11342

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/26UG/LSC/2015/0059**
Property	**:**	**Whitley Court, Newsome Place, St Albans, Hertfordshire AL1 3GL**
Applicant	**:**	**Miss Laura Foster, Co-Chair Whitley, Scholars and Oriel Residents Association (WaSRA)**
Representative	**:**	**Miss Foster accompanied by Richard Dryden, Secretary of the Residents Association**
Respondent	**:**	**Hightown Housing Association Limited**
Representative	**:**	**Mrs L Middleton accompanied by Mr D Bogle both of Hightown Housing Association Limited together with Mr M Howells, Head of Asset Management and Procurement**
Type of Application	**:**	**Under Section 27A of the Landlord and Tenant Act 1985 (the Act) together with Section 20C of the Act**
Tribunal Members	**:**	**Tribunal Judge Dutton** **Mr N Martindale FRICS** **Mrs L L Hart**
Date and venue of Hearing	**:**	**The Quality Hotel, St Albans on 28th October 2015**
Date of Decision	**:**	**2nd December 2015**

DECISION

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DECISION

The Tribunal makes the various decisions as set out in the Findings section below, which to assist we have in part highlighted. The Tribunal determines that given the circumstances of the case an order under Section 20C shall be made it being just and convenient so to do.

REASONS

BACKGROUND

1. This application was made by Miss Foster as the Co-Chair of the Residents Association (WaSRA). The application was on behalf of the residents of Whitley, Scholars, Oriel, Keble and Fardell Court. The application, which is dated 20th July 2015, states that as well as an application under Section 20C, the challenge is made to the service charges for the years 2014/15 and 2015/16. The detailed information contained on the application condenses down to a consideration in the year 2014/15 of the communal boiler replacement charge, the communal boiler maintenance charge, an increased management fee and the cost of gas dealt with on an estimated basis. In the following year, that is to say 2015/16, the same issues are raised but in addition there is a heading 'gas debt/overcharge' at over £100,000 and service charge rising by additional £30,000 due to 'unexplained deficits' from previous year and change in managing agent. In the statement of case these matters are to all intents and purposes repeated and somewhat hidden in the statement of case are certain other issues which were pursued by the Applicants at the hearing.

2. A bundle was provided to us before the hearing, which was broken down into a number of sections. It included the Applicants' statement of case and Hightown's response, certain witness statements, a copy of the shared ownership lease for a flat in Whitley Court, the head lease under which Hightown became the landlord of Whitley Court and a copy of the head lease in respect of Oriel Court.

3. Under section two of the bundle there was various service charge demands and evidence of indebtedness and documentation relating to the management fees, the boilers and evidence of unreasonable charging. Under section 3 was further evidence produced and section 4 contained such evidence as it is said Hightown wished to produce. Section 5 contained correspondence. We have noted the content of those documents in the bundle which are relevant to the matters before us and which were drawn to our attention at the hearing.

INSPECTION

4. We inspected the development in the morning before the hearing. We were asked in a letter from Miss Foster to inspect four flats at Whitley Court, five at Scholars Court and the boiler rooms serving the various units of accommodation, which were the subject of the application. We did make an external inspection of Whitley Court and the meter outside 18 Whitley Court, which is the property owned by Miss Foster. This meter was intended to measure the water usage which should have been used as the basis for which individual costs were assessed for each of the leaseholders for heating and hot water. The problems with these meters form part

of the claim before us. It did not seem necessary to us to make internal inspections of the various flats referred to in Miss Foster's letter as our remit was not to deal with internal issues as they do not form part of the service charge claim. Furthermore, reading of the meters would not be of assistance as it appears to be accepted by all concerned that they are not functioning properly.

5. Having inspected the interior of Whitley Court we then viewed the boiler house which houses the boilers serving Whitley, Scholars and Fardell Court as well as the boiler rooms for those servicing Oriel Court and Keble Court. We were not able to fully inspect the boiler room serving Whitley, Scholars and Fardell as there was no means of access to the floor. We could, however, see from the door that there was old boiler equipment in situ and new boilers installed it seems in 2010 as was the case for the boiler rooms for Oriel and Keble Court. This removed an argument that the old boilers were still those being used, which had formed part of the concerns of the leaseholders and we do not need to spend more time on that.

