10914

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/OOBY/LSC/2014/0112**
Property	:	**Various Flats at 17 and 19 Grove Park, Liverpool L8 0PL**
Applicants	:	**Dr Georgina Woods and others (see Appendix 2)**
Representative	:	**Dr Georgina Woods**
Respondent	:	**Riverside Housing Association Limited**
Representative	:	**Trowers & Hamlins, Solicitors**
Type of Application	:	**Application under section 27A of the Landlord and Tenant Act 1985 ("the Act") and section 20C**
Tribunal Members	:	**Judge G. C. Freeman** **W. T. M. Roberts FRICS Expert Valuer Member**
Dates and venues of Hearings	:	**23 February, 21 April, and 1 June 2015: Liverpool**
Date of Decision	:	**8 July 2015**

DECISION

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DECISION

A The service charge for the periods in question, adjusted by agreement between the parties, is reasonable save for the following:

1. The sum of £1585.72 incurred in the year ended 31st March 2012 for consultancy fees paid to Arcus Consulting was unreasonably incurred.
2. The management charges for the period ended 31st March 2008 of £4865.28 were reasonably incurred.
3. The management charges for the year ended 31st March 2009 of £3068.00 were reasonably incurred.
4. The management charges for the year ended 31st March 2010 of £3160.04 were not reasonably incurred. The reasonable charge for the period was £3068.00
5. The management charges for the year ended 31st March 2011 of £3254.81 were not reasonably incurred. The reasonable charge for the period was £3068.00
6. The management charges for the year ended 31st March 2012 of £3524.44 were not reasonably incurred. The reasonable charge for the period was £3068.00
7. The management charges for the year ended 31st March 2013 of £3524.44 were not reasonably incurred. The reasonable charge for the period was £3068.00
8. The management charges for the year ended 31st March 2014 of £3524.44 were not reasonably incurred. The reasonable charge for the period was £2500.00
9. The reasonable charge for management charges for the year ended 31st March 2015 is £2500.00

B. No part of the Landlord's costs incurred in connection with the Application are to be included in service charge payable for the Property.

C. The Respondent is to refund to the Applicants, via the service charge account for the year ended 31st March 2016, the Application fee of £440.00 and the Hearing fee of £190.00.

Background

1. By their application dated 16th September 2014, the Applicants applied to the Tribunal for a determination of the liability to pay and the reasonableness of service charges for the Property for the period ended 31st March 2008 and the years ended 31st March 2009 to 31st March 2015 inclusive. Attached to the application was a schedule of expenses which the Applicants considered were unreasonable.

2. The Tribunal issued Directions on 6th October 2014, following which the parties provided written statements of case, responses and witness statements setting out the issues for consideration by the Tribunal. Helpfully, the parties narrowed down the issues by means of what is known as a Scott Schedule, which identified which items were in dispute, and provided for the respective comments on those items from each party. During discussions between the parties, to which the Tribunal was not privy, agreement was reached over many of the items. Those that remained are the subject of this decision.

3. The Property, which was inspected by the Tribunal on the morning of the first hearing, consists of a large Victorian building originally constructed as two semi-detached private houses with stables in a residential suburb close to the centre of Liverpool. Princes Park is close by. Subsequently the building has been converted into twelve self-contained flats with car parking in the front garden. The former stables have been converted to a house, so there are thirteen self-contained units of accommodation in all. There is a communal garden to the rear. Many similar sized houses in Grove Park and the surrounding area have been similarly converted.

The Leases

4. A specimen copy of the lease for Flat 3 was produced. It was not disputed that the leases of all the flats are in similar form and all provide for the payment of a service charge to cover the provision of services to be provided by the Respondent. The lease for Flat 3 is dated 12th March 2007 and is made between the Respondent of the one part and Georgina Woods of the other part. It created the term of 125 years from 28 August 2006. The lease is on a shared ownership basis. That is to say the tenant can buy a proportion of the value of property, either 25%, 50%, 75% or the whole of the property, and pay a rent in respect of the remaining unbought share. The tenant has the opportunity if buying further shares (known as "staircasing"), on paying the then value of the relevant share at the time of purchase. All the Applicants are the original tenants of the leases granted by the Respondent.

5. Clause 7 provides for the calculation of the service charge. It is a sum which the Respondent's Finance Officer estimates is need to cover the expenditure listed in clause 7.5 and a further sum which is "an appropriate amount" as a reserve to cover future expenditure. Clause 7.5 (e) includes the cost of

". . employing (whether by the Landlord, Managing Agents or any individual firm or company) such staff as the Landlord may at its absolute discretion deem necessary for the performance of the services and other functions and duties referred to in clause 7.5 and all other incidental expenditure in relation to such employment."

