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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	LON/00AF/LSC/2013/0660
Property	:	The Tower, Summer Hill Lodge, Chislehurst, Kent, BR7 5NY
Applicant	:	Mrs Sandra Jones
Representative	:	Ms Claire De Vos MRICS (De Vos Consultancy Ltd)
Respondents	:	Mrs Carole Gallagher
Representative	:	Mr Patrick Gould FRICS
Type of Application	:	Determination of the reasonableness of and the liability to pay a service charge
Tribunal Members	:	Mr Robert Latham Mr Stephen Mason BSc FRICS FCIArb Mrs Rosemary Turner JP
Date and venue of Hearing	:	23 January 2014
Date of Decision	:	30 January 2014

DECISION

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(1) The Tribunal is satisfied that the Respondent has failed to comply with the consultation requirements imposed by Section 20 of the Landlord and Tenant Act 1985. However, the Tribunal is further satisfied that the Applicant has not suffered prejudice thereby and therefore makes an order under Section 20ZA dispensing with these requirements.

(2) The Tribunal makes the following adjustments in respect of the service charges which are payable:

Fixed Management Charges

(i) 2005: Reduced from £200 to £100;
(ii) 2006: Reduced from £210 to £100;
(iii) 2007: Reduced from £220 to £100;
(iv) 2008: Reduced from £230 to £100;
(v) 2009: Reduced from £250 to £100;
(vi) 2010: Reduced from £270 to £100;
(vii) 2011: Reduced from £280 to £100;
(viii) 2012: Reduced from £290 to £100;
(ix) 2013: Reduced from £310 to £100.
(Total to be refunded: £1,360)

(3) The Tribunal disallows the sum of £168 claimed in the 2011 accounts by C & H Management Ltd in respect of supervision of works, the Applicant's share being £56, together with the 10% management charge levied in respect of this (£5.60).

(4) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessee through any service charge.

(5) The Tribunal determines that the Respondent shall pay the Applicant £440 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

The Application

1. By applications dated 23 September 2013, the Applicant seeks determinations pursuant to:

(i) Section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable for the years 2005 to 2013 (p.5-29 of the Bundle);

(ii) Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of administration charges payable for the said years (p.31-41); and

(iii) Section 20C of the 1985 Act in respect of the costs of these proceedings (p.43-48).

2. On 19 September 2013, the Applicant served a preliminary notice for the appointment of a manager pursuant to Section 22 of the Landlord

and Tenant Act 1987 (p.274-294). Although the Applicant has sought to issue an application in respect of such an appointment, the requisite fee has not been paid, as a consequence of which no Directions have been given. This application is not before this Tribunal

3. On 6 August 2013, the Tribunal gave Directions (at p.1-7). The Tribunal:

(i) identified the service charges which were in dispute.

(ii) noted that whilst the annual management fee was set out in the second application form as an administration charge, it was strictly a service charge.

(iii) recorded that the Respondent admitted that none of the demands for service charges had been accompanied by the summary of rights and obligations required by section 21B of the 1985 Act and the Service Charges (Summary of Rights and Obligations, and Transitional Provision) England Regulations 2007. The parties were to address the consequences of this breach in their respective statements.

4. Pursuant to the Directions, the parties have filed:

(i) a Scott Schedule identifying the issues in dispute (at Tab 5);

(ii) a Statement from Ms Claire De Vos, dated 27 November 2013, on behalf of the Applicant (at Tab 3);

(iii) a Statement from the Respondent, dated 10 December 2013 (at Tab 4);

(iv) a Bundle of Documents.

5. The relevant legal provisions are set out in the Appendix to this decision.

The Hearing

6. The Applicant did not appear at the hearing. She was represented by Ms De Vos. Ms De Vos informed the Tribunal that the Applicant was unwell, but wished the Tribunal to proceed in her absence. We acceded to this request. We heard evidence from Ms De Vos. However, she had no personal knowledge of the history of this dispute prior to being instructed in June 2013.

