9628

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AH/LSC/2013/0782**
Property	:	**Various flats, Woburn Court and Bedford Court, Wellesley Road, Croydon CR0 2AF**
Applicant tenant	:	**Mohammad and Suriya Mahmud and others (see attached list, save that Glyn Lewis (5 Woburn Court) and Jorn Cooper (19Woburn Court) have withdrawn)**
Representative	:	**Mr Gary Butler, chairman of the Residents' Association, assisted by Ms Margaret Davis**
Respondent landlord	:	**Guideaim Ltd**
Representative	:	**No appearance**
Type of Application	:	**Liability to pay service charges**
Tribunal Members	:	**Judge Adrian Jack, Tribunal Member West**
Date and venue of determination	:	**10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**24th March 2014**

DECISION

Members being represented by the Woburn Bedford Court Residents' Association at FFT Application November '13

Member(s) being represented	Property/ Properties own
Mohammad & Suriya Mahmud	No .1 Bedford Court
Mrs Kaplish	No. 2 Bedford Court
Bobby Lau	No. 4 Bedford Court
Brian King	No. 6 Bedford Court
Iltaf Karim	No. 3 Woburn Court No. 34 Woburn Court No. 57 Woburn Court No. 68 Woburn Court
Glyn Lewis	No. 5 Woburn Court
Stella Elliott	No. 9 Woburn Court No. 15 Woburn Court
Benvinda Martins Marques	No.13 Woburn Court
Jorn Cooper	No. 19 Woburn Court
Colin & Adele Palmer	No. 20 Woburn Court No. 22 Woburn Court
Sue Carter	No. 21 Woburn Court
Mark Desmier	No. 26 Woburn Court
Nick Evangeli	No. 28 Woburn Court No. 42 Woburn Court
Carlos & Maria Andrade	No. 29 Woburn Court
Tony & Sheila Long	No. 30 Woburn Court
Nico Rogic	No. 36 Woburn Court
Terry & Sue Moore	No. 38 Woburn Court
Alastiar Cornish	No. 44 Woburn Court
Lawrence & Therese Rasquinha	No. 46 Woburn Court
Asif & Shirin Patel	No. 56 Woburn Court
Balakrishnan Rajamanickam	No. 59 Woburn Court
Ernie & Kee Tip Abbott	No. 65 Woburn Court
Rawl Samuel	No. 67 Woburn Court
Donbosco Ravel	No. 70 Woburn Court

Background and procedural

1. By an application dated 5th November 2013 the tenants sought determination of various issues in respect of service charges in the service charge years 2001 to 2011. The service charge year runs Christmas to 24th December.

2. The Tribunal gave directions on 12th December 2013. There was poor compliance with these by the landlord, who failed to appear either at the directions hearing or at the substantive hearing.

3. This matter has a long history. The Leasehold Valuation Tribunal (the predecessor of the First-tier Tribunal (Property Chamber) (Residential Property) on 1st February 2013 determined a large number of issues between the landlord and the tenants named in that application (LON/OOAH/LSC/2012/0579). That Tribunal comprised Mr Nicol (now Judge Nicol), Mr C Norman BSc FRICS (now Professional Member Norman) and Mrs LL Hart (now Tribunal Member Hart). We shall call its determination the Nicol decision.

4. The tenants in the current application are all tenants who were **not** parts to the Nicol decision.

5. Of the tenants named in the current application, two, namely Glyn Lewis (5 Woburn Court) and Jorn Cooper (19Woburn Court), have subsequently sought to withdraw their applications. The Tribunal acceded to these requests.

6. At the hearing Mr Butler, assisted by Ms Davis, represented the tenants. The landlord did not appear and was not represented.

7. Under cover of a letter dated 19th March 2014 (and thus in breach of the Tribunal's directions) the landlord purported to serve witness statements of Stephen David Gray, Beverley Martin, Bob Wigley, Ian Mondado-Thomas and Sheldon Peters. Mr Gray's witness statement was unsigned. Neither he nor Ms Martin appeared at the Tribunal. Messrs Wigley, Mondado-Thomas and Peters attended the Tribunal building but left when the matter was called on. Accordingly there was no live evidence called by the landlord.

8. Mr Butler said that the tenants in the current application merely sought the relief granted to the other tenants in the Nicol application. He said that the tenants intended to repeat the evidence which was given to the Nicol Tribunal (although Ms Davis added that they did have some additional documentation, if the current Tribunal needed it).

DISCUSSION

9. A decision of one Tribunal is not binding on another Tribunal, unless the parties to the decision are the same. Thus the current Tribunal is not bound by the Nicol decision.

10. However, in the current case the tenants intended merely to repeat the evidence before the Nicol Tribunal and did not seek to go beyond the determination of the Nicol Tribunal. The landlord has adduced no oral evidence. The witness statement of Mr Gray is unsigned and very brief. The witness statement of Ms Beverley is signed, but there is no explanation for her failure to appear. In those circumstances we can attach no weight to her witness statement. Moreover her statement in part addresses issues as to the managing agents' costs in 2012 and 2013, which are outside the periods on which we are asked to make a determination.

11. Mr Wigley, Mr Moncado-Thomas and Mr Peters did serve a joint witness statement. This was an attempt to get around the limitation of the Tribunal's directions, whereby witnesses were limited to three for each side. Regardless of that breach of the Tribunal's directions, the evidence of the three witnesses is irrelevant to the issues for determination by us. Further the fact that they left the Tribunal's building before appearing before us means in our judgment that no weight can be applied to their joint witness statement.