6. In respect of Oriel Court there were two boilers which served the six flats that had originally been in shared ownership with the Respondent. We were told that two flats in Oriel Court had now come out of shared ownership and one was about to and that when they do they no longer are owned by Hightown and subject to a different service charge regime. The boilers servicing Keble Court are solely for Hightown flats.

7. The development is somewhat unusual. The property was originally an educational establishment. Some of those buildings have been retained and converted into residential accommodation and new buildings have been erected. The development was in good order and provided what appeared to be a pleasant environment.

HEARING

8. The hearing took place following the inspection and it is perhaps helpful if we set out the practical arrangements concerning the development at Newsome Place. We were told that Hightown either owns or is part-owner of some 82 properties. Seventy six of these properties are supplied with heating and hot water from communal boilers and 58 of those 76 are to be found within Whitley, Scholars and Fardell Court, the first two blocks being flats held on long leases. They are served by the communal boiler system located near to the gymnasium which we had inspected earlier. There are presently four (soon to be three) shared ownership flats at Oriel Court served by the boiler system within the building, which is not owned by Hightown. Hightown holds individual head leases of the shared ownership flats in Oriel Court but does not own the boiler room. It is not responsible for arranging the gas supply or repairs throughout the estate. Keble Court is heated by a separate boiler house, not within Hightown's ownership and these properties are, we understand, held under assured short lettings.

9. There is a management company, Newsome Place Management Company Limited (previously Oaklands College Management Company) which is privately owned and the communal areas and estate are now in the care of Remus who are the present managing agents. A proportion of the service charges collected by Hightown are for services provided by these managing agent and which includes

grounds maintenance, estate roads and paths, the gym and also repairs and maintenance of the communal boilers and the gas supplied thereto. There appears to be no dispute that it is not Hightown's responsibility to ensure the supply of gas or to maintain the boilers. It is, however, Hightown's responsibility to ensure that contributions are made towards those costs, which they do by charging the leaseholders through the service charge on the basis of the costs charged to Hightown.

10. In the light of this background the first matter that we dealt with was the estimated gas bills. It appears that presently Hightown has been charging the bulk of their leaseholders £35 per month on account of heating and hot water supplied to residents via the communal heating system. Here is the source of the problem in that the individual meters which record the amount of water being used by each flat do not work properly and have not done so for some time. The intention was that these meters would provide the basis upon which individual leaseholders were charged for receiving heating and hot water from the communal system.

11. For the general needs tenants in Fardell Court and Keble Court who are on assured shorthold tenancies or assured tenancies, the heating and hot water charges are included within their schedule of services and are not an issue for us.

12. According to the Respondent's statement of case in June of 2014 the views had been sought of the residents of Scholars and Whitley Court on the question of billing for heating and hot water but there had been something of a lack of response. We were told by Mrs Middleton that the present arrangement is that the three blocks, namely Scholars, Whitley and Fardell, have their costs of heating divided in three on a block basis and then divided between each of the flats in the block. Both Scholars and Whitley have 21 flats each and there are 16 in Fardell. This gives the total of 58 flats. Of those flats it appears that in Fardell 10 are two bedroomed but in Scholars there are 12 one bedroom flats and in Whitley 16 one bedroomed flats. There appears to have been no differentiation by Hightown to take account of the fact that in the blocks there are different numbers of flats and different accommodation.

13. For Keble Court, which has its own boiler house, there are 14 flats that have meters and the gas costs are divided equally between those flats. In respect of the shared ownership units in Oriel Court, again they have their own meter and that is divided between those that have not 'stair-cased' out. Those flats pay one sixth of the cost with those flats that have stair-cased out of being recharged through the service charge collected by Remus. Apparently we were told Remus has been charging £35 per month and an agreement has been reached on that basis.

