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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/OOBJ/LSC/2013/0462**
Property	:	**46 and 49 Kirtley House, Thessaly Road, London SW8 4XX**
Applicant	:	**The Mayor and Burgesses of the London Borough of Wandsworth**
Representative	:	**Mr Shomik Datta of Counsel**
Respondents	:	**(1) Ms Maureen Olton** **(2) Mr Vijay Annand Ghunowa**
Representative	:	**In person**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Ms N Hawkes** **Mr S Mason FRICS** **Mr C Piarroux CQSW JP**
Date and venue of Hearing	:	**10.12.13** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**10.1.14**

DECISION

Decisions of the tribunal

(1) In county court proceedings in the Wandsworth County Court, claim number 3YJ74139, the Applicant has brought a claim against the First Respondent in respect of unpaid service charge in the sum of £3,625 relating to major works carried out in the year 2010/11 plus interest and costs. The sums claimed in the final service charge accounts total £3,331.80. The Tribunal determines that of the amount claimed in respect of unpaid service charge, £3,309.50 is reasonable and payable.

(2) By an application notice dated 9th October 2013, the Applicant seeks a determination against the Second Respondent that service charge in the sum of £4,073.97 relating to major works carried out in the year 2010/11 is reasonable and payable. This is the sum claimed in the final accounts. The Tribunal determines that of this amount, £4,047.70 is reasonable and payable.

(3) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

(4) Since the Tribunal has no jurisdiction over county court costs and fees and claim number 3YJ74139 was transferred solely for adjudication of the reasonableness of the service charge, claim number 3YJ74139 should now be returned to the Wandsworth County Court.

The application

1. The Applicant seeks determinations pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charge payable by the Respondents in respect of two major works projects which were carried out in the year 2010/2011: one relating to external redecoration and the other to the renewal of a door entry system.

2. Proceedings against the First Respondent were issued in the Wandsworth County Court, claim number 3YJ74139 and were transferred to the Tribunal by order dated 20th July 2013 for adjudication of the reasonableness of the service charge (see Paragraph 1 of the Directions dated 25th July 2013).

3. By application noticed dated 9th October 2013, the Applicant seeks a determination against the Second Respondent as to the reasonableness and payability of service charge arising from the same two major works projects. On 25th October 2013, the Tribunal determined that these two matters should be consolidated.

4. The relevant legal provisions are referred to below and in the Appendix to this decision.

The hearing

5. The Applicant was represented by Mr Shomik Datta of Counsel at the hearing and the Respondents appeared in person.

6. During the course of the hearing, the Applicant handed in further documents, namely, print-outs of repair orders for the door entry system; an additional extract from the contract specification for the major works; a letter dated 19.7.11; and a certificate for payment and a certificate of practical completion of the major works. The Respondents did not object to the admission of these late documents.

7. The Tribunal heard from the Respondents in person and the following witnesses gave evidence on behalf of the Applicant:

   (i) Mr Laytham who is employed by Patmore Co-operative Limited (which acts as the managing agent of the Estate on behalf of the Applicant) as the Co-operative Manager of the Estate.

   (ii) Mr Barton who, prior to his retirement on 2.8.10, was a Senior Project Officer for the Applicant's Design Services and who is currently working for the Applicant as a self-employed consultant.

   (iii) Mrs Parrette who is the Leasehold Services Manager for the Applicant's Housing Management Services.

The background

8. The Applicant is the freehold owner of the housing block, Kirtley House, Thessaly Road, London SW8 4XX ("the Block") which is located on the Patmore Estate in Battersea ("the Estate").

9. The Respondents hold long leases of flats in the Block which require the landlord to provide services and the tenants to contribute towards their costs by way of a variable service charge. The specific provisions of the leases and will be referred to below, where appropriate.

10. The First Respondent is the leasehold owner of flat 49 Kirtley House ("the First Respondent's property") which is a two bedroom flat situated on the fifth and top floor of a six storey section of the Block.

11. The Second Respondent is the surviving leasehold owner of flat 46 Kirtley House ("the Second Respondent's property") which is a four bedroom flat situated on the fourth and top floor of five storey section of the Block.

