9704

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/OOMC/LCS/2013/0027**
Property	:	**Royal Court, Kings Road, Reading, Berkshire, RG1 4AE**
Applicants	:	**Caley Properties Limited** **Firas Bizzari** **Mididol Limed** **Represented by Field Seymour Parkes Solicitors**
Respondents	:	**Royal Court RTM Co. Limited** **Represented by Atlantis Estates Limited ("Managing Agents")**
Date of Application	:	**21st February 2013**
Type of Application	:	**Application for a determination of liability to pay a service charge, pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act")**
Dates of Hearing	:	**1st and 2nd October, reconvene (in parties absence) 21st November and 13th December 2013**

Attendees:

Applicants	**Respondent**
Mr. F. Bizzari, Second Appellant **Mr. N. Duckworth, Counsel**	**Mr. A. Strong MD of Atlantis Estates Limited** **Mr. K. Nicholas, Service Charges Manager of Atlantis Estates Limited**

DECISION

For the following reasons, the Tribunal finds:

(i) as reasonable and payable service charges in years 2009/10 and 2010/11 and 2011/12 in accordance with the table at Appendix A,

(ii) as reasonable and payable all service charges in the year 2011/12 in accordance with the table set out in Appendix A, save that the sum of £65 demanded by way of final demand is not payable,

(iii) the Respondents shall be prevented pursuant to section 20 of the 1985 Act from adding to the service charge account the costs of responding to these proceedings,

(iv) the Applicants do pay to the Respondent the sum of £500 pursuant to paragraph 10 of Schedule 12 Commonhold and Leasehold Reform Act 2002.

REASONS

Background

1. The premises consist of a five storey purpose-built block of 35 flats, constructed in the 1980's, split into two halves linked by walkways. There are two lifts (one in each part of the building), and a car park in the basement, where there is located a bin store. There is vehicular access to the street from the basement; rubbish bins are emptied using the same access.

2. The First and Second Applicants are lessees of flats 15-21, 25, and 33-36 Royal Court. The Third Applicant is the freeholder of the building, and since approximately 2010 been liable to discharge service charges for flat 31, in respect of which there is no lease (it having been forfeited). The Second Applicant is a Director of the First and Third Applicants.

3. The Respondent is the Right to Manage Company ("the Company") which was formed to manage the premises, and which took over management of the premises from the Applicants on 24th June 2009. Atlantis Estates Limited ("the Managing Agents") are appointed by the Company to manage the building.

4. There is considerable past-litigation between the parties made pursuant to section 27A, during both the Applicants' period of management, and the Company's management.

Current Application

5. On 21st February 2013 the Applicants made an application, pursuant to section 27A, for determination of the reasonableness and payability of

actual service charges incurred during the first two service charge years of the Company's management of the premises: namely,

(i) 24th June 2009 to 23rd June 2010 ("year 1")
(ii) 24th June 2010 to 23rd June 2011 ("year 2").

6. In respect of year 1 there had been a section 27A determination made as to the reasonableness of estimated service charges, on 13th May 2010, which found that the estimated costs of £46,765 were reasonable and payable, being individually and collectively similar to costs incurred in earlier years.

7. The Applicant suggested (and the Respondent) concurred with this Tribunal's invitation for the application to be amended to add actual service charges in the service charge year 24th June 2011 to 23rd June 2012 ("year 3"). This was because they had been included in other proceedings, as estimated costs, but by the date of the hearing actual costs were known. Accordingly, it was suitable for the three years actual costs to be considered at the same time, as they raised points common to each year.

8. In this application the Applicants said that the Respondent had not served properly certified final service charge account in any of the years – despite a delay of 2 years - nor provided an account to show whether there was a surplus or a shortfall in sums received or paid in those years. Further, that in the absence of receiving all vouchers and an opportunity to analyse them, the reasonableness of every item was disputed.

9. At a hearing of the other estimated years, on 9th April 2013, the parties agreed on the extent of disclosure which would be needed to address the issues in this case, and on 30th April 2013 the Tribunal made Directions for the exchange and filing of evidence.

10. In accordance with Directions, on 20th September 2013 the Respondent sought costs and served on the Tribunal and Applicants a schedule of costs of £9480 (including VAT) on the basis that the Applicants had behaved vexatiously and unreasonably in bringing the application, and disputing so many items. The Applicants made an application for a section 20C Order to prevent costs being added to the service charge account (without prejudice to the Applicant's contention that the lease did not allow for such recovery).

11. The applications in respect of the actual costs for the three service charge years were heard by the Tribunal over two days, on 1st and 2nd October 2013. The Tribunal reconvened on two days to makes its decision.

The Applicants' Case

12. The Applicants' rely on a witness statement made by the Second Applicant dated 19th September 2013, attached to which were the following exhibits:

- "FB1" is a Scott Schedule listing the items disputed by the Applicants, reasons for the disputes, most of the Respondent's responses, and the Applicants' replies,
- "FB2" is a comparison made by the Applicants setting out under each head of expenditure for the three years in dispute, the estimated expenditure, the sum in the service charge accounts, and the sum in the company accounts,
- "FB3" is an email dated 3rd September 2013 from a tenant of the Applicants, named Anurag Kothari, making complaint about various aspects of management of the building.

13. The Second Applicant attended the hearing and gave oral evidence. He was asked questions by both the Respondent and the Tribunal.

14. Further, the Applicants rely on the skeleton argument filed by their Counsel, and closing submissions.

15. The Applicants case has six main points:

(i) though the Respondent had provided invoices to support claimed expenditure, it had failed to produce some documents (i.e. service contracts, quotes, or estimates) in accordance with Directions, and had otherwise failed to establish that many of the service charges are reasonable, ("the reasonableness argument");
(ii) some of the service charges are not recoverable under the terms of the lease – as they relate to company expenditure, not service charge expenditure – which gave rise to a question as to whether the accounts provided are Company accounts or service charge accounts ("the irrecoverable argument");
(iii) the Respondent failed to provide copies of contracts, to prove that works are not "qualifying works" pursuant to section 20 of the 1985 Act ("the section 20 argument");
(iv) the accounting practices of the Respondent do not comply with the terms of the lease; it appeared that finally there was compliance in May 2013, but cross-examination revealed that the Respondents have not undertaken the balancing exercise at all; the certificates issued are not valid; further, reserves are being used to supplement income rather than for the purpose identified in the lease, ("the accounting practices argument")
(v) the Respondent's recovery of most of the service charges is precluded by the operation of section 20B of the 1985 Act ("the section 20B argument"),
(vi) the Respondent's recovery of all service charges is precluded by the operation of section 21B of the 1985 Act ("the section 21B

argument"), because the Respondent failed to serve valid accountant's certificates within a reasonable time of the end of the accounting period, and none of the demands are said to have been served on an interim basis.