7. The Respondent was represented by Mr Gould. He adduced evidence from Mrs Gallagher.

8. At the commencement of the hearing, we clarified the following issues:

(i) The Respondent confirmed that she has still not served the Applicant with any demand for outstanding service charges accompanied by the requisite Summary of Rights and Obligations. However, the Applicant has paid all service charges due up to June 2013. The Respondent will need to compute whether there are any outstanding service charges in the light of our decision. Should there are, they will become payable upon a demand being served accompanied by the requisite Summary of Rights and Obligations. The legislation merely freezes the obligation to pay until the requisite information has been provided.

(ii) There is no application for the appointment of a manager before the Tribunal. However, the Respondent is in the process of appointing a managing agent, namely Acorn. This appointment has been deferred pending the decision of this Tribunal. Albeit that this is not required by statute unless the appointment is to be a qualifying long term agreement, we suggested that the Respondent consults the Applicant about the appointment. If the Applicant is satisfied with the proposed arrangement, this should resolve the need for any application for the appointment of a manager.

(iii) The Respondent conceded that she had not complied with her duties to consult under section 20 of the Act. In her statement, she has made an application for dispensation. It was apparent that neither party was fully appraised of the recent decision of the Supreme Court in *Daejan Investments Ltd v Benson [2013] UKCS 14; [2013] 1 WLR 854.* We provided a copy of this decision to the parties which they were able to consider during the lunch adjournment, before making their closing submissions.

9. The relevant matters in dispute are set out in the Scott Schedule. Our task has been made the easier by the care with which the Applicant has prepared the Bundle of Documents. Ms De Vos complained about the Respondent's failure to comply with best practice in the management of the building, for example the failure to adopt a planned programme of maintenance or to arrange for a fire risk assessment. However, we are satisfied that these are rather matters for the future. We are rather concerned with the service charges which have been levied over the past nine years.

10. We have identified the following issues for our determinations:

(i) The Applicant' liability for an annual fixed management charge.

(ii) The Applicants liability for a number of items of expenditure where these are qualifying works and the Applicant's relevant contribution has exceeded £250. The Applicant contends that her liability should be restricted to £250. The Respondent rather argues that no prejudice has arisen from the failure to comply with the consultation requirements under section 20 of the Act and that we should dispense with these requirements under section 20ZA.

(iii) A 10% management charge has been levied on top of any service charge that has been incurred. In so far as we reduce any service charge, this 10% addition must also be refunded. We deal with this as an aspect of (ii) above.

The Lease

11. The Lease is at Tab 9. It is dated 31 October 1991, and grants a term of 99 years. The ground rent is £100 for the first 33 years, increasing to £150 for the second period of 33 years and £200 for the final period.

12. There are some ambiguities in the lease. However, the landlord is liable for the normal obligation to insure the building, repair the structure and exterior of the building and provide the normal services, including maintenance of the common parts and gardens. External decorations are to be carried out every 5 years (Clause 5(5); whilst the common parts are to be decorated every 3 years (Clause 5(4)(iii).

13. The tenant is required to decorate the premises every 5 years (Clause 3(1)(i)). She is also required to pay one third of any service charge, including the payment of an interim service charge (Clauses 3(1)(c) and 4(2) and Schedule 4).

14. The landlord is entitled to employ managing agents and to recover all their proper fees, salaries, charges and expenses (Clause 5(7)). Alternatively, the landlord is entitled to recover his reasonable and proper costs of managing the property being equivalent to the ground rent payable and an annual sum equivalent to 10% of the total costs incurred in managing the flats (Schedule 4, paragraph 2). This 10% expressly extends to the landlord's obligation to insure (under Clause 5(2)).

The Background

15. The Applicant has been the tenant of the Tower ("the premises") since 1 September 1998. She derives her interest from a lease dated 31 October 1991. The lease was granted by Hugh and Carole Gallagher, namely the Respondent and her late husband who died in February 2012.