14. It does appear from what Mrs Middleton said that during the management period of Gem which was until December 2014, actual costs for gas had been provided and indeed Miss Foster by dint of hard work had been able to obtain from the gas supplier (Corona Energy) details of the gas charges for the periods 27th September 2010 to, it is said August 2015 for Keble Court, for the period October 2009 to August 2015 for Oriel Court and for Whitley, Scholars and Fardell for the period 27th September 2010 to August 2015. The total invoiced and paid for this period so Corona say in a letter to Miss Foster, was £137,806.89. Matters were then complicated somewhat by an email dated 27th August 2015 which appeared in the

bundle at page 333 where the value per meter was set out and which came to a different figure. We also had at pages 289 through 296 a schedule of costings from it appears July 2011 through to September 2014 showing what each block had been billed in that period. It is right to record that it appears these blocks were probably almost full from July of 2011 and prior to that there were a number of empty flats which may have given inaccurate estimates of gas usage prior to July of 2011.

15. On the question of the meters it appears that Hightown had been endeavouring to get Nicholas King Homes (NKH), the original developers, to resolve the issue and indeed had commissioned and paid for a report on this issue which had been presented to NKH. Apparently NKH had agreed in principle to fit new meters although there was no timescale for such fitting. What we were asked to do was to consider how the historic gas charge should be dealt with on the basis that the present rate of £35 per month, indeed greater than that in the case of Keble and Fardell, should be reconsidered and whether those costs should be amended. In the application the Applicants say that there was misleading information given to justify £35 per month and that this gives rise to extremely high gas bills inconsistent with the energy performance certificates that were provided at the time of purchase. A question is posed as to whether or not the energy performance certificates for Whitley and Scholars Court fall under the Consumer Protection from Unfair Trading Regulations. We should say at this stage that is not really a matter for us to consider. Issues of that nature require independent legal advice and it is not for us to advise on matters such as that. In any event, the basic premise was that the amount being sought as an estimated charge was too high and that Hightown had been in the words of the Applicants *"intimidating shared owners for two years and forcing sellers to make a retention of £1,000 from sale proceeds until the gas issues were resolved"*. The question is posed *"have the gas charges been calculated in a lawful and accurate and fair way."* Asked what she considered would be a fair charge in respect of gas costs, it being accepted that something had to be paid, Miss Foster suggested that something in the region of £25 per month would be reasonable. What the Applicants wanted was for meters to be installed by the end of this year and for Hightown to keep in contact with Applicants to ensure all was being done that should be done to get NKH to deal with the matter. In addition also, having been told when they first purchased their flats that the charge would be around £20 per month, the costs should be reduced to that sort of level.

16. We then having spent most of the morning considering the way forward on the gas charges dealt with the other issues relating to the communal boiler replacement charge, maintenance charge, management fees, the deficit and a gas bill liability for past expenses being carried forward.

17. Insofar as the communal boiler charge was concerned, we heard from Mr Howell who had provided a witness statement. We went through the figures at appendix 4 of his witness statement and considered the plant room replacement costs. He conceded that some of the figures shown were excessive. As a result of discussions it was agreed that the amount presently being claimed, we were told of £14.40 per month, should instead be reduced to the sum of £7.16 per month and this was agreed as the charge to be made for the two years in dispute.

18. On the question of the boiler maintenance charge, it seems that there had been some confusion, which is not unnatural given the complications inherent in the accounting arrangements of Hightown. We looked at pages 560 through to 562. These included the estimated service charge budget by Remus for the period 1st January 2015 for 12 months. This is broken down into various headings; 'estate service charge', 'garage costs', 'gymnasium costs', 'building insurance' and 'HA communal boilers'. The proportion of these expenses is in some cases divided amongst the total number of units on the development (290) or reduced down to represent the number of those that have garages or the numbers that have use of the gym. In respect of the boilers it is divided by 72.