12. The position is therefore that we have before us the very detailed, nineteen page, Nicol decision. The tenants merely seek to repeat the evidence before the Nicol Tribunal. If there were matters with which we disagreed in the Nicol decision, then it would be our duty to make a different determination. However, in our judgment the Nicol decision is right for the reasons which the Nicol Tribunal gives. In those circumstances we merely gratefully adopt the Nicol decision as our own and repeat it in relation to the tenants now before us.

13. The tenants raise an issue as to what should happen to the reserve fund, which the Nicol determination said was not justified under the lease. Ordinarily, if the money should not have been collected, it should be repaid (or at least credit be given for it), but this is not a matter for the Tribunal, it is a matter for the County Court, including issues as to whether interest (including compound interest) should be paid on any monies returned.

COSTS

14. The tenants sought recovery of the fees payable to the Tribunal in the sum of £315 (£125 issue fee and £190 hearing fee). The Tribunal has a discretion as to who should pay that. In the current case the tenants have won and in our judgment the landlord should reimburse them that sum.

15. The tenants also seek an order under section 20C of the Landlord and Tenant Act 1985 preventing the landlord recovering its costs of the current proceedings through the service charge. In our judgment it would be unjust if the landlord were able to do so. Accordingly we make such an order in favour of the tenants before us.

DECISION

(a) The applications of Mr Lewis (5 Woburn Court) and Mr Cooper (19 Woburn Court) are withdrawn and the current determination does not apply to them.

(b) The decision of the Leasehold Valuation Tribunal dated 1st February 2013 under reference LON/OOAH/LSC/2012/0579 applies as between the landlord and the tenants who are parties to the current application as it applied between the landlord and the tenants who were parties to that application.

(c) The landlord shall pay the tenants who are parties to the current application the sum of £315 in respect of the fees payable to the Tribunal.

(d) The landlord is pursuant to section 20C of the Landlord and Tenant Act 1985 debarred from claiming its costs of and in the current application from the tenants who are parties to this application through the service charge.

Name: Adrian Jack **Date:** 24th March 2014

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.

HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 27A OF THE LANDLORD AND TENANT ACT 1985

Case Reference:	LON/00AH/LSC/2012/0579
Premises:	Woburn Court and Bedford Court, Wellesley Road, Croydon CR0 2AE
Applicant:	Guideaim Ltd
Representative:	CL Clemo & Co, solicitors Galebaron Ltd, managing agents
Respondents:	Mr and Mrs Bheekhoo (Flat 4 Woburn Court) Mr Thomas (6) Mr Lombardo and Miss Howard (7) Mr Divuilu (8) Mr Tapia (14) Miss Simms (16) Mr and Mrs Patel (17) Mr Khan (18) Mr and Mrs Chitwa (23) Mr Ganatra (27) Mrs Peregrino-Addo (31) Mr and Mrs Skowronski (32) Mrs Asare-Addo (43) Mr Samuel (45) Mr & Mrs Butler (48 and 53) Mr and Mrs Johannan (51) Miss Matutu (69) Mr Dixon (72) Mr & Mrs Fernandes (Flat 5 Bedford Court) Miss Anyasi (7) Mr Bull (8)
Representative:	Mr G Butler
Date of hearing:	9th & 10th January 2013
Appearance for Applicant:	Mr M Gray, Galebaron Ltd Mr R Taylor, surveyor
Appearance for Respondents:	Mr G Butler Mrs MF Davis Mr G Akasie (on behalf of Miss Anyasi)
Leasehold Valuation Tribunal:	Mr NK Nicol Mr C Norman BSc FRICS Mrs LL Hart
Date of decision:	1st February 2013

Decisions of the Tribunal

(1) Additional management charges: The sum of £250 is payable by the Respondents in respect of the year 2008 but the additional management charges claimed for 2005, 2006 and 2010 are not payable.

(2) Interest: The Tribunal has no jurisdiction to award interest to the Respondents on any alleged overpayment of service charges.

(3) Apportionment: The correct apportionment between the lessees of the service charges relating to estate costs is 1/80th, not 1/79th.

(4) Cleaning/Gardening: The gardening and cleaning charges for 2005 and 2006 were reasonable but those for the following years are capped at the following amounts:-

2007	£7,885	(down from £9,950)
2008	£8,300	
2009	£8,715	(£11,200)
2010	£9,150.75	(£11,350)
2011	£9,608.29	(£11,475)

(5) Legal costs: Costs incurred by the Applicant's agents or solicitors in legal proceedings or in employing legal advisers are not recoverable through the service charge under the terms of the Respondents' leases.

(6) Insurance commission: The Tribunal has estimated that service charges for buildings insurance have been raised by 10% for irrecoverable commissions paid to the Applicant.

(7) Roadway maintenance: The sum of £9,268 in relation to the cost of resurfacing part of the estate roads is payable.

(8) Reserve Fund: There is no provision in the Respondents' leases for a reserve fund and so all the reserve fund charges should be removed from the service charge account.

(9) Rental of garage: The lease does not permit the recovery of the charge of £520 per year for use by the Applicant's contractors of the garage retained by the Applicant.

(10) Car parking control: The Applicant is entitled to retain income received from issuing car parking permits but the service charges relating to car parking control are not reasonable in that they should be paid for by the income from the permits.

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(9) Rental of garage: The lease does not permit the recovery of the charge of £520 per year for use by the Applicant's contractors of the garage retained by the Applicant.

(10) Car parking control: The Applicant is entitled to retain income received from issuing car parking permits but the service charges relating to car parking control are not reasonable in that they should be paid for by the income from the permits.

(11) Management fees for 2011: The management fees for 2011 are capped at the same level as the previous year, £10,898 rather than £18,000.

(12) Rubbish removal: The charges for rubbish removal are reasonable and payable.

(13) Advance service charges: The Respondents' leases permit the Applicant to levy advance service charges.

