached garage block. The Tribunal determined they had no jurisdiction over this matter as it was beyond their jurisdiction.

4.7 The Tribunal was told that the management contracts provided by Attwood Property Services Limited and the predecessor, Fresh Property Services Limited Ltd were for 364 days. The Respondents provided evidence of this to the Applicant. After perusal of the documents, he accepted the contracts were for less than a 12-month period and did not constitute long term qualifying contracts under the provisions of s.20 of the 1985 Act.

4.8 Following the preliminary discussions the parties agreed the following matters remined in dispute and asked that the Tribunal determine:

- Whether the management company was permitted to collect, hold and use reserve funds under the provisions of the lease.
- The payability and reasonableness of the payments made by the management company following collection of monies earmarked for the reserve fund.
- Whether the service charges in year 2023 arising from works carried out to the carpark were payable and reasonable.
- The payability and reasonableness of the service charge for the s.20 Notice, in respect of works to provide and install the electric gates.
- Whether the administration charges for the revision of the leases were payable and reasonable.
- The reasonableness of service charges for Green and Olive solicitor services.

5. The law

5.1 The relevant legal provisions are set-out in the appendix to this Decision.

6. The reserve fund lease provisions

6.1 The Applicant told Tribunal the lease did not provide for the collection of monies from leaseholders to a reserve fund. He said to his knowledge WCM had collected funds from leaseholders over many years earmarked for the reserve fund. The Applicant acknowledged that he had paid monies earmarked for reserve fund over many years without querying the validity of the requests.

6.2 The Tribunal asked the Applicant whether he accepted that the monies collected by the managing agents for the reserve fund had been allocated to expenditure permitted within the lease provisions. The Applicant said he accepted that to the best of his knowledge all monies collected for the reserve fund had been spent on payable charges under the lease provisions.

6.3 The Tribunal then asked the Applicant what remedy he sought, if the reserve fund monies had been incorrectly demanded. The Applicant said he wanted a determination by Tribunal that there was no provision in the lease for the collection of a reserve fund. The Applicant did not however make any request for reimbursement of these monies.

6.4 Ms Al-Qassab, a Director of WCM conceded in her opening statement that there was no provision in the lease for the collection of monies for a sinking or reserve fund. She told Tribunal it was a longstanding custom and practice to collect monies in advance of major expenditure. The Applicant, along with other leaseholders, had not previously challenged this practice. WCM,WCFC and the instructed management company were not aware the lease did not provide for reserve fund collection.

6.5 Ms Al-Qassab told the Tribunal that as soon as the Applicant brought his concern about the reserve fund contributions to WCM's attention, they arranged for any outstanding monies in the reserve fund account contributed by the Applicant to be reallocated to his s.20 works costs.

6.6 Tribunal was told that it was the intention of WCM to ask the leaseholders to contribute to a reserve fund on a voluntary basis in the future.

6.7 <u>Findings of Tribunal</u>

6.7.1 The Tribunal reviewed the lease provided in the bundle and concurred with the parties that there was no provision in the lease for the collection of contributions toward a reserve fund.

6.7.2 It is agreed by all parties that the monies collected under the auspices of a reserve fund had been allocated to payable service charges. The reasonableness of these charges is not disputed by the Applicant.

6.7.3 The Tribunal was assured the balance of any monies paid by the Applicant to the reserve fund account were reallocated to payable S20 expenditure. An analysis of the contributions to the reserve fund by the Applicant was in the bundle. The Applicant accepted this as an accurate representation of his contributions.

6.7.4 The Tribunal could not identify any financial prejudice to the Applicant as a result of the WCM's requests to contribute to the reserve fund through service charge demand.

6.7.5 Tribunal determined that the monies, although collected under a false premise had been used for expenditure consistent with the provisions of the lease.

6.7.6 The Tribunal conclude that the Respondents did collect monies earmarked for a reserve fund which is not permitted under the service charge provisions of the lease however this failure is now remedied.

7. Reasonableness of car park works costs

7.1 The Applicant said the expenditure on the renewal of the tarmacadam surface to the carparking and garaging access was not reasonable. He told Tribunal the tarmacadam surface was breaking down but in his view capable of being repaired. The Applicant claimed that renewal of the entire surface was excessive and patch repair would have been appropriate repair. He did not however dispute the payability of the charge.