19. The figure estimated by Remus for this year in respect of the share to be paid by each individual Hightown lessee is £1,482.17. At page 560 we see the estimated charge levied to the individual lessee by Hightown which includes not only the Remus costs but those costs charged by Hightown. In the accounts is a figure of £1,117.75 as the contribution towards the Remus service charges and £420 as the contribution towards the costs of the heating and hot water. This gives a total annual expenditure of £2,470.09 for these shared ownership units. Towards the end of the day Miss Foster sought to draw a comparison between the service charges that they were required to pay and those which were payable by leaseholders who were subject to Remus management alone. We will come back to that.

20. The £14.40 headed planned maintenance is not in relation to boiler maintenance. This is in respect of a general payment to a reserve fund to cover future ongoing expenses. It did not, therefore, appear that this was relevant to the case that we needed to consider as this money is being paid into the trust fund for reserve issues and was not, in the light of that explanation, pursued by Miss Foster.

21. On the question of the management fee, we are pleased to record an agreement that for the two years in dispute, the management charge will be limited to £25 per month.

22. We then turn to the 'gas bill overcharge'. We were told that this is something of a fiction because it is merely a figure appearing in the accounts. For the year ending 31st March 2015 we were able to see the accounts that had been produced. This includes the figure of £32,024 under expenditure for hot water being an adjustment to 2013/14. This is not a demand that has been made of the leaseholders. Indeed in the year 2014/15 there is a reduction in this amount of £11,216 which reduces the deficit. However, the deficit is created in part by costs for hot water of £8,290 and increases in fire system and smoke detection costs which had been budgeted at £156 and had come in at £1,528. These are essentially accounting matters and we would suggest that if further explanation is needed as to these figures there should be contact between the residents and Hightown.

23. We refer to the letter to Miss Foster and other residents dated 27th February 2015 from Hightown. This letter says as follows: *"I am writing to confirm that the 2013/14 audited accounts for Whitley Court include an amount of £32,024 in respect of gas costs. This is a proportion of the total costs in respect of Scholars, Whitley and Fardell Court and is the maximum amount that Hightown will seek to recover from residents of Scholars Court, Whitley Court and Fardell Court.*

The apportionment of these costs will take place once new heating check meters are in place and readings are available enabling apportionment to take place." It is not to say, therefore, that these costs are presently due and owing but by giving notice that these costs have been incurred to Miss Foster the Respondents say they are intending to avoid the 18 month limitation set out in Section 20B. This also drifted into the explanation as to how deficits had arisen.

24. The questions posed by Miss Foster are set out in the statement of case and raise issues of alleged latent defects which do not appear to apply in this case as it is now accepted that the communal boilers were new in 2010/11.

25. Miss Foster raised the difference between the costs of Hightown's residents and others on the estate and an apparent increase in the managing agent's fees, once Remus had been instructed which we are told had increased by more than £10,000. It is right to say that at page 561 the management fees for Remus in respect of the estate service charge come to some £62.40 per unit per annum which on the face of it does not seem excessive. It does not appear that Hightown raised any query with Remus as to this considerable increase. The other concern expressed by the Applicants was the increase in the monthly sums payable on account of service charges from 2014/15 when it was £179.57 to the next year when it increases to £220.24. Of course this is only based on estimated charges.

26. One issue raised was the costs associated with repairs, budgeted at £1,586 whereas the actual expenditure was £4,807 made up of a large increase in the general repairs figure originally estimated at £848 but increased to actual costs of £2,636. We were asked to look at page 273 and 279 in the bundle which showed general repairs for Whitley and Scholars Court. An assertion was made by the Applicants that the bulk of the repairs were as a result of the faulty water meters. From an inspection of these repair sheets it is quite clear that that was not the case. In respect of Whitley Court there was some £449.94 spent in respect of water leaks and repairs to the meter giving a cost of £21.42 per unit per annum. In respect of the Scholars property there appear to be only one attendance for water leak between Flats 1 and 2 which was £96. No further explanation was given for that outgoing. It seems clear, therefore, that the bulk of the repairs had nothing to do with the water meters.

27. Reference was also made at the end of the day by Miss Foster to a charge made by Remus for lift telephone maintenance and insurance. It was not clear whether this referred to any particular block although one of the attendees thought this might relate to the lifts in the car park. It is a matter that Hightown said they would investigate and raise with Remus as to whether or not this was an expense that should fall on their tenants.