(14) Hall hire: It is noted that the Applicant conceded this £50 charge and the Tribunal does not comment on it further.

The application

1. The Applicant has applied to the Tribunal under s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") for a determination as to the amount of service charges payable by the Respondents in respect of the years 2005-2011.

2. The Applicant is the freeholder of blocks of flats known as Woburn Court and Bedford Court, Wellesley Road, Croydon CR0 2AE. Their agents for the relevant period, Galebaron Ltd, were named in the application as an additional Applicant but they are not parties to any relevant lease and so, hereafter, they are referred to as the agents, not as a party to these proceedings.

3. The Respondents are a majority of lessees in the subject properties. It was suggested that the Applicant had incorrectly named some people as Respondents. Further, the Applicant's statement of case asserted that at least one Respondent had now paid their service charges so that they were no longer a participant. However, no applications were made to add or remove any Respondents and so they are as listed in the application. Also, under s.27A(2) of the 1985 Act, the fact of payment does not alter a party's status or limit the Tribunal's jurisdiction.

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

The hearing

5. It is unfortunate that the Applicant was not properly represented at the hearing of the application before the Tribunal on 9th and 10th January 2013. For the period in dispute, Galebaron was essentially Mr John Gray who sought to act as agent for the Applicant from his base in Yorkshire. Mr Gray's health has not allowed him to take part in these proceedings and he did not attend the hearing (it is understood that Galebaron has ceased as a business). The solicitors acting for the Applicant, CL Clemo & Co, stated in a Skeleton

Argument that they were also not attending because they could not get proper instructions from Mr Gray and the principal of the Applicant, Mr John Hay-Arthur (often referred to in the documents as if he were the landlord himself), was attending to more important matters in the USA.

6. Instead, Mr Gray's son, Mr Michael Gray, attended the hearing. He indicated that he was not familiar with the issues in the case and was attending simply to do what he could to protect his father's position. He was assisted by Mr Roger Taylor, a surveyor who was involved from time to time with the management of the subject properties at Mr John Gray's request. Mr Michael Gray relied entirely on written submissions compiled by CL Clemo & Co and did not make any substantive oral submissions. Mr Taylor gave evidence on one issue only (relating to the resurfacing of an estate road) but otherwise did not contribute to the hearing. Neither attended the second day of the hearing.

7. The Respondents were represented at the hearing by one of their number, Mr Butler, who is also Chairman of the Woburn & Bedford Courts Residents' Association (which was granted recognition as a recognised tenants association in early 2012 by the Tribunal). He was assisted by a resident, Mrs Margaret Davis, who is not a party to these proceedings. They both gave evidence and made submissions. Mr Akasie attended on behalf of one of the Respondents, Miss Anyasi, but did not make any oral submissions in addition to his written statement. Mr Butler decided not to call his witnesses to give oral evidence when Mr Gray stated he was not going to attempt any cross-examination and instead relied on the written statements included in the bundle from most of the Respondents and a few other residents. He also handed in a skeleton argument.

8. The relevant documents for the hearing were presented to the Tribunal in three lever arch files. The Tribunal is used to parties appearing who do not have experience of these proceedings and present documents in a form which is not ideal. However, these lever arch files were prepared by the Applicant's solicitors. They were in a poor state. Although they were paginated, many of the documents were not in a recognisable order so that it was extremely difficult to find any relevant document. The index was poorly laid out. The documents which set out the parties' respective cases and/or explain what the case is about should be prominently displayed and easily accessible at the front of any trial bundle, not scattered about towards the end. It is not acceptable for solicitors to do this. It is disrespectful to the Tribunal and to the other party, as well as being unprofessional. If the same solicitors appear in front of this Tribunal in the future, they will be expected to deal with the proceedings properly and professionally.

9. The Tribunal agreed with the parties that an inspection of the property would not assist because the situation now is not the same as for the period in dispute.

The background

10. The subject properties are on an estate which consists of 66 flats, 14 townhouses and 63 garages. Some of the townhouses are freehold, such as that owned by Mrs Davis, but the rest are held on leases. The Tribunal was provided with separate specimen leases for a townhouse and for a maisonette/flat since there are some differences between them, mostly relating to the numbering of clauses rather than anything substantive. Both freehold and leasehold properties are liable to pay service charges for the maintenance of the estate other than one freehold townhouse for which the Applicant failed to make provision. The lessees of the maisonettes/flats are also liable to pay for services to their blocks.

11. There were two previous Tribunal decisions in relation to the subject properties:-

a) The Applicant sought a determination as to the payability of service charges demanded from the lessees of Flats 28 (Mr N Evangeli), 35 (Mrs B Obeng) and 42 (Mr AS Evangeli) for the years 2007-2009 (case ref: LON/00AH/LSC/2010/0376). By the time of the hearing, only Mrs Obeng had not paid in full and none of the lessees took part in the proceedings. The Tribunal issued a decision on 15th November 2010, allowing the majority of the service charges other than legal costs.

b) The lessees of Flats 2 (Mr R Raj-Vithuran), 10 (Mrs S Raj-Vithuran) and 37 (Ms S D'Souza) challenged service charges demanded by Galebaron on behalf of the Applicant for the years 2008, 2009 and 2010 (case ref: LON/00AH/LSC/2010/0847). After an inspection of the premises and a four-day hearing, the Tribunal issued a decision on 5th December 2011, allowing the majority of the service charges other than legal costs. The lessees sought leave to appeal but it was refused by both the Tribunal and the Upper Tribunal.

12. The Applicant's written submissions in support of the current application asserted that the parties had agreed to apply the Tribunal decision of 5th December 2011 and set out what the result would be by doing so on each issue. However, the Respondents made it clear that they had not agreed this – on the contrary, they disagreed with many of the Tribunal's conclusions and wanted them re-examined.