7.2 The Respondents took Tribunal to copies of the s20 Consolation notices. in the bundle. These s 20 Notices provide detailed advice on the resurfacing of the carpark and satisfied statutory procedure regulations.

7.3 The Respondents explained how they had sought quotes from three contractors and had accepted the lowest price. They had taken advice on the need to resurface the entire area from Bestco Surfacing described as "a specialist contractor" and a copy of a letter report had been provided in the bundle.

7.4 The Respondents also referred Tribunal to a series of photographs showing the condition of the tarmacadam surface prior to repair. WCM had instructed a health and safety assessment prior to undertaking the works. This had highlighted the trip hazards posed by the breaking down of the surface.

7.5 No comments had been made by any of the leaseholders as a result of the s.20 consultation.

7.6 Ms Al-Qassab explained that Attwood Property services had supplied a copy of the accepted quote for the car park works to the Applicant and he had made no comment.

7.7 Findings of the Tribunal

7.7.1 Tribunal reviewed the evidence of need for the resurfacing works and have concluded the surface was in a wholly dilapidated condition. Tribunal has relied upon the photographs and opinion provided by Bestco Surfacing that wholesale renewal was necessary, rather than patch repair.

7.7.2 There was evidence in the bundle of compliance with s 20 statutory consultation procedure. A works were competitively tendered and costs market tested.

7.7.3 No objections had been received from any of the leaseholders following issue of the results received from seeking quotations, nor the appointment of the chosen contractor.

7.7.4 Tribunal concludes that resurfacing of the entire access and carparking area was justified and the service charge costs were fair and reasonable.

8. The lease terms and the installation of electric gates

8.1 The Applicant claimed that there was no provision in the lease for expenditure relating to improvement of the Property. He claimed that the provision of electric sliding gates across the entrance to the garage block was neither a repair nor maintenance item, as permitted within the lease. The Applicant contended that these service charges were not payable.

8.2 Ms Al-Qassab told Tribunal that the open carparking area was considered a security risk. She alleged this had been subject to fly tipping and antisocial behaviour. WCM had therefore decided that electric gates should secure this part of the Property, to the benefit of all leaseholders.

8.3 This proposal had been discussed at a residents' meeting, held on 27 September 2022 via video conferencing. The minutes of this meeting are at p.305 of the Respondents' bundle (RP). The minutes record the intention to carry out the installation of electric gates.

8.4 Ms Al-Qassab referred Tribunal to the Zoom transcript (RP310) of a statement by the Applicant *"we will vote in favour of the electric gate"*.

8.5 The results of the subsequent voting on the proposal are at RP347. These which show the Applicant voted in favour of the works.

8.6 The Respondents also referred Tribunal to an e-mail from Ms Al- Qassab to Mr Matthew Attwood at RP318, confirming the Applicant and his wife voted in favour of the works at the meeting.

8.7 It was confirmed by Mr Caplan to Tribunal that the allocation of the costs to the Applicant in respect of the works was £673.75.

8.8 The Applicant, when asked by Tribunal whether he had agreed to the installation of the electric gates, said he was unable to recall any of the actions documented in the submissions. He also challenged the validity of the meeting held on 27 September 2022. He said such a meeting conducted via Zoom was invalid and had to be held in person in order to comply with the Memorandum of Association.

8.9 Findings of the Tribunal

8.9.1 Tribunal considered the evidence submitted by the Respondents in order to confirm the Applicant had agreed to installation of the electric gates.

8.9.2 Tribunal carefully reviewed the evidence and gave weight to the Zoom transcript and concluded this unambiguously recorded the statement of the Applicant *"we will vote in favour ..."*. Tribunal has no reason to doubt this was an accurate record and was corroborated by other evidence submitted by the Respondents in their bundle.

8.9.3 Tribunal concludes the Applicant agreed to the electric gates being installed during the meeting on 27 September 2022.

8.9.4 This is an agreed matter between the parties. The Tribunal has no jurisdiction to determine on matters that are not in dispute. The Applicant agreed to the works and has not challenged the reasonableness of this service charge. This service charge is therefore payable.

