



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **CAM/26UK/LSC/2013/0061**

Property : **19 Lorane Court, Langley Road,
Watford, Herts, WD17 4LZ**

Applicant : **Mr. Sunil Gupta**
In person

Respondent : **Penguin Investments Limited**
**Represented by Mr. P. Lawrence
FRICS of Hersey & Partners,
Managing Agents ("the agents")**

Date of Application : **15th April 2013**

Type of Application : **Section 27A Landlord and Tenant Act
1985 ("the 1985 Act") for a
determination of the reasonableness
of service charges**

Tribunal : **Judge J. Oxlade
D. Banfield FRICS
N. Bhatti**

**Date and venue of
Hearing** : **1st July 2013
Watford Tribunal Service,
Watford
Herts**

DECISION

For the following reasons the Tribunal¹ finds that:

(i) subject to compliance with section 21B of the 1985 Act:

- (a) the demands for service charges in 2010, 2011, and 2012 are reasonable and payable, save as provided in paragraphs 49-58 in this decision, and
- (b) reasonable estimated service charges for 2013 are £1250 per flat.

(ii) the Respondent shall pay to the Applicant the sum of £250 by way of reimbursement of the fees paid by him to the Tribunal

(iii) the application for an order for payment by the Respondent on account of unreasonable conduct in the proceedings, is dismissed.

REASONS FOR DECISION

Background

1. The Applicant is the lessee of the property, and the Respondent is the freeholder. The lease imposes on the Respondent obligations to maintain and repair the building, to light and clean common parts, and attend to the communal gardens in which the premises are situated, which obligations are discharged through managing agents. The lease imposes on the Applicant an obligation to make payment of service charges to meet a proportionate part of the Respondent's costs in meeting its obligations.

2. The Applicant issued an application pursuant to section 27A of the 1985 Act, being discontent with the following service charge items charged or to be charged to the service charges account in the following service years:

- (i) managing agents fees: 2010, 2011, 2012, 2013,
- (ii) external water usage: 2010, 2011, 2012, 2013,
- (iii) gardening: 2010,
- (iv) accountancy fees: 2013,
- (v) works to doors: 2010,
- (vi) the total sum estimated as service charges for 2013 was excessive.

3. The Applicant also took issue with the way in which the agents complied with the legislative requirements:

- (i) there was a failure to issue service charge demands which complied with section 21B of the 1985 Act,

¹ The Decision recorded in this document was made by the First-tier Tribunal (Property Chamber) rather than the leasehold valuation tribunal, to whom the application had been made, because by virtue of The Transfer of Tribunals Function Order (2013 No1036) ('the Transfer Order') the functions of leasehold valuation tribunals were, on 1st July 2013, transferred to the First-tier Tribunal (Property Chamber). In this Decision the expression 'the Tribunal' means the First-tier Tribunal (Property Chamber).

- (ii) there was a failure to consult lessees in accordance with section 20 of the 1985 Act when major works were done in 2010, 2012, and in respect of the awarding of the gardening contract in 2013.

4. Further, the Applicant was discontented with the accountancy side of the service charges:

- (i) service charge demands were not sent out at the time provided in the lease,
- (ii) there was a failure to provide a budget for the forthcoming year along with those demands, neither were end of year accounts provided,
- (iii) there was a failure to achieve a reasonable rate of return on the monies in the reserve fund.

5. The Applicant invited the Tribunal to make findings as to reasonableness and payability of sums incurred or to be incurred, and to direct the Respondent to repay to him the sums he has overpaid. In addition, he sought a refund of the fees paid by him to bring the proceedings and an Order that the Respondent would not be able to add to the service charge account any costs incurred by it in these proceedings.

Directions

6. The Tribunal issued Directions on 28th April 2013, and in accordance with those Directions both parties filed statements of case.

7. The application was listed for an oral hearing with an inspection beforehand.

Inspection

8. On the morning of the hearing the Tribunal inspected the car park, garaging, grounds, boundary, and ground floor entrance and hallway to the flats 10-22 though to the rear of the flats. The Applicant attended, as did Mr. Lawrence on behalf of the Respondent.

9. The premises were located in a 1960's development of 30 flats, constructed of red brick under a tiled roof, with communal gardens, parking and garaging to the rear of the premises. The development is located some 10 minutes walk to the centre of Watford and main line station.

10. The Tribunal noted that the building, common parts, grounds, bin stores and garages were generally in reasonable condition, that there were mature trees of substantial size which had been subject to pollarding and other treatment, and that there was a good number of mature shrubs, bushes and hedges. The soffits and fascia boards were generally in poor condition as were the exterior surface of some of the windows.