The Respondent's Case

16. The Respondent relies on the witness statement of Mr. Strong, made on 6th September 2013, oral evidence of Mr. Strong and Mr. K. Nicholas, Service Charges Manager, employed by the Managing Agents. Closing submissions were made on behalf of the Respondent by Mr. Strong.

17. The Respondent's case is that they aim to take a prudent approach over expenditure, and have no problem collecting service charges from lessees, save the Applicants, who continually refuse to pay - so leaving the Respondent repeatedly short of funds to carry out works to the site. This has resulted in them taking a reactive – rather than proactive – approach to management, and budgeted items have been cancelled. Contracts have to be fluid and easy to terminate, rather than long-term.

18. The Respondent has complied with the Directions, and have not supplied contracts as there are few in place and most work is done on an ad hoc basis. They manage a large number of developments in Reading, and so have a good portfolio of suppliers. The Applicants have asked for additional documents, outside the scope of the Directions.

19. This is the fourth hearing since the inception of the RTM in 2009 where reasonableness has been challenged, and determinations have been made as to reasonableness and payments have been made. The Respondent's view is that the Applicants press for details to find fault, where none exist. The actual costs are not at great variance from earlier costs found to be reasonable.

20. The Respondent has served valid certificates. As these do not make demands for payment, they are not subject to section 21B.

21. At the end of the hearing the decision was reserved, and the Tribunal reconvened on two occasions to make a decision and provide reasons. For ease of reference the Tribunal has grouped the parties respective positions, and the Tribunal's findings under each heading.

Relevant Law

22. The relevant law is set out in Appendix A

Findings

The reasonableness argument

23. The Applicants case as to unreasonableness of service charges over the three years and Respondent's response, is set out in considerable detail at pages 1-78 to 1-92, 1-104 -115, and 1-147 to 1-160 in FB1. It is therefore unnecessary and indeed impractical in these reasons to repeat all of the arguments for and against each item.

24. Before giving reasons for making findings on the individual items in dispute, it is worth noting that the Applicants' starting position - as set out in the application - was that unless and until documentary evidence was adduced by the Respondent to prove each item to be reasonable, the Applicant would dispute it. It is particularly pertinent to this case to consider the dictum of Wood J in Yorkbrook Investments v Batten[1] that the "landlord in making claims for maintenance contributions will no doubt succeed, unless a defence is served saying that the standard or the costs are unreasonable. The tenant in the pleading will need to specify the item complained of and the general nature – but not the evidence - of his case. If the tenant gives evidence establishing a prima facie case, then it will be for the landlord to meet those allegations". Establishing a prima facie case was expanded upon by HHJ Rich QC in Schilling v Canary Riverside Developments Ltd [2], "in discharging the burden the observations of Wood J in Yorkbrook case make it clear the necessity for the LVT to ensure that the parties know the case which each has to meet *and for the evidential burden to require the tenant to provide a prima facie case of unreasonable costs or standard*".

25. Having received all of the invoices during the course of the proceedings, some items have been resolved, but the Applicants' case as to unreasonableness is substantially advanced (and set out in FB1) on the basis of raising numerous questions about how sums were spent, stating that items were too much or a ridiculous amount. The Applicants' approach has been to inundate the Respondent with questions, seeking a level of accountability and explanation which is disproportionate, which not only takes considerable company time to address, but which the Tribunal has not found to be particularly helpful or informative when assessing reasonableness or quantum. The Applicants approach of requiring every item to be proven, documented, and detailed, goes far beyond the terms of the lease; the Respondent must be allowed to get on and manage the building without having to account to the lessees to the "nth" degree. At the hearing the Tribunal pressed the Applicants to specify what sums they regarded as reasonable expenditure – having not done so before - and the sums then specified by Mr. Bizzari as reasonable were very much a "finger in the air" assessment - rather than based on comparative quotes or

[1] (1986) 18 HLR 25
[2] LRX/26/2005

estimates. It is noteworthy that the Applicants' challenges are not put on the basis that the sums have not been spent (save in respect of a dozen or so duplicated items), nor that the sums spent are unsupported by invoices.

26. The Tribunal sets out at Appendix B, in tabular form (provided by the Respondent) the sums in dispute, the parties respective positions, and the Tribunal's findings as to sums reasonably incurred and payable, for the following reasons.

Year 1 – 2009/10

27. By the date of the hearing, the Applicants did not dispute *water rates* (£6778.54), buildings insurance (£3633.99), *lift maintenance* (£6240.31), *fire safety* (£572.70), or *gardening* (£141.68); accordingly the Tribunal finds these costs incurred to be reasonable and payable. At the hearing the Respondent conceded that *Director's liability insurance* (£198.74) was not recoverable as a service charge under the terms of the lease; accordingly, the Tribunals finds that this cost was not reasonably incurred or payable.

28. In respect of e*lectricity* though it was the Applicants case that there had been a significant jump in costs (from £4687 to £6130.86), attributed to lights being left on winter settings throughout the period, Mr. Bizzari's recollection of his specific observations were vague. He did not refer to any records that he had kept, relied on his recollection of his visits to the building and was unable to specify which period of time he was speaking about. Mr. Bizzari levelled to inconsistent allegations, saying both that there was overlighting 24/7, and that one side of the building was not lit (being the side not occupied by the Directors of the Company). Reliance was placed on an email from a tenant, Mr. Kothari, who referred to there being an absence of lighting on one side of the building until 8pm in the previous winter (2012), and one occasion of lights being on all day on 3rd September 2013; this fell outside the relevant period, and he said nothing about the lighting in the period relevant to this dispute - though he was living there at the time. Mr. Bizzari initially said that there should be a 25% deduction, which was a rough estimate, and when asked why it should be that deduction then said that he would revise it downwards to a 10% reduction. He agreed that to challenge the amount spent on over lighting he would need to rely on expert evidence (using numbers of light fittings, and the numbers of hours over lit, multiplied by the cost per KW of electricity at the specific time) to provide an accurate assessment, which he did not have. The Tribunal was not satisfied that any increase in costs was attributable to careless usage, as opposed to being incurred at a time of high inflation of costs. The Tribunal further finds that the corridors in the building are quite dark, and is not satisfied that it is unreasonable for them to be lit 24 hours a day, 7 days a week. Further, as some of the bills show estimated readings and others actual readings, it is not possible to be clear about what electricity was used in which periods;

the Applicants points about usage having massively increased, could simply be a distortion caused by estimated readings followed by actual reading. The Tribunal is not satisfied that the Applicants have established a prima facie arguments to challenge the reasonableness of costs and finds that in respect of e*lectricity* the costs of £6130.86 were reasonably incurred and payable.

