12127

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BG/LBC/2016/0274**
Property	:	**10 Balmoral House, Lanark Square, London E14 9QD**
Applicants	:	**John Dowland** **Omowumi Dowland**
Respondents	:	**Glengall Bridge Management Ltd** **Melrose Apartments Property Ltd**
Type of Application	:	**Liability to pay service charges**
Tribunal	:	**Judge Nicol** **Mr CP Gowman MCIEH MCMI**
Date and venue of hearing	:	**23rd March 2017 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**31st March 2017**

DECISION

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(1) The Tribunal decided during the hearing that the Applicants were debarred from relying on their amended schedule and bundle of documents filed and served late and outside the directions.

(2) The service charges levied by the Respondents for the years 2011-2016 inclusive are payable by the Applicants save in relation to:

a) The First Respondent's costs of the 2015/2016 county court proceedings which they discontinued.

b) The First Respondent's management liability insurance and company secretarial costs.

(3) The Tribunal makes no order as to costs.

Relevant legislative provisions are set out in the Appendix to this decision.

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Reasons for Decision

1. The Applicants applied for a determination under section 27A of the Landlord and Tenant Act 1985 ("the Act") as to the reasonableness and payability of service charges sought by the Respondents for the years 2010-2016 inclusive. The Applicants have been the lessees of the subject property since 2003 but have never themselves paid any service charges (other than one payment of £2,420 on 11th July 2016). Their fundamental complaint is that the total service charge bill is too high and, in particular, according to their detailed research, higher than service charges levied in similar nearby blocks. At up to £8,000 per year, the Tribunal agrees that the total charges are clearly higher than would normally be expected but this cannot form the basis of a successful challenge by itself. While the relatively high charge justifies queries from the lessees, it is necessary to examine the charges individually to find out which, if any, could be regarded as unreasonably incurred and, if so, to what extent.

2. The Applicants' mortgagees have paid some of the disputed service charges and added those sums to the mortgage. In 2007 the Applicants were made bankrupt. The property was not re-vested in them until 7th September 2011 and, by a preliminary decision dated 31st October 2016, the Tribunal held that they could not challenge any service charges levied prior to that date.

3. The Tribunal heard the application on 23rd March 2017. Both Applicants attended and represented themselves, although the First Applicant made most of their submissions. The First Respondent, the lessee-owned management company, was represented by counsel, Mr Doyle, and their solicitor, Mr Wayman, and they were attended by representatives of their agents. The Second Respondent, the freeholder, was represented by Mr Stancliffe of their solicitors.

Preliminary issue – Applicants' late service of schedule and bundle

4. Before the Tribunal could hear the substantive matters, it was necessary to consider a request from both the Respondents for the exclusion of certain material delivered late by the Applicants. The Tribunal issued directions on 13th September and 29th November 2016. The first direction in the latter order required the First Respondent's former agents, Douglas & Gordon Block Management, to send to the First Respondent any relevant documents. The First Respondent sent on what they received to the Applicants along with other material required by the third direction by the required date in December 2016.

5. Based on what they had received to date, the Applicants submitted a Scott schedule of the items they disputed, again as required by the fourth direction. The First Respondent then received further documents from their former agents. There was no specific direction for their disclosure but the First Respondent properly sent them on to the Applicants along with their response to the schedule in accordance

with the fifth direction. The Applicants say they did not receive this material until 20th February 2017 but the First Respondent produced an email to the Tribunal, copied to the Applicants, to which the documents were attached and which was dated 10th February 2017. It does not make a material difference to the Tribunal's reasoning further below but, for the record, the Tribunal found that the Applicants would have received the email and the documents on 10th February 2017 in accordance with the fifth direction. The Applicants alleged that the First Respondent had breached the directions but, in the light of the above, the Tribunal finds that they did not.

