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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BE/LSC/2017/0304** **LON/00BE/LSC/2017/0385**
Property	:	**10 & 17 Walkynscroft and 2 & 27 Ryegates, Brayards Road Estate, London, SE15 2BZ**
Applicants	:	**Ms Nadezhda Heath** **Mr Jonaas Esse** **Ms Hannah Crawford** **Ms Violeta Jawdokimova**
Representative	:	**Mr Stuart Wright (Counsel) and Mr David Crawford** **Ms Violeta Jawdokimova (in person)**
Respondent	:	**London Borough of Southwark**
Representative	:	**Ms Stephanie Lovegrove (Counsel)**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Judge Robert Latham** **Mr Peter Roberts, DipArch RIBA** **Mr Richard Shaw, FRICS**
Date of Hearing And Venue	:	**1 and 2 February; 13 and 14 March 2018 at** **10 Alfred Place, London WC1E 7LR**
Date of decision	:	**27 April 2018**

DECISION

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Decision of the Tribunal

(i) The Tribunal determines that the estimated reasonable costs of the works specified in Notices of Intention dated 6 January 2017 served in respect of 10 & 17 Walkynscroft and 2 & 27 Ryegates, Brayards Road Estate, London, SE15 2BZ are payable as service charges pursuant to the terms of the Applicants' leases.

(ii) This application has been brought pursuant to Section 27A(3) of the Landlord and Tenant Act 1985 and the Tribunal is not required to determine the reasonableness of any sums that may be charged in respect of the works, as no service charge had been demanded when the applications were issued.

The Applications

1. The Tribunal is required to determine two applications which have been brought pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") in respect of two blocks on the Brayards Road Estate, London SE15 2BZ against the London Borough of Southwark ("Southwark"):

   (i) LON/00BE/LSC/2017/0304 ("0304"): This is brought by three tenants: Ms Nadezhda Heath (27 Ryegates); Mr Jonaas Esse (2 Ryegates); and Ms Hannah Crawford (17 Walkynscroft). It was agreed that Ms Heath should be treated as the lead case.

   (i) LON/00BE/LSC/2017/0385 ("0385"): This is brought by Violeta Jawdokimova (10 Walkynscroft). She has acted in person.

2. On 11 January 2018, when "0385" was listed for hearing, the Tribunal directed that these applications should be heard together. This Direction was made at a stage when both parties had filed evidence and prepared their separate Bundles. The evidence in each case was similar, but not identical. It was agreed that both cases stand or fall together, and that all the evidence should be treated as relevant to both cases.

3. The applications relate to the Southwark's decision to carry out major works, the most significant item being renewal of the windows. In about 2004, Southwark had carried out a major refurbishment of the two blocks replacing the timber single glazed units with composite aluminium and timber double glazed windows.

4. These applications were issued before the tenants were required to make any contribution to the costs of the works whether through an interim or a final service charge. The applications are therefore made pursuant to Section 27A(3) and we are asked to determine whether any service charge would be payable and reasonable, were costs to be

incurred in respect of the proposed works of repairs, maintenance or improvement. The significant item is the windows.

5. The respective position of the parties on the windows is as follows:

   (i) Southwark contends that the composite aluminium and wood double glazed windows which it installed in 2004 were defective both in design and installation. As a result of these defects, the only economic repair is to replace them with new UPVC windows.

   (ii) The tenants contend that the windows are not beyond economic repair and that limited repairs are currently required to the windows in their flats. They suggest that defects in other flats may be due to condensation and untenant-like behaviour.

   The Tribunal clarified that it was not part of the tenants' case that they have any equitable set-off in respect of the negligent design and installation of the windows in 2004. The limited circumstances in which such a set-off can arise was considered in *Continental Property Ventures Inc v White [2006] 1 EGLR 85.*

6. The Tribunal is asked to consider the initial schedule of works. Once contractors were on site, the need for some additional repairs was identified. Southwark have now issued service charge demands for these works. These are outside the scope of what this Tribunal is required to determine in the current applications.

The Hearing and Inspection

7. This case was listed for hearing on 1 and 2 February 2018. There was insufficient time to conclude the application and it was adjourned until 13 and 14 March.

8. On 1 and 2 February, Mr Stuart Wright, Counsel instructed under the Direct Access Scheme, appeared on behalf of Ms Heath, Mr Esse and Ms Crawford. On 13 and 14 March, Mr David Crawford represented the tenants. Mr Crawford is a retired Solicitor and is the father of Hannah Crawford. At the resumed hearing, Mr Crawford sought to raise issues which had not been canvassed by Mr Wright when he had presented the tenants' case. The Tribunal was not willing to allow him to do so as this would have put the Respondent in an impossible position, not knowing the case that it had to answer.

9. Ms Jawdokimova appeared in person. Her case was similar, but not identical, to that advanced by the other tenants.

10. Ms Stephanie Lovegrove (instructed by Southwark's Legal Department) represented the Respondent. We are grateful to the assistance that she provided to the Tribunal. She was mindful of her duties, as Counsel, when confronted by litigants in person. She sought to ensure that the Tribunal were alerted to all the points which they had raised. Ms Lovegrove complained of the late stage at which the tenants had filed their Statement of Case in "304". However, she did her utmost to deal with all the points that had been raised.

11. The Tribunal has sought to ensure that no party should be prejudiced by being confronted with new points which were not raised at the appropriate time pursuant to the Directions given by the Tribunal.

12. At the hearing, the Tribunal was confronted by three Bundles of Documents which exceeded 1,000 pages to which additional documents were added throughout the course of the hearing:

(i) The Bundle filed in "0304" which was prepared by the tenants extends to 740 pages. Reference to this Bundle will be prefixed by the letter "A.____".

(ii) On 9 March, Mr Crawford filed a Supplementary Bundle in "0304". Reference to this Bundle will be prefixed by the letter "B.____". He prepared a further Bundle of documents and legislative material in support of his closing submissions. No new documents were produced and these rather replicated documents which are to be found elsewhere in the Bundles.

(iii) The Bundle in "0385" which was prepared by Southwark and extends to 317 pages. Reference to this Bundle will be prefixed by the letter "C.____".