29. In respect of *Lift Telephone* costs the Applicants challenged duplicate invoices, processing costs of £9 incurred on 5 occasions, and line rental costs apparently incurred despite the contract being terminated. The Respondent demonstrated to the Tribunal's satisfaction that the duplicated costs had been credited back to the account, that it had "inherited" a contract which attracted processing costs, and that it was a reasonable management decision to incur early termination costs to end the contract to release the Respondent to enter into a cheaper contract. The Tribunal finds in respect of *Lift Telephone,* costs of £582.62 were reasonably incurred and payable.

30. In respect of *Accountancy* costs the Applicants conceded that in this current year and subsequent years, that £600 is a reasonable sum to prepare service charge accounts. However, the costs incurred in this service charge year included preparation of RTM company accounts, for which the lease makes no provision; there is no "split" on the invoice for the two different parcels of work, and so the Respondent has included in service charge costs the preparation of company accounts. This the Respondent conceded.

31. The Respondent must appreciate that company and service charge accounts serve different purposes and must fulfil different requirements, which cannot be rolled up into one document. The Tribunal finds that part of the costs incurred by the Respondent relate to the provision of company accounts, which are not recoverable under the terms of the lease. Despite the failure to provide a clear "split" on the invoice, the Tribunal finds that £428.22 is attributable to company accounts and rejects the Respondents argument that it is not recoverable as an expense of management. The Tribunal finds that costs of £616.80 in respect of *service charge accounts* were reasonably incurred and payable.

32. In respect of *Management* costs the Applicants position was that during previous management by Mididol's the costs of £4000 p.a. were incurred in 2006, 2007, and 2008 and were found to be reasonable by an earlier Tribunal. Mr. Bizzari could not recall how that sum was calculated - whether or not it was 10% of the overall costs – but had no idea what the market charged then or now. He would not object to the current costs, if the standard of service was reasonable; he thought that the costs should be reduced by 1/3rd to mark the inadequacy in service. The Applicants' position was that the Respondents had failed to produce accounts on time in accordance with the lease, failed to undertake a balancing exercise in accordance with the lease (a point

which was conceded), and that as this fault lay with the managing agents, their fees should be reduced. The Respondent did not dispute that the balancing exercise had not been undertaken, nor that certificate service charge accounts had not been served in accordance with the lease, but otherwise disputed the criticisms levelled. Using its knowledge and experience as an expert Tribunal, the Tribunal finds that the management costs of £5531.11 per annum fall below the general market rate. The management of such a building – with a high number of flats, central Reading location, heavy and sometimes inconsiderate user - throws up management challenges. There are additional challenges caused by the constant challenges made by the Applicants and frequent refusal to pay service charges, which cause cash-flow problems and forces decisions to provide services on an ad hoc basis – which makes the task of management difficult and time consuming. Whilst some of the accounting criticisms are well-made, the Tribunal finds that the management costs of £5531.11 were reasonably incurred and payable.

33. In respect of *binstore maintenance* the Applicants questioned what works the caretaker performed daily and the amount of time spent, particularly as the Respondents later curtailed his hours; the Applicants considered that this implied that he was engaged in this period for an unreasonably long time. Further, two duplicated invoices were paid. The building is a large one, with 35 households, producing commensurate amount rubbish, all of which requires management. The Tribunal finds that it is reasonable to pay a caretaker 30 minutes per day to manage this, as well as other items dumped (fridges etc). The Tribunal accepts that the costs had to be cut in later years – by reason of the Applicants consistent failure to pay – but which does not lead to a finding that the costs incurred in this year were unreasonable. The Tribunal finds – save the duplicated invoices – that the costs incurred on *binstore maintenance* of £1830 are reasonable and payable. There was a dispute about the payment to an outside contractor to remove a fridge, at a cost of £287.50, on the basis that the Applicants had done so at a cost of £50 and that the Council would charge £20. However, the Applicants rely on a printout from the Council website in 2012/ 2013 (so later than the period to which it is relevant which is 2009/10) and the Tribunal notes that the Council say that it cannot collect fridges or freezers from business. The Tribunal accepts the evidence given that this was an industrial fridge left by the Applicants business, and so the Council would not have collected the item. The Tribunal finds that the costs incurred in this respect of binstore maintenance of £1830 were reasonably incurred and payable.

34. The heading of *general maintenance* includes costs for refitting of locks and hinges on several occasions, provision of new cylinders and keys, provision of skip and clean up costs, replacement light bulbs and fitting, cleaning up after a flood, and cleaning of gutters. The Applicants comments are variously that costs cannot possibly as much as this, that costs are ridiculous, that there cannot possibly have been as many light

bulbs needing replacement as claimed, that tenants should have been charged for loss of keys and costs of flooding defrayed to the lessee responsible. The Tribunal finds that the points made are based on supposition, without real substance, and damage Mr. Bizzari's general credibility. They do not establish a prima facies case of unreasonableness. There is a failure to recognise that this amounts to less than £100 per unit per year, which is a small sum to spend on this building. The Tribunal finds that these costs were incurred, that they were part and parcel of the ordinary costs incurred in a building of this size with the type of occupant in residence. The Tribunal finds the costs incurred on *general maintenance* in the sum of £3261.36 were reasonably incurred and payable.

35. The heading of *exterior maintenance* include replacement of Georgian safety glass and resolving a flooding (which highlighted a lack of access, which required rectification). The Applicant's evidence amounts to a series of questions, which do not establish a prima facie case of unreasonableness. In evidence the Applicant advanced £400 as being a reasonable sum in respect of glass works – as opposed to the actual costs of £808.10 – without any specific basis for saying so. The Tribunal finds that the sum of £1619 incurred on *exterior maintenance* were reasonably incurred and payable.