Hearing

11. At the commencement of the hearing the Tribunal and parties identified the issues which the Tribunal would need to consider, and which are set out in paragraphs 2-5 herein.

Preliminary Points

12. The Tribunal indicated that although Mr. Gupta requested that the Tribunal make Orders for repayment of service charges, and for the Respondent to invest the reserves at a better rate of interest, the Tribunal did not have power to do so.

S 21B of the 1985 Act

13. In the Respondent's statement of case, Mr. Lawrence conceded that his firm no longer sent out to the lessees of these flats demands for payment of service charges accompanied by a summary of tenants rights. He said that many tenants had objected to receiving the same thing repeatedly, year after year, and he had taken a decision in 2010 not to send them in the future, which decision he communicated to the tenants by letter (page 60 of the bundle); none of the tenants had taken issue with this, except the Applicant. Mr. Gupta said that the letter did not constitute an adequate explanation of the tenant's rights and was not sufficient to waive their rights.

14. In light of the concession as to non-compliance with section 21B, and in light of the Tribunal's explanation that the service charges demanded without them were not enforceable by the Respondent, Mr. Lawrence conceded that none of the service charges for 2010, 2011, 2012, and 2013 are payable by the Applicant until such time as they are demanded in accordance with section 21B. It follows that demands for interest for late payment made by the Respondent also fall by the wayside, and are not payable.

15. The Tribunal proceeded to consider the substance of the parties respective cases in anticipation of the Respondent re-serving on the Applicant the demands for 2010, 2011, 2012, and 2013 which complied with section 21B.

Compliance with Section 20 consultation requirements

16. Mr. Lawrence also conceded that the Respondent could not prove at this hearing that it had complied with the statutory consultation procedure in respect of major works in 2009 (doors/windows/common parts) and 2012 (garages). Mr. Gupta wished to make the point that it formed a pattern of non-compliance, a disregard for proper process, and importantly just meant that there was inadequate communication with the lessees, which meant that they were all kept in the dark. However, Mr. Gupta wished to take a pragmatic view in these proceedings: he did not want to "hide behind" the statutory maximum of £250 recoverable in default of compliance; rather he wished the Tribunal to determine the reasonableness of the costs of those works.

17. In respect of gardening from 2013 onwards, Mr. Lawrence said that the former gardener had been dismissed, and the current gardener was on a trial period of 8 weeks. The current intention is to award the current gardener a contract; the Tribunal reminded Mr. Lawrence of the section 20 consultation requirements for long term qualifying agreements, with which he said that he would comply if and when a contract was awarded.

Substantive Costs

Managing Agents Fees

18. Mr. Lawrence said that he was appointed as a managing agent and had a written contract, though it was not filed in evidence; Mr. Gupta said that he had been asking to see this since 2012, but it had not been supplied. At the end of the hearing Mr. Lawrence consented to an Order that he provide a copy to the Tribunal and Mr. Gupta within 7 days. Mr. Lawrence said that it was a rolling contract that his firm “inherited it”, and the only thing that had changed was the fee structure, which was a phased change. It was not clear what the date of appointment was, and so whether this would be covered by the requirement to consult on long term agreements.

19. Mr. Lawrence said that his firm charges £120 per flat per year which covers day-to-day management. He charges on top of this 15% on anything out of the ordinary i.e. supervising the cutting of trees, decorating. Mr. Gupta set out to demonstrate that if this was the terms of payment, it was not reflected in the figures; in any event, changes have not been discussed or notified. When presented with the mathematics, Mr. Lawrence said that he had no answer to what Mr. Gupta was asserting.

20. The Tribunal indicated that Mr. Lawrence was not at this stage in a position to explain what charging structure he had in place, and it was far from transparent and clear.

21. The parties were given 10 minutes to talk, and continued their conversations over lunch. They returned with an agreement as follows: the management fees of £5008 for 2010, £5162 for 2011 and £5322 in 2012 would stand as reasonable and payable; that for the service charge year 2013/14 the managing agents fees would be £120 per flat which would cover all routine activity i.e. sorting out utilities, core insurance, supervising gardening and cleaning contracts. The managing agents would be able to charge 10% of sums spent on all activities which were not core activities i.e. the handling of insurance claims, all items of expenditure pursuant to section 20 of the 1985 Act. Mr. Gupta said that he was content with that, and would only wish the Tribunal to determine the reasonableness of the past managing agents fees in respect of major expenditure in 2010 and 2012.