13. The true position is that the Tribunal is not bound by its previous decisions but also does not have the power to re-examine them. The previous decisions were only in relation to the rights and obligations for the relevant years of those lessees who were parties and were based on the evidence presented at the time. The Tribunal must decide the current application (which relates to more service charge years than the previous cases) on the evidence presented to it rather than second-guessing what happened with the previous applications.

14. The Applicant asserted that it would be onerous for them to have to repeat evidence given to a previous Tribunal but the fact is that the current Respondents were not parties to those proceedings and did not have the opportunity to put their case at that time. Even if it is onerous, fairness requires that the Applicant make out their case against these Respondents.

15. Further, this decision only applies to those who are parties to this application. The Respondents asserted that any decision in their favour should be applied to all lessees but the Tribunal has no power to order this.

The issues

16. The parties' written submissions referred to a number of discrete issues which are dealt with in turn below. However, the Respondents made a general point that the estate has not been properly maintained by the Applicant and their agents for many years and that this shows in what the previous Tribunal in its decision of 5th December 2011 called the estate's "tired look". The previous Tribunal accepted the evidence of Mr Hay-Arthur that he had not carried out maintenance at the request of lessees, formed as Woburn and Bedford Court Management Ltd ("WBCML"), because they were seeking to buy and develop the estate.

17. The current Tribunal has struggled to understand why the previous Tribunal accepted this evidence. There was no evidence before this Tribunal that WBCML sought to exploit the development potential of the estate but rather sought to change its management because the constituent lessees were so dissatisfied with the existing service (any reference to redevelopment appears to have been Mr Hay-Arthur's idea). Further, there was no basis for thinking that the lessees involved in WBCML represented everyone on the estate (in a letter dated 24th October 2003 they claimed to represent no more than a majority) and so they did not have the power to release the Applicant from its normal obligations. Also, even if Mr Hay-Arthur's evidence were correct, the company ceased its activities in 2006 so that it could no longer provide an excuse for inactivity after this date.

Additional Management Charges

18. Galebaron charged an amount for their services each year. In its decision of 5th December 2011, the previous Tribunal found the charges of £10,898 for each of 2008 and 2009 to be reasonable and limited those for 2010 to the same amount. However, Galebaron also sought to charge the following additional amounts:-

Year	Charge		Page	Tribunal Findings
2005	£790	By a note dated 25th December 2004, Galebaron sought to explain this charge	895	Such costs are part of the costs of running a business of a managing agent, not a

		as arising from compliance with new EC and statutory regulations.		service chargeable item.
2006	£4,475	"Additional administration charges incurred in the management of the estate between December 2003 and December 2006, dealing with difficulties caused by the Woburn and Bedford Court Management Ltd (WBCML) posing as the management, initially encouraging lessees not to pay their service charge and later collecting service charge with no legal authority to do so and paying that money to be held by a firm of Solicitors, Piper Smith Watton, countering notice served that they intended to take over the management of the Estate. Costs of the management obtaining legal advice."	899-901	There is a number of problems with these charges. Some appear more than 18 months old and so not chargeable under s.20B of the Act. They appear excessive but there is no evidence of what work was expected within Galebaron's normal fees.* They purport to include costs of the abortive negotiations with WBCML to take over management and legal fees, neither of which is chargeable (see below on legal costs). The Tribunal might have allowed the charges in part but insufficient details were provided of any work which would be chargeable so as to distinguish it from that which was not.
2008	£1,750	By a note dated 20th December 2008, Galebaron sought to explain this charge as being caused by having to deal with nuisance caused by residents at no.58 Woburn Court, including taking legal action.	903-906	The cost of dealing with nuisance caused or allowed by lessees is chargeable and the Respondents admit some work was done, including 5 letters written. However, again there is a lack of detail (Mr Gray did provide a statement on this dated 17th September 2009 but suggests he did little more than monitoring and writing a few letters to the lessee) and legal costs have been included. The Tribunal allows £250.
2010	£2,000	"Extra management fee due to attending Leasehold Valuation Tribunal and County Court hearings"	907	Costs incurred in legal proceedings are not recoverable under the Respondents' leases (see below).

*According to Mr John Gray in his undated witness statement, the Applicant had no written contract with Galebaron and the terms and conditions of management were arranged on an "ad hoc" basis.

19. For the above reasons, the Tribunal determines that the additional management charges are not payable other than up to £250 in respect of the charge levied in 2008.

Interest

20. The Respondents sought determinations of each individual's service charge liability and interest on all overpayments. Unfortunately, the Tribunal is just not in a position to determine the liability of each Respondent, not least because it is not clear that the required details have been provided of all payments made by them. Liability for each Respondent will have to be calculated as follows:-

a) The Tribunal's conclusions in this decision must be used to find out the total amount of payable service charges.

b) The total amount must then be divided by the relevant proportion (see below) which will give each Respondent's liability for the period each has been a lessee.

c) The liability must then be offset against any payments made by each Respondent, leaving either a surplus to be credited to the Respondent or a deficit to be paid to the Applicant. The parties had suggested working out individual refunds on each issue determined in the Respondents' favour but that would be a far more complicated method which would be unlikely to produce a clear, comprehensible result for each Respondent.

21. Mr Butler pointed out that the Applicant has purported to charge interest on those lessees alleged to be in arrears. Mr Butler asserted that it would only be equitable if the Applicant had to pay interest on any overpayments. However, the Tribunal is a creature of statute and may only do what statute law specifies. The Tribunal has never been given the power to award interest and so cannot award any to the Respondents.