36. The costs for *general cleaning* were regarded as too high by the Applicant for the standard achieved; the Applicants position was that costs would have been reasonable - but the building was routinely filthy. He had no photographs to demonstrate this and relied on the email of Mr. Kothari, in respect of general cleaning it was noted that Mr. Kothari referred only to cleaning in the car park and it was not clear that he was referring to the period of time in question. The Tribunal notes that costs incurred in the previous year for general cleaning whilst under the Applicants management were £6000, and the costs in this year (£3295) amounted to £62 per week. In light of the number of corridors, stairwells, lifts, and hallways, it is highly unlikely that the common parts could be kept up to a good standard. The Tribunal accepts that the Respondent has cut costs and services to a bare minimum because of cash flow problems. That being so the Tribunal finds that the costs of £3295 spent on general cleaning were nevertheless reasonably incurred and payable.

37. The Respondent incurred *sundry expenses* of £1040, for loss of keys and removal of graffiti, though conceding that £101.94 should not have been applied. The Applicant has obtained evidence of the service that the local council now provide, without any evidence that it was operating in 2009/10. There is no comparable quote which could show that the costs actually incurred were unreasonable. The Applicants have failed to establish a prima facie case of unreasonableness. The Tribunal notes that the costs would amount to £15 per week per unit, which for a building of this size, with much sub-letting and high occupancy, an

expenditure of £938.06 on sundry items, were reasonably incurred and payable.

38. The Respondent incurred *loan interest* of £237 to borrow £10,500 as an emergency, arising from the Applicants' non-payment of service charges. The Applicants dispute that this item is recoverable under the terms of the lease. However, the Tribunal finds that it is recoverable by virtue of clause 5(5)(n) of the lease, which provides that the lessor may "without prejudice to the foregoing to do or cause to be done all such works installations acts matters and things as in the absolute discretion of the lessor may be considered necessary or advisable for the proper maintenance safety amenity and administration of the building". In a situation where the Respondent (being a RTM Co.) does not have any assets, has a significant non-payment problem, cannot meet outgoings, and where the lease is absent of specific provision on taking loans, the Tribunal is satisfied that the width of the clause permits such borrowing. Accordingly, the Tribunal finds that £237 incurred *loan interest* were reasonably incurred and payable.

39. The Respondent demanded service charges, which included £13,165 to set aside as *reserves*, gathered in as part of a 5-year plan which was adduced in evidence. The Applicants were concerned about the size of the amount demanded, and whether or not the sums demanded were being set aside and held in a trust account. In cross-examination of Mr. Strong and Mr. Nicholas, Mr. Duckworth established that the sums were being gathered in but used by the Respondent, to meet the shortfall left by the Applicants' non-payment of service charges. This evidence was elicited in the context of questions being asked to ascertain whether the on account payment of service charges was followed up by the issue of final demands, and any deficit demanded or surfeit credited to the reserves. The Tribunal finds that this is a building which has been subject to neglect over a long period, with inherent risks arising from ageing lifts and other infrastructure; good management recognises a need to set aside a sum such as this to meet future costs. The Tribunal notes that in earlier years there was no provision for this. The Tribunal finds that the sum is reasonable and payable to set aside for works to the building. The Tribunal notes that by clause 1(14) the lease provides in the definition of "the reserve fund" that it means "moneys reserved for periodical expenditure by the lessors"; this is not further defined. Despite the Applicants' opposition to the monies being used for day-to-day purposes, this is not at odds with the stated purpose of setting aside money, in clause 5(o)(i) of the lease. The Applicants have a fair point as to the failure to set aside the funds in a separate account as required by 5(o)(ii), but this does not undermine that as an amount was reasonably incurred and payable. The Tribunal finds that the sum of £13,165 was reasonably incurred and payable.

40. By the date of the hearing, the Applicants did not dispute *water rates* (£7848.87) or *gardening* (£796.30); accordingly, the Tribunal finds these costs were reasonably incurred and payable.

41. At the hearing the Respondent conceded that *Director's liability insurance* (£198.74) was not recoverable as a service charge under the terms of the lease; accordingly, the Tribunals finds that this cost was not reasonable incurred and payable.

42. In respect of *buildings insurance* the Applicants position was that the policy had an oppressive empty property exemption, and that there was a concern that the Respondent had not obtained a revaluation of the premises, so risking under-insurance. This went to the standard of management. The Applicant adduced no evidence to suggest that the building had been modified – so giving rise to a need to revalue it – nor that the practice of the insurance company had not been followed, namely to build in annual re-building cost inflation. The Tribunal is not satisfied that the Applicant has raised a prima facie case as to unreasonableness, and aside from the concession of £208.89 having been made by the Respondent, otherwise the Tribunal finds the sum of £4928.11 were reasonably incurred and payable.

43. In respect of *electricity and gas costs* the same arguments arise in this service charge year as in year 1, and for the reasons given in paragraph 28 the costs are reasonable and payable. The Applicants raised one additional point, that of a gas standing charge, which is said to be excessive, as the boiler has been disconnected. The Respondent's position is that the costs of removal and then possible re-installation at some point in the future, make continued payment of the standing charge a reasonable management decision. The Tribunal accepts that this is so and so finds the sum of £5067.29 for *electricity and gas costs* were reasonably incurred and payable.

44. In respect of *lift telephone costs* the Applicants have not raised a prima facie case, simply disputing as unsatisfactory the facts given as the Respondent's explanation. The Tribunal notes that there is no comparable evidence adduced by the Applicants, nor is it said that there is no invoice in support of expenditure. The Tribunal finds the sum of £780.15 for *lift telephone costs* was reasonably incurred and payable.

45. In respect of *legal and professional costs* of £9440, the Applicants concede accountancy costs of £600. The remainder were legal costs incurred by the Respondent in proceedings to enforce service charge covenants. In a decision issued by the Tribunal on 10th January 2010 in proceedings between the same parties, extensive argument was advanced on the issue of recoverability of legal costs, and the Tribunal found that the clause in the lease relied on by the Respondent (namely

(5(5)(g)(ii)) did not allow recovery of legal costs as part of the service charge. It would not preclude proceedings brought against individual lessees pursuant to clause 3(9)(c) and which point was common ground between the parties and recorded as such in those reasons. In these proceedings the Applicant argues res judicata, and makes the point that the Respondent could have – but did not – challenge the finding on costs by way of an appeal. The Respondent has not satisfactorily responded to the Applicants argument, which this (differently constituted) Tribunal finds persuasive. Accordingly, the Tribunal finds that only the sum of £600 *legal and professional costs* was reasonably incurred and payable.