22. The managing agents fees in respect of major works are dealt with below.

External Water Usage

23. Mr Gupta made the point that the costs of external water usage was shown in the year end accounts as follows: £731 in 2010, £735 in 2011, £2569 in 2012, with a credit of £3208 in 2013. There was, however, no provision in the lease which entitled the Respondent to demand service charges in respect of this.

24 Mr Lawrence initially said that he believed that the credit to the account of £3208 would negate all liability, but on closer analysis of the figures accepted that there would be a debit of £827 from the service charge account. The high cost in 2012 arose from a leak in the pipe between the two taps, somewhere along the 40 meters in between. Mr. Lawrence relied on the lessee's covenant at 3(c) to pay towards the costs of the lessor complying with clauses 5(b),(c),(d), and (f), and noted that 5(b)(i) required the lessor to maintain the water pipes. Mr. Gupta pointed out that the clauses were narrow, and could not be interpreted as requiring a service charge contribution for use of water. He had raised this in correspondence with the Respondent on 23rd November 2012 (page 127) and could not understand how the Respondent would not address the point.

Gardening Costs

25. Mr Gupta said that he was not concerned with the day to day gardening costs; rather that in 2010 there was a charge of £2908.13, which was supported by an invoice in the bundle at page 61. He believed that the work was needed and that it was done to a reasonable standard; his concern was that as most of the work was done from ground level, the cost was excessive for what was done. It did not include works to the large Cedars at the rear of the premises. He believed that works should be subject to market testing i.e. getting quotes.

26. Mr. Lawrence said that he had a quote from a firm in Watford, which were very slightly more expensive than JRB Treework, who did the work. He had used this company before, and is fussy about whom he uses. There was no need to make any application to the Council, as none of the work was on trees with a TPO on them. It was a take down a Sycamore which was 25 foot high, and grind the stump; it had to be taken over a fence to remove, so access was restricted. He had another quote from a company who did not have Public liability insurance, and so they dropped out of the picture.

27. In reply, Mr. Gupta said that if there had been communication, then life would be a lot simpler and he would not have to ask these questions. This had been the practice of the last agents. He was unable to provide quotes as he had not known of the details of the work done, and could only say that he thought it would be 2 operatives working for a couple of days. Of the quote he has a problem with the £1800 which is annotated as "remove all sycamore to ground level and prune shrubs and trees £1800", as this did not give sufficient detail to enable him to assess the position for himself.

Accountants Fees

28. The accountancy fees in 2012 for £720 were in issue. Mr. Gupta had been content with £600 charged in the earlier years, but then they increased by 20%, and consider that they should have remained broadly consistent. He produced accounts (page 98) for service charge expenditure which was double the subject costs, and the accountancy fees were £1200. He had no other estimates or quotes to provide.

29. Mr. Lawrence said that the Accountant was coming up to retirement and so merged with another firm; the fee reflects their charge out rate.

Major Works

Doors -2010

30. Mr. Gupta said that in his statement of case he had conceded that the costs of major works in 2010 of £16238 were reasonable, but disputed the managing agents costs on top, charged at 10%, whereas he considered that 5% was reasonable in view of the lack of consultation which saved the agents considerable paperwork and possibly time on fielding enquiries from lessees. Further, he considered that the lack of consultation deprived him of the opportunity of assessing the specifications. He did not want the old doors replaced, but was persuaded by the argument that the costs of maintaining wood was more costly over time than replacing with something which was efficient. Having moved on that point he is disappointed to see that the specification for the new supposedly trouble-free doors was not adequate. He was concerned that there was subsequent expenditure on adjusting doors, which required 3 or 4 visits. A reduction of £1000 would effectively address the point. Also there was inadequate specification on the communal exterior doors: no thought had been given to the fact that the frame being uninsulated, would have condensation in the winter and require more cleaning and attention. There could have been attention paid to this so that now they were not in the position of considering remedial costs and putting up with condensation stains/mould. He considered that it was foreseeable and the specification was inadequate.

31. Mr. Lawrence said that he was aware that there was a condensation problem, and could put a heater in the common parts, but with the doors being well used each day, this may not be effective. There was a possibility of injecting the frame and filling it with foam. Harris look after the doors and they were called out after a "bedding in" period. On one occasion a key was broken in the lock. On another they were called out as the tension on the door had to be adjusted to the needs of a lady with a disability. Once 12 months have passed it is not reasonable to ask the installer to come back. They had not had condensation problems before and so had not anticipated problems.

Lights -2010

32. Mr. Gupta raised as an issue the costs of extra lights and carpeting as part of the major works in 2010. He considered that the extra costs for lighting came very late in the day, and should have been thought of before then, as part of the original specification. He thought that the costs should have been £31 for each light fitting – so he would agree £93. Also on the invoice at page 62, he did not accept £45 for replaced timer, £220 for spotlights, nor £320 for supply of keys.