12. The Tribunal inspected Kirtley House before the hearing in the presence of the Respondents and the Applicant's representatives. Prior to the inspection and again prior to the start of the hearing, the First Tier Tribunal Judge informed the parties that Mr Datta is a former member of her chambers. Submissions were invited prior to the start of the hearing but neither party wished to make any submissions regarding this matter.

The issues

13. At the start of the hearing the parties identified the relevant issues for determination as follows:

    (i) The reasonableness of the service charges in the year 2010/11 relating to the installation of a new door entry system.

    (ii) The reasonableness of the service charges in the year 2010/11 relating to external repairs and redecorations.

14. It is not in dispute that the consultation process under section 20 of the Landlord and Tenant Act 1985 ("the 1985 Act") has been fully complied with by the Applicant; that work of the type carried out falls within the relevant provisions of the Respondents' leases so the service charge is payable subject to the issue of reasonableness; and that no payments have been made by either of the Respondents on account of the sums in dispute.

15. By clause 3(b) and the particulars of the leases, the First Respondent covenanted to pay 1.881% and the Second Respondent covenanted to pay 2.3% of the costs, expenses and outgoings of the Applicant in complying with its obligations contained in the Fourth Schedule of the leases in relation to works carried out to the Block.

16. Having heard evidence and submissions from the parties and having considered all of the documents referred to, the Tribunal has made determinations on the various issues as follows.

The door entry system

The Tribunal's decision

17. The Tribunal determines that the amount payable by the First Respondent in respect of the door entry system is £538.72.

18. The Tribunal determines that the amount payable by the Second Respondent in respect of the door entry system is £658.72.

Reasons for the Tribunal's decision

The costs of the installation

19. The Block has two doors. The installation of the door entry system was commissioned following a competitive tender process and this is compelling evidence that the costs represent a reasonable market rate for the work undertaken. The Respondents' challenges predominantly relate to whether or not the work was carried out to a reasonable standard. The Respondents did not propose any specific alternative figure as the market rate for the installation of the new door entry system.

20. Having considered all of the evidence available and, in particular, the documentation relating to the competitive tender process, the Tribunal finds that the costs claimed in respect of the installation of the door entry system represent a reasonable market rate for the work which was undertaken, subject to any deductions which may fall to be made on account of the standard of the work.

The door closer arm

21. The Respondents argued that the door closer arm was not fit for purpose and/or was unsuitable and they cited the installation of a four foot high door stop as evidence in support of these assertions. They also argued that the door closer arm was not sufficiently robust because it was bent out of position following its installation.

22. The Applicant accepted that the door closer arm was bent out of position (which prevented the door from closing until the defect was remedied) but argued that this was the result of vandalism which was outside the Applicant's control. During the course of the inspection, one of the Applicant's witnesses put his entire weight on the door closer arm without damaging it and the Applicant argues that vandals are likely to have used specific tools to bend the arm out of position.

23. Mr Barton gave evidence which the Tribunal accepts that the model of door closer in question (a LCN "Smoothie" 411 series) is used elsewhere in the Borough with few reported problems. He stated that the door stop was installed in response to extremes of vandalism which were experienced on the estate during the later stage of the major works rather than because the door closer arm was not fit for purpose.

24. The Second Respondent gave evidence, which the Tribunal accepts, that he reported faults to the door entry system soon after its installation. He also explained that security is a major concern on the Estate that he was himself attacked in a stairwell of the Block.

25. The Tribunal is satisfied having viewed the door closer arm; having heard and accepted the evidence of Mr Barton regarding the installation of the door closer arm and the door stop; and having heard and accepted the evidence of the First Respondent and Mr Barton regarding the problems of anti-social behaviour on the estate; that it is likely on the balance of probabilities that the door closer arm was pushed out of position as a result of the actions of vandals rather than due to any design flaw or defect. The Tribunal is satisfied that the door closer arm is reasonably fit for purpose and that the vandals who bent it are likely to have subjected it to extreme force.