46. In respect of *management fees* of £5613.67 the parties raised the same arguments as those recited in paragraph 32, and for the same reasons the Tribunal finds the sum were reasonably incurred and payable.

47. In respect of *Lift Maintenance* of £3,299.25 the Applicants take issue with a credit note incorrectly charged as a cost (of £466.08), which is conceded by the Respondent. Further, the Applicants question three invoices for maintenance to the lift in September and December 2010 and March 2011, refer to correspondence dated 12th April 2011, concerning notes left by Schindlers Lifts, with which contractor the Applicant were content. There is a reference to "abject failure" to take recommendations made, though this appears to relate to car park shutters. The Applicants have not established a prima facie case to establish that the costs incurred in respect of *Lift Maintenance* is unreasonable, and so the Tribunal finds that the sum of £2,832.92 were reasonably incurred and payable.

48. In respect of *bin store maintenance* of £2,407.42 the Applicants made the same points as the earlier year, and said that the costs of installing new gates on the bin store area at a cost of £998 amounted to an improvement, which was irrecoverable under the terms of the lease. Mr. Bizzari thought that half such a cost would be reasonable, though without saying why. The evidence as to an improvement was that the gates had been wooden and were now made of metal, but there was no evidence of the costs of metal as opposed to wooden gates, in the absence of which the Tribunal is not satisfied that this is an improvement, and so irrecoverable. The Tribunal is not satisfied that the Appellant had made out a prima facie case as to unreasonableness of costs for keeping the area clean, and notes that a cost of approximately £30 per week is a modest amount to do the works necessary. Further, whilst the wooden gates have been replaced by metal there was inadequate evidence for the Tribunal to conclude that it amounted to an improvement. The Tribunal is satisfied that the sum of £2,407.42 were reasonably incurred and payable.

49. In respect of *general maintenance* of £7,759 the Applicants raised a challenge to various modest items concerning replacement of lock cylinders, deadlock to basement, fitting car park lights so that they are

permanently on, resetting of timing clocks, and clearing main stack pipe. The challenges were made in the form of a series of questions, and statements that sums were too high, and questioned why works were necessary, none of which raised a prima facie challenge to unreasonableness. The Tribunal notes the sums involved, and does not consider as a global figure that costs of maintenance in this range to suggest anything unusual or concerning. The Tribunal finds the sum of £7,658.62 were reasonably incurred and payable for *general maintenance.*

50. In respect of *Fire Prevention, and Health and Safety* the sum of £7,473.13 was expended. The Applicants were concerned that the works were unnecessary, some were improvements not recoverable under the terms of the lease, and that the company engaged was not a specialist in the field. Mr. Duckworth cross-examined Mr. Strong as to the necessity of some of the works and particularly the failure to support (by adducing documentary evidence) the assertion made that the works were all advised by the fire service. This went to the point whether or not the works would be regarded as improvements or not. Criticisms were made about locating emergency exit buttons which were accessible from outside the building, so compromising the security of the car park. The Tribunal accepts the point made that the paper trail as produced by the Respondent was not complete – though time given overnight should have made this possible - but accepts the oral evidence of Mr. Strong that the fire service so advised and finds that the works were done, were done to a reasonable standard and at a reasonable cost. The Tribunal finds that the Respondent were advised by the fire service to do the works, and that clause 5(5)(n) of the lease is a sufficiently wide power that these costs are recoverable. Accordingly, the Tribunal finds that in respect of *Fire Prevention, and Health and Safety* the sum of £7,473.13 were reasonably incurred and payable.

51. In respect of *Exterior Maintenance* the sum of £2,649.53 was incurred and the Applicants challenged approximately half of the costs. The Applicants took issue with locks being changed twice in short succession, which was dubious, and the Respondent should have done more to prevent vandalism; locksmiths (who it is said use qualified electricians) were too costly to change tube lighting and fitting spotlight bulbs; questioned the need for a one-off clean of the car park. Save the sum of £252 conceded by the Respondent, the Tribunal is satisfied that the sums were expended, that the costs incurred were reasonable and payable. The Applicants' challenges form a series of questions, which fall short of raising a prima facie case of unreasonableness. It does not dispute that costs were actually incurred, just the management decisions made. The Tribunal finds that the sum of £2,398. were reasonably incurred and payable.

52. In respect of *general cleaning* the sum of £1647.00 was incurred, which was approximately half the costs incurred in the previous year and ¼ the costs under this heading when the Applicants were

managing the premises. The Applicants challenges were in accordance with the points made in Year 1. For the same reasons as given at paragraph 36 of this decision, the Tribunal finds the costs incurred were reasonably incurred and payable.

53. In respect of *loan interest* the sum of £788 was incurred, and in respect of *reserves* the sum of £13,165 were incurred. The arguments made in Year 1 apply equally to the current year, as do the reasons for the finding given at paragraphs 38 and 39. For the same reasons, the Tribunal finds these costs were reasonably incurred and payable.

Year 3 – 2011/12

54. By the date of the hearing, the Applicants did not dispute *lift telephone* (£404.30), *accountancy* (£600), and *gardening* (£37.50); accordingly, the Tribunal finds this costs to be reasonably incurred and payable. At the hearing the Respondent conceded that *Director's liability insurance* (£206.49) was not recoverable as a service charge under the terms of the lease; accordingly, the Tribunal finds that this cost was not reasonable or payable.

55. In respect of *water charges* the sum of £7,829.82 was incurred, to supply water to the 35 units. The Applicants complaint was that there had been a water leak into the commercial unit below (owned by one of the Applicants') which was said to have been ongoing since 2010, and so there was a wastage of water until resolved in December 2011; further all bills were estimates. The Respondents case was that the estimated readings were relatively accurate when compared to the actual readings, and that whilst it took some time to establish and cure the source of the leak, entry to a flat had to be secured. The Tribunal notes that the cost of water in the previous year was slightly higher, and whilst wastage of water is regrettable, the Applicants have not demonstrated a quantifiable loss nor that the Respondents were neglectful in their responsibilities so leading to inflated water costs. The Tribunal finds the water charges of £7,829.82 were reasonably incurred and payable.