28. On the question of the Section 20C application by Miss Foster, Hightown said they would await the decision and Miss Foster agreed that the decision could be sent to her and she would then circulate it to those interested parties.

<u>THE LAW</u>

29. The law applicable to this matter is set out in the attached appendix.

FINDINGS

30. This is a case where the issues are to be found in the detail. The statement of case produced by Miss Foster relates to the communal replacement charge for the boiler and the maintenance thereof, the increased management fee, the estimated 'back billing' for gas bills, the inclusion by Hightown of past costs as an ongoing expense under s20B of the Act and the deficits that have arisen in the service charge year 2014/15 carried forward to 2015/16. In addition the question was raised as to the difference between the total costs for residents who fall under the Remus service charge banner and those who are dealt with by Hightown.

31. We will take that point first. Firstly we should say that the photocopies of the comparable service charges included in the bundle were illegible. Miss Foster did provide us one copy at the end of the hearing for us to view. It was not wholly clear from that what item she said made up the alleged £700 annual difference per flat. Certainly part of that will rest on the costs of the heating as other residents appear to have their own individual heating provisions. In addition, it is not clear what management charge Remus levied for the provision of services to those other units. Hightown charge over £300 per annum for management with the gas bill for heating at £400, there may well be the £700 difference that Miss Foster complains of. It was not, however, something that we could really take any further for two reasons; firstly we were not comparing like with like because of the different heating arrangements and secondly these were based on estimated service charges only. The position should perhaps be reviewed when actual costs are available and of course bearing in mind the agreements that were reached during the course of the hearing. The increased management charge for Remus is something that Hightown said they would investigate but to be frank the cost on a unit basis is really quite small and it may well be that Gem had been operating at a much lower value for reasons which are not known to us.

32. We turn then to the question of the heating and hot water costs and the water meters. It seems to us to be wholly inappropriate for the delay that has ensued in either replacing the meters or reaching some other method of correctly apportioning costs between leaseholders. It may be that Hightown should have grasped the nettle two or more years ago, installed their own water meters and looked to recover the costs of such works from NKH. Instead they appear to have stood on the sidelines metaphorically wringing their hands and waiting for NKH, the original developer, to do something about the problem. In the meantime, they have considered the apportionment on a very basic method. This was to take the estimated gas charges for the boiler house serving Whitley, Scholars and Fardell, divide that in three and then sub-divide that by the number of flats in each block. This, with respect, seems too simplistic. Firstly, two blocks have 21 flats and one has 16. Accordingly a straight third division seems unfair. In addition, some flats are two bedroomed and some are one bedroomed. Some form of bed weighting arrangement as is used by a number of London boroughs might have been appropriate but the method by which they have taken this simplistic division seems to us unreasonable. We are asked to consider the contributions towards the gas bills for two years. Reference is made to there being a communal fault with the boilers and the fact that there were original build defects. We have no evidence to

support that contention. A question posed relating to consumer protection legislation is not for us to answer. It is quite clear that heating and hot water has been provided.

33. We do not think that Hightown has taken enough notice of complaints raised by the Applicants. Miss Foster was able to get some detailed costs from the supplier, although whether based on estimated charges as stated at page 331 or actual costs as appears to be the case by reference to the email at page 33 is not wholly clear. One can attempt to work out the kilo watt hourly charge by reference to these two pages and the schedules also provided at pages 289 onwards. However, the period for which the figures supplied is unclear, they appear, at least in the letter at page 331, to be estimated and the totals shown on that page do not correlate with the figures at page 333.