6. Clause 3.18 (b) of the Lease provides for a payment to the Respondent of a sum based on the sale price of the Property towards a reserve fund to be used for future capital expenditure. To date no payments have been made under this clause because no flats have changed hands.

Hearings

7. Three hearings were held as outlined above in the Liverpool Social Security and Child Support Tribunal and the Civil and Family Court Centre on the above dates. During the course of the first two hearings it became clear to the Tribunal that further evidence was required from both parties, and this was provided. The Tribunal is grateful to them for providing this additional information.

8. The Applicants were represented by Dr Woods in person for herself and the other applicants. The Respondents were represented by Mr S. Coward of Trowers and Hamlins. Ms Fiona Morear the Respondent's Finance Manager also attended all the hearings. Mr J Styles, the Respondent's Property Services Manager Ms M Kearns, the Respondent's Assistant Housing Services Manager, Mr M. Blakeman, the Respondent's Leasehold Officer attended the first and second hearings. Ms Morear, Ms Kearns and Mr Styles submitted witness statements. Mr Coward helpfully provided a skeleton argument. Ms Woods provided statements of case and responses. All were considered by the Tribunal.

The Applicant's Case

9. Put simply, the Applicant's case is that the service charges are excessive and unduly onerous given the nature of the Property. Particular issues were raised in connection with individual heads of charge. Where items remained in dispute, the arguments raised are dealt with under the heads of charge referred to below.

The Respondent's Case

10. The Respondent's case is equally simple. The Leases provide for the payment of a service charge. The costs having been incurred by the Respondent and in almost all cases, actually paid, are reasonable. No evidence had been produced by the Applicants to show they are unreasonable and in particular, no comparable costs have been produced to the Tribunal to justify the Applicant's contentions.

The Law

11. The Law is set out in Appendix 1.

12. The Tribunal has to apply a three stage test to the matter referred to it under section 27A:-

12.1 Are the service charges recoverable under the terms of the Lease? This depends on common principles of construction, and interpretation of the Lease.

12.2 Are the service charges reasonably incurred and/or for services of a reasonable standard under section 19 of the Act?

12.3 Are there other statutory limitations on recoverability, for example consultation requirements of the Landlord and Tenant Act 1985 as amended?

Discussion: The Tribunal's Findings

13. It was not disputed that the Applicants were aware of their liability to pay service charge and that there was no limitations on recovery, for example, by a failure to consult with the Applicants on contracts which ran for a period in excess of twelve months or repairs which exceeded the statutory limit. The Tribunal therefore considered the reasonableness of the individual heads of charge still in dispute as follows:-

Lighting, intercom system and front door

14. Evidence from the Applicants consisted of emails to the Respondent complaining about the failure to replace defective lights in the common parts timeously. They date from a period shortly after the conversion work had been completed and the tenants had moved in. The Tribunal speculated that there may have been a design defect in the fittings and/or the bulbs. The work may have been covered by a defects period given by the contractor. Be that as it may, no evidence was forthcoming as to the cause of the bulb failure or the replacement costs and the Tribunal can go no further except to note the complaint about the apparent lack of expedition in effecting repairs. The Tribunal noted that there was a two stage process to be considered under paragraph 12.2 above. Was the cost reasonably incurred and

was it to a reasonable standard? No evidence was produced that the replacement/repair costs were excessive. The Tribunal therefore accepted the Respondent's argument that the repair costs were reasonably incurred. They also accepted that the repairs were to a reasonable standard. There had been no complaint that the lights did not work after repair/replacement. The Tribunal came to the same conclusion in respect of the repairs to the intercom system and front door.

Buildings Insurance

15. Following investigations by the Respondent during the course of the case an overpayment for insurance was identified. This has resulted in a restatement of the cost for insurance during the period in question, and a credit for £2221.10 has been given. The matter has been resolved to the Applicants' satisfaction.

Cyclical Funds

16. It is quite proper for a responsible landlord to provide for a fund to cover the long term repair and replacement of the common parts of the Property, as well as recurring non annual expenses such as redecoration. No evidence was produced to the Tribunal that such a reserve was unreasonable. The Tribunal therefore finds that such sums are reasonable. The Tribunal did not consider the argument put forward by Mr Coward that the Tribunal has no jurisdiction to consider clause 3.18(b) of the Lease, because no payments due under that clause have become payable during the periods in question.