(iv) The Applicant also filed a Bundle in "0385". This is not numbered, but is rather divided into nine tabs. Reference to this Bundle will be prefixed by "Tab.____".

(v) Southwark provided a number of additional documents during the course of the hearing which were neither indexed nor paginated.

13. Over the first two days of the hearing, the Applicants presented and closed their cases. Mr Wright adduced evidence from Ms Heath. He asked the Tribunal to have regard to the written reports of two experts: Mr Paul Duncan, MRICS (A.248-250) and Mr Robert Brown, MRICS (A.252-272). We were told that Mr Duncan was abroad and that Mr Brown was ill.

14. Ms Jawdokimova gave evidence. She adduced evidence from Mr Philip Smith MRICS, who had inspected her flat on 17 January 2018. Ms

Jawdokimova also asked the Tribunal to have regard to the report from Mr Duncan (at Tab 7).

15. On the morning of 2 February, the Tribunal inspected the Estate with the parties. We inspected the following flats:

(i) 9 Walknscroft which is occupied by a longstanding secure tenant. We inspected this flat without the parties. The flat still had the original windows. We noticed some condensation, particularly in the kitchen where there is no mechanical extract ventilation.

(ii) 10 Walkynscroft (Ms Jawdokimova). The original windows were in place. Mr Smith had inspected these windows on 17 January and we were mindful of his report. We noted some evidence of condensation. In the living room, there was some staining to the wood, but no visible evidence of wood rot. There was some evidence that one bottom fixed pane was dropping. In one of the bedrooms, we noticed some staining to the woodwork, but no wood rot. Again, one pane was dropping. The rotating mechanism to the windows was demonstrated to us. These windows were subsequently removed and on 13 March we heard further evidence about their condition.

(iii) 17 Walkynscroft (Ms Crawford). The windows had been replaced the previous November. We noted that the infill panels had been removed and the replacement panels had still to be installed.

(iv) 27 Ryegates (Ms Heath). These windows had been replaced on 24 January. Ms Heath had retained some wooden samples from the windows that had been removed. These showed no evidence of wood rot. There was evidence that the cork packers had been left in the frames when the windows were installed.

16. The Tribunal inspected a ground floor flat No.3 at Walkynscroft from the exterior with the existing composite windows still in place. We noted that the aluminium cover flashings at the head of the windows were poorly fitted. The condition of the common parts in both blocks was good. The communal windows in Walkynscroft had not been replaced. These were aluminium rather than the composite of wood and aluminium. The Tribunal was concerned about the lack of cladding panels. Where panels had been removed, polythene covering had been provided pending the insertion of the new panels. Some had been in this condition since November. Southwark was not willing for us to go on the scaffolding to inspect the roofs on grounds of Health and Safety.

17. The Tribunal then went to the site office. Mr Tunc Doru, a Building Surveyor employed by Calfordseaden LLP ("Calfordseaden), demonstrated the defects which he had identified in his report from the windows which had been removed from 24 Walkynscroft on 24

January. His statement is at A776-9. The state of these windows is illustrated in the photographs at A576-584. The Tribunal also heard evidence from Ms Aimie Long, a Senior Quantity Surveyor employed by Southwark (statement at A741-3).

18. The Tribunal then returned to Alfred Place where Mr Doru completed his evidence and was cross-examined. The Tribunal adjourned the case to 13 March to enable the Respondent to conclude their case and to hear closing submissions.

19. On 26 February, Mr Crawford notified the Tribunal that he was now acting for the tenants in "0304". He further applied for disclosure of various documents and for a witness summons. On 27 February, the Respondent applied to adjourn the hearing pending an investigation relating to allegations raised by Mr Crawford in respect of the planning process. Southwark described these as being "very serious" which could attract a criminal sanction. The Tribunal dealt with these applications in the Further Directions, dated 2 March. The Tribunal notified Mr Crawford that it was not open to him at this late stage to reopen the tenants' case and to present it on a different basis to that advanced by Mr Wright. The Tribunal concluded that a further day would be required on 14 March.

20. On 13 March, Ms Jawdokimova produced samples from the 2004 windows in her flat, which had been replaced. We were shown a number of photographs of the frames as they were being dismantled on 17 February (at B16-21). Whilst there was some discolouration to the woodwork, there was no evidence of rot.

21. Ms Lovegrove adduced evidence from Mr Piers Lee-Parsons, a Surveyor employed by A & E Elkins Ltd ("A & E Elkins") and three Southwark employees: Ms Anne Blackburn (Lead Designer), Mr Carla Blair (Service Charge Construction Manager), and Mr Paul Thomas (Contracts Manager).

22. Ms Blackburn produced (i) the performance specification for the windows which had been installed in 2004, which Southwark had only recently obtained; (ii) a number of photographs which were taken when the contractors were dismantling the windows at Walkynscroft (at C326-332). These suggested that the windows at Walkynscroft were in a similar condition to those at Ryegates; and (iii) two "Justification Reports" dated March 2016 and January 2018.

23. On 14 March, the parties made their closing submissions. Both Ms Lovegrove and Mr Crawford provided skeleton arguments. Mr Crawford also provided a sample of a plastic packer of the type which he asserted should have been inserted when the windows were installed in 2004.

The Issues in Dispute

24. The application relates to major works which the Respondent is executing on the Brayards Road pursuant to a Qualifying Long Term Agreement (QLTA). On 6 January 2017, the Respondent served the Notice of Intention (at A.418). These works related to the two blocks at Ryegates and Walkynscroft together with eight street properties in Caulfield Road, Hathorne Close and Hollydale Road.

25. The works include the following: (i) general access and safety work; (ii) window renewals; (iii) roof repairs; (iv) concrete and brickwork repairs; (v) external decorations to include communal areas; (vi) drainage repairs; (v) external asbestos removal. The cost of the works at Ryegates was estimated at £530,725, the service charge for a two bedroom flat being £20,412; at Walkynscroft the estimate was £543,475, the service charge for a two bedroom flat being £20,903. No service charge, whether interim or final, had been demanded when these proceedings were issued.