33. Mr. Lawrence said that a late decision was made to replace the three lights, as when the old ones were taken down, the wiring was found to be poor and so there was little choice about this. The revised total cost was £1085 plus vat. The three items challenged £45/£220/£320 were not part of the main contract, though invoiced at the same time. There was a charge for extra keys, to enable each flat to be issued with more than one key.

34. Mr. Gupta said that of the £1900 overspend he had accepted £1500, but it was vital to shine a torch on these areas in order to have transparency in the process.

Carpets - 2010

35. The carpets were replaced at the end of the major works at a cost of £5600 which Mr Gupta considered to be excessive, considering the style and quality of it. He had estimated the floor area as 270 sq m and the advice he had was that a nylon carpet glued would be £10 a square metre, but he had given £12 per square metre. He considered £4500 to be the right figure. In 2004 he had a quote for £1400 for the central block alone, which was a useful guide. In a recession where companies were going out of business, there were bargains to be had.

36. Mr. Lawrence said that one can buy carpet at almost any price, but this was one chosen to cope with heavy footfall. He had a quote for £10,996.99 (Page 63) but chose one at almost 1/2 the price.

Managing Agents fees -2010

37. Mr Gupta relied on the same argument in respect of managing agents fees for the internal redecoration/carpets/lights, as set out for the doors. He considered that the lack of consultation saved administration costs for the agents, and so their fee should be reduced from 10% to 5%.

Garages -2012

38. Mr. Gupta did not challenge the costs or quality of the works, but the managing agents fees of 10%, as there was no attempt at consultation. The first he heard was a letter advising that the men would be on site and need access. The RICS code makes it clear that people need to be given knowledge and the chance to have some input.

Estimated costs 2013

39. Mr Gupta accepted that clause 3(c) of the lease required that he pay estimated service charges for the forthcoming year to cover all anticipated expenditure in the lessor discharging her responsibilities under clauses 5(b),(c)(d), and (f). However, this was subject to an implied term of reasonableness. The demand for 2013 was for £1565, which would result in the lessor gathering in £46,950. The historical spend had never exceeded that even in a year of large expenditure, save 2010. There was £31000 in the reserves. He produced statistical analysis at pages 91 and 92. He had asked for a budget, which has not been produced, and despite the Directions order had not justified the demand.

40. Mr. Lawrence said that the soffits and fascias are in a poor state, and the plan is to replace with upvc and to replace the guttering at the same time. The estimated costs are in the region of £25,000 – but could be more - and with reserves of £31,000 (held in a separate bank account) there would be insufficient to meet the costs unless they make such a demand. He initially said that they hoped to do the work this summer - until it was pointed out that we were in July and so with the necessary time for consultation the autumn would be the earliest time - then assured the Tribunal and Mr. Gupta that the statutory consultation procedure would be followed. He was referred to correspondence showing that the work and garages was estimated at £40,000 and as the garages cost £8000, the figure could be nearer £32,000. He wanted to protect the base figure in the reserves as much as possible.

Costs and Fees

41. Mr. Lawrence conceded that the costs of the proceedings could not be added to the service charge account, as there was no provision in the lease permitting it.

42. Mr Gupta asked for repayment of his fees of £250 in light of the managing agents behaviour, and also £100 for the out of pocket expenses for the Respondent's behaviour. He found it awkward to make the application but considered that the agents have been unreasonable: he sought information as to actual and estimated costs (pages 139 to 141). His emails have been unanswered, despite the tracking facility suggesting delivery.

43. Mr. Lawrence said that he did have a problem with emails from some addresses as the settings on the filters have been re-sent and he had not turned away a recorded delivery letter as suggested.

44. At the end of the hearing the Tribunal reserved its determination. Mr. Gupta expressed his thanks to the Tribunal, and said that he said that having opened the lines of communication in the proceedings, there would be better communication in the future; a hope which the Tribunal endorsed.

Jurisdiction

45. The Tribunal has jurisdiction by virtue of section 27A of the 1985 Act, which is set out in annex A, along with the other statutory provisions which have been considered in this application.

Tribunal's Findings

46. The Tribunal has carefully considered the evidence adduced by both parties, and the submissions made to it.

47. The first point to make is that in light of the concession made by Mr. Lawrence that there had not been compliance with section 21B of the 1985 Act, it follows that the service charges demanded of Mr. Gupta are not payable until they are properly demanded. Further, interest charged in the past is not recoverable as service charges were not lawfully demanded and so the provision in the lease for recovery of interest cannot apply.