9. The costs of the lease variation

9.1 The Applicant told the Tribunal that WCM had spent money on preparing a variation of the lease, which he described as a "completely new lease rather than a variation of the existing lease". He claimed WCM now sought leaseholders to pay for the advice associated with the preparation of the revised lease.

9.2 He claimed three drafts had been prepared by the lawyers instructed by WCM. The first draft had been a wholly unrealistic document and preparation had been wasteful and further the second and third drafts comprised significant departures from original lease. The wording of the variations was unclear, poorly drafted and too wide ranging.

9.3 It was the Applicant's contention that the costs were unreasonable, albeit he accepted the lease provisions provided for such charges to be levied and payability was not in dispute.

9.4 In reply to Ms Al-Qassab told Tribunal that paragraphs 2(a) and 3(e) of the lease comprised the clauses the Respondents had relied upon in levying charges for this work. The Respondents had communicated with all leaseholders in 2021 in order to explain the need for modernisation of the lease and that, prior to commencement of the legal work, there would be costs associated in modernisation of the lease.

9.5 The respondents had contacted several solicitors regarding the proposed revisions to the lease and invited them to submit fee quotes for this work. Cullimore Dutton in Chester had been selected, based on their competitive fee quote and previous experience in this type of work.

9.6 Ms Al-Qassab told Tribunal that the revised lease was now available for leaseholders to sign.

9.7 Findings of the Tribunal

9.7.1 The Tribunal reviewed the current lease and accepted the style is dated. In Tribunal experience modern lease wording does assist effective management of Property.

9.7.2 The Applicant's comments about lease drafting and the need for more wide ranging clauses was noted. However, the provision of three varying drafts is consistent with standard legal practice and the costs for such work had been carefully market tested prior to Cullimore Dutton's appointment. Tribunal had no reason to doubt the chosen solicitor's costs were unreasonable. They are not persuaded the work carried out by the solicitors to review the lease was excessive.

9.7.3 The payability of these charges had not been disputed by the Applicant.

9.7.4 The Tribunal concludes that the legal costs associated with revision of the leases were both reasonably incurred and payable.

10. Proposed charges for Green & Olive Solicitors services

10.1 The Tribunal addressed the costs to individual leaseholders arising from the legal services currently offered by Green & Olive Solicitors. It was confirmed by the Respondents that the solicitors were instructed to register the recently varied leases at HM Lands Registry. They referred to a leaseholder update provided at P223 of the bundle. An assurance was given that costs would not be recovered through the service charge of Mr Caplan. The Applicant subsequently withdrew his request for this matter to be determined by Tribunal.

COSTS

11. s.20c costs Landlord & Tenant Act 1985

11.1 The test for Tribunal with regard to a s.20 Order is whether it would be *just and equitable* for the Applicant to pay the Respondents' costs, given the Tribunal findings and that other leaseholders might be disadvantaged by their liability to pay such costs.

11.2 The Applicant is not successful in all of the findings of the Tribunal. The Tribunal do note the Applicant agreed around 50% of the items in dispute at the hearing. He also failed to attend mediation prior to the hearing. The Tribunal has consequently decided not to make an Order, on the basis that the s.27a determination did not favour the Applicant.

11.3 The Tribunal does not make an Order limiting recovering of the Respondents' costs, pursuant to s.20c of the 1985 Act and paragraph 5(a) of Schedule 11 of the 2002 Act.

12. Tribunal procedural Rule 13

12.1 The Respondents made an oral application for Rule 13 costs. They alleged the Applicants behaviour in this Application was unreasonable and vexatious. The Applicant claimed he had no alternative to making the application as WCM failed to respond to his enquiries about the property. This was disputed by the Respondents.

12.2 In making this costs application the Respondents failed to adduce any time sheets, cost schedules or other documentary evidence to support their assertion of the legal or other professional costs incurred by WCM in responding to the application.