6. Five days before the hearing, the Applicants purported to file and serve an amended Scott schedule. As well as setting out objections to the invoices disclosed in February, they took the opportunity to revise their objections to the invoices disclosed in December, with the help of the local CAB. The new schedule had an extra 98 items in addition to the original 172, of which the largest single category raised an entirely new objection as to an alleged lack of consultation in accordance with the requirements under section 20 of the Act.

7. Just three days before the hearing, the Applicants purported to file their bundle which the Tribunal had directed should be filed 2½ weeks earlier. They had not attempted to agree the contents with the Respondents, provided only one copy rather than the directed four and had not served the Respondents at all. As at the commencement of the hearing, the Respondents had not seen the bundle, let alone having had the opportunity to review its contents.

8. The Applicants sought to excuse the late delivery of the revised schedule and the bundle on the basis that they had only just obtained legal advice. However, they have been embroiled in a legal dispute with the Respondents about their service charges for over a decade. They brought this application and did so on 12th July 2016. They have had plenty of time to take legal advice. In the Tribunal's opinion, even taking into account that they are litigants in person, the Applicants have no excuse for their breaches of the directions and such late attempts to put in new material.

9. The Tribunal was particularly concerned with the allegations of a lack of consultation. Many of them appeared to lack any merit because the sums involved were clearly less than the statutory limit of £250 per lessee. However, fairness requires that such allegations are made in sufficient time so that the other party can consider whether to seek dispensation from the statutory requirements under section 20ZA and suitable evidence can be sought. The short period allowed by the Applicants would never be sufficient in such circumstances.

10. In the circumstances, the Tribunal concluded that it would be unfair to the Respondents and contrary to the overriding objective of dealing with cases fairly and justly to allow the Applicants to rely at this hearing on their amended schedule and bundle.

11. The Applicants sought an adjournment of the hearing. They had sought one in advance, with the support at that time of the First Respondent, but the Tribunal had refused. The Tribunal clerk had asked the Applicants to "do their best" to comply thereafter with the directions in the circumstances but the Tribunal is not satisfied that they even did that in the sense that they could and should have sought legal advice months or even years earlier. Fortunately, the First Respondent had prepared a suitable bundle of documents and was ready to proceed with the hearing. The Tribunal was satisfied that it would involve significant prejudice to both the Respondents and to the administration of justice to put the hearing off. Therefore, the request for an adjournment was refused.

Service Charges

12. On 22nd June 2016 the First Respondent's solicitors sent the Applicants a letter before action claiming service charge arrears of £47,781.52 which, with interest and legal fees, resulted in a total bill of £72,498.20. The Applicants say they have not paid any of these service charges because at least some of them have been unreasonably incurred and any balance should be set off against a credit arising from their mortgagees' overpayment of past unreasonable service charges. In any event, the Tribunal's consideration is limited to the 172 items listed in the Applicants' original Scott schedule.

13. The Applicants withdrew their objections to a large number of items in their Scott schedule during the hearing. Therefore, not all of them are considered below.

14. Rather than put its comments in the final column of the Scott schedule, the Tribunal found it more expedient to put its reasoning in the paragraphs below, not least because the schedule proceeded by invoice and many of the objections were repeated multiple times because the invoices dealt with the same or a similar charge.

Estate costs

15. The Second Respondent is entitled under the lease[1] to charge estate costs to the First Respondent which is in turn entitled to include those charges in the lessees' service charges. The First Respondent listed the heads of charge in the Scott schedule. The Applicants noted that the names of some of the heads were either the same or very similar to the those listed in the First Respondent's charges, such as Health and Safety, Repairs and Cleaning, and concluded that there might be duplication or some expenditure might be misallocated. Amongst the invoices disclosed to them were some which appeared to involve expenditure to areas under the Second Respondent's control or related to a neighbouring block on the same estate.

[1] Neither party was able to provide a copy of the lease between the actual parties but, as in previous proceedings, all were content to rely on the lease of another flat which was said to be in identical form.