56. In respect of *insurance costs* the sum of £5,674.19 was incurred, though the Respondent conceded that £316.76 in interest charges was irrecoverable and finally sought the sum of £4,789.98 in respect of which an invoice has been adduced in evidence. The Applicants points remained the same as year 2, and in the absence of any evidence of an alteration to the building to give rise to a need for revaluation, the Tribunal is satisfied that the costs of insurance of £4,789.98 were reasonably incurred and payable.

57. In respect of *light and heat* the sum of £4856.68 was incurred. The points made by both parties in this current year were identical to the earlier years, and in accordance with paragraphs 28 and 43 the

Tribunal finds the sum of £4856.68 were reasonably incurred and payable.

58. In respect of *bin store maintenance* the sum of £2,401.20 was incurred. The points made by both parties in this current year were identical to the earlier years, and in accordance with paragraphs 33 and 48 the Tribunal finds the sum of £2,401.20 were reasonably incurred and payable.

59. In respect of *general maintenance* the sum of £7659 was incurred (referring to the service charge accounts) and the Respondent has made concessions amounting to £2147.27 (at points 11.6 and 11.11 on pages 1-153 and 1-154), so leaving costs incurred under this heading of £5511.73). The Applicants have raised a multitude of questions about specific invoices, saying variously it was not clear why works were needed, that the costs were high for a derisory service, questioning how long certain items took. However, the Applicants have not established a prima facie case of unreasonableness of these costs and in accordance with our earlier observations as to the annual costs of maintaining such a building, the Tribunal finds that these costs of £5,511.73 were reasonably incurred and payable.

60. In respect of *fire prevention, health and safety* the sum of £730.06 was incurred. The Applicants case was that the costs for a service exceeded what was reasonable, and that it was not good enough to use someone new, when a historic contractor had provided a near identical service. The Respondent's case is that the former contractor had become unreliable, that the Basingstoke Fire Protection had recommended the new contractor; albeit costs may have been higher for works done at short notice, but the historic contractor intended to increase their prices. Further, that the legionnaires report was not adduced in evidence, to which the Respondent said that a test (not a report) was needed annually. The Tribunal is satisfied that the sums were expended, is satisfied with the Respondent's explanation as to the increase in costs, and absence of report, and so finds that the sum of £730.06 was reasonably incurred and payable.

61. In respect of *general cleaning* the costs of £2,726 were incurred and the parties made the same points as made in earlier years. The Applicants raised as an issue the costs of one-off cleaning events, and window cleaning. The Tribunal accepts the explanation that regular cleaning was supplemented by one-off events, needed in view of the reduction in service and costs, reduced in line with affordability. The Tribunal finds the sums incurred of £2,726 were reasonably incurred and payable.

62. In respect of *exterior maintenance* the sum of £873 was incurred which included repairing a gutter, removing a header tank, supplying and fitting new pipework, cleaning of exterior windows, attending to a leak and repairing the door frame of the lift door. The Applicants challenges amount to a list of questions, observes in one case that

labour costs had doubled, and asserted that one cost should be chargeable to specific units. The points do not collectively raise a prima facie case as to unreasonableness, and the Tribunal is satisfied that the sums of £873 spent were reasonably incurred and payable.

63. In respect of *management fees* of £7,323.41 the parties raised the same arguments as those recited in paragraph 32. The Tribunal notes the increase in costs, now amounting to £205 per unit, and for the same reasons the Tribunal finds the sum of £7,323.41 were reasonably incurred and payable.

64. In respect of *lift maintenance* of £9,726 the Applicants disputed some of the invoices – amounting to half of the costs - on the same basis as challenged in 2011, and in respect of one invoice said that the cost was absurd to fit new light, asserted that the lift was in darkness for weeks, disputed the invoice because there was no evidence of other quotes being obtained, and asked questions about whether the contractor checked wiring. The Tribunal notes that the Applicants have not provided any alternative quotes, or basis for establishing that the costs were "absurd" for the works done. The Tribunal also relies on the findings made at paragraph 47 and finds the costs of £9,726 to be reasonably incurred and payable.

65. In respect of *binstore maintenance* of £1492.55 the Applicants challenged most of the costs, asserting that at some point the internal binstores had overflowed for weeks, that the hourly costs were now more per week than in earlier years, and adopted the arguments from previous years. The Tribunal notes that the details provided by the Applicants are limited, do not undermine the claim for the remainder of the year, which is modest and is almost £1000 less than the previous year. The Respondent has satisfactorily met the compliant of an increase in hourly costs, referring to the work done including litter picking. The Tribunal finds the costs of £1492.55 incurred in binstore maintenance to be reasonably incurred and payable.

66. In respect of *intercom maintenance* of £708, £126 was conceded by the Respondent. In respect of the remainder the Applicants disputed the Respondent's reason for doing works because the system had become obsolete. The Applicant questioned how a system could suddenly become out of date and unserviceable, when a contractor had been met on site and quoted for a replacement and when a fault was rectified in an earlier year; in answer to this the Respondent said that the system had not previously been regularly serviced, and faults would occur through wear and tear. The Applicant considered a maintenance contract a waste of money. The Applicants have not raised a prima facie case as to unreasonableness, raising questions and making assertions which did not undermine the management decision to have a regular servicing system in place. The Tribunal finds that the sum of £582 was incurred and is reasonably incurred and payable.

67. In respect of *professional fees* of £3746.15 and *bank charges* of £15, these have not been pursued by the Respondent and so the Tribunal finds that they were not reasonably incurred and payable as a service charge.

68. In respect of graffiti removal of £264 the Applicants view was that the amount was absurd for 4 hours work, advanced an argument that the Council would have done the work, and that as a carpenter would charge £27.50 per hour, it should not exceed this sum. The Applicant relied on a printout from the Reading Council website, which said that the Council would provide a free service when working within certain parameters (where 1m squared, visible from the public highway, and less than 2 meters from the ground) outside which they would charge. In the absence of reliable evidence as to extent and location of the graffiti, the Tribunal is not satisfied that the Applicant has established a prima facie case to challenge the principle of the working being done by outside contractors or the costs. The Tribunal finds that the cost incurred of £264 is reasonable and payable.