The "D" shaped door handles

26. The Respondents' argued that the fixing of "D" shaped handles to the doors to the Block constituted a further design flaw because "D" shaped handles afford vandals the ability to apply a high degree of leverage to the door and to forcibly pull it open. It is common ground that the "D" shaped handles have now been replaced by dead knob style handles.

27. Mr Barton gave evidence that "D" shaped handles are currently in use in many of the other blocks on the Estate. He stated that the "D" shaped handles to the Block were replaced by dead knob handles in response to vandalism but that dead knob handles have their drawbacks because the elderly, children, and people with arthritic hands find it easier to use the "D" shaped handles. He said that "D" shaped handles had been in use since 1982 and "were standard" throughout the borough when they were installed on the doors to the Block. He stated the extremes of vandalism which later occurred could not have been predicted and he was of the view that both types of handle have advantages and disadvantages.

28. The Applicant confirmed that the Respondents have not in fact been charged for the replacement of the "D" shaped door handles with dead knob door handles at a cost of £50 per handle.

29. The Tribunal accepts the evidence of Mr Barton that "D" shaped door handles and dead knob door handles both have advantages and disadvantages and does not accept that the fixing of "D" shaped handles to the doors to the Block was unreasonable. In any event, as stated above, the "D" shaped handles have been replaced with dead knob style door handles at no cost to the Respondents.

The repairs history of the door entry system

30. The Respondents argued that the repairs history of the door entry system demonstrated that the door entry system was unsuitable and that the costs of installing the system were not reasonably incurred. They placed particular reliance upon a fault to the barrel cylinder which

arose in the autumn of 2013 but also relied upon the repairs history as a whole.

31. It was common ground that a defect to the door entry system arose during the six month defects liability period following the installation of the door entry system in March 2011. This fault was rectified.

32. The six month defects liability period ended in about September 2011. The Applicant has produced the repair records for the door for the subsequent period of approximately two years and three months.

33. The repairs orders raised during this period were as follows: the barrel on the main entrance door required overhaul in January 2012; a door required easing and adjusting in February 2012; a lock was repaired in March 2012; a defect to the intercom arose in March 2012; the barrel to the main entrance lock required re-securing in April 2012; a cylinder required easing and adjusting in November 2012; there was a problem with constant buzzing in June 2012; and a cylinder required renewal in October 2013. "Repair orders" were also raised to replace the "D" shaped handles with dead knobs and to order spare cylinders to prevent long periods of breakdown from occurring but these are not strictly speaking works of repair.

34. Accordingly, eight repairs in total were required to the two doors in a period of over two years. Mr Laytham stated that this is a standard type of repair record by comparison with other blocks and that there are fewer faults under the new system than there were under the previous system. The Tribunal accepts this evidence.

35. The Tribunal is not concerned with ongoing maintenance issues unless they establish that the initial costs of installing the door were not reasonably incurred (for example if they can be used to demonstrate the wrong type of unit was fitted). There are 52 flats in the block; two doors; and it is common ground there is a problem of anti-social behaviour vandalism on the Estate. The Tribunal does not consider that the maintenance records for the door entry system are unusual and it is not satisfied that the Applicant's choice of door entry system and/or method of installation can be criticised on the basis of the subsequent repairs history. Any door entry system which is in regular use and sometimes subject to vandalism is likely to require ongoing maintenance.

36. The Respondents stated that there was a period following the installation of the new door entry system when the doors were left unlocked. This was accepted by the Applicant and Mr Laytham explained the doors were left unlocked for a period during which residents were invited to collect the new keys. The Tribunal finds that this was a management issue and that the doors were not left unlocked due to any defect or design flaw to the door entry system itself.

37. During the course of the inspection, the Second Respondent pointed to very small gap of approximately 1-2 mm between the front entrance door and the frame which appeared to the Tribunal to have been caused by normal construction tolerances. Neither party raised this matter in closing submissions but, for the avoidance of doubt, the Tribunal is satisfied that the existence of this very small gap does not constitute a design defect or disrepair.