22. Having said that, the Tribunal has been unable to identify any provision in any of the leases for the Applicant to charge interest on arrears of ground rent or service charges. The Tribunal's conclusions in this case will reduce, if not remove altogether, the outstanding service charge liabilities of the Respondents which will remove even the possibility of charging interest but, in any event, the Applicant will need to justify by reference to an express power in the lease any future attempts to charge or recover interest on alleged arrears.

Apportionment

23. Under clause 3(B) of each townhouse lease and 4(B) of each maisonette lease each Respondent's liability is for a "due proportion" of the relevant expenditure, a "due proportion" being whatever expenditure is "properly attributable" to the relevant premises. The Applicant regarded the "due proportion" of estate costs as 1/79th, despite the fact that there are 80 properties on the estate (the block costs exclusive to the 66 maisonettes/flats

are divided by 66). One freehold townhouse does not contribute anything because the Applicant did not arrange for appropriate terms when the property was sold.

24. The Tribunal agrees with the previous Tribunal (in their decision dated 5th December 2011) that a due proportion is one which divides the estate expenditure between all 80 properties since that identifies expenditure "properly attributable" to each better than dividing by only 79. The fact that the Applicant is not recovering anything from one property does not entitle it to recover the missing amount from all the other lessees because the terms of their leases do not provide for that.

25. Therefore, the Tribunal determines that the appropriate proportion to be applied to the estate costs at the second stage of the calculation referred to in paragraph 19 above is 1/80th.

Cleaning/Gardening

26. Included in the services arranged by the Applicant and paid for by the Respondents are gardening, including cutting the communal lawn areas, and cleaning, particularly of the internal common parts. Although the Applicant has used a number of contractors over the years, in recent years the principal contractor has been Mr Sheldon Peters who used to live at 60 Woburn Court. Amongst other services, he provided cleaning and gardening services under the trading names Orchid Property Care Services and Nataraj Property Services. The hearing bundle included his statement dated 10th June 2011 compiled for the previous Tribunal proceedings but the Applicant's solicitors said he was unavailable on this occasion to attend the Tribunal since he had moved away.

27. The Respondents believe that Mr Peters's service has been poor and even that he charges for work he does not do. As an example, Mrs Davis pointed to an invoice dated 31st October 2010 from Nataraj which purported to demand £115 for fixing a sign by doing work which included providing new wooden posts and concrete mix. Mrs Davis showed the Tribunal photos which showed the sign being down between 2008 and 2010 and put back up simply by being nailed to a fence. There were no new wooden posts or concrete involved. This example undermines the credibility of Mr Peters's charges. In his statement, Mr Peters said that he changed his mind as to how to fix the sign after he had bought the materials which were then retained for the benefit of the lessees. However, even if that is correct, that does not answer the point since it is not what his invoice says and there is no evidence the materials were of any benefit to the lessees at any time thereafter.

28. As a further example, Mrs Davis pointed to photos showing that the grass areas were sometimes overgrown, despite Mr Peters's charges for grass-cutting.

29. On 27th May 2011 the estate was inspected by JJ Homes (Properties) Ltd. Their report recorded observations that, "All internal corridors and balconies which we inspected were dirty with little or no sign of any maintenance works having taken place for a considerable time." The report was provided with a view to possibly taking over management of the estate but Mrs Davis asserted that the observations matched hers and those of other residents.

30. Another of Mr John Gray's sons, Mr Stephen Gray, had provided a written statement dated 10th June 2011 in which he said that he attended the estate on a monthly basis, without charge, to inspect it on behalf of his father and felt the gardening and cleaning to be adequate but he was not present and could not be cross-examined on his claims. His non-attendance was not explained.

31. In its decision dated 5th December 2011 (at paragraphs 34-38), the Tribunal decided that the gardening and cleaning costs for 2008 were reasonable and that an increase of 5% for each of the following years to reflect increased costs and inflation would be reasonable. Mr Butler submitted that capping the relevant costs in each of the years in dispute by the same mathematical calculation would reflect the actual standard of the cleaning and gardening services.

32. The Tribunal analysed the annual accounts and identified a number of items which were expressed to be in relation to cleaning and gardening (see the first three columns of the table below). For the first two years it was not possible to marry up the items in the accounts with the invoices included in the hearing bundles and so the figures in the accounts alone were used.

33. The last three columns of the table below show the effect of the calculation used by the previous Tribunal and proposed by Mr Butler in this case. The previous Tribunal appear to have used the wrong base figure – they put the total for 2008 at £7,200 which omits the charges for grass cutting (this may be because Mr John Gray appears to have made the same mistake in paragraph 16 of his undated witness statement). The table below uses the correct total for 2008.

Year	Charges	Page			Column 2 – 5
2005	P Baker £2,340; TJ McMahon £713.06, £377.50 & £1426.10; LPM £566.67, £300 & £1133.33 Total: £6,856.66	202-203	-5%	£7,116.21	-£259.55
2006	LPM £1558.34, £825 & £3116.66 Total: £5,500	271-272	-5%	£7,490.75	-£1,990.75

2007	Orchid £5200, £2150 & £2600 Total: £9,950	333, 335, 339-363	-5%	£7,885	+£2,065
2008	Orchid £4800, £1100 & £2400 Total: £8,300	415-438, 449-460	£8,300		–
2009	Nataraj £5800, £2000 & £3400 Total: 11,200	527, 529, 530-569	+5%	£8,715	+£2,485
2010	Nataraj £6000, £1750 & £3600 Total: £11,350	644, 646-683	+5%	£9,150.75	+£2,199.25
2011	Nataraj £6000, £1875 & £3600 Total: £11,475	762-801	+5%	£9,608.29	+£1,866.71

34. The Tribunal is satisfied from the evidence that the standard of the cleaning and gardening services was not what it should have been throughout the period in dispute and the proposed method of calculation provides reasonable figures. The accounts for 2005 and 2006 noted that the service had not been adequate and recorded that the charges had been reduced accordingly. It can be seen that this resulted in figures below the amount produced by the relevant calculation. Therefore, the Tribunal determines that the totals for 2005 and 2006 were reasonable.