12.3 Rule 13 of the Tribunal rules provides that under:

> *'1(a) the Tribunal may make an Order in respect of costs only; and*
>
> *1(b) if a person has acted unreasonably in bringing, defending or conducting proceedings to a leasehold case.'*

12.4 The Upper Tribunal adopted the guidance of the term *'unreasonable'* as set-out in Ridehalgh –v– Horsefield [1994] chapter 205, which stated:

> *'The acid test is whether the conduct permits a reasonable explanation, if so, the course adopted may be regarded as optimistic and reflecting upon a practitioner's judgment but it is not unreasonable.'*

12.5 In Willow Court Management (1985) Ltd –v– Alexander [2016] 0290 UKUT (LC) it held at paragraph 28:

> *'At the first stage the question is whether the person has acted unreasonably. A decision that the conduct of a party has been unreasonable does not involve an exercise of discretion but, rather, the application of an objective standard of conduct to the facts of the case. If there is no reasonable explanation for the conduct complained of, the behaviour will probably be adjudged to be unreasonable and the threshold for making an Order will have been crossed. A discretionary power is then engaged and the decision maker moves to a second stage of the enquiry. At that stage, it is essential for the Tribunal to consider whether, in the light of the unreasonable conduct, it is found to have been demonstrated it ought to make an Order for costs or not. It is not only if it decides that it should make and Order that a third stage is reached, when the question is what the terms of that Order should be.'*

12.6 At the first stage, the question is whether a person acted unreasonably, which requires the application of an objective standard of conduct in the facts of the case. In this case, the Applicant made an application to Tribunal as he was entitled to do, to review and consider the service charges that he believed either not to be payable or unreasonable. This is usual practice for lessees who are discontent with the operation of their leases and managing agents.

12.7 The allegation that the Applicant failed to engage with the Respondents prior to the Tribunal hearing by declining to take part in mediation is noted. This refusal to engage with the alternative dispute resolution service at an early stage in this dispute is unhelpful and a disappointment. The Tribunal cannot identify with any certainty whether this behaviour was obstructive at this stage of the dispute and therefore does not make a finding. The Tribunal is not provided with any evidence of the professional costs incurred by the Respondents in dealing with this application.

12.8 Despite the Applicant's failure to engage in mediation and the subsequent withdrawal of several disputed items, prior to or during the hearing, the Tribunal is unable to identify any manifest vexatious behaviour on the part of the Applicant. It also is not provided with Costs evidence. It is for these reasons they do not consider the actions of the Applicant in making the s.27a 1985 Act application as unreasonable.

12.9 Tribunal can see no justification for awarding the Respondents' costs under 13(1)(b) and no Award is made.

Name:	Ian B Holdsworth Valuer chairman	**Date:**	15 November 2023 Revised 22 December 2023

Appendix A

RIGHTS OF APPEAL

1. If a party wishes to appeal this 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 of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act 'service charge' means an amount payable by a tenant of a dwelling as part of or in addition to the rent -

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
(b) the whole or part of which varies or may vary according to the relevant costs.

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

(3) For this purpose: -

(a) 'costs' includes overheads; and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period: -

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

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

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to: -

(a) the person by whom it is payable;
(b) the person to whom it is payable;
(c) the amount which is payable;
(d) the date at or by which it is payable; and
(e) the manner in which it is payable.

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

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to: -

(a) the person by whom it would be payable;
(b) the person to whom it would be payable;
(c) the amount which would be payable;
(d) the date at or by which it would be payable; and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which: -

(a) has been agreed or admitted by the tenant;
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party;
(c) has been the subject of determination by a court; or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either:-

(a) complied with in relation to the works or agreement; or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal.

(2) In this section 'relevant contribution', in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement: -

(a) if relevant costs incurred under the agreement exceed an appropriate amount; or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount: -

(a) an amount prescribed by, or determined in accordance with, the regulations; and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

Section 20B

(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.

Section 20C

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

(2) The application shall be made: -

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

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

Section 21B

(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.

The Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007

Regulation 3 relates to the 'Form and Content of Summary of Rights and Obligation'. Where these Regulations apply, the summary of rights and obligations which must accompany a demand for the payment of a service charge must be legible in a typewritten or printed form of at least 10 point, and must contain (a) the title “Service Charges — Summary of tenants' rights and obligations'; and (b) the statement set out in subparagraph (b).