34. At the hearing Hightown accepted that there had been some delay in resolving the meter issues and that they would welcome some form of pressure to put on NKH to resolve the problem. Miss Foster had suggested that something around £25 per month would be appropriate to pay whilst these matters were resolved. As we have stated above we have our concerns about the figures provided by Miss Foster. We do wish to assist Hightown by giving them some leverage with NKH and it may be that if they can persuade NKH to deal with the repairs of the meters more speedily, this issue can be resolved. **However, doing the best we can and with the lack of real evidence as to the costs of the hot water and heating we propose to leave the costs for the leaseholders at £35 per flat for the year 2014/15. However this should apply to all as presumably the basic cost is the same, the difference being useage, which cannot be accurately measured with the present system. However, there is a requirement for Hightown to get on with this and we propose, therefore, for the year 2015/16 where there are no gas costs available to us to limit the amount that may be charged by way of estimated interim gas payments to £25 per month per Hightown lessee. This will apply for Keble, Fardell, Oriel, Whitley and Scholars. This will hopefully assist Hightown in putting pressure on NKH to resolve this matter.**

35. As a matter of suggestion only because it is not really something that we can become too involved in, it seems to us a way forward for dealing with the historic charges is to get the meters repaired, monitor the readings for a 12 month period, take the average of those meter readings for the flats in question and apply that average as the liability for all leaseholders for past costs. This is going to be a very difficult exercise because tenants will have come and gone, they will have bought at different times and how one reaches a suitable resolution of this historic issue is really something that should be discussed between the residents association and Hightown, but our suggestion is perhaps a way forward.

36. **We record that the communal boiler replacement charge for future replacement costs is agreed at £7.16 per month for these two years in question. We record also that the management fee for these two years in question is reduced to £25 per month.** We make no comment as to whether or not we consider that to be a reasonable charge as the parties reached this agreement during the course of the hearing.

37. The communal boiler maintenance charge is we hope now clear to the Applicants as having nothing to do with boiler maintenance. This is in fact a contribution towards the reserve fund and which on that basis was not challenged. It does appear there are in place planned maintenance programmes and we do not think that the Applicants disagreed that some form of reserve fund should be put in place.

38. Insofar as the gas bill overcharge point is concerned, this we hope was explained to the Applicants as being nothing more than a protection measure taken by Hightown to ensure that they were not caught by the provisions of Section 20B. These sums should work their way through the system when actual accounts are available. We do, however, urge Hightown to get on with it. They have sat back and waited for this matter to be resolved by others which has not provided suitable protection to their leaseholders. It needs to be resolved without further undue delay.

39. Insofar as the deficits are concerned, we hope that again the Applicants have appreciated the estimated charge included in the accounts in respect of heating charges for past years of £32,024. This is already reducing as can be seen from the latest set of accounts. It is an accounting exercise.

40. In addition the deficit which included repairs is only partly relating to repair costs to the meters and water leakage. Taking a view on that we find that the delay in resolving the meter problems is not at the doors of the leaseholders. **Accordingly in respect of Whitley Court for the year 2014/15 we order a reduction in the general repairs by the sum of £449.94 which relates to works that appear to have been associated with leaks adjacent to or caused by leaks from the water meters**. Insofar as Scholars Court is concerned the only reference to a water leak is that between Flats 1 and 2 and we cannot say whether that relates to the water meters or is just a water leak. We do not propose, therefore, to make any reductions in respect of Scholars Court repair and maintenance costs.

41. We should also point out to the Applicants that if there is a challenge in respect of the actual costs for 2015/16 they can still pursue that if they so wish.

42. We return the finally to the question of the Section 20C application. We propose to make an order preventing Hightown from recovering the costs of these proceedings as a service charge. The Applicants have been trying to resolve this matter and indeed have taken it to a stage 3 complaint. It has not resulted in a resolution. The accounts that are produced by Hightown are difficult to follow and the question of deficits can be confusing. Further, the delay on the part of Hightown in resolving the water meter issues, which is the main bone of contention for the Applicants, is not acceptable. Although we found that the estimated charges are not in part unreasonable it does seem to us that Hightown have not been proactive in resolving this issue to the potential prejudice of their individual leaseholders and it is something they must deal with as quickly as possible. Having also determined that the boiler reserve fund contribution should be reduced as well as the management charge we conclude that it is just and equitable to make an order under Section 20C in this case.

Andrew Dutton

Tribunal Judge Dutton 2nd December 2015

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 20B

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

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

Section 20C

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

application.

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

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

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

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

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.