Vision panels

38. The Respondents argued that the lack of any transparent panels or windows to the lower half of the front entrance door presents a security risk. During the course of the inspection, the Tribunal noted that there are vision panels to the upper half of the door which are positioned sufficiently low to enable an average height adult woman to see through them. The Tribunal finds that the specification of door installed was within the reasonable range of potential specifications.

Conclusion

39. The Tribunal finds that the costs of the door entry system are reasonable in amount and that they were reasonably incurred. Accordingly, the sums shown in the final accounts are reasonable and payable.

The external repairs and redecorations

The Tribunal's decision

40. The Tribunal determines that the amount payable by the First Respondent in respect of the external repair and redecoration work is £2,770.78.

41. The Tribunal determines that the amount payable by the Second Respondent in respect of the external repair and redecoration work is £3,387.98.

Reasons for the Tribunal's decision

The cost of the external redecoration work

42. The contractor who carried out this work was recommended to the Applicant by Adair Associates, independent Chartered Quantity Surveyors and Construction Consultants, following a competitive tender process. This is compelling evidence that the costs represent a reasonable market rate for the work undertaken.

43. The Second Respondent relies upon an alternative quotation for work to the Block provided by Gordon GB Limited which he submitted to the Applicant during the first-stage consultation. During the first-stage consultation the lessees were invited to submit details of any contractor who they wished to tender for the work.

44. Instead of submitting the details of Gordon GB Limited, the Second Respondent sent the draft specification directly to the company. He asked them to provide him with a quotation for the works to the Block only rather than across the wider Estate and failed to include any prices for the general preliminary items included in the wider specification. The quotation from Gorden GB Limited was then forwarded to the Applicant.

45. The Applicant states that, as no prices were provided for the general preliminaries, the quotation provided by Gordon GB Limited failed to meet the specification. Further, rather than providing for the block to be scaffolded, Gordon GB Limited instead proposed the use of a counterweight pulley system or cradles which the Applicant asserts would have failed to meet health and safety requirements and would have been an unsuitable method because the balconies of the Block project outwards preventing the effective use of cradles.

46. The Applicant also asserts that as Gordon GB Limited provided their quotation outside of the formal tender process, whereby unmarked sealed bids were to be sent to the Applicant and opened at the same time in the interests or fairness and transparency, it would have been unreasonable and potentially unlawful for their quotation to have been considered alongside the formal tenders submitted for the project.

47. In addition, Gordon GB Limited offered to provide flowers for all of the balconies of the Block if their bid was accepted. The Applicant stated that the provision of flowers to the balconies was not in accordance with the specification and could have potentially been viewed as an inducement to contract.

48. Finally, Mr Laytham gave evidence that Gordon GB had been found not to meet the minimum requirements for the appointment of a contractor. Mrs Parrette gave evidence that these minimum requirements are that the contractor in question must have a cash flow or a turnover equal or in excess of the value of the proposed contract (in that case £500,000 spread across four blocks) and they must have £5,000,000 public liability insurance.

49. The Tribunal accepts the Applicant's evidence and finds that the costs claimed in respect of the external repairs and redecoration work represent a reasonable market rate for the work which was undertaken, subject to any deductions which may fall to be made on account of the standard of the work.

The standard of the work

50. The Tribunal notes that the certificate of practical completion for the repair and redecoration work is dated 24th September 2010; that well over three years has elapsed since the completion of the work; and that some wear and tear, impact damage and deterioration is likely to have occurred during the intervening period.

51. Mr Laytham gave evidence, which the Tribunal accepts, that he personally carried out periodic checks on site whilst the redecoration work was being undertaken but that he did not personally check all of the works on completion. He explained that the work was more closely monitored by a clerk of works who would be on site for 10 hours a week. Mr Laytham also stated that contract administrators would be on site every week and that there would be progress meetings every 4-6 weeks when he would visit the site and look at any "query areas". He said that, if any complaints were raised by residents during the course of the project, he or the site manager would deal with them.

52. The Tribunal finds that deductions fall to be made in respect of isolated areas of weathered and peeling paintwork, cracked tiles and minor snagging items but otherwise finds that the sums claimed in respect of the repair and redecoration work are reasonable and payable.

