12995

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BH/LSC/2018/0110**
Property	:	**113 Hampton Road, London E4 8NP**
Applicants	:	**Shazia Younas (Flat 2)** **Adam Chaplin (Flat 3)** **Michael Locke (Flat 4)** **Julie Chaplin (Flat 5)** **Degel Limited (Flat 6)**
Representative	:	**Ms G Whiting of counsel**
Respondent	:	**Mr K Phelby**
Representative	:	**Mr Channer of counsel**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	:	**Judge Pittaway** **Mr D Jagger FRICS** **Mr P Clabburn**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**31 October 2018**

DECISION

Decisions of the tribunal

(1) The respondent landlord is responsible for the repair of the roof.

(2) The respondent complied with the consultation requirements of the Landlord and Tenant Act 1985 (the **"Act"**) in respect of the Initial Works (defined below) and the tribunal determines that the costs of these, in the sum of £18,420 (including VAT) are reasonable and are payable.

(3) The respondent has not complied with the consultation requirements of the Act in relation to the remainder of the works and accordingly the amount of the costs incurred by the respondent in carrying out these works that may be taken into account in determining the relevant contribution in relation to each tenant is limited to £250 per tenant.

(4) If the respondent had consulted on the remainder of the works a cost of £58, 557 would have been reasonable. A cost of £139,760 was not.

(5) The tribunal makes the further determinations as set out under the various headings in this Decision.

(6) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985, so none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

The background

1. By an application dated 14 March 2018 the applicants (being five of the six tenants of long leases at 113 Hampton Road Chingford applied to the tribunal to determine, pursuant to s.27A of the Landlord and Tenant Act 1985 ("the **1985 Act**"), the payability, and reasonableness if payable, of service charge in the sum of approximately £158,000 for works to the roof and associated works in the service charge year 2014.

2. The tribunal issued directions on 12 April 2018 (amended 16, 26 and 27 July 2018) which identified that the issue to be considered by the tribunal at the hearing was whether the respondent's failure to comply with his repairing obligations had resulted in the roof repairs that were ultimately carried out being more expensive than would have been the case if the respondent had acted in a timely manner. The directions also indicated that the applicants were seeking a set-off rather than disputing the reasonableness of the cost of the works themselves.

3. The properties which are the subject of this application are five of the six flats in a purpose-built block of self-contained two-bedroomed flats constructed in the 1960s (the "**Block**"). Neither party requested an inspection and the tribunal did not consider that one was necessary. Photographs of the Block, and in particular its roof, were provided in the hearing bundle.

4. The Applicants hold long leases of their respective flats which were copied in the bundle before the tribunal. These were stated to be in identical form, save for their particulars. The tribunal considered the lease of Flat 2 for the purposes of their decision. The applicants did not deny a liability to pay service charge under the terms of their respective leases nor that the service charge provisions would entitle a landlord to recover the cost of the repair of the roof.

5. On 13 July 2014 there was a partial collapse of the roof at 113 Hampton Road which resulted in scaffolding and a temporary roof being erected between 14 July and 28 July 2014 by KADS Developments Ltd ("**KADS**"). On 18 August 2014 KADS provided an estimate for the Initial Works, being the removal of the ceilings in flats 5 and 6, providing Acrow props to the front and rear of the building, stripping the old felt, screed and insulation from the remainder of the roof and arranging for the roof to be inspected by a structural engineer and building control. The estimated cost of this work was £18,240 (including VAT).

6. On 16 November 2014 KADS provided an estimate for the second stage of the works which included replacing the roof. The estimated cost of these works was £58,557.60.

7. On 14 January 2015 the respondent applied for dispensation of the consultation requirements of section 20 of the Act.

8. On 25 February 2015 the tribunal granted dispensation.

9. It would appear that the cost of the works (the Initial Works and the second stage and some further works) rose to £158,000 and the respondent is seeking to recover this sum from the tenants by way of service charge.

Evidence and submissions

10. The Applicants were represented by Ms Whiting of counsel at the hearing and the Respondent was represented by Mr Channer. The tribunal heard evidence from Ms Reynolds for the respondent, and Mr Locke, one of the applicants; and expert evidence from Mr Purton for the applicants and Mr McSorley for the respondent.