16. In fact, although it is theoretically possible for expenditure to be misallocated, there was no evidence of that or of any duplication. During the hearing it became apparent that the Applicants had mistakenly assumed that all invoices disclosed to them had been charged to them through the First Respondent's service charges. In fact, a number of the invoices were addressed to the Second Respondent and related to expenditure which would have been passed through their estate charges or were matters relating to a neighbouring property which would have been included in the service charges of the lessees in that block. The Applicants had not appreciated that disclosure did not relate exclusively to the basis for the First Respondent's charges but extended to any relevant documents in the First Respondent's possession.

17. The Applicants made a further, related error in thinking that every invoice represented a charge to them so that, if there were two identical invoices, they must have been charged twice for the same item. In fact, the First Respondent's disclosure included some duplication. Two identical invoices represented a copying mistake, not two charges.

Apportionment

18. The Applicants questioned how the service charges were apportioned between lessees. The lease does not specify the method. The First Respondent determines each lessee's share by the ratio of the floor area of their flat to the floor area of all the flats. This has resulted in the Applicants paying a higher proportion than others due to the size of their flat. They have paid 9.2768% in relation to "Schedule 1 items" and 12.22% for "Schedule 2" items. Faced with this explanation, the Applicants did not pursue the point.

Skylight

19. The Applicants complained that a skylight had been repaired without any reference to them or evidence of competitive tendering. However, this was not an item for which there was any obligation to consult and there was no evidence to contradict the First Respondent's assertion that maintenance contracts were subject to tendering, review and negotiation. The Applicants' understandable concern at the size of their service charges appears to have led them to have unrealistic expectations for their involvement in the management of their building – if the First Respondent had to consult and notify the Applicants to the extent suggested in this case, the management fees would have to be considerably higher.

Legal costs

20. In or about 2015 the First Respondent issued proceedings in the county court against the Applicants for unpaid service charges but then later discontinued them. A number of invoices related to the legal costs incurred, although there was some overlap as some of the invoices superseded earlier ones or included charges which had previously been

separately invoiced. The First Respondent asserted that they had been justified in issuing the proceedings, given the Applicants' record of non-payment, and were therefore justified in pursuing them for the costs. The Tribunal disagrees.

21. Rule 38.6(1) of the Civil Procedure Rules which govern the procedure in the county court provides,

> Unless the court orders otherwise, a claimant who discontinues is liable for the costs which a defendant against whom the claimant discontinues incurred on or before the date on which notice of discontinuance was served on the defendant.

It would be unusual if the county court were to order that the First Respondent had not only not to pay the Applicants' costs (if any) but also were able to recover their costs from the Applicants. This is for the reason that the costs should be borne by the party which decided not to follow through with the legal action they instituted. If a party is justified in issuing proceedings, they should see them through to conclusion. Mr Doyle said his instructions were that the proceedings were discontinued due to lack of funds but that is no excuse – they should not expect to recover their costs from the other party if they were to commence the action and then could not see them through to the end.

22. Assuming the First Respondent is entitled to charge their legal costs to lessees, that is subject to their being reasonably incurred. Legal costs would not normally be reasonably incurred if they relate to proceedings which were discontinued (other than perhaps if the discontinuance had been part of a settlement with the tenant). There is no reason to alter that approach in this case. The Tribunal is satisfied that any legal costs relating to the discontinued county court case were not reasonably incurred and so are not payable by the Applicants.

23. The First Respondent had also sought to recover through the service charges legal costs incurred in taking proceedings against other non-paying lessees. Mr Doyle asserted that the First Respondent was able to do so under the following clause of the lease:

> 10. For the sake of clarity the parties acknowledge that notwithstanding anything herein contained or implied:
>
> 10.1 in the management of the Apartment Block and the Estate and the performance of the obligations of the Landlord (or the Company as the case may be) shall be entitled to employ or retain the services of any employee agent consultant service company contractor engineer or other advisers of whatever nature as the Landlord or the Company may require in the interests of good estate management and the expenses incurred by the Landlord or the Company in connection therewith shall be deemed to be an expense incurred by the Landlord or