16. The premises are a two bedroom flat situated on the second floor of Summer Hill Lodge, a semi-detached property, with the second "tower bedroom" on the third floor. We were told that the property was constructed in 1840. There are two other flats, namely "Talbot" on the ground floor, and "Bascomb" on the first floor. At all material times, the Respondent and her husband have let these under assured shorthold tenancies ("ASTs").

17. Mr Gallagher was a builder. He operated a number of companies which he controlled with his wife, namely Kennetbridge Limited, C&H Gallagher & Sons, and C & H Management Limited. Mr and Mrs Gallagher have owned a number of other properties. They live near Hastings.

18. Mr and Mrs Gallagher have managed the property on an informal basis. Mrs Gallagher states that the Applicant was happy with this arrangement. Mr Gallagher would carry out any repairs and maintenance through one of his building companies. He had an interest in minimising the repair costs in respect of the two properties subject to ASTs. The Applicant benefited from this.

19. Ms De Vos now suggests that this arrangement was too cosy and that there was a lack of transparency. Mr Gallagher did not comply with the consultation requirements imposed by the 1985 Act. However, Mrs Gallagher states that her husband always discussed with the Applicant the works that were required and she was always content with the approach adopted by her landlord. This evidence is uncontradicted as Mrs June has neither made a witness statement nor attended to give evidence.

20. A number of service charge accounts appear in the name of C & H Management Limited. Mr Gould suggested that they had been appointed to act as managing agents. We are satisfied that this was not the substance and reality of the situation. There was no written contract between Mr and Mrs Gallagher and their Company. Neither did the Company invoice the landlords for any services that were provided. We are satisfied that Mr and Mrs Gallagher managed the premises, albeit that the Company may have retained all moneys received, including ground rents.

21. The position was somewhat different in respect of any works of repair or maintenance. Whilst Mr Gallagher was alive, works were executed by one of the companies, whether by C & H Gallagher and Sons (see p.84 – invoice submitted to C & H Management Ltd) or C & H Management Limited (see p.87 – invoice submitted to Mr and Mrs Gallagher). Kennetbridge Ltd may also have been used at some stage. The invoices fully described the works which had been executed. Most also describe the manner in which the charge has been computed. We are satisfied that these works were executed by Mr Gallagher's building

companies on behalf of Mr and Mrs Gallagher, as landlord. Given this close relationship between landlord and builder, coupled with the failure of the landlord to comply with the statutory requirements to consult, we have carefully scrutinised the invoices to satisfy ourselves whether the Applicant has been prejudiced by this arrangement.

22. Whilst both parties were content with this informal arrangement for some thirteen years, that situation has now changed. Mr Gallagher died in February 2012 after a considerable period of illness. Over the past four years, there have been increasing problems with the roof. In October 2012, White & Sons Home Improvements replaced the rear roof at a cost of £6,270 (see p.100). The Respondent has now obtained three estimates for re-roofing the front roof. The lowest of these is £12,814.70 + VAT. The Respondent understands that she must now comply with the statutory obligation to consult. That process has yet to commence.

Issue 1: The Fixed Management Charge

23. The Tribunal is satisfied that Mr and Mrs Gallagher have been the relevant landlord at all material times and that they have not entered any oral or written contract with any of their companies to act as managing agents. They have therefore been entitled to charge the following in respect of the costs of managing the property (Schedule 4, paragraph 2 of the lease): (i) a fixed fee of £100 (namely a sum equivalent to the ground rent that is currently payable) and (ii) 10% of the costs incurred in insuring, repairing and maintaining the premises.

24. The fixed sum charged by the landlord has been higher than this and we make the following reductions:

(i) 2005: Reduced from £200 to £100 (see p.172);

(ii) 2006: Reduced from £210 to £100 (see p.181);

(iii) 2007: Reduced from £220 to £100 (see p.189);

(iv) 2008: Reduced from £230 to £100 (see p.197);

(v) 2009: Reduced from £250 to £100 (see p.206);

(vi) 2010: Reduced from £270 to £100 (see p.221);

(vii) 2011: Reduced from £280 to £100 (see p.239);

(viii) 2012: Reduced from £290 to £100 (see p.251);

(ix) 2013: Reduced from £310 to £100 (see p.259).