11. Immediately prior to the hearing both counsel provided skeleton arguments to the tribunal. At the request of the tribunal Ms Whiting also provided copies of the decision in *Continental Property Ventures Inc v White* [2006] 1 EGLR 85 (referred to in the directions dated 12 April 2018) (***"the Continental Case"***) to the tribunal and it was confirmed to it that the respondent had seen a copy.

12. The start of the hearing was delayed while the parties sought to settle the matter but as they were unable to do so, the hearing proceeded.

13. Following the hearing the tribunal realised that the documents included with the application form pursuant to which the Section 20 ZA dispensation from consultation dated 23 February 2015 (the **"Consultation Dispensation"**) had not been

provided to the tribunal. It requested all the documents that had supported that application be provided. It also indicated that it would consider further representations on this if appropriate.

14. Kennard Wells, solicitors to the respondent, provided the tribunal with a further copy of the application for the Consultation Dispensation on 17 September 2018. They were uncertain as to what documents had accompanied that application but attached those that Ms Reynolds believed had been attached. On 21 September they sent the tribunal the respondent's further submissions and a copy of the decision in *Birmingham CC v Mr Keddie and Mr Hill* [2012] UKUT 323 (LC) ("the "***Birmingham Case***")

15. The tribunal received no further representations from the applicants.

16. The tribunal refers to that evidence, the documents and submissions as appropriate in its decision below.

The tribunal's decision and reasons

17. Having heard evidence (including expert evidence from Mr David Purton of Complex Construction Limited for the applicants and Mr McSorley of Thomasons Ltd for the respondent) and submissions from the parties and considered all of the documents provided including the decisions in the *Continental Case* and the decision in *Daejan Properties Limited v Sean Gerald Griffin, Alphonse Mathew [2014] UKUT 0206 (LC) (the "**Daejan Case**")*, the extract from the case of *India v India Steamship Co Ltd* referred to in Mr Channer's submissions (the ***"India Case"***) and the *Birmingham Case* the tribunal has made determinations on the various issues as follows.

Responsibility for the repair of the roof

18. In Mr Channer's skeleton argument he accepts that clause 5(4) of the leases requires the respondent to *"repair, decorate and maintain and keep in repair, decorated and maintained the retained parts and in particular.... the roofs..."*.

19. It is Mr Channer's submission that in 2004 a letter from the then tenants of the Block (of whom only one, Mr Locke, remains a tenant) to the respondent's predecessor in title to the freehold, amounted to notice of the tenants' intention to assume responsibility for the repair and maintenance of the Block. He accepts that there was no formal variation of the lease but argues, relying on an extract from the *India case,* quoted in *Service Charges and Management; 3rd edition Tanfield Chambers,* that the parties were acting on an assumed state of facts, namely that the tenants had taken over responsibility for the repair of the roof.

20. The tribunal are not persuaded by Mr Channer's submission. The letter of 3 November 2004 was restricted to notice by the then tenants of their intention to carry out some then required works as detailed in that letter. It includes reference to carrying out repairs to the roof and repointing of the parapet wall constructed at the top of the Block then required but does not suggest that the tenants were accepting an on-going responsibility. It invited the then managing agents, to whom the letter was addressed,

to object to the tenants undertaking the work if the then landlord objected to them doing so. This does not suggest that they considered that they had taken over long-term responsibility for structural repair.

21. The *India case* states "It is not enough that each of the two parties acts on an assumption not communicated to the other" The tribunal are not satisfied that there was the requisite level of communication in this case to show that the tenants were accepting on going responsibility for the repair of the roof.

22. That the tenants allowed the respondent, acting by Ms Reynolds to organise the repairs, and indeed pay for them also indicates that the tenants did not consider that they were responsible for repair.

The sum claimed

23. During the hearing it became apparent that the works could be divided into three stages.

    (i) The initial works undertaken when the roof collapsed in the sum of £18,240. (the **"Initial Works"**)

    (ii) The substantive roof works and the works ancillary to them. The original estimate for these works was £58,557.60. (the **"Main Roof Works"**)

    (iii) The cost of certain extra works requested by the tenants.