> Company in respect of which the Tenant shall be liable to make an appropriate contribution under the provisions set out in the Fourth Schedule hereto

24. The argument is not whether the First Respondent is able to recover their legal costs at all. They may be able to recover their costs in court proceedings or, to a more limited extent, in Tribunal proceedings by order of the court or Tribunal. Also, paragraph 13.1 of the Fourth Schedule to the lease contains the usual covenant for a lessee to pay the lessor's costs in contemplation of forfeiture proceedings. The question here is whether the First Respondent may recover their legal costs through the service charges if they take that course rather than any alternative.

25. The Tribunal finds that the First Respondent may recover their legal costs through the service charges. Paragraph 6 of the Sixth Schedule to the lease requires the First Respondent to use all reasonable efforts to enforce the covenants contained in the leases of other flats. This would include the covenant to pay service charges. Therefore, in taking proceedings against other lessees, the First Respondent was performing one of their obligations within the meaning of clause 10.1 quoted above.

Buildings insurance

26. One of the service charges is buildings insurance. The Applicants' mortgagees noticed that the certificate of insurance had a typo – it referred to Balmoral House being at 14 Lanark Square instead of number 12. The Applicants said their mortgagees took out their own insurance against any potential problems arising from this and took this to mean that the buildings insurance may be invalid. In fact, there is no evidence that any problems arose from this typo. The First Respondent asserted that there had been at least one successful claim on this insurance policy during the relevant period. Therefore, there is no evidence that the insurance premium was unreasonably incurred.

27. The Applicants queried why repairs invoiced in December 2014 were not covered by insurance. The First Respondent explained that the insurance excess was £1,000. This reduced the premium, making it more cost effective to put smaller repairs through the service charge.

Company insurance and costs

28. The First Respondent included in the service charges management liability insurance, placed with Axa for a premium of £302.10 in 2015, and company secretarial fees of £291.67, invoiced by Haus Block Management on 1st January 2016. The issue here is not whether these costs have been reasonably incurred but whether they are service charges at all.

29. The policy document for the management liability insurance shows that it covers the liabilities of directors, officers and trustees, liability for the

insured's employment practices and the insured's liability for breaches of data protection, employee dishonesty, identity fraud, pension schemes, pollution and wrongful acts generally. Mr Doyle picked out words from paragraph 4.1 of the Sixth Schedule of the lease which suggest that the First Respondent is obliged "to insure against liability for personal injury occurring to any person and such other risks as the Company ... may require".

30. Mr Doyle further asserted that the company secretarial costs could come under clause 10.1 quoted above or paragraph 8 of the Sixth Schedule which allows for the employment of staff in relation to the management of the estate.

31. In the Tribunal's opinion, neither the management liability insurance nor the company secretarial costs are service charges. They are the reasonable costs of doing business for the First Respondent given its status as a limited company. Paragraph 4.1 of the Sixth Schedule to the lease is predominantly concerned with buildings insurance and the additional risks referred to in the words quoted in the preceding paragraph are intended as an extension of that. They do not enable the First Respondent to pass on the costs of their business risks to service charge payers. Clause 10.1 and paragraph 8 of the Sixth Schedule are concerned with the management of the estate, not of the company. Therefore, these costs are not payable as part of the service charge although, depending on the content of the First Respondent's memorandum and articles of association, the same lessees may be liable to meet these costs through a separate call on funds from the members of the company.

Maintenance contract

32. The Applicants pointed out that there was a contract with Cooltech for regular maintenance but that there were invoices for various repairs from other contractors. They queried why such matters could not have been addressed within the existing contract. The contract with Cooltech has been terminated which explains the recent use of alternative contractors. In relation to the period before then, the First Respondent pointed to the work set out in Cooltech's maintenance proposal and asserted that it did not cover everything. The Applicants did not point to any particular invoice from an alternative contractor which fell within Cooltech's remit.