4.7 and 4.8 Balcony Railings

53. The Tribunal noted areas of peeling paint at the time of the inspection. Whilst the Tribunal accepts that some wear and tear and deterioration is inevitable given the passage of time since the redecoration work was carried out, the Tribunal finds that the painting of these areas was not carried out to a reasonable standard.

54. Mr Laytham gave evidence that the Applicant would typically redecorate every 7 to 10 years and that he could only speculate as to the cause of the peeling paint. The Tribunal considers it likely that the peeling has occurred due to the inadequate preparation of the areas in question. The paintwork to other areas is in a reasonable condition and the majority of the paintwork is sound. The areas affected are predominantly the tops (rather than the sides) of isolated sections of railing.

55. The Tribunal finds that it would be appropriate to make a deduction equivalent to 10% of the cost of the redecoration of the private and front balcony railings on account of the areas of defective paintwork and snagging items (patches of paint on wires and signs) which were pointed out by the Respondents during the course of the inspection.

56. The total cost of these two items was £5,317.26. The amount payable by the First Respondent is £100.02 plus associated fees of 11.5%, namely £111.52 in total. A 10% deduction amounts £11.15. The amount payable by the Second Respondent is £122.30 plus associated fees of 11.5%, namely £136.36 in total. A 10% deduction amounts to £13.64.

3.6 3.7 and 3.10 concrete repairs and coatings and floor tiles

57. In respect of item 3.10, staircase landing floors which includes "relay quarry tile floors to match and blend with existing and 3.18 "Re-tile 2 No. Ground Floor Entrance Areas", the First Respondent pointed out a few cracked floor tiles during the course of the inspection.

58. Mr Laytham stated in evidence that he did not know whether or not the tiles were damaged following the work. The Respondents were adamant that repair work to these tiles was not carried out and, on the balance of probabilities, the Tribunal accepts the Respondents' evidence. As regards items 3.6 and 3.7, concrete repairs and coatings, the Respondents pointed to some small areas which were not repaired during the course of the inspection.

59. The Tribunal finds that the work in question was not fully completed at the time of the major works but that the areas affected are small and that there is also likely to have been some deterioration and wear and tear between the completion of the work and the inspection. Doing its best having regard to the passage of time, the Tribunal finds that further deductions of the order of the sums allowed in respect of the peeling paintwork and snagging should be made to cover these further items. Accordingly, the Tribunal finds that a further deduction of £11.15 should be made from the sum charged to the First Respondent and that a further deduction of £13.64 should be made from the sum charged to the Second Respondent.

Scaffolding

60. The Tribunal finds that the use of scaffolding was necessary and that the sum charged represents a reasonable market rate for the provision of scaffolding for a project of this scale and type.

3.3 4.17 Cleaning

61. Mr Laytham stated that, whilst it was difficult to provide evidence of the cleaning after over three years have elapsed, he himself had seen the contractor on site cleaning. He also relied upon the process of monitoring and inspection described above and the certificate of completion. It was not put to him that the contemporaneous complaints had been made about the cleaning. The Tribunal finds that

it is likely on the balance of probabilities that the cleaning was carried out in accordance with the contract.

3.5 Concrete survey and hammer testing

62. Mr Laytham gave evidence that concrete survey and hammer testing was carried out to specific areas of concrete which were identified during the course of a visual survey. He also relied upon the process of inspection and the certificate of completion. The Tribunal finds that it is likely on the balance of probabilities that this work was carried out in accordance with the contract.

3.12 Planters

63. As regards item 3.12, remove planters, pots etc. from balconies and reinstall in completion, Mr Laytham stated that he was not aware of any complaints and relied upon the monitoring process and the certificate of completion. It was not put to him that any contemporaneous complaints were made. The Tribunal finds that it is likely on the balance of probabilities that this work was carried out in accordance with the contract.

Wires

64. An issue was raised during the course of the hearing by the Second Respondent, which does not appear in the Scott Schedule, regarding some wires which were not provided with containment. The Tribunal finds that the specification did not require the wires to be provided with containment.