24. The total claimed by the respondent for all the works was £158,000. The bundle before the tribunal was unclear as to how the sum of £158,000 was calculated despite the fact that it included a breakdown and the tribunal therefore heard evidence from Mrs Reynolds as to how this sum was broken down. The tribunal remained unclear after hearing this evidence as to the split of the cost between the Main Roof Works and the cost of the extra works requested by the tenants and have therefore treated this as one item; the total of which is £139,760.

Consultation

25. During the course of the hearing it became apparent to the tribunal that a further issue was whether the Consultation Dispensation related to

    (i) The Initial Works alone;

    (ii) The Initial Works and the Main Roof Works; or

    (iii) the totality of the works carried out in 2014 (some of which were not directly the result of the lack of repair of the roof);

26. Neither party submitted that the Consultation Dispensation related to anything other than the Initial Works and the Main Roof Works. It did not relate to the extra works requested by the tenants. Accordingly it is clear that the Consultation Dispensation did not relate to these.

27. When giving her evidence Mrs Reynolds was very clear that the Consultation Dispensation only related to the Initial Works. She made it quite clear to the tribunal on two separate occasions when giving evidence that the dispensation had only been sought in relation to the Initial Works, explaining that all subsequent consultation had been carried out by the numerous e mails that had been sent to the tenants. On the first day of the hearing Mr Channer also confirmed to the tribunal that the Consultation Dispensation related only to the Initial Works.

28. Because Mrs Reynolds had given this evidence and because of its impact on the possible level of service charge payable by each tenant the tribunal invited both counsel to address them on the issue of consultation in their closing submissions.

29. Ms Whiting submitted at the hearing that at the time of the Consultation Dispensation the extent of the main works was not known and for the Consultation Dispensation to have covered the entirety of these works would have taken away the protection that the Act intended to give tenants. She submitted that there had been no consultation in respect of the main works to the roof; only the Initial Works. Ms Whiting made no further submissions after the hearing although she was offered the opportunity to do so.

30. Mr Channer submitted at the hearing that lack of consultation had not been pleaded; and should have been given the significant impact that lack of consultation might have on the amounts recoverable from the tenants. He submitted that the Consultation Dispensation related to both the Initial Works and Main Roof Works. The application for dispensation referred to "roof works", that the report of 29 July 2014 referred to in the Consultation Dispensation relates to the then anticipated work to the roof in its entirety and the quotation of 18 August 2014 referred to, although headed "Initial Works" clearly states that the extent of the work required is not then known.

31. Mr Channer made further submissions (as invited to do so by the tribunal) following the hearing. In these he stated that the extent of the dispensation given to the respondent was raised as an issue by the tribunal, *"by its own motion"*. He refers the tribunal to the *Birmingham Case* as authority that the tribunal should not resolve issues which it has not been asked to resolve and that the tribunal has no jurisdiction to consider the issue of consultation. Without prejudice to this he then again submitted that the Consultation Dispensation related to the entirety of the works to the roof, referring specifically to the statement in the application by the respondent that he is *"applying for the dispensation retrospectively for the replacement of the damaged roof"*.

32. The tribunal reject Mr Channer's submission that the tribunal of its own motion raised the issue of what works the Consultation Dispensation related to, as this does not sit easily with the evidence that it heard from Ms Reynolds. The issue of the extent of the Consultation Dispensation is appropriate for the tribunal to raise in light of that

evidence. It is a matter which falls within the broad scope of the application and needs to be considered by the tribunal in order to determine properly the issues expressed to be in dispute. The issue may not have been pleaded but the tribunal has given both parties a fair opportunity to deal with it, both at the hearing and subsequently.

33. The tribunal have therefore considered the extent of the works to which the Consultation Dispensation relates. While noting Mr Channer's submissions, the tribunal considers the respondent's application is ambiguous. The tribunal agrees that it says he is, *"applying for the dispensation retrospectively for the replacement of the damaged roof"*, as Mr Channer states, but the whole sentence reads, *"We will be starting the initial for [sic] within the next ten days and applying for the dispensation retrospectively for the replacement of the damaged roof."* The underlining is that of the tribunal. The tribunal further notes that the application also states that all quotes from the builders are attached (they have not been provided in the copy application provided to the tribunal) and refers to three estimates having been obtained. The tribunal has seen no evidence that three estimates were obtained in respect of any works other than the Initial Works.