69. In respect of loan interest of *£1640.47* was incurred and reserves of *£12,500* were demanded. In accordance with the earlier arguments advanced, the Tribunal finds in accordance with paragraphs 38 and 39 that the costs were reasonably incurred and payable.

The Section 20 argument

70. The Applicants were keen to establish whether the Respondent had entered into qualifying long term agreements, which would require compliance with section 20 of the 1985 Act. The Respondents denied that this was so, and said that they are no in a position to do so, and because of financial constraints have done works on an ad hoc basis. The Tribunal accepts the explanation given, and is not satisfied that any costs incurred in the three years by reason of this provision.

The Irrecoverable argument

71. The question of irrecoverability of some of the service charge items has been dealt with above under the heading "unreasonableness argument", and so does not need to be addressed separately.

The Accounting Practices argument

72. During the course of cross-examination of Mr. Strong and Mr. Nicholas as to accounting practices followed by the Respondent, the following became clear:

    (i) the Respondent did not deposit into a separate account and hold on trust as required by clause 5(o)(ii) of the lease, the funds collected as reserves,

(ii) the Respondent did not operate the lease by way of seeking equal half yearly payments of service charge from the lessee and making a demand for any deficit or carrying forward a surplus, as set out in clauses 3, 4, and 5 of the Sixth Schedule; the Respondent made use of the reserves,

(iii) the Respondent did not, as required by paragraph 7 of the Sixth Schedule of the lease, provide to the lessee as soon as reasonably practicable after the expiry of the service charge year, a certificate signed by the Lessors' accountant specifying (a) the total expenditure for the year, (b) the interim and further interim charge paid by the lessee together with any surplus from the earlier year (c) in respect of the current year the deficit or excess attributable to this lessee ("the balancing and reconciliation argument"),

(iv) save in respect of the final year, the Respondent did not issue a final demand accompanied by the (iii),

(v) there was clearly some re-working of accounts, to create service charge accounts and company accounts.

73. During the course of the hearing the Tribunal explained that the Tribunal's function was not to act as lease "police"; rather, to assess the reasonableness and payability of service charges. Accordingly, errors in accounting practices were relevant only to the extent that they affected (i) recovery of management charges related to performance (which are been dealt with at paragraphs 32, 46, and 63), (ii) the recovery of items relating to the company, and which were not recoverable as service charge items (dealt with under the reasonableness argument), or (iii) the extent to which it impacted on section 20(B) of the 1985 Act, as to serving valid demands in accordance with Brent LBC V Shulem Association [3], which is dealt with below.

74. The Tribunal should make clear that the Respondent should revisit and understand the terms of the lease, and where appropriate, seek legal advice. Irrespective of the assertion made that during the Applicants stewardship, they had not attended to such matters, this is not a justification for not operating according to the terms of the lease.

The Section 20B argument

75. The Applicants case is that the Respondent has failed within 18 months of the costs being incurred for years 1 and 2, and some of year 3 (anything incurred before 5th October 2011), either to (a) validly demand them from the leaseholder, or (b) notify the Applicants in writing that costs have been incurred and that they would be required to contribute by payment of a service charge, in accordance with section 20B of the 1985 Act. The effect of failing to do so was that the sums were irrecoverable.

[3] [2011]EWHC 1663

76. Mr. Duckworth argued that the service demands needed to be valid demands (i.e. accompanied by the certificates) and as these were served in May 2013 (albeit not s21B compliant), all costs incurred in 2010 and 2011, and were irrecoverable. The Applicants case is that none of the demands served by the Respondent have been stated to be served on an interim basis, and the certificates served refer to a deficit between the interim service charge and final charge, which "will not be collected".

77. In respect of year 3 (June 2011 to June 2012) all costs incurred before 5th October 2011 were irrecoverable.

78. He asserted that at no time did the Respondent serve section 20B(2) notices, namely to notify the Applicants in writing that costs have been incurred and that they would be required to contribute by payment of a service charge.

79. Mr. Duckworth's skeleton argument did not address the impact that the "on account" system had on the operation of section 20B. In cross-examination of Mr. Strong and Mr. Koichi, the oral evidence of the "on account" system was that:

(i) each year a demand for interim payments had been made, which lead to recovery of most of the costs; so that prior to March 2013 no demands were made for balancing payments,
(ii) a deficit would be funded from the reserve account - which deficit arose because the Applicants have repeatedly failed to pay- this was a practical response to the situation, albeit not what the lease provided,
(iii) the Respondents denied that this was a "rouse" to avoid the 18 month bar,
(iv) between 2009 and March 2013 the managing agents provided an end of year account, though not in accordance with the provisions of the lease as to certification and which did not provide the level of accountability required in the lease
(v) the Applicants were well aware of costs as they have demands, an annual reconciliation, and a set of accounts.

80. The Respondent's position was that section 20B applied only when a demand was made, but that as they had made use of the reserves it was not necessary to make a demand for final service charges. This argument applied to Year 1 and Year 2.

81. The Tribunal finds that the exception to section 20B, recognised in Gilje v Charlegrove Securities [4] means that where a lease provides for a balancing payment in arrears, it is the demand for the final balancing payment which triggers the section 20B point. Where that final demand is not made, the section 20B restriction does not bite to

[4] [2004] HLR 1

preclude recovery. The legitimate basis for not seeking a final payment is where the payment on account covers all costs. Here, as the balancing exercise was not conducted because the reserves were used, the section 20B point does not operate to preclude recovery of years 1 and 2. However, in respect of year 3, it operates to preclude recovery of the balance demanded, namely £65, until such time as a valid certificate is issued.

The Section 21B argument

82. The Applicants case was that the Respondents demands were not accompanied by a statement of tenants rights and obligations, as required by section 21 B of the 1985 Act. Neither in his witness statement nor oral evidence did Mr. Bizzari address this point, and so the Applicants rely on the cross-examination put to Mr. Strong and Mr. Koichi.

83. The Tribunal heard evidence from Mr. Bizzari and Mr. Strong, both arguing a different a different point of view. Mr. Bizzari said that the demands made were not accompanied with statement of rights and obligations; Mr. Strong said that it was common practice do so, said that they were not included in the bundle, as they are not stored with the demands, but that the staples which were shown on some of the photocopies accorded with their practice to staple a copy and then send them. It does not appear that this point had featured in the application or Mr. Bizzari's witness statement; whilst section 21 of the 1985 Act was referred to, it was in respect of other matters. In any event, having found that the final certificates were not making demands – save in respect of year 3 – the point becomes otiose, as section 21B applies only to demands made. As the Respondent will need to re-serve the final demands for year 3, the demand would need to be accompanied by such a statement.