35. However, the amounts charged by Mr Peters's firms in 2007, 2009, 2010 and 2011 exceeded the amount produced by the relevant calculation and the Tribunal determines that they were not reasonable. The Tribunal finds the reasonable charges are the figures given in the fifth column in the table above are reasonable.

Legal costs

36. Over the years, the Applicant has made a number of charges for legal costs totalling £41,815 for the period 2006-2011 (see page 919 of the bundle). Invoices were provided for the charges for 2007-2011. They provide little detail as to what work was done but the issue was whether the leases actually permit the recovery of such costs through the service charge. Both previous Tribunals decided that they did not.

37. The leases include the following clauses:-

- Clause 2(xiii) obliges the lessee to pay the landlord's costs in forfeiture proceedings.
- Clause 3(A)(4) of the townhouse lease and 4(A)(5) of the maisonette lease allows the landlord to recover the costs of enforcing another lessee's covenants.
- Clause 3(B) of the townhouse lease and 4(B) of the maisonette lease, already mentioned above, contains the lessee's obligation to pay the service charge for the expenditure defined in the Second Schedule.
- The Second Schedule lists expenditure for insurance, repairs, redecoration, maintenance and cleaning, works to remedy breaches of covenants by lessees, rates/taxes and "The administrative or management costs of the Landlords in respect of any of the matters aforesaid."

38. The issue of whether a landlord may recover costs incurred in legal proceedings or in employing legal advisers as part of the service charge has been considered by the courts:-

- In *Sella House Ltd v Mears* (1988) 21 HLR 147 the Court of Appeal held that the relevant clauses in the lease relating to service charges were not sufficiently clear and unambiguous to include solicitors' or counsel's fees for advice or proceedings in relation to the recovery of unpaid service charges.
- In *Iperion Investments v Broadwalk House Residents Ltd* (1994) 27 HLR 196 the Court of Appeal held that clauses covering the reasonable costs of management included the legal costs incurred in enforcing the covenants under the lease.
- In *St Mary's Mansions Ltd v Limegate Investment Co Ltd* [2003] HLR 24 the Court of Appeal felt that the above two cases turned on the individual interpretation of the clauses of the leases in each case and, in the subject case, the relevant clauses were not sufficiently widely drawn to include legal costs.

39. The issue of recoverability of such costs in the service charge depends on construction of the lease. Contrary to the Applicant's assertion, it does not depend on what is permitted by the RICS Management Code. The current Tribunal agrees with both the conclusion and the reasoning of the two previous Tribunals, namely that the clauses of the leases are not worded so as to permit the recovery of such costs. Both clauses 2(xiii) and 3(A)(4)/4(A)(5) permit costs to be recovered outside the service charge from the specific lessee in relation to whom the costs were incurred. The costs incurred in relation to breaches by other lessees of their covenants are included only to the extent that they refer to physical works, not legal advice or proceedings. The "administrative and management costs" extend to those incurred in relation to the other listed items of expenditure which do not include attending or participating in legal proceedings and so the costs of such incurred by the managing agents are not recoverable.

40. Therefore, the service charges are not payable to the extent that they include any costs incurred in legal proceedings or in employing legal advisers.

Insurance commission

41. The Applicant is responsible for insuring the buildings – lessees may arrange their own insurance as they wish but this cannot relieve them of their obligation to pay for any insurance arranged by the Applicant in accordance with the leases. Mr Butler is the lessee of one townhouse on the estate and the freehold owner of another. He pointed out that the insurance he pays on his freehold property is substantially lower than his contribution in relation to his leasehold property, £170 per year rather than over £500 per year. At least part of this discrepancy arises from the fact that, as Mr Hay-Arthur stated both at a lessee meeting on 5th May 2010 and to the previous Tribunal, the Applicant received a commission on the insurance premiums. Mr Hay-Arthur further stated that the Applicant did no work in return for this commission which means that it was not recoverable as part of the service charge.

42. In its decision of 5th December 2011, the previous Tribunal held that the service charge in relation to the buildings insurance was not payable to the extent that it included £9,000 which Mr Hay-Arthur gave as his rough guess as to the value of his commissions for his property portfolio. The current Tribunal does not know whether this credit has been given and has not heard from Mr Hay-Arthur so as to make its own assessment of the credibility of his calculation of the relevant sum. Mr Hay-Arthur promised at the lessee meeting on 5th May 2010 to provide details of his commissions and Mr Butler sought disclosure of relevant documents from the Applicant (although he made no application to the Tribunal) but neither has been provided. The broker, Mr Kevin Horton of St Giles Insurance & Finance Services Ltd, had provided a lengthy written statement dated 9th June 2011 but he did not mention the issue of commissions. Therefore, the Tribunal has no choice but to make its own fresh calculation.

43. Mr Butler said that his own investigations into the insurance market suggested that Mr Hay-Arthur could have been receiving as much as 15% of the insurance premiums in commission. The Tribunal accepts that his commission may well have been calculated in percentage terms but is reluctant to accept that it is as high as Mr Butler suggests given the paucity of direct or expert evidence.