34. The tribunal do not accept Mr Channer's submission that reference to the report by John Pryke and Partners can be read in isolation from the quotation of 18 August 2014 issued by KADS, referred to by the tribunal in the same paragraph, which is a quote of £15,200 plus VAT. Paragraph 8 of the Consultation Dispensation makes it clear that the dispensation is in respect of works in the sum of £15,200 plus VAT.

35. Accordingly the tribunal finds that the Consultation Dispensation only related to the Initial Works, which are payable. It did not relate to the Main Roof Works.

The reasonableness of the cost of the Initial Works

36. Mr Purton's report did not query the reasonableness of the cost of the Initial Works. Further the cost of the Initial Works had been communicated to the tenants and accepted by them.

37. In the absence of any evidence to the contrary the tribunal find the cost of the Initial Works in the sum of £18, 420 to be payable and reasonable

Whether the cost of the Main Roof Works would have been reasonable had there been consultation

38. The tribunal have considered whether the cost of the Main Roof Works would have been reasonable had they been payable.

39. It was common ground between the experts for both parties that the roof structure failed in 2014 due to ingress of water which caused the timber roof joists to rot and over time fail. It was also common ground that the original 3 layer felt system installed when the block was built was well beyond its expected lifespan, which Mr Purton estimated at 10 to 15 years. And it was further agreed that at some time during the life

of the roof some 12 additional layers of felt had been added to the roof, although neither party accepted responsibility for having undertaken this work.

40. Thomasons' report pointed to the water ingress being the result of poorly maintained finishes; the roof membrane had exceeded its life expectancy, and there was cracked, debonded and missing render on the faces to the parapets at the top of the external elevations of the building. In their opinion earlier intervention (by reason of regular inspection and a maintenance regime) would not have stopped the finishes needing to be replaced but it would most likely have prevented the deterioration and eventual failure of the roof joists. Such earlier intervention would have prevented the internal damage to the flats, the need to replace the joists and ceiling and the removal and reconstruction of the parapet.

41. Mr Purton's report identified the additional works over and above what would reasonably have been expected to have been undertaken to include the removal of several courses of brickwork and the installation of a new damp proof course to the perimeter. In his opinion the emergency propping works, removal of ceilings and rebuilding of the roof had contributed unnecessary extra cost. He identified that of the work actually carried out the following works would have been required even if there had been cyclical maintenance;

(i) Scaffolding;

(ii) Temporary roof (dependent on timing of works);

(iii) Removal of existing roofing felt and to the main and tank room roofs, with associated upstands, pipework details, etc.;

(iv) Removal of existing roof insulation and installation of new (potentially unnecessary if the roof had been well maintained);

(v) Installation of new roof membrane;

(vi) Waste removal; and

(vii) Preliminaries, overheads and profit.

42. Ms Whiting, in her skeleton argument submitted that the respondent's historic neglect was the sole reason for the costs incurred at the level demanded and that, as a result of this historic neglect, the applicants had a right of set-off of the increased expenditure against the sums sought by the respondent. Mr Purton's expert report of 30 April 2018 is headed "Set-Off Report..."and has attached to it a schedule which is described as a "set off Cost Plan Summary" However the summary does not set out sums that should be set -off against the service costs claims. Rather it sets out two alternative sums that Mr Purton considers would be reasonable cost of the roof works. In Mr Purton's opinion a reasonable estimate for the work (utilising the Principle Contractor's Cost Model) was in the region of £40,859 to £43,137, depending on the product used.

43. In her closing submissions Ms Whiting submitted that while set-off was the primary basis of the applicants' claim if the tribunal did not consider that there was enough information before the tribunal to determine a sum to be set-off against the cost of the works then it was appropriate to look at what would be a reasonable sum for the works. This is what the tribunal have done.