26. Mr Wright referred us to the schedule at A.256 which relates to Ryegates and which identifies the items which are challenged (out of a total of £530,725):

    (i) Window replacement: £223,525;
    (ii) Remove cills, tiles and asbestos: £1,250;
    (iii) Clean off roof covering: £3,700;
    (iv) Concrete and masonry repairs: £25,982;
    (v) Works to lift lobbies and stairs: £17,523;
    (vi) External decorations: £3,561;
    (vii) Roofing works: £16,196;
    (viii) Extra over window: £11,148;
    (iv) Brick and masonry repairs: £2,519.

    This Schedule had been prepared by Mr Robert Brown, a Chartered Quantity Surveyor. The Respondent confirmed that the item "Replace refuse chamber doors: £1,950" would not be charged to the tenants.

27. Ms Jawdokimova confirmed that she challenged the similar items in respect of her flat at Walkynscroft. The task for this Tribunal is to determine which items, if any, should be disallowed in whole or in part. In the light of our findings, it will be for the Respondent to determine what sums should be passed on to the tenants through the service charge.

Procedural Concerns

28. On 1 February, we heard evidence from Ms Heath. She told us that her windows had been replaced on 24 January. She had wanted to keep

them to show to the Tribunal. Ms Julie Cole, of A & E Elkin, had told her that she could not remove any of the windows from the site and that were she to do so, this would be treated as theft. Ms Heath was able to retain some of the wood strips which she showed the Tribunal when we inspected 27 Ryegates on 2 February. Her evidence was uncontradicted and we accept it.

29. The state of these windows was highly material to the issues that we have been required to determine. The Tribunal is surprised that Southwark was not willing to make this evidence available to the Tribunal. Had this case been finely balanced, the adverse inferences which we could have drawn from Southwark's conduct, could have been critical to our determination. In the event, we have not found the case to be so finely balanced and are satisfied that the tenants have not been prejudiced.

30. Mr Crawford adduced a number of documents relating to the planning application for these works. Two forms were completed by Mr Lee-Parsons, dated 29 January 2016 (at B1-3) and 4 May 2016 (at B5-7). These referred to the works being "the replacement of blue UPVC double glazed windows with white UPVC double glazed windows". A "Certificate A" Declaration was completed which made no reference to the applicants' leasehold interests in their flats. A further "Form" 6 was completed by Ms Sharon Shadbolt, dated 4 May 2016 (at B8-9). This also wrongly described the windows that were to be replaced.

31. Mr Lee-Parsons gave evidence. He declined to answer any questions relating to the entries that he had made on these forms on the grounds of self-incrimination, apparently on legal advice. Ms Lovegrove argued that the planning process was irrelevant to the matters that we are required to determine. Further, these errors would not have been material to the outcome of the planning applications. We accept these arguments. However, we are satisfied that these inaccurate entries are relevant to the weight that we should give to the evidence of Mr Lee-Parsons. The Tribunal suggested that there were two inferences to be drawn, either (i) he knowingly inserted inaccurate information to short circuit the planning process; or (ii) he had been careless. Ms Lovegrove suggested a third explanation, namely that he had misread the questions on the forms. This would have been an instance of carelessness.

32. Ms Lovegrove informed the Tribunal that Southwark are carrying out an investigation into Mr Crawford's allegations. Southwark agreed to notify the Tribunal of the outcome of their investigation.

The Leases

33. All the tenants occupy their two bedroom flats under 125 year leases granted pursuant to Part III of the Housing Act 1985 (the statutory Right to Buy).

    (i) Ms Heath occupies 27 Ryegates pursuant to a lease dated 12 September 2005 (at A107). The original tenant was Leopold Cressy. On 5 October 2011, Ms Heath acquired the leasehold interest for £113k.

    (ii) Mr Esse occupies 2 Ryegates pursuant to a lease dated 9 July 2007 (at A74). He is the original tenant and paid a premium of £129k.

    (iii) Ms Crawford occupies 17 Walkynscroft pursuant to a lease, dated 17 May 2007 (at A131). The original tenant was Ego Nwodo. On 21 October 2016, Ms Crawford acquired the leasehold interest for £325k (A103).

    (iv) Ms Jawdokimova occupies 10 Walkynscroft pursuant to a lease dated 19 November 2001 (at C81). The original tenant was Francis Onyinah. On 8 April 2005, Ms Jawdokimova acquired the leasehold interest. The 2004 major works were still underway. On 6 December 2004, Southwark had invoiced Mr Onyinah £6,870.05 in respect of these works. Ms Jawdokimova agreed to pay 50% of the cost (Tab 5).

    It is to be noted that Ms Jawdokimova is the only applicant who was required to contribute to the cost of the 2004 works.

34. The parties agreed that the leases are similar in all material regards. The lease for 10 Walkynscroft is at C81-105:

    (i) the definition of the demised flat excludes "all external windows and doors and window and door frames";

    (ii) the tenant covenants to keep the flat "in good and tenantable repair and condition" (Clause 3(1));

    (iii) The landlord covenants "to keep in repair the structure and exterior of the flat and of the building (including drains gutters and external pipes) and to make good any defect affecting the structure" (Clause 4(2));

    (iv) The landlord is entitled to recover through the service charge the cost and expenses "of or incidental to (9) The installation (by way of improvement) of (i) double-glazed windows (including associated frames and sills) in replacement of any or all of the existing windows of

the flat and of the other flats and premises in the building and in common areas of the building" (Third Schedule, Paragraph 7).

The Legislative Framework

35. The relevant legal provisions are set out in the Appendix to this decision.

The Duty to Consult

36. The obligation to consult is imposed by Section 20 of the Act. As the proposed works are being carried out pursuant to a Qualifying Long Term Agreement ("QLTA"), the consultation procedure is prescribed by Schedule 3 of the Service Charge (Consultation Requirements) (England) Regulations 2003.

37. Where there is a QLTA, leaseholders do not have a right to nominate a contractor. The landlord is rather obliged to serve leaseholders and any recognised tenant's association with a Notice of Intention to carry out qualifying works. The Notice of Intention shall: (i) describe the proposed works; (ii) state why the landlord considers the works to be necessary; and (iii) contain a statement of the estimated expenditure. Leaseholders are invited to make observations, in writing, in relation to the proposed works and expenditure within the relevant period of 30 days. The landlord shall have regard to any observations in relation to the proposed works and estimated expenditure. The landlord shall respond in writing to any person who makes written representations within 21 days of those observations having been received.