Costs

84. In view of the findings made in the earlier proceedings, and as set out at paragraph 45, the Tribunal considers that the Respondent cannot recover costs as a service charge. The Tribunal need not therefore make a section 20C order, but will do so for the avoidance of doubt; this is appropriate in view of the "creeping back into the account" the earlier costs.

85. The Respondents seek an order for costs on the basis that the Applicants have behaved unreasonably. Though the Tribunals powers now are unlimited in respect of applications issued on and after 1st July 2013 [5] , for applications issued before that, costs are limited to £500 where the party has incurred them as a result of the behaviour of the

[5] The Tribunal Procedure (First-tier Tribunal) (Procedure Chamber) Rules 2013

other party being frivolous, vexations, abusive, disruptive or unreasonable [6] in connection with the proceedings.

86. The Tribunal finds that the Applicants have behaved unreasonably in these proceedings. The Applicants starting point is that every item will be disputed until proved, which is not a balanced or proportionate approach to the dispute; the Applicants have failed to have regard to the wider picture, as to historic costs, as against current costs, which have increased quite modestly. The Applicants persistence and expectation as to the level of accountability is undermining of the Respondent, consumes a large amount of their time, pursuing unnecessary points. The Applicants should appreciate that the limitation of £500 applies in these proceedings only because of the date that the application was issued. Future applications do not have the benefit of such a limitation.

.....

Judge J. Oxlade

30th January 2014

[6] Paragraph 10(2)(b) of the Commonhold and Leasehold Reform Act 2002

Appendix A

S/C Year 2009/10	Figure in accounts	Original disputed amount	A concedes	R concedes	Current disputed sums	Findings of Tribunal
Water rates	6778.54					6778.54
Buildings Insurance	3933.99					3933.99
Director's liability	198.74	198.74		198.74	0	0
Electricity	6130.86	6130.86			6130.86	6130.86
Lift telephone	582.62	242.81	134.44		108.37	582.62
Accountancy	1045.68	428.88			428.88	616.80
Management Fee	5531.11	5531.11			5531.11	5531.11
Lift Maintenance	6240.31					6240.31
Binstore Maintenance	2010	1757		180	1577	1830
General Maintenance	3261.36	3002.66	287.5		2715.16	3261.36
Fire Prevention H&S	572.70					572.70
Exterior Maintenance	1618.71	1498.71			1498.71	1618.71
Gardening	141.68					141.68
General Cleaning	3295.00	3295.00			3295.00	3295.00
Sundry Expenses	1040.19	446.65			446.65	938.06
Loan Interest	237	237			237	237
Reserves	13165	13165			13165	13165

S/C Year 2010/11						
Water rates	7848.87	7848.87	7848.87			7848.87
Buildings Insurance	5136.86	4304.77	208.89		4095.88	4928.11
Director's liability	198.74	198.74		198.74	0	0
Electricity and Gas	5067.29	5067.29			5067.29	5067.29
Lift telephone	780.15	456.62			456.62	780.15
Legal and Professional	9439.75	9439.75	600		8839.75	600
Management Fee	5613.67	5613.67			5613.67	5613.67
Lift Maintenance	3299.25	2329.84		466.08	1863.76	2832.92
Binstore Maintenance	2407.42	2407.42			2407.42	2407.42
General Maintenance	7658.62	7123.62			7123.62	7658.62
Fire Prevention H&S	7473.13	6864.26			6864.26	7473.13
Exterior Maintenance	2649.53	1385.01	252		1133.01	2398.00
Gardening	796.30					796.30
General Cleaning	1647	1647			1647	1647
Loan Interest	788	788			788	788
Reserves	13165	13165				13165

S/C Year 2011/12						
Water rates	7829.82	7829.82			7829.82	7829.82
Buildings Insurance	5674.19	4789.98			4789.98	4789.98
Director's liability	206.49	206.49		206.49	0	0
Light and Heat	4856.68	4856.68			4856.68	4856.68
Lift telephone	404.30					404.30
Account-ancy	600					600
Car Park Maint-enance	2401.20	2401.20			2401.20	2401.20
General Maint-enance	82.09				5381.43	5511.73
Fire Prevention H&S	730.06	730.06			730.06	730.06
General Cleaning	2726	2726			2726	2726
Exterior Maint-enance	646	873			873	873
Gardening	37.50					37.50
Manage-ment Fees	7407.93	7407.93		84.52	7323.41	7323.41
Lift Maintenance	9726	5381.43			5381.43	9726
Binstore Maintenance	1492.55	1282			1282	1492.55
Intercom Maint-enance	708.00	582			582	708
Professional fees	-3746.15					
Bank charges	15					0
Graffiti removal	246	246				246
Loan Interest	1640.47	1640.47			1640.47	1640.47
Reserves	12500	12500			12500	12500

Appendix B

Relevant Law

The 1985 Act as amended by the Housing Act 1996 and the Commonhold and Leasehold Reform Act 2002 provides as follows:

Section 18

"(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling house as part of or in addition to the rent –

(a) which is payable directly or indirectly for services, repairs, maintenance, improvement or insurance or in the landlord's cost 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 of which the service charge is payable.

(3) For this purpose

(a) costs include 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 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 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.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 20B

(1)" If any of the relevant costs taken into account in determining the mount of any service charge were incurred more than 18 months before a demand for payment of the service charge is service on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflect 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 21B

(1) "A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.
(2) .....
(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.
(4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation ot the period for which he so withholds it".

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 it costs were incurred for service, repairs, maintenance, improvements, insurance, or management of any specified description, a service charges would be payable for the costs and if it would 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.

<u>In respect of Costs</u>

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 the proceedings before .. the LVT.. are not 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) .....

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

Commonhold and Leasehold Reform Act 2002

10(1)" A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are when -

(a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with Regulations made by virtue of paragraph 7, or
(b) he has, in the opinion of the leasehold valuation tribunal acted frivolously, vexatiously, abusively, disruptively, or otherwise unreasonably in connection with the proceedings.

(3) The amount which a party to party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed -
(a) £500..."