44. The tribunal note that Mr Purton's suggested estimate of a reasonable cost of the works excluded certain items of work that were actually required (by reason of the landlord's historic failure to repair the roof). All the parties and the tribunal had before them the decision in the *Continental Case,* in which it was held that costs incurred by a landlord due to its own historic breach of a repairing covenant could be reasonably incurred. In the absence of a schedule of set-off costs the tribunal have therefore considered the reasonableness of the actual cost of the Main Roof Works, notwithstanding that some element of the cost may have been incurred by reason of historic neglect by the respondent of his predecessor landlords.

45. It is clear that the tenants had been advised that the cost of the Main Roof Works would be £58,557.60. Mr Locke, when cross examined on an apparent acceptance of the costs of £58,557.60 stated that his response consenting to the works was a consent to the works; it did not amount to an acceptance of their cost.

46. The tribunal notes that there was no evidence before it that any of the tenants communicated to the respondent that they considered a cost to repair the roof of £58,557.60 to be unreasonable and, having regard to Mr Purton's estimate (which was for less work) the tribunal consider that such a cost would have been reasonable.

47. The tribunal then considered whether the actual cost incurred of £139,760 was reasonable.

48. Mr Purton queried why the appointed contractors KADS Developments Ltd ("**KADS**") had taken 40 weeks to carry out the Main Roof Works when their initial estimate had quoted eight weeks from start to finish of the works. In his experience he would not have expected the work to have taken more than eight weeks.

49. In her evidence Mrs Reynolds, the sister-in-law of the respondent who assists with the management of the Block, explained that the length of time the works had taken was because of delays on the part of the builders, delays on the part of suppliers, illness and the need to liaise with the tenants.

50. Mrs Reynolds confirmed that there had been no one appointed to project manage the builders. She lives in France and made one visit from France for a meeting in connection with the substantive works while they were taking place.

51. The tribunal consider that the increase in the cost of the work by £81,202.40 to be unreasonable. The respondent had undertaken no cost control on what the builders were doing and no effort had been made to project manage the works. There was no evidence before the tribunal that these escalating costs had been advised to the tenants or that they had or would have accepted this increase.

Payment by the respondent of the sums claimed

52. Ms Whiting submitted that there was no evidence that the respondent had actually paid the sums set out in the service charge demand.

53. Ms Reynolds in her evidence explained that the invoices had all been settled by the respondent's solicitors, Kennard Wells Solicitors. To support this she pointed the tribunal to one letter from that firm to KADS dated 7 December 2016 in the bundle which states that a cheque for £28,983.20 is enclosed with the letter in settlement of their invoice no 033.

54. The tribunal consider that it would have been appropriate for there to have been evidence of all the payments made in the bundles but that there is no reason to doubt Mrs Reynolds' evidence that the sums were paid.

55. Accordingly the tribunal determine that the respondent paid the sum claimed in respect of the Initial Works.

Receipt by the applicants of the service charge demands

56. The only evidence of the service charge having been demanded in the bundles before the tribunal was a "Reminder statement 15/02/2018". This in turn referred to the statement having first been sent on 20/11/15 with reminders sent on 21/09/2016 and 30/05/2017.

57. Mrs Reynolds gave evidence that the first demands were posted to the tenants but that she had not kept copies. No response had been received from any of the tenants in respect of these demands. The first reminders had been sent by recorded delivery and three had been returned; two suggesting that the flat tenants were not known at the Block. On being cross-examined as to the absence of a due date by which the charge should be paid and to whom the payment should be made Mrs Reynolds pointed to the address of the respondent given at the top of the statement.

58. Mr Locke gave evidence that he had received the demand and all the reminders referred to.

59. On the basis of Mr Locke's evidence the tribunal consider that it is probable that the original demands were received by the tenants.

Application under s.20C

60. In the application form the applicants applied for an order under section 20C of the 1985 Act. Although both parties indicated that they did not believe such costs to be recoverable under the service charge provisions of the leases, for the avoidance of doubt, the tribunal nonetheless determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the

respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

The law

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

Name: Judge Pittaway **Date:** 31 October 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 20B

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

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

Section 20C

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

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

(aa) in the case of proceedings before a residential property tribunal, to that tribunal;

(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the

application is made after the proceedings are concluded, to any residential property tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

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