Entryphone

33. The Applicants complained that the building has a "miserable, cheap-looking" door entryphone system but that the charge was £3,500 per year. The First Respondent accepted that there are cheaper alternatives around nowadays but asserted that that was not the case at the time they entered into the current 20-year contract. This is unfortunate for the service-charge payers but does not mean that the charge has been unreasonably incurred – circumstances have changed since the

contract was first entered into. Furthermore, the contract was not only for door entryphone maintenance but also for maintenance of the satellite TV system.

34. The Applicants queried maintenance charges for attending to door entry codes. When the Tribunal pressed for details, the Applicants said the only query they had was why this was not covered by the door entryphone rental agreement. In fact, like the maintenance contract, there are matters which must be addressed outside the rental agreement and this is one of them.

Phone line

35. The Applicants queried charges for a phone line but dropped their objections when the First Respondent explained that it was for the emergency line out from the lift.

Lift maintenance

36. The Applicants challenged the reasonableness of the lift service contract because the lift itself had been out of commission since November 2016. The First Respondent admitted that the lift was not working but stated that they did not have the funds for the major works required to get the lift working again. The significant nature of the required works means that they come outside the lift service contract. It is possible that the First Respondent is in breach of their obligation to maintain the lift, in respect of which a lack of funds is unlikely to be a defence, but the Tribunal is concerned with the reasonableness of the service charges, not defective services. There is no reason to think that the lift service contractor is not ready, willing and able to fulfil its contract but there is no evidence that it is at fault for its current inability to affect the situation. Therefore, the First Respondent is bound by the contract they entered into before the lift broke down and they remain liable for the fees payable under it. Further therefore, the costs may be included in the service charges payable by the Applicants.

Window cleaning

37. The Applicants asserted that the communal window cleaning charges were unreasonable in amount because there are cheaper methods for carrying out the work. Balmoral House is a four-storey block and the Applicants said the windows could be cleaned by someone with a pole from the ground rather than by rope from above. They had left their evidence at home but claimed that the pole method would cost only £250 rather than the current £400. However, a landlord is not required to use the cheapest possible service, only to act reasonably. The First Respondent questioned whether window cleaning by a person four storeys away could match the quality of that by a person who is directly in front of the relevant window. The Tribunal cannot be satisfied that the First Respondent has acted unreasonably in employing a window cleaner using the rope method.

Light bulbs

38. The Applicants queried an invoice dated 30th September 2015 for £624 plus VAT from Maeve Contractors for changing light bulbs on the basis that the cleaning contractor was already obliged under their contract to change light bulbs. In fact, the invoice was not just for changing light bulbs but for installing a new electrical socket in the communal area to facilitate cleaning using electrically-powered equipment. This was outside the cleaning contractor's remit. Also, the light bulb in question is a large commercial light rather than the kind found inside the flats. The charge might appear high on its face but the Applicants had no evidence that it might be unreasonably high.

Roof works

39. The Applicants challenged some roof works on the basis that the roof was in such a poor state that it needed a comprehensive solution. However, they had no evidence to support the claim and did not pursue it.

Cleaning

40. The Applicants objected to the First Respondent arranging for the communal areas to have a deep clean, invoiced by North London Cleaning Services on 12th October 2015 at a cost of £562.20. As far as they were concerned, the twice-weekly cleaning service delivered prior to that date should have been enough to keep the communal areas clean to a sufficient standard. The First Respondent disagreed. They had arranged a twice-weekly service only due to lack of funds. They believe it is necessary for cleaning to take place four times a week. They decided to switch to such a service and to carry out a deep clean in order to bring the relevant areas up to standard before the new arrangements began. The Applicants had no evidence to challenge the First Respondent's view and so the Tribunal again cannot be satisfied that the First Respondent has acted unreasonably on this issue.