The Landlord's Obligations

38. The Tribunal was referred to *Waaler v Hounslow LBC* [2017] EWCA Civ 45; [2017] 1 WLR 2817. This was a case in which the replacement of the original wooden-framed windows with new metal windows was considered to be an improvement. The works also required the replacement of external cladding and removal of asbestos. The First-tier Tribunal held that the freeholder was entitled to recover the claimed service charge, finding, inter alia, that the freeholder had been reasonable in seeking to replace the windows, which while not in disrepair suffered from an inherent design problem which was a potential safety issue, and the cladding cost was an inevitable consequence. The Upper Tribunal allowed the lessee's appeal against that finding, determining that the freeholder had an obligation to carry out repairs and a discretion to carry out improvements; that the replacement of the windows and cladding was an improvement; and that the freeholder ought to have taken particular account of the extent of the lessees' interests, their views on the proposals and the financial

impact of proceeding when deciding whether to make that improvement. This decision was upheld by the Court of Appeal.

39. The following passages are taken from the judgment of Lord Justice Lewison:

"14. I do not believe that the following propositions are controversial in the context of contractual liability.

> (i) The concept of repair takes as its starting point the proposition that that which is to be repaired is in a physical condition worse than that in which it was at some earlier time: *Quick v Taff Ely Borough Council [1986] QB 809.*
>
> (ii) Where the deterioration is the product of an inherent defect in the design or construction of the building the carrying out of works to eradicate that defect may be repair: *Ravenseft Properties Ltd v Davstone (Holdings) Ltd [1980] QB 12.*
>
> (iii) Prophylactic measures taken to avoid the recurrence of the deterioration may also be repair: the Ravenseft Properties Ltd case, at para 22, *McDougall v Easington District Council (1989) 21 HLR 310* , 315.
>
> (iv) In principle where there is a choice of methods of carrying out repair, the choice is that of the covenantor provided that the choice is a reasonable one: *Plough Investments Ltd v Manchester City Council [1989] 1 EGLR 244.*
>
> (v) At common law there is no bright line division between what is a repair and what is an improvement: the *McDougall* case at p 315.
>
> (vi) The use of better materials or the carrying out of additional work required by building regulations or in order to conform with good practice does not preclude works from being works of repair: *Postel Properties Ltd v Boots the Chemist Ltd [1996] 2 EGLR 60.*
>
> (vii) Where a defect in a building needs to be rectified, the scheme of works carried out to rectify it may be partly repair and partly improvement: *Wates v Rowland [1952] 2 QB 12.*"

"26 Part of the context for deciding whether costs have been reasonably incurred is the fact that, in principle, the cost of the work is to be borne by the lessees. As Nicholls LJ put it in *Holding and Management Ltd v Property Holding and Investment Trust plc* [1990] 1 EGLR 65 (not reported on this point at [1989] 1 WLR 1313) when considering whether

the most comprehensive (and expensive) of three possible schemes amounted to repair:

> "A prudent building owner bearing the costs himself might well have decided to adopt such a scheme, despite its expense. But what is in question is whether owners of 75-year leases in the building could fairly be expected to pay for such a scheme under an obligation to 'repair'."

"39 Once the landlord has consulted the tenants and taken their observations into account, it is then for the landlord to make the final decision. In considering whether the final decision is a reasonable one, the tribunal must accord the landlord what, in other contexts, is described as a "margin of appreciation". As I have said there may be a number of outcomes, each of which is reasonable, and it is for the landlord to choose between them."

The Background

40. The Brayards Estate was constructed in the late 1960s and early 1970s and consists of the two blocks at Ryegates and Walkynscroft and a number of low rise street properties. Both of the two blocks consist of 27 flats. There are three flats on the ground floor and four flats on each of the upper six floors. The blocks are similar, but not identical. Ryegates was built first.

41. In about 2004, there was a major refurbishment undertaken including the installation of new double glazed windows, works to the roof, brickwork and the common parts. The original windows had been timber single glazed units. The new windows were composite double glazed windows, aluminium framed externally and timber internally. The performance specification required all panes of glass to have a 6mm perimeter gap between the glass edge and the rebate. The glass should be packed within the frame, the packers and wedges were to be dense plastic or nylon and purpose made. The windows were manufactured and installed by AM Profiles. These were backed by a ten year Alarbond Guarantee (at A749). Ms Blackburn stated that this is not insurance backed and is no longer valid as AM Profiles are in administration.

42. Ms Blair produced the repair records for Walkynscroft and Ryegates which she suggested indicated sporadic repairs to the windows which increased in 2014/5 and 2015/6 (C363-370). On 20 October 2011 (at A287), Lorraine Beck, Chair of the Brayards Estate TRA ("BETRA"), complained of the number of tenants at Ryegates who were suffering from ill fitting windows. She referred to the "council being taken to court, intervention by the MP, local papers, Ombudsman and anybody else who can bring an end to this situation".

43. On 13 June 2014, a report was commissioned by Southwark and Standage & Co from Fenestration Training (at A465). The author, Andrew Clegg inspected the windows at 10, 11, 16, 18, 24, 26 and 27 Ryegates. He did not dismantle any windows. The major defect which he identified was water ingress into the interior of the flats. He was not provided with the design specification and came to the erroneous finding that the system did not provide for bridge packing. He concluded that composite fenestration facades were in their infancy at the time the product was specified and had not proved to be robust. The fenestration system had suffered prolific failure mainly due to the inability to drain effectively. The sash design and tolerances were inadequate and did not provide a seal between the sash and outer frame. Mr Clegg stated that "the system is fundamentally flawed in as much as inappropriate sash cover is provided thus not providing a robust seal". In giving evidence, Mr Doru stated that he was not sure of the point that was being made; neither was the Tribunal. Mr Clegg identified "lifestyle issues" which was aggravating the problem in two of the flats.