25. The total reduction is £1,360.

Issue 2: The Consultation Process

26. The consultation procedures required by Section 20 of the 1985 Act are complex. They apply where any tenant is required to contribute more than £250 in respect of any qualifying works. In the current case, the procedures are to be found in the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003 No.1987) ("the Regulations"). The relevant provisions are set out in Part 2 of Schedule 4 ("Consultation Requirements for Qualifying Works for which Public Notice is not Required"). These requirements have been helpfully summarised by Lord Neuberger in *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854 at [12]:

Stage 1: Notice of intention to do the works

Notice must be given to each tenant and any tenants' association, describing the works, or saying where and when a description may be inspected, stating the reasons for the works, specifying where and when observations and nominations for possible contractors should be sent, allowing at least 30 days. The landlord must have regard to those observations.

Stage 2: Estimates

The landlord must seek estimates for the works, including from any nominee identified by any tenants or the association.

Stage 3: Notices about estimates

The landlord must issue a statement to tenants and the association, with two or more estimates, a summary of the observations, and its responses. Any nominee's estimate must be included. The statement must say where and when estimates may be inspected, and where and by when observations can be sent, allowing at least 30 days. The landlord must have regard to such observations.

Stage 4: Notification of reasons

Unless the chosen contractor is a nominee or submitted the lowest estimate, the landlord must, within 21 days of contracting, give a statement to each tenant and the association of its reasons, or specifying where and when such a statement may be inspected.

27. It is common ground that the Respondent has failed to comply with these requirements. The issue for the Tribunal is whether we should make an Order under section 20ZA dispensing with these requirements. Were we to decline to do so, the Applicant's contribution

to each item of "qualifying works" would be limited to £250 (section 20(7)).

28. In exercising our discretion, we have regard to the guidance given by the Supreme Court in *Daejan Investments Ltd v Benson*. We identify the following principles:

(i) the purpose of a landlord's obligation to consult tenants in advance of qualifying works is to ensure that tenants are protected from paying for inappropriate works or from paying more than would be appropriate;

(ii) adherence to those requirements was not an end in itself, nor are the dispensing jurisdiction under section 20ZA(1) a punitive or exemplary exercise;

(iii) on a landlord's application for dispensation, the question for the tribunal is the extent, if any, to which the tenants has been prejudiced in either of those respects by the landlord's failure to comply;

(iv) neither the gravity of the landlord's failure to comply nor the degree of its culpability nor its nature nor the financial consequences for the landlord of failure to obtain dispensation is a relevant consideration;

(v) the tribunal can grant a dispensation on such terms as it think fit, provided that they are appropriate in their nature and effect, including terms as to costs;

(vi) the factual burden lies on the tenant to identify any prejudice which she claimed she would not have suffered had the consultation requirements been fully complied with but would suffer if an unconditional dispensation were granted;

(vii) once a credible case for prejudice has been shown the tribunal must look to the landlord to rebut it, failing which it should, in the absence of good reason to the contrary, require the landlord to reduce the amount claimed as service charges to compensate the tenants fully for that prejudice;

(viii) where the extent, quality and cost of the works are unaffected by the landlord's failure to comply with the consultation requirements an unconditional dispensation should normally be granted.

29. Ms De Vos therefore has the evidential burden to identify any prejudice. If this burden were discharged, the Respondent must rebut it. The question for the Tribunal is whether the Applicant has benefited or been prejudiced by the informal approach adopted by Mr Gallagher. The Respondent's case, uncontested by any evidence from the Applicant, is that Mr Gallagher discussed any proposed works with Mrs June and she was content with the course that he proposed. We were

told that Mrs June has a son-in-law who is a builder. On one occasion, Mrs June suggested that Mr Gallagher obtain a quote from him. Mr Gallagher invited him to submit an estimate, but he declined to do so.