41. The Applicants queried an invoice dated 22nd November 2015 for the purchase of cleaning equipment on the basis that the cleaning contractor should provide their own. In fact, this equipment was bought at a time when there was no cleaning contractor and one of the directors of the First Respondent was carrying out the cleaning without any charge for their time. The Applicants did not pursue the point.

Management fees

42. In 2015 the First Respondent appointed new managing agents, Haus Block Management. They issued an invoice dated 1st January 2016 for £250 plus VAT for their set-up costs, as well as later charging the usual management fees. The Applicants challenged the need for set-up costs but it is not an uncommon industry practice and, again, the First Respondent is acting reasonably in using agents which follow this practice.

Electricity

43. The Applicants pointed to the fact that electricity bills from Scottish Power listed the climate change levy as part of the cost, despite the fact that the domestic sector is supposed to be excluded from it. Unfortunately, they provided nothing to help the Tribunal decide whether the communal areas of a block of flats constitute excluded domestic premises for the purposes of the levy. There is no doubt that the First Respondent has paid the bills in good faith. The Tribunal cannot be satisfied on the evidence that there is any problem with this bill although it might be useful if the First Respondent could raise the issue with Scottish Power.

44. The Applicants questioned why there were also bills from another supplier, Southern Electric, but the First Respondent explained that there are separate supplies to the lift and to the rest of the building.

Dry riser

45. The Applicants queried an invoice dated 24th March 2016 from Churches Fire for £150.54 for work to the dry riser and associated signage on the basis that there is no dry riser at Balmoral House. As far as the First Respondent is aware, there is one. A dry riser was also mentioned in Cooltech's contract. It is difficult to believe that two contractors would be claiming fraudulently for work which cannot possibly have taken place. The Tribunal is not satisfied that the Applicants are correct about the lack of a dry riser, in which case there is no basis for challenging this charge.

Pest control

46. The Applicants challenged the charge for a pest control contract on the basis that there are no pests. However, the likelihood is that there are no pests at least in part due to the work of the pest control contractor. The Tribunal can take judicial notice of the existence of pests throughout London and it would be rare, if it happens at all, that the manager of a block of flats in London could ignore the issue. In any event, the First Respondent explained that they do have a problem with pigeons. The Tribunal is satisfied that charges for pest control have been reasonably incurred.

Costs

47. The Applicants sought an order under section 20C of the Act that the Respondents may not add their costs of these proceedings to the service charges. They asserted that the Respondents had not sought to explain their charges before resorting to legal proceedings. In fact, this application was brought by the Applicants. Their approach has been to question everything and to drop their objections on many points only at the last possible moment, namely during the hearing at the moment when the particular point comes up for consideration. The large majority of their objections have been found to be without merit,

sometimes partly due to their failure to provide the Tribunal with any relevant evidence supporting their position. It would not be just or equitable to make a section 20C order and so the Tribunal refuses to do so.

48. Mr Stancliffe sought an order for his costs of attendance (£1,620 = 6 hours at £225 per hour, plus VAT) under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. He submitted that his client, the Second Respondent, had only instructed him to attend in order to protect their position in the light of the Applicant's new Scott schedule – their position had been that the issues raised by the original schedule would not have required their attendance.

49. The Applicants' late submission of an amended schedule and even later submission of a bundle has already been the subject of deserved criticism above. The Second Respondent's application for costs is understandable. However, the test under rule 13 is that the behaviour complained of must reach the high standard of being unreasonable in the sense of being frivolous, vexatious or abusive. The principal criticism of the Applicants is their failure to obtain legal advice timeously. The Tribunal does not believe that they acted in bad faith. Their conduct as litigants in person is explicable. They have struggled to understand the issues in the case. In the Tribunal's opinion, their behaviour does not quite reach the required standard and so there will be no order as to costs.

Name: NK Nicol **Date:** 31st March 2017

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

   and the amount payable shall be limited accordingly.

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

Section 20C

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

(2) The application shall be made—
   (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
   (aa) in the case of proceedings before a residential property tribunal, to that tribunal;

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

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

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

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

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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