44. On 19 August 2014, Mr Doru inspected first Ryegates on behalf of Calfordseaden. Again, he was not provided with the design specification. On 14 July 2015, he inspected the windows at 3, 4, 14, 15 and 27 Ryegates. One resident explained how rainwater swept in during wind driven rain. The bedroom window in Flat 4 was dismantled to inform his investigation. His report, dated 29 September 2015, is at C507-520 and is illustrated by a number of photographs. The Tribunal found Mr Doru to be a careful, cogent and credible witness.

45. We highlight the following findings in his report, upon which he elaborated in his evidence:

(i) The majority of the windows had symptoms of dampness and/or rot. The double glazed sealed units had lost their air tightness and this affected their thermal performance. The windows were only some ten years old and one would not normally expect windows to be degraded to this extent.

(ii) He noted signs of rot within the corners of the casement windows. He considered whether this was due to condensation. Based on his examination of the window at Flat 14 and other windows, he noted that the rot was not to the beading, but underneath this component suggesting water ingress from other means.

(iii) When the bedroom window of Flat 4 was dismantled, Mr Doru observed signs of wetness and recent damp patches on each layer of the components. He attributed this to poor design and degradation.

(iv) He identified two main problems. First, plastic or nylon packers of some 5 x 100 mm should have been installed in the frames to support

the glazing. There is no evidence that any of these packers were installed. Rather, it seems that the cork packers (3 x 12 x 12 mm) which were used for transportation, were left in situ. The weight of the double glazed units crushed these cork packers as a result of which the windows dropped in their frames and the seals were broken. Secondly, there should have been drainage channels in the bottom section of the frames which if properly installed would enable any water between the frames to discharge externally. The holes should have been some 25mm; the evidence suggests that they were only 10 mm. The drainage channels did not discharge any water to the exterior of the property. It rather remained within the frame causing the wooden frame to rot. This defect was aggravated by the dropping of the glazing which sat directly on the drainage channels.

(v) On 2 February, He illustrated these defects when he gave evidence in the site office in respect of the windows which had been removed from 24 Walkynscroft on 24 January. Ms Blackburn prepared a "Justification Report" in respect of these windows and provided a number of photographs (at A576-584)

(vi) He noted a number of further defects. The aluminium cover flashings at the head of the windows were poorly fitted. The external mastic failed to provide a watertight seal. The sliding trickle vent mechanisms had become seized. We observed some of these defects during our inspection.

(vii) He noted that AM Profiles were no longer trading and that any guarantee had now expired.

46. In his September 2015 report, Mr Doru considered the two options, namely to repair or to replace the windows. He recommended replacement. This recommendation was informed by a "life cycle costing analysis" prepared by A & E Elkins at A525. This had computed the total cost for renewal of the windows at Ryegates to be £805,519, whilst the cost of repairs and maintenance was assessed at £842,046.

47. On 16 May 2015 (at A290), Ms Beck made a further complaint on behalf of the BETRA in respect of the windows at Ryegates. The composite windows had never been the preferred option of her members. There had been numerous complaints since their installation in 2004. She referred to "the total deterioration of the timber", which seems to have been something of an overstatement. She also complained that the appropriate insulation had not been injected into the walls.

48. On 15 June 2015, Paul Thomas, Contract Manager, Major Works (at A187), wrote to the residents at Ryegates inviting them to a Drop-In Session on 30 June at the Ryegates Resident's Hall. The letter referred to a design fault to the windows which could not be resolved through

repairs. A full renewal programme was being considered. Volunteers were invited for a "Residents Project Team". A & E Elkins, Southwark's partnering contractor, had been instructed to commence surveys of the windows and produce a detailed and costed design proposal. We were told that only 3 or 4 residents had attended the Drop-In Session.

49. On 15 December 2015 (at A190), Mr Thomas wrote to all residents on the Estate. He notified residents that the Estate had been included in the Quality Homes Investment Programme ("QHIP") for 2016/7. On 20 October 2015, Southwark's Cabinet had agreed the QHIP programme which is summarised at A200. A Pop-In Session was arranged for 22 December at which some 5 or 6 residents had attended.

50. On 15 March 2016, Southwark's Cabinet approved the Estate as part of the QHIP programme. This included the replacement of the windows. In March, Ms Blackburn had produced a "Justification Report" (at A385) in which she recommended that the windows in both blocks should be replaced with UPVC. Intrusive investigations had been carried out in both blocks to identify the defects. She had discovered that Norscroft, a Company based in Scotland, had acquired the Alarbond window design from AM Profiles. Norscroft had informed her that Alarbond had not been in production since 2012. Whilst repairs were possible, it would be extremely expensive to make the extruded parts of the frames. The repairs would need to be carried out off site in a factory situation. Both scaffolding and temporary windows would be required.

51. In June 2016, Mr Lee-Parsons produced a Feasibility Study on the Brayards Estate (at A468-505). He had sight of the Fenestration Report, but not the Calfordseaden Report. Mr Lee-Parsons inspected a sample of 25% of the flats at both Ryegates and Walkynscroft. He was accompanied by a colleague with 30 years' experience of window installation.

52. We regret that we did not find Mr Lee-Parsons to be a satisfactory witness and therefore give limited weight to his report on the state of the windows. On 29 January 2016, he had submitted the inaccurate applications for planning permission (at B1-7). He was not willing to offer any explanation for his errors on grounds of "self-incrimination". On 4 March, he produced the first draft of his report (at B22-24). This included the statement: "The windows to Walkynscroft were apparently not subject to the same drainage defect and indeed this particular defect was not identified when one was stripped down". This passage was removed from his final report. He was unable to explain why he had removed this in his final report. He suggested that in the iterations of the three drafts of his reports, he had done no more than correct typographical and grammatical errors. In his final report, he stated that "the windows at Ryegates are due for replacement in any case". His

explanation was that this was what he had been told, albeit that the windows were only 12 years old.

53. The Tribunal accepts the findings by Mr Lee-Parsons on the other defects affecting the two blocks. His evidence was not undermined in cross-examination. We highlight the following: (i) the need for modest brick and masonry repairs (Section 1.3); (ii) the possible need for work to the concrete lintels (Section 1.4); (iii) defects to the asphalt roof finishes, albeit that the roofs appeared to be in a reasonable condition structurally (Section 1.7); and (iv) the painted finishes to the communal ceilings and walls did not comply with current fire standards (Section 1.14). He stated that the "class 0 standard" related to the surface spread of flame. He was not sure whether the same standards had applied in 2004. A number of these defects are illustrated in the photographs annexed to his report.