Fire Protection

17. The Respondent asserted that it was a legal requirement that the smoke alarm at the Property must be tested at least once per week. When challenged by the Tribunal to produce the legislation stating this requirement the Respondent produced the most recent sector guidance entitled "Fire Safety in Purpose Built Blocks of Flats". British Standard 5839-6:2013 at paragraph 25.2 – Recommendations, states:-

"c) All systems, other than Grade A systems, should be tested at least every week by operating all fire alarm devices in the premises"

Clause 81.15 of the document states that
" . . .a simple functional test should be undertaken, once a week, by operating a manual call point. This can readily be carried out by non-specialists e.g. housing officers and in house maintenance teams. The aim of this test is simply to check that the system is functional. It is not intended that this test is to be used to confirm the audibility of the alarm, for example.

18. The Respondent has outsourced a weekly test of the smoke alarm at the Property with effect from the year ended 31st March 2010 as follows:

2010	£322.00
2011	£329.00
2012	£336.00
2013	£0.00
2014	£336.00

The Tribunal considered the above, as a result of which they make the following observations.

19. As the Respondent subsequently conceded, there is no legal requirement to test the smoke detection system at the Property every week. The Guidance document referred to in paragraph 17 above relates to purpose built flats. The flats within the Property are not purpose built. No guidance was produced for non-purpose built flats.

20. The Guidance document is what it says: guidance. It has relevance to properties which have been converted into flats, but it is not a bible that must be followed religiously, particularly in relation to conversions, because it does not specifically refer to them. The Tribunal noted that no special expertise is required to conduct the testing. It can be done by a Housing Officer, although the Tribunal were disappointed to note that Mr Styles, the Respondent's Property Services Manager, stated he was unable to carry out such a test.

21. Developments of flats range from two or three flats in a converted house to multi storey purpose built developments. A "one size fits all" approach to fire risk assessment and testing is inappropriate: a multi-story block in an inner city will require a greater degree of testing and inspection than a converted house in a leafy suburb which is largely vacant during the day when the occupants are at work. A cost-effective system of testing should be implemented depending on the risk factors. Alternative methods of testing should be considered in order to reduce costs. The quotations referred to at paragraphs 34 and 35 provide for an alternative and possibly more cost effective means of testing.

22. The Tribunal considered whether the cost incurred in testing the smoke alarm by outsourcing it was reasonable. The lease provides for recovery of the cost. (see paragraph 5 above). No evidence was produced by the Applicants that such costs had been unreasonably incurred. The Tribunal concluded that such costs actually incurred were just within the parameters of reasonbleness.

Management Charges

23. Ms Morear provided a comprehensive witness statement on the calculation of management charges. She has been Finance Manager with the Respondent or its associate companies since 8th May 2006. She is responsible for overseeing all aspects of the Finance Department, including service charge accounts.

24. Her evidence to the Tribunal was that the basis of the Management Charge implemented for the Property at the outset of the scheme was calculated prior to her employment with the Respondent. It was scheme specific – in other words, the charge applied to the Property alone and was not a generalized management charge which the Respondent applied to all of its properties. As a result she was unable to demonstrate to the Tribunal how the Respondent calculated the charges which were applied to the scheme until 31st March 2011. (her statement refers, at paragraph 5, to 31st May 2011, but the Tribunal have assumed this is a mistake: 31st March is the scheme's accounting year-end). Following her appointment, in order to calculate the annual charge, it seems the Respondent simply took the previous year's charge and added a percentage increase based on the increase in the Index of Retail Prices during the previous year.

25. During this period, Ms Morear stated she was aware that the Respondent needed to quantify the management charge for the scheme. In 2011 she came up with a methodology for quantifying it. In the meantime, since 2009, the Respondent had undertaken restructurings, an office move, and rationalization and consolidation of the organization. Ms Morear presented the Board of the Respondent with a methodology for calculating the management charge. This was rejected by the Board for reasons which were not made clear to the Tribunal, but which are not relevant to this decision. The Respondent then decided to "freeze" the management charge. This was done to "minimize the impact to customers and reduce costs". Thus the figures for management charges over the period were as follows:-

Period ended 31st March	
2008	£4865.28*
2009	£3068.00
2010	£3160.04
2011	£3254.81
2012	£3522.44
2013	£3522.44
2014	£3352.44

*covers a 17 month period.