30. We consider each item of "qualifying works" to which the consultation arrangements would have applied. The first item is the invoice submitted by C & H Gallagher and Sons dated at 30 October 2006 for £476.66 (the Applicant's 1/3 share) at p.84. Mrs Gallagher described how her husband would inspect the property annually and prepare a list of works that were required. This invoice relates to 8 items of maintenance to the common parts. We were told that this was some 5 days work by Mr Gallagher assisted by a second worker, namely some £143 per person per day (including materials).

31. Whilst Ms De Vos queried why workers should have to come up from Hastings, she had no evidence to challenge either cost or quality of the work. Indeed, the invoice seems eminently reasonable. Ms De Vos's real complaint was that Mrs June had been denied of her procedural right to be consulted. Her argument was that even if service charges are reasonable in amount, reasonably incurred and are for work and services that are provided to a reasonable standard, they will not be recoverable above the statutory maximum if they relate to qualifying works agreement and the consultation process has not been complied with or dispensed with. There was no competition in that quotations were not sought from other builders. The consultation provisions are imposed to ensure transparency and accountability when a landlord decides to undertake qualifying works.

32. This is an attractive argument which would have found favour with us but for the decision of the Supreme Court in *Daejan Properties v Benson*. This was the legislative intention identified by Lord Wilson and Lord Hope. There is one insuperable problem. These two speeches reflected the view of the minority and were rejected by the three other Justices of the Supreme Court.

33. The second and third items are invoices submitted by C & H Management Limited dated 7 November 2007 (£6,233.62) and 16 June 2008 (£10,770.82) at p.87 and 89 respectively. The Applicant's share is 1/3 of this. These invoices spread over two service charge years and relate to external decorations and a range of other annual maintenance items, the work taking 20 and 18 days respectively. In October 2007, the landlord decorated the ground and first floors; in May 2008 the second and third floors. Scaffolding was only required for the higher floors. Mr Gallagher carried out the works assisted by one or two other workmen. The work was charged on an hourly basis of £18.25 or £146 for an 8 hour day. The team travelled up from Hastings and charged £12/£15 for petrol. Mr Gould suggested that the workmen charged for their travel day, but Mrs Gallagher disputed this.

34. Ms De Vos suggested that all the external decorations should have been executed at the same time. However, this would have lead to a much higher service charge payable in one year. There is no evidence that the cost was increased by phasing the works over two years. There is no evidence that the hourly rate or time engaged was excessive. Indeed, from our expert knowledge we note that building costs were at their peak in 2007 and 2008. A builder in Chislehurst could be charged out at £225 or £250 per day. No criticism is made of the quality of the works. We are therefore satisfied that the Applicant has not discharged her evidential burden of identifying any prejudice.

35. The fourth item is an invoice submitted by C & H Management Limited dated 12 November 2010 in the sum of £1,432.92 at p.92. The Applicant's 1/3 contribution is £477.64. This relates to a range of works to the exterior of the property and the common parts. It seems that there were no such annual maintenance works in 2009. Again, no evidential burden of prejudice has been established.

36. The further items in dispute relate to works to the roof. Some of these were partially funded by insurance. The invoices identified by the Applicant are as follows:

(i) White and Sons Home Improvements (apparently dated 15.10.11 for £707) at p.94 and the associated scaffolding costs (24.10.11. for £600) at p.96.

(ii) D White Home Improvements (22.10.12 for £6,270) at p.100 and the associated scaffolding costs (£700) at p.104. This related to replacing the rear roof covering. We were told that there was a hole in the roof. The cause could not be identified. These works are illustrated by photos 14 and 15.

(iii) White and Sons Home Improvements (apparently October 2012 for £652) at p.102 and the associated scaffolding costs (£700) at p.106. This related to new lead flashings. We were told that this was unrelated to the works to the rear roof.

37. We were told that there has been further water penetration over the past months. This does not surprise us given the recent inclement weather. The landlord now intends to replace the front roof. Three estimates have been obtained, the lowest of which is in the sum of £12,814.70 + VAT. The Respondent has not yet served the statutory notices in respect of these works. Mrs Gallagher accepts her obligations to do so. She has taken no steps pending our determination of this application.