54. On 19 July 2016 (at A192), Mr Thomas wrote to residents in the two blocks. A further Pop-In Session was to be held on 26 July to discuss the proposed works which included (i) window renewals; (ii) roof repairs; (iii) concrete and brickwork repairs; (iv) possible fire precautions; and (v) external/communal decorations.

55. At this time, Ms Crawford was in the process of acquiring the leasehold interest in 17 Walkynscroft. On 20 September 2016 (at A200-202), Southwark wrote to her Solicitor explaining the works that were proposed. On 29 September, she exchanged contracts and on 21 October the sale was completed (A104). She paid £325k.

56. On 6 January 2017 (at A418-426), Southwark served on the tenants its Notice of Intention. The Notice complied with the statutory requirements for works carried out under a QLTA (see [36] – [37] above):

(i) The Proposed works were described: "general access and safety works; window renewals; roof repairs; concrete and brickwork repairs; external decorations to include communal areas; drainage repairs; and external asbestos removal where necessary."

(ii) Southwark explained why the works were considered to be necessary. Water ingress had caused damage to wooden window frames as well as contributed to concrete and brickwork perishing. Replacement was now required.

(iii) The Notice contained a statement of the estimated expenditure, namely £530,725 for Ryegates and £543,475 for Walkynscroft. The estimated liability for each tenant was: (a) Ms Heath (27 Ryegates): £23,574 (A432); (b) Mr Esse (2 Ryegates): £23,574 (A418); (c) Ms Crawford (17 Walkynscroft): £24,141 (A446); and (d) Ms Jawdokimova

(10 Walkynscroft): £24,141 (C107). This notice was the first occasion that the tenants learnt of their potential service charge liability.

The Notice stated that the works were to be executed by A&E Elkins, Southwark's long term partnering contractor. The schedule of rates under the QLTA had been established under competitive tender. Southwark continually monitored these rates to ensure that they remained competitive.

57. On 2 February 2017 (at A156-162), seven tenants, including three of these applicants, made a detailed response to this Notice. Detailed representation were made in respect of the decision to replace the windows. Only 26% of the windows at Ryegates had been surveyed, whilst none of those at Walkynscroft. When the windows at 27 Ryegates had been surveyed, the surveyors had indicated to Ms Heath that they didn't see any major issues with her windows.

58. On 3 March 2017 (at A758-766; A767-775; C220-228), Ms Blair responded to each of the tenants. In March 2016, Southwark's Cabinet had agreed the window repairs as part of the QHIP. Detailed responses were made addressing the points raised by the tenants. Southwark's surveyors had not only based their recommendations on their inspections, but also on the repair histories. The windows in the two blocks were essentially the same with the same defect. The one difference was that the communal windows in Walkynscroft were all aluminium rather than of a composite construction. Some minor adjustments were made to the proposed works in the light of the representations.

59. On 23 March 2017 (at A195), Ms Johnson notified Ms Jawdokimova that Southwark intended to make a refund of the sums paid by tenants in respect of their contribution to the cost of the defective windows which had been installed in 2004. Ms Jawdokimova had paid £3,953.02 and this sum was to be refunded.

60. On 22 April 2017, Mr Duncan (At Tab 7), instructed by the tenants, inspected the windows at 9, 25, and 27 Ryegates and 10 and 17 Walkynscroft. His report is dated 24 April 2017 and is illustrated by a number of photographs. He found that all the windows which he inspected were operational, in a satisfactory condition and suffered no sign of any rot to internal components. The bottom rails of some of the openable casements had discoloured internally, particularly in the corners. None of this discoloration was accompanied by any degradation of timber. One of the bedroom windows at 10 Walkynscroft had failed in that it was suffering from interstitial condensation. He was satisfied that the defective pane could be replaced internally. He concluded that the majority of the proposed works were either premature or unnecessary. He also inspected the internal communal areas which were decorated in high gloss paint. He concluded that they were in "above average condition". Mr Duncan was not available to give

evidence or be cross-examined. We were told that he was abroad. This affects the weight that the Tribunal can give to his evidence.

61. On 23 October 2017, Southwark served a further Section 20 Notice in respect of additional works. These related to the replacement of panels, brickwork repairs and fire risk assessment works. The need for the brickwork repairs was identified in the report by Trenton Consultants, dated 14 June 1017 (at A548). The additional works increase the estimate service charge of the tenants at Ryegates from £23,574 to £26,432 (A441) and those at Walkynscroft from £24,141 to £26,334 (A455). As already noted, any service charge relating to these additional works is outside the scope of the current applications.

62. On 17 January 2018, Mr Smith inspected the windows at 10 Walkynscroft on behalf of Ms Jawdokimova. He attaches a number of photographs to his report. He concluded that the windows were generally functional and in a condition suitable for continuous regular use. He noted that one window in the middle bedroom had a cracked pane and some interstitial condensation. He recommended that the glazing should be replaced. The window mechanisms were slightly stiff and recommended some easing/adjustment. The seals to the lower part of the frames were generally worn and should be replaced. The varnished timber to the base of the frames was discoloured. He found no signs of dampness and no indication of wood rot or other irreparable timber defects.

63. Mr Smith gave evidence to the Tribunal. He had not inspected the windows in any of the other flats. Neither had he seen the reports from Fenestration (June 2014) or Carfordseadon (September 2015). We adjourned for a short period to allow him to consider these reports. In response to questions from Ms Lovegrove, he conceded that he had been unaware of the inherent defects affecting the windows when he had inspected the flat. He conceded that it may only be possible to see wood rot through an intrusive examination. However, the Tribunal notes that when these windows were dismantled on 17 February, there was no evidence of wood rot. Mr Smith was shown the Justification Report prepared by Ms Blackburn based on her examination of the window at 24 Walkynscroft. He responded that these windows were in a worse condition from those at 10 Walkynscroft. In a response to a question from Mr Roberts, he conceded that it was apparent that the packers had not been installed correctly. His philosophy was that a landlord should do the minimum that was required. If woodwork is rotten or the seals damaged, replacement of the damaged part must be the most economic. Windows should only be replaced if they are beyond economic repair.