26. In 2011 the Respondent met with fellow RSLs (Registered Social Landlords), and also analyzed items that are regarded as management fees under ARHM (Association of Retirement Housing Managers) and RICS (Royal Institution of Chartered Surveyors) Guidance. A spreadsheet setting out the Respondent's calculation was included in the Respondent's bundle.

27. As part of the calculation, Ms Morear explained that each scheme has three staff allocated to it: a leasehold officer, a property services officer (responsible for repairs and health and safety) and a scheme finance officer (responsible for budgets and costings). It was not made clear what role the leasehold officer played. There are also other staff that work directly on services at schemes. These include gas servicing, insurance and major cyclical contracts and related reserve funds. The "direct" staff split their time into basic categories of work as follows:-

50% Leasehold management
26% Sales
20% Tenancy management
5% Arrears management
1% Other

27. She stated that each of the above staff members has an assistant manager and manager. There is an RHO (Regional Head Office) director above all of them. None of the Riverside Group's management structure has been taken into account in compiling the management charges. However the Respondent does recharge the cost of specific departments (for example, the insurance department and 24 hour customer service centre) as direct costs. She stated these costs also cover other parts of the Respondent's overheads; for example, an estimated 55% was added to cover the cost of the Respondent's management team to manage the staff, leasehold queries and office overheads. The reason for choosing this proportion was not made clear to the Tribunal.

28. Ms Morear argued that subsequent investigations showed that 59% was a more realistic figure for leasehold management for the current year, based on the latest office overhead forecast of £307,000 (leasehold element £154,000) and an estimation of 50% of manager's time being spent on leasehold management and management of directly related staff (£183,000).

29. Following the submission of information to calculate the costs by managers, Ms Morear carried out an "independent" review of the information provided by the staff to ensure the figures were reasonable and only included elements relevant to leasehold residents. The hourly rate was then applied to each scheme for each activity to arrive at the management charge. Ms Morear concluded that if the actual costs incurred by the Respondent during the years in question were applied to the scheme, instead of the amounts actually charged, the management charges would be higher than those actually charged.

30. At paragraphs 15 and 16 of her statement Ms Morear contends that this is a "high intensity" scheme implying the involvement of more management than most other schemes run by the Respondent. Managing the scheme involves managing thirteen contracts which have to be regularly re-tendered. On this basis she claimed that the management charges were reasonable.

31. Dr Woods claimed that the Applicants had been repeatedly asking for a breakdown of the management charges since the inception of the scheme. No explanations had been forthcoming. She produced a letter from the Respondent's ironically titled "service delivery officer" dated 15th April 2009 in which it is stated:-

"I would advise that I have spoken to the finance manager Fiona Morear regarding the management fee. Fiona has advise [sic] *that the management fee is under review and that once the review has taken place she will then be in a position to provide a complete breakdown of the charges to residents as requested"*

The notes of a meeting held on 18th February 2011, almost two years later, record that *"Andrea Newberry Finance Officer advised that Fiona Morear Finance Manager was working on the management fee in respect of the breakdown of the charges. This will be presented to the Riverside Board with the next few months"*

32. Dr Woods produced the accounts for the management of a privately owned development nearby which was similar to the Property, being a former Victorian residence in Alexandra Drive Liverpool which had been converted into 14 Flats. The management charge for the years ended 31st May 2008 to 31st May 2015 shown in the accounts is as follows:-

Year ended 31st May 2008	£2303.00
2009	£2415.00
2010	£2441.25
2011	£2493.75
2012	£2688.00
2013	£2856.00
2014	n/a
2015*	2427.00

*budget figure

33. During the hearing it was disputed by the Respondent whether such figures for management charges were for services directly comparable to those carried out by the Respondent for the Property. For example, whether such costs included the preparation of year-end financial statements by a qualified accountant. The comparable development also appears to have a lift, whereas the Property does not. As a result, the Applicants were directed to provide three further estimates for managing the Property from managing agents.

34. The Applicants produced three further estimates from Central Property Management ("CPM"), Scanlans Property Management LLP ("Scanlans") and Marshall Property ("Marshalls") respectively. The agents were asked to quote on the basis of providing services as recommended by the RICS Service Charge Residential Management Code. Helpfully Dr Woods produced a comparison between the quotes which also included testing the smoke alarm. None of the companies asked to quote inspected the Property.