44. The Tribunal has concluded that the insurance premiums are not payable to the extent that they include commission for the Applicant which is calculated at 10%. The correct figures are shown in the table below, save for 2011. There is no entry for insurance in the 2011 accounts which implies that none was paid in that year. In the Applicant's statement of case, it is asserted that insurance has been arranged separately, by the new managing agent, without a commission, but there is no evidence to support this. In either case, there would be no further credit to be applied to the service charge account but the

Applicant will need to establish the truth of their assertion to the Respondents' satisfaction if they are not to risk facing a further Tribunal application.

Year	Premium Charged	Page	Premium less 10%	Difference
2005	£21,401.15	202, 268	£19,455.59	£1,945.56
2006	£23,910.94	271, 331	£21,737.22	£2,173.72
2007	£25,421.87	333, 414	£23,110.79	£2,311.08
2008	£27,490.68	415, 522	£24,991.53	£2,499.15
2009	£29,565.45	527, 642	£26,877.68	£2,687.77
2010	£30,200.85	644, 758	£27,455.31	£2,745.54
2011	Nothing in accounts	762	To be calculated	--
TOTAL for 2005-2010				£14,362.82

Roadway maintenance

45. The roads on the estate are in poor condition. The previous Tribunal put this down to a policy agreed with the lessees. As already discussed above, the current Tribunal does not understand how the previous Tribunal reached this conclusion in the circumstances. The fact is that it would now take a major and expensive works programme to put the roads into a satisfactory state. Unless and until the lessees have been consulted on whether they are prepared to pay for this, it is difficult to apportion blame for the current situation. In the meantime, there have been occasional patch repairs.

46. In August and September 2009, Nataraj invoiced Galebaron for £9,268 for resurfacing works. Mr Taylor explained to the Tribunal that he was asked to inspect the works after the event. He looked at a large square area outside one of the blocks and concluded that the work had been adequately done. Mr Butler questioned whether the work had been properly invoiced but the invoices were in the hearing bundle at pages 946 and 947. As the previous Tribunal also decided, the current Tribunal can see no reason not to regard this amount as reasonable and payable.

Reserve Fund

47. According to the service charge accounts for the year ending 25th December 2010 (page 644), there was at that time a reserve fund of £27,168.92. The problem is that there is no power under the leases for the Applicant to collect any reserve fund. The Applicant has claimed in the past that a previous residents' association approved the creation of a reserve fund. There is no

evidence of this but it would be irrelevant even if there were. It is the lease which governs the relationship between the parties, not ad hoc arrangements made occasionally with some of them.

48. The Applicant's statement of case asserted that the sum of £27,168.92 was not paid by the Respondents and pointed to Galebaron's calculation of sums received from each Respondent. However, this is not how service charges work. Each lessee pays a service charge which is made up of many elements. They do not pay each element separately so there is no calculation that can be made of which elements have been paid for and which have not.

49. The reserve fund does not appear in the accounts for the following year, 2011 (page 762). It was asserted on behalf of the Applicant that all the money had been spent on service charges but there is no evidence of this. Since there is no power to collect a reserve fund, the service charges must be re-calculated by the method in paragraph 19 above without any charge for a reserve fund. If there is then a deficit, this will have to be collected, insofar as it can, in the normal and proper way through the service charge. It is not acceptable to collect a large amount of money for unspecified purposes and claim that its disappearance from the accounts results from some unspecified expenditure.

Rental of garage

50. The Applicant has charged £520 each year as rental for one of the garages which has been retained and used principally by Mr Peters to store equipment and rubbish he has collected from around the estate. This is not an actual cost since the Applicant owns the garage. Rather it is a nominal amount, presumably representing lost rental income. The Applicant's solicitors' Skeleton Argument asserted that the garage has been and is still used for the convenience of contractors, not only Mr Peters, so as to allow them to better carry out their work. However, there is no provision in the lease allowing for such a charge to be included in the service charge. Therefore, it is not payable.

Car parking control

51. The Applicant has instituted a system of parking control for the estate. Mr Butler has described the estate as "open" and vulnerable to unauthorised parking. In the circumstances, therefore, it seems to the Tribunal to be a responsible and reasonable step to take.

52. The system consists of issuing permits to those who wish to park on the estate. Any unlicensed vehicle is then subject to possible clamping. The problem for the Respondents is that the Applicant collects a fee for processing each permit (other than for approved contractors), which is then retained by the Applicant, whereas all costs incurred in using contractors, namely the London Clamping Company and Parking Control Services, are passed onto the service charges. Mr Hay-Arthur said at the lessee meeting on 5th May

2010 that he intended to apply the permit fee income to improve the estate but there is no evidence that he has ever attempted to do so.

53. In its decision of 5th December 2011, the previous Tribunal decided that the Applicant should not put on the service charge any cost of maintaining those estate roads which were used for licensed parking areas. The current Tribunal cannot agree. The lease is very clear that the lessees are required to pay for the maintenance of all the estate roads. It is not possible to re-write the terms of the lease, even if the result appears to be more equitable in the circumstances.

54. The estate roads are the Applicant's land and the Applicant is entitled to do with them as he wishes (see clause 5(iv) of the townhouse lease and 6(iv) of the maisonette lease), subject to the Respondents' own rights over them, in particular easements allowing them to use the roads. However, the system of parking control is carried out as part of the management of the estate. Further, the maintenance of the roads is paid for by the lessees and property owners of that estate. In the Tribunal's opinion, charges arising from the parking control system are not reasonable or payable as service charges to the extent that the same system generates an income which can cover those charges.