The Tribunal's Determination

64. The Tribunal has had regard to all the evidence and the written submissions of the parties. In the light of this, the Tribunal is satisfied Southwark is entitled to pass on the estimated charges for the works specified in the Notice of Intention, dated 6 January 2017. This is an expert tribunal and our decision has been informed by the expert knowledge of both an architect and a Chartered Surveyor.

65. The Tribunal makes the following findings in respect of the windows:

(i) The windows which were installed in both Ryegates and Walkynscroft in 2004 are beyond economic repair and should be replaced. The only practical and economic solution is to replace all the windows in the two blocks.

(ii) The composite aluminium and wood double glazed windows which were installed in 2004, might reasonably have been expected to have had a life of 30 to 40 years if manufactured and installed according to the design specification.

(iii) Soon after the windows were installed, evidence of the defects became apparent. Having seen the design specification, the Tribunal is satisfied that there were two main problems. First, plastic or nylon packers of some 5 x 100mm should have been installed in the frames to support the glazing. There is no evidence that any of these packers were installed. Rather, it seems that the cork packers (3 x 12 x 12 mm) which were used for transportation, were left in situ. The weight of the double glazed units crushed these cork packers as a result of which the windows dropped in their frames and the seals were broken. Secondly, there should have been drainage channels in the bottom section of the frames which if properly installed would enable any water between the frames to discharge externally. The holes should have been some 25mm; the evidence suggests that they were only 10 mm. Many of the drainage channels did not discharge any water to the exterior of the property. It rather remained within the frame causing the wooden frame to rot and water to penetrate into the interior of some flats. This defect was aggravated by the dropping of the windows as the glazing sat directly on the drainage channels. Some of the window frames were in a worse condition than others which showed little rot, if any.

(iv) These were not the only defects. The aluminium cover flashings at the head of the windows were poorly fitted. The external mastic to the perimeter of windows failed to provide a watertight seal. The sliding trickle vent mechanisms in some flats became seized, which could have aggravated problems of condensation in some flats.

(v) These defects seem to be a combination of negligent manufacture and the negligent installation of the window units. The quality of supervision in respect of these works was poor. It seems remarkable that no one noticed that the cork packers had not been removed and replaced by the specified plastic/nylon packers.

(vi) As a result of these defects, water built up between the aluminium and wooden frames causing the wood to rot. As the windows dropped within their frames, they became ill fitting and draughty. Water penetrated into the flats. Complaints relating to the state of the windows were made shortly after the windows were installed. From October 2011, complains were well documented with the BETRA agitating for effective repairs to be put in hand.

(vii) Whilst the initial reports focused on the defects at Ryegates, the Tribunal is satisfied that the windows at Walkynscroft were in a similar condition.

(viii) The extent of the wood rot was demonstrated in the wooden frames from the windows which had been removed from 24 Walkynscroft and which were shown to the Tribunal. The Tribunal is satisfied that similar rot was apparent when other windows were dismantled.

(ix) The Tribunal did not see any evidence of wood rot to the windows which we inspected. The Tribunal accepts that such rot may only become apparent when the windows are dismantled. However, we saw photographs of the windows from 10 Walkynscroft which were dismantled on 17 February and which did not indicate any wood rot. Further, the Tribunal is not satisfied that there was any wood root to the windows which were removed from 27 Ryegates on 24 January 2018.

(x) The Tribunal is satisfied that the windows at 10 and 17 Walkynscroft and 2 and 27 Ryegates had the same design and installation defects as the other windows in the two blocks. There is no evidence that the correct packers were installed in any of these windows. Indeed, we saw evidence that windows at 10 Walkynscroft were starting to drop.

(xi) The Tribunal rejects the suggestion from the tenants that the wood rot between the aluminium and wooden frames was caused by condensation or untenant-like behaviour. We accept the evidence of Mr Doru on this point. The fact that there was more extensive wood rot in the windows in some flats could be explained by the extent of the crushing of the cork packers in the individual window, the effectiveness of the drainage channel in the individual window, or the physical layout of the flats and orientation. Some flats will be more exposed to the elements.

(xii) Southwark covenants not only to keep the windows "in repair", but also to "make good any defect" affecting the windows. The Tribunal is satisfied that there was a defect in all the windows that needed to be made good. Further, the Tribunal is satisfied that the windows were in disrepair in that their physical condition was worse than it had been when they were installed.

66. The Tribunal is satisfied that Southwark was entitled to conclude that the windows were beyond economic repair and that their replacement with new UPVC windows was justified. The Applicants occupy their flats under leases for 125 years. Any windows should have a life expectancy of at least 30 to 40 years. The composite windows as installed have not been in production since 2012. Norscot which has brought the designs from A M Profiles, has informed Southwark that it has depleted all the stocks of spares. It has disposed of all the dies and the templates to produce repairs. We are satisfied that all the windows would need to be removed and repairs carried out in a factory situation off site. Both scaffolding and temporary windows would be required. It would not be practical to defer works to any particular flat until the defects have had a significant impact, whether by evidence of wood rot or the windows dropping in their frames. Because of their defective construction, all the windows are now at the end of their natural lives, albeit that that they were only installed in 2004.

67. A & E Elkins carried out a Life Cycle Costing Analysis (at A525). This computed the "renewal option" at £805,519.38 and the "repair option" at £842,046.92. This assumed the life cycle of the new UPVC windows at 21 years. We suggest that, in practice, 30-40 years is more likely. Whilst we have some concerns about the assumptions that inform this assessment, the Tribunal is satisfied that Southwark has taken reasonable steps to satisfy itself that renewal is the cost effective option.

68. The tenants suggested that any repairs could be executed on site. The glazing could have been removed, the appropriate packers installed and the glazing reinstated. However, this would not have addressed the defective drainage channels. Neither would it have been possible to replace any defective timber on site. The Tribunal concludes that this suggestion is wholly unrealistic given the nature of the defects that have been identified. It would have been wholly impractical to deal with any repairs on a piecemeal basis. Replacement parts are no longer available.