35. CPM quoted a management charge of £1820 inclusive of VAT excluding smoke alarm testing. Scanlans quoted a figure of £2520 inclusive of VAT but exclusive of smoke alarm servicing and accountancy fees, which they estimated at £400. They considered that the smoke alarm testing would be carried out by the cleaners as part of their duties, so little or no additional costs would be incurred. Marshalls quoted a figure of £3369.60 inclusive of VAT and smoke alarm testing to be carried out every two to four weeks as an integral part of their management service. Scanlans also produced a draft management agreement, a schedule of services, a list of additional charges and a handover checklist.

The Tribunal's Findings

36. The Tribunal accepted Dr Woods contention that the Applicants had been requesting the basis of the calculations for a number of years. The conversion of the Property was completed in 2007. It is unacceptable that the Respondent failed to provide the Applicants with a breakdown of their management charges until a few months before this application, approximately seven years after completion of the conversion of the Property. At the very least, the Respondent should have retained documentary records of how the service charge was originally calculated.

37. It is also unacceptable that the management charges for the years subsequent to completion of the conversion were on the basis of the previous year's charge plus an increase equivalent to the increase in the Retail Prices Index. The Respondent established no correlation between the costs of management and the Index. The Tribunal also noted that the Respondent underwent considerable reorganization and upheaval in 2009. It is to be hoped that such reorganization was intended to reduce costs and overheads. The Tribunal noted that no corresponding reduction in management charges to the scheme was made.

38. Ms Morear suggested that during the period in question, the overheads of the management team increased as a result of an increased workload. This suggests an increase in management costs for the Property. The Tribunal disagreed that this would be the case. Once the management scheme is set up, no increase in management time would be necessary as a result of increased workloads unless as a direct result from the scheme itself in the form of, for example, increased repairs. The accounts produced by the Respondent do not bear this out.

39. Ms Morear also suggested that following submission of the information to compile the management charges, she carried out an "independent" review (paragraph 29). No clear methodology for this review was given but the Tribunal do not accept it was independent in the true sense of the word. Ms Morear was the Respondent's Finance Officer. She was responsible for ensuring that the services provided by her organization were not carried out at a loss, or, more likely, that they contributed to the surplus made by the Respondent from time to time. This conflicts with the interests of the Applicants who were interested in obtaining reasonable management at the lowest possible cost.

40. Ms Morear contended that this was a "high intensity" scheme implying that management time and costs were higher than normal (paragraph 30). The Tribunal disagreed. An example of a high intensity scheme would be a large block within an inner city environment, involving many repairs due to vandalism and anti-social behaviour. No evidence was forthcoming that such factors apply to the Property and it was not apparent from the accounts. Ms Morear admitted that management involved thirteen contracts. There is no lift, nor a caretaker. The Tribunal query whether a 24 hour call out service or a gas safety service is necessary. The Property consist of flats whose owners are responsible for interior repairs including gas appliances. These are not the same as properties usually managed by Registered Social Landlords such as the Respondent where the landlord is responsible for internal repairs of landlord's fixtures and fittings as well as common parts.

41. The Tribunal noted that six officers of the Respondent were directly responsible for the management of the Property, although not on a full time basis (see paragraphs 26 and 27). Other officers were consulted at other times, for example, for insurance and tenants repairs. For a relatively straightforward management exercise, the Tribunal considered this number of staff, with the resultant cost, to be excessive.

42. It was pointed out that there are various methods of calculating management charges. This can be on a cost basis as in this case; a percentage of the cost of repairs and services; or a flat fee based on the number of properties involved. The Tribunal did not have to consider which method it considered was the most reasonable. Each has its advantages and disadvantages. No calculation is particularly scientific. A managing agent has to take into account a variety of factors, such as the size and complexity of the scheme. The Respondent eventually made an estimate of the actual cost involved so far as it was concerned, although the Tribunal considered this to be flawed for the reasons stated above. One other factor which the Tribunal noted was not taken into account by the Respondent was the market and the competition among managing agents for managing similar property. On the other hand, the quotations obtained by the Applicants were unscientific; for example, no inspection of the property by any "prospective" agent was carried out. Nevertheless the Tribunal must base its findings as to a reasonable fee on the evidence placed before it and, if such evidence is not forthcoming or is flawed, its own expertise.

43. A managing agent is paid to manage: that is, to exercise reasonable skill and judgement in keeping the Property in good repair and insured at reasonable cost to the occupants. The Tribunal noted that the Respondent relied a great deal on consultants for advice. For example, consultants were employed on this scheme for Fire Precautions, Asbestos surveys and obtaining quotations, consultation and supervising the redecoration of the exterior of the common parts in 2011. This suggested to the Tribunal one of two things: either the Respondent did not have the necessary expertise in management or it was not prepared to carry out the work itself and take responsibility for its decisions.