55. What this means is that the services of the clamping contractors should be paid for out of the income received by the Applicant in permit fees. Mr Butler informed the Tribunal that the annual charge for a permit has been £100 and his understanding is that at least 20 permits have been issued each year. A document dated 8th March 2010 (at page 1294), apparently written by or on behalf of the Applicant, asserts that the permit fee increased from £100 to £200 in 2010. This suggests an income of more than twice the highest amount charged in any one year for clamping services, namely £900 in 2007. The average annual amount put on the service charge for clamping services between 2005 and 2011 was £363.48. Even if Mr Butler has over-estimated the permit fee income, the Tribunal is satisfied that all the clamping services could and should have been paid for from that income.

56. In the circumstances, the Tribunal has decided that the charges for clamping services are not reasonable because the Applicant could and should have covered them from the permit fee income. Therefore, they are not payable by the Respondents.

Management fees for 2011

57. In its decision of 5th December 2011, the previous Tribunal decided that Galebaron's management fee for 2010 should be frozen at the previous year's figure of £10,898 rather than £12,206. The Respondents accepted that and expected a similar figure for 2011. Instead, Galebaron has sought to charge £18,000, principally on three grounds:-

a) They argued that the previous Tribunal had approved a unit charge of £250 per year whereas their previous charges equated to around £138 per unit.

Therefore, they brought the unit charge in line with the Tribunal's opinion (see note 22 to the 2011 accounts at page 953 of the hearing bundle).

b) There had been exceptional management costs associated with the flooding of four properties.

c) A new managing agent was brought in to take over from Galebaron. There was a great deal of work to be done in ensuring that the proper information and documentation was handed over.

58. The Tribunal cannot see any justification for increasing management fees by 65% in a single year, particularly when there was no apparent improvement in service during the same period and even evidence that it declined further. The previous Tribunal did not "approve" any unit charge, let alone a set amount of £250 – they had simply commented that £250 could be regarded as a starting point when considering what was reasonable for an estate like the subject one. Even after that, they reduced Galebaron's fee for 2010 on the basis that Mr Gray had been unable to provide a proper service due to his illness. This point applied no less in 2011.

59. No evidence was presented to support the allegation that the four alleged floodings constituted exceptional circumstances. Both that and work transferring to a new agent would usually be regarded as normal services to be encompassed within the agent's standard fee. In particular, transferring to a new agent should not involve a significant amount of additional work for a properly organised management service.

60. In the circumstances, the Tribunal has decided that the fee for 2011 is not reasonable or payable to the extent that it exceeds the amount charged in previous years, namely £10,898.

Rubbish removal

61. Galebaron arranged from time to time for the removal of rubbish left on the estate, both by fly-tippers and by residents, and passed their contractors' charges through the service charge:-

Year	Contractor	No. of visits	Page	Charge	Per visit
2005	McMahon LPM	11 3	202, 238-251	£1,426.10 £655	£129.65 £218.33
2006	LPM	8	271, 307-314	£1,625*	£203.13
2007	Orchid Strongcastle	10 1	333, 386-395, 398	£2,415 £540.50	£241.50 £540.50
2008	Orchid	10	415, 439-448	£3,191	£319.10

2009	Nataraj	6	527, 608-613	£1,180	£196.67
2010	Nataraj	6	644, 723-728	£1,400	£233.33
2011	Nataraj	9	762, 802-810	£1,485	£165

* £1,265 was recorded in the annual account but the invoices added up to £1,625

62. Mr Butler strongly challenged the charges of Mr Peters's firms, Orchid and Nataraj. He asserted that Mr Peters acted fraudulently, charging for work he had not done, although he did accept that some of the work had been done, e.g. the removal of some rubble on 28th October 2008 (page 445) and of some tyres on 3rd September 2009 (page 994). He and Mrs Davis also asserted that most of the waste he claimed to remove was domestic waste which the local authority, the London Borough of Croydon, was prepared to remove for a much smaller charge. Further, they asserted that waste disposal required a licence from the local authority which Mr Peters did not have.

63. Fraud is an extremely serious allegation which should only be made with adequate supporting evidence, particularly if the subject of the allegation is not available to defend himself. The average amount Mr Peters charged and the number of visits he made in a year were consistent with the charges and visits of other contractors in other years. The Tribunal is not satisfied that the local authority would pick up rubbish from wherever it might happen to lie around the estate, even if it did not include non-domestic waste (see page 1302 of the bundle). Further, the Applicant asserts that Mr Peters used licensed contractors when required – even if that is not correct, it is not clear what Mr Peters actually did and whether he required a licence for his activities.

64. It is normal for a landlord to levy service charges in respect of this kind of service, as it is common for there to be rubbish which cannot be disposed of through the normal bin collections or by the good neighbourly activities of the residents. The Tribunal is not satisfied that the Respondents have made their case that the charges for rubbish removal are unreasonable; therefore, they remain payable.

Advance Service Charges

65. Galebaron sought advance service charges each year, i.e. a charge in anticipation of expenditure to ensure that they were in funds before expenditure was incurred. A properly-written lease should allow for this good practice but the Respondents challenged whether their leases provided for them. In the event, clause 4(B) provides for expenditure "incurred or to be incurred". The Tribunal is satisfied that "incurred" refers to historic expenditure whereas "to be incurred" covers the kind of anticipated expenditure included in advance service charges. Therefore, the Tribunal is satisfied that the Applicant may levy them, as long as credit is given in each year's final account.

Conclusion

66. The Tribunal's conclusions are summarised at the beginning of this decision. They represent the limit of the Tribunal's jurisdiction on the available material. The Respondents sought an order that the Tribunal appoint an independent auditor to review the accuracy of the service charge accounts but the Tribunal has no power to do this. With a new managing agent having been appointed, it is hoped that this decision brings to an end any historic disputes or that any remaining issues may be sorted out without resort to legal proceedings.

Chairman: N.K. Nicol

NK Nicol

Date: 1st February 2013

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 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 27A

(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.