69. The tenants raise a number of further issues in respect of the proposed works to the windows:

(i) Ms Jawdokimova suggested that Southwark is only responsible for the external aluminium section of the frame; the internal wooden frame is rather the responsibility of the tenant. The Tribunal does not accept this. The landlord is liable to keep the whole of the window frame in a proper state of repair.

(ii) Ms Jawdokimova attributed the wood rot to condensation and the untenant-like behaviour of the secure tenants. Whilst we accept that there was evidence of condensation in some of the flats, we are satisfied that this is not the cause of the wood rot between the frames.

(iii) Mr Crawford suggests that the proposed works are "improvements". We do not accept this. We are satisfied that the proposed works are works of repair necessary to make good the damaged windows. UPVC double glazed units are replacing composite aluminium and wood double glazed units.

(iv) Mr Crawford suggested that the consultation process was flawed in that Southwark did not approach the process with an open mind. The Tribunal is satisfied that Southwark had due regard to the points raised by the tenants. Southwark was entitled to conclude that the windows were at an end of their serviceable lives.

(v) Both Mr Crawford and Ms Jawdokimova suggested that the works were being carried out as part of a borough-wide improvement scheme pursuant to their QHIP and their policy objective of installing UPVC windows throughout their housing stock. The suggestion seems to be that the works to the windows were not justified by their condition. We are satisfied that they were. The decision to replace the existing windows with UPVC windows was one which fell within the landlord's margin of appreciation. The replacement with new composite aluminium and wood double glazed units was not a realistic option.

(vi) The tenants objected to the use of UPVC windows, suggesting that they are unsafe. The Tribunal is satisfied that Southwark were entitled to opt for UPVC windows which are increasingly favoured by social landlords.

(vii) The tenants suggest that Southwark had inadequate regard to the interests of the seven lessees. The vast majority of the flats were occupied by secure tenants. The Tribunal is satisfied that Southwark has due regard to the financial impact of the proposed works on its lessees, as opposed to its secure tenants. Indeed the option of replacing the windows, rather than the more expensive option of seeking to repair them, was in the interests of all parties.

(viii) The tenants suggest that the need to replace the windows would not have been necessary had Southwark kept them in a proper state of repair having installed them in 2004. The Tribunal cannot accept this argument. These windows were doomed from the start because of their defects.

(ix) The tenants contend that Southwark should have required the windows to be rectified under the guarantee. The problem is that the

guarantee was not insurance backed. It was issued by AM Profiles who went into administration in about 2012 before the extent of the defect became apparent. Ms Blair explains how it was not Southwark's policy to obtain an insurance backed guarantee at this time ([14] at C357).

(x) The tenants complain that Southwark should have taken up the defects with Standage and Co who were the main contractor for the 2004 works. The Tribunal is satisfied that Southwark did raise the defects with Standage. Indeed, the Fenestration Report was jointly commissioned by Southwark and Standage.

(xi) The tenants have queried whether VAT is payable. Ms Long confirmed that it is not.

70. Mr Crawford sought to argue that Southwark are estopped from seeking to recover the costs of the windows from Ms Crawford who acquired the leasehold interest in 17 Walkynscroft of 21 October 2016 for £325k. Mr Crawford relies on an e-mail, dated 20 September 2016 (At A200) as feeding this estoppel by representation. Fatimoh Abudallahi, a Southwark employee, wrote to Ms Crawford's Solicitor providing information regarding planned major works. It includes the following statement:

> "The following components will be repaired where feasible to give a reasonable life-span or renewed if detailed surveys indicate condition is such the component has reached the end of its repairable life span ..... windows to residential and communal parts".

71. It is suggested that Ms Crawford would not have proceeded with her purchase had she known of the likelihood of a substantial service charge being levied. The Tribunal considers this argument to be hopeless. There was no promise that Ms Crawford would not be liable for a service charge in respect of the planned major works. She was rather strongly advised to seek her own independent professional advice about the structural condition of the flat. Southwark had not yet served its Notice of Intention to execute these works. This was served on 6 January 2017. Whilst Southwark was clearly contemplating that the windows would need to be replaced, it had not yet finalised its decision. Further, the cost of repairing the windows would have been greater than the option which was finally selected.

72. The tenants challenge a number of other items which are included in the schedule of works. We are satisfied that all the works were justified. We deal with these more briefly:

(i) Roofing works: We accept that there were some defects to the asphalt roof finishes.

(ii) Some repairs were required to the brickwork and masonry.

(iii) Whilst the communal parts were generally in a good condition, they did not comply with current fire retardment standards.

(iv) The Tribunal accepts that Southwark's Head Office contribution is recoverable. We were told that there is no element of profit.

(v) The parties were agreed that the Social Landlords Mandatory Reduction of Service Charges (England) Directions 2014 had no relevance to this case as central government is making no contribution to the cost of the works.

Applications for the Refund of Fees and Costs

73. The Applicants apply for a refund of the fees that they have paid in respect of the application. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal does not order the Respondent to refund any of these fees. The Applicants have not succeeded in their application.

74. The Applicants have also applied for an order under section 20C of the 1985 Act. Ms Lovegrove informed the Tribunal that the Respondent did not intend to pass on the cost of these proceedings through the service charge; accordingly no order is necessary.

75. In her written submissions, dated 10 March, Ms Lovegrove sought to apply for a penal costs order in the sum of £800 + VAT pursuant to Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 in respect of the arguments raised by Mr Crawford in respect of the alleged breaches of planning control. There is a high threshold for any such application and in the light of a firm indication from the Tribunal, Ms Lovegrove withdrew the application.

76. Mr Crawford has sought costs on an indemnity basis in the sum of £20,000, namely £8,400 for Counsel's fees and £4,000 for the costs of experts. This Tribunal is normally a "no costs" jurisdiction. Mr Crawford has not established any grounds for seeking penal costs order. In any event, the tenants' challenge has failed.

Judge Robert Latham
27 April 2018

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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

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

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

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

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of Relevant Legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

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

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

(3) For this purpose -

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

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -

(a) only to the extent that they are reasonably incurred, and
(b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

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

Section 27A

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

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

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

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken

into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20C

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

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

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