3.19 Access balconies

65. As regards item 3.19, repairs to the cracks to the access balconies, Mr Laytham relied upon the monitoring process and the certificate of completion. A provisional sum was allowed for the repair of 30 cracks.

66. The Tribunal accepts the Respondents' evidence that some cracks were not repaired at the time of the major works and the Tribunal noted the existence of some cracks during the course of the inspection. However, the Tribunal also considers it likely, having regard to the nature of the work, that the number of cracks which were repaired would have been counted during the monitoring process and that any unrepaired cracks are in excess of the number provisionally allowed for. Accordingly, the Tribunal finds that it is likely on the balance of probabilities that the charges only relate to those cracks which were repaired.

3.20 Re-coating of Access Balconies

67. The Applicant accepts that this work was not carried out because the Applicant was not satisfied that the product to be used was suitable and the substitution of a more suitable product would have increased the contract price. However, the item was removed from the specification and so Respondents have not been charged for the work. Accordingly, there is no deduction to be made in respect of the failure to carry out this work.

3.30 Re-pointing

68. The specification provided for only 20 square metres of re-pointing to be carried out. The Tribunal finds, having viewed the Block, that it is likely on the balance of probabilities that the pointing to the extent allowed for under the specification was carried out.

4.1 Paint previously decorated areas

69. The Respondents pointed out that the sides of the staircase had, in general, not been painted. Having observed the relevant areas during the course of the inspection, the Tribunal finds that they were not previously decorated.

4.4 Staircase walls, Lift Lobby Wall and Internal Cills and Reveals to Staircase windows

70. The Tribunal accepts the Respondents' evidence that window tiles were not replaced but finds that there was no provision for the replacement of window tiles in the specification.

4.5 Redecoration of staircase balustrade

71. The Tribunal noted some damage to decorations but finds that it is likely on the balance of probabilities that this is attributable to impact damage and wear and tear in the period of over three years which has elapsed since the redecoration was carried out. There are 52 flats in the block and the common parts are likely to be subject to significant daily use.

4.1, 4.12 and 4.13 Rubbing down of relevant areas

72. The First Respondent put to Mr Latham that certain areas were not adequately rubbed down. Mr Latham stated that the rubbing down was carried out in accordance with the specification but that it did not extend to taking the decorations back to the original surface or remedying underlying defects (which would have increased the contract price). The Tribunal accepts Mr Latham's evidence and finds that the rubbing down was carried out in accordance with the specification.

Major works fees and consultants' fees

73. These items appear in the Scott Schedule but were not referred to by either party in oral submissions. For the avoidance of doubt, the Tribunal finds that the sums claimed in respect of major works fees and consultants' fees are reasonable.

Conclusion

74. The Tribunal finds that a deduction of £20 plus the associated fees at 11.5% (£22.30 in total) should be made from the sum claimed in the First Respondent's final account in respect of the external repair and redecoration work (£2,793.08). Accordingly the total sum payable by the First Respondent in respect of the repair and redecoration work is £2,770.78.

75. The Tribunal finds that a deduction of £24.46 plus the associated fees at 11.5% (£27.27 in total) should be made from the sum claimed in the First Respondent's final account in respect of the external repair and redecoration work (£3,415.25). Accordingly the total sum payable by the First Respondent in respect of the repair and redecoration work is £3,387.98.

s.20C of the Landlord and Tenant Act 1985

76. At the end of the hearing, the Respondents applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines that it would not be just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Applicant may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

77. In reaching this decision the Tribunal has had regard, in particular, to the level of the deductions which have been made in proportion to the total costs claimed; to the fact that the section 20 consultation process has been fully complied with; and to the fact that no payments have been made by either of the Respondents towards the costs of these major works.

The next steps

78. Since the Tribunal has no jurisdiction over county court costs and fees and claim number 3YJ74139 was transferred solely for adjudication of the reasonableness of the service charge, claim number 3YJ74139 should now be returned to the Wandsworth County Court.

Judge: Naomi Hawkes

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 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.

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) a leasehold valuation 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 20C

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

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

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

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

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

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