38. Ms De Vos suggests two aspects of prejudice: (i) the works were not carried out to a reasonable standard as evidenced by the extent of the

works that were required; and (ii) the rear roof could have been replaced at a cost of £5,250. She has produced no evidence to support these contentions. The figure of £5,250 was no more than one plucked from the air when she was asked by the Tribunal how much she suggested the work might cost. There is no evidence that the charge of £6,270 was unreasonable and this seems low when compared with the three estimates obtained in respect of the front roof. We accept that there have been a range of problems reflecting the fact that the roofs have come to the end of their natural lives. It is inevitably a judgment for the landlord as to when attempts at patch repairs should be abandoned in favour of replacement of the roof. There is no evidence that the landlord's judgments have been unreasonable. Mr Gallagher inspected the roof on 22 June 2011, and the careful report that he prepared after that inspection confirms our view (at p.68)

39. There is, however, one item that we disallow. On 5 November 2011, C & H Management Limited invoiced the landlord £168 to view the roof. The Applicant's 1/3 share is £56. Mr Gallagher was doing no more than satisfying himself of the quality of the works to the roof which had just been executed by White & Sons Home Improvements. The management charge includes 10% in respect of any such expenditure by builders. This reflects the sum that the landlord is entitled to charge for supervising any works. No additional sum is payable.

40. The Respondent has also charged the Applicant an additional 10% management fee in respect of this sum of £56 which we have disallowed. This additional charge of £5.60 must also be refunded.

Application under s.20C and Refund of Fees

41. The Applicant is seeking an order under section 20C of the 1985 Act. The Tribunal is satisfied that it is just and equitable in all the circumstances to make such an order so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge. We have regard to the following factors:

(i) The Respondent has not served the relevant Summary of Rights and Obligations with their demands for service charges. The effect of this has been that no service charges have been payable.

(ii) The Respondent has not complied with their statutory duty to consult. The effect of this is that, in the absence of this Tribunal granting dispensation, she would have been restricted to recovering £250 in respect of each item of qualifying works. It was this application by the Applicant which galvanised the landlord to seek such an order for dispensation.

(iii) The Respondent has not levied the fixed management fee in accordance with the terms of the lease. Any landlord must act strictly in accordance with the express terms of the lease which they have granted.

42. At the end of the hearing, the Applicant made an application under Regulation 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for a refund of the fees that she has paid in respect of the application/hearing. Having heard the submissions from the parties and taking into account the above determinations, the Tribunal also considers it is appropriate to order the Respondent to refund the fees paid by the Applicant which total £440.

43. Either party has the right to appeal to the Upper Tribunal (Lands Chamber) (s.175 Commonhold and Leasehold Reform Act 2002). Permission to appeal is required which should initially be sought from this Tribunal.

Robert Latham

Tribunal Judge

30 January 2014

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 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.

Section 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 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 20 - Consultation Requirements

(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 20ZA – Consultation Requirements: Supplementary

(1) Where an application is made to [the appropriate tribunal][2] for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

(2) In section 20 and this section:

"qualifying works" means works on a building or any other premises, and

"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

Section 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 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 21B – Notice to Accompany Demands for Service Charges

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

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

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

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

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

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

Summary of Rights and Obligations

Regulation 3 of the Service Charges (Summary of Rights and Obligations, and Transitional Provisions) (England) Regulations 2007 (2007 No.1257) sets out the form and content of summary of rights and obligations which are to accompany any demand for a service charge required by section 21B of the Landlord and Tenant Act 1985.

Regulation 2 of the Administration Charges (Summary of Rights and Obligations) (England) Regulations 2007 (2007 No.1258) sets out the form and content of summary of rights and obligations which are to accompany any demand for an administration charge required by paragraph 4(2) of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

Section 20C – Limitation of Service Charges: cost of proceedings

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

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

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

Regulation 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.