44. The Respondent is a large scale provider and manager of residential property in the north of England. The Tribunal accepted that the Respondent had the necessary expertise to manage a property consisting of twelve flats and one house in a suburb of Liverpool which formerly consisted of two large semi-detached houses, especially in the light of Mr Styles statement.

45. Turning to the cost of the external decoration, according to Mr Styles statement, the Respondent decided *"based upon industry good practice and my own extensive experience (as a qualified Building Surveyor) of delivering cyclical painting programmes over the last twenty years"* to carry out an external redecoration in 2011. Despite Mr Styles acknowledged expertise, Arcus Consulting were employed by the Respondent to prepare a *"mini works schedule and identify the extent of the decoration works required"* They assessed the tenders and chose the cheapest at a cost of £20,478.52. The consultancy fees charged for this work in the accounts for the year ended 31st March 2012 were £1585.72.

46. Based on the size of the scheme and the Respondent's professed expertise in delivering cyclical painting programmes over twenty years, the Tribunal considered that, either the tendering exercise could have been done in house, or, if the work was sent outside, an appropriate adjustment should be made to the management charge to reflect that the Respondent had not carried out work which otherwise could and should have been its responsibility, and should have been within its capabilities. The costs of the tender exercise by Arcus Consulting were not therefore reasonably incurred and should be deducted from that years' service charge.

47. The Tribunal then turned to the Respondent's calculation of the management charge. They decided that although it was unscientific, it did attempt to calculate a charge. However the Tribunal did not accept the bases of the calculations for the reasons stated above. No details of actual time spent by each officer on managing this scheme were produced. For example, no evidence as to the total number of schemes and units managed was produced. No justification for the amount allocated to overheads was produced.

48. The quotations produced by the Applicants were similarly unscientific, but they differed from the Respondent's calculation by being market tested, albeit in an unscientific form, and in the case of the neighbouring property, were based on a similar-sized development. The Tribunal considered that the most comprehensive and detailed quote was from Scanlons. It was also close to the median of all the quotations. Their fee, it will be recalled was £2520 exclusive of accountancy fees. The Tribunal therefore decided that the reasonable management charges for the Property for the years ended 31st March 2014 and 2015 are £2500 for each year.

49. The Tribunal had no firm evidence before it to decide that the charges for the years prior to 2014 were unreasonable. On the other hand, no justification was produced by the Respondent for the increases over time to link the charge to the Retail Prices Index. To that extent these increases were unreasonably incurred and must be credited back to the service charge account for the Development.

S20(C) Application

51. The Tribunal heard submissions from the parties on the above. The Tribunal found that as a result of the application, errors had been discovered in the Applicants' favour. These probably would not have been found in the absence of the application. The Applicants were therefore justified in issuing the Application and it was not issued with malice or vexatious. They are therefore entitled to an order under the subsection and also an order refunding the application fee and the hearing fee which the Tribunal so makes.

Appendix 1

The Law

Section 18 of the Landlord and Tenant Act 1985 ("the 1985 Act") provides:

(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 provides that

(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 provision 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.

Section 27A provides that

(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 date at or by which it is payable, and

(d) the manner in which it is payable.

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

(3) ....

(4) No application under subsection (1)...may be made in respect of a matter which –

(a) has been agreed by the tenant........

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

No guidance is given in the 1985 Act as to the meaning of the words "reasonably incurred". Some assistance can be found in the authorities and decisions of the Courts and the Lands Tribunal.
In *Veena v S A Cheong* [2003] 1 EGLR 175 Mr Peter Clarke comprehensively reviewed the authorities at page 182 letters E to L inclusive. He concluded that the word "reasonableness" should be read in its general sense and given a broad common sense meaning [letter K].

Section 20C of the 1985 Act provides

(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 or the First-tier Tribunal (Property Chamber) 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 the county court

(b) in the case of proceedings before a First-tier Tribunal (Property Chamber) to the Tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded to any First-tier Tribunal (Property Chamber)

(c) ....

(d)....

(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.

(4)

Appendix 2

List of Applicants

Clare Campbell

Donna Reid

Marilyn Galvin

Georgina Woods

Josephine Bourke

Darleen Lee

Jennifer Coley

Joanne Doyle

Christopher Ryan

Lyndsey Winstanley and Jonathan Bruce

Aaron Riley