48. The Tribunal has nevertheless proceeded to consider the points in dispute between the parties as will assist the parties when lawful service charge demands are made.

Water

49. The lease makes no provision for recovery from the lessee the lessor's cost of supplying water to the premises. Accordingly, service charges demanded in respect of this item of expenditure are not recoverable.

Gardening

50. The dispute as to gardening costs was limited to the costs incurred in 2010 for £2908.13 (page 61) in respect of "reducing one sycamore by one third", "reduce laurel hedge also by one third in both height and width", "remove all sycamore to ground level and prune shrubs and trees", and "grind out all sycamore root and leave site clean and tidy". There was no issue between the parties as to the extent of the works, or the quality of the work, rather that the costs were excessive. The Tribunal benefitted from visiting the site. Whilst we have sympathy with Mr. Gupta's struggle to try to analyse costs from the breakdown given in the invoice – which is oddly and disjointedly detailed, so that sycamore appears twice, and the balance of the money is lumped into one item – in light of the description of the works given in oral evidence, which were extensive, and the difficulties with accessing the sycamore, the Tribunal finds that the costs are reasonable and recoverable under the lease.

Accountants Fees

51. It is quite natural for lessees to assess costs, and assume that they will increase in line with inflation. The statutory test is whether the costs are reasonable in light of the work done. The Tribunal appreciates the parallel which Mr. Gupta sought to draw with other accounts. However, the Respondent has now explained why the sum increased out of line with the previous costs. There

is a band of what is reasonable, and the Tribunal finds that the annual cost of £720 falls within what is reasonable and in line with industry standards for accounts of this type.

Managing Agents Fees – Major Works

52. The Respondent knew that compliance with section 20 was in issue and did not file adequate evidence to show compliance. Whilst a concession was sensibly made in light of the absence of proof, the Tribunal is satisfied that the Respondent did not in fact comply.

53. However, the course advocated by Mr Gupta – namely to impose a “penalty” by deducting 5% of costs is not an appropriate approach. Rather, the Tribunal considers that the correct approach is to assess what agents fees would be reasonable in view of the savings made in not having sent appropriate letters and then dealing with lessees queries. In terms of administrative cost-saving to the Respondent at the very least this would be a saving of sending 2 separate letters to 30 tenants, plus postage and phone calls. Doing the best that we can on the limited evidence available the Tribunal deducts £500 from the managing agents fees for the major works in 2010, and £250 from the managing agents fees for the major works in 2012.

54. The Tribunal is not satisfied that proper consultation otherwise prejudiced the lessees, as argued by Mr. Gupta. The specification for works was sufficiently detailed and the Tribunal is not satisfied that had there been full consultation that it would be been reasonably foreseeable for any person to raise the cold-bridging point in respect of the communal doors. Whilst it is said that there are now costs to be incurred in rectifying the problem, it could equally be said that there may have been a cost saving when the work was initially done.

55. The Tribunal does not, however, implicitly condone the agents failure to follow the statutory consultation procedure; Mr. Gupta’s plea for openness and transparency would partly be met by such compliance.

Doors

56. Mr Gupta was concerned that there were unnecessary costs associated with the newly installed doors, but having heard Mr. Lawrence’s evidence on this point, we are not satisfied that these costs would have been included within any maintenance contract.

Lights

57. There is no dispute that the lights were not originally priced as part of the contract. The Tribunal accepts the explanation given for the approach – namely, not knowing what was necessary until the old ones were removed- is a reasonable approach. That they were not on the specification would not preclude recovery. Further, the Tribunal finds that the costs of lights are reasonable for the type and quality of lights.

Carpeting

58. The Respondent has satisfied the Tribunal that quotes were obtained, and a reasonably competitive price paid for carpet of a reasonable quality. The test is not whether it could be done more cheaply, rather, whether the costs are in fact reasonable in view of the standard of work and type of work. The Applicant referred to evidence from 2004. If one takes the figure for one entrance, and multiply by three (to deal with all three entrances) it suggests that from 2004 to 2010 the costs have increased by only £1000. The Tribunal finds that this supports the Respondent's case that the costs were reasonable and find that this is so.

Estimated Service Charges - 2013

59. The parties agreed that there should be an adequate reserve, and that high costs could be foreseen in light of the necessary works to the soffits/facia/guttering.

60. Mr. Gupta undertook a detailed analysis of costs, and from table 4 at page 92 it appears that for the past 5 years or so expenditure of £24,000 is usual. The Tribunal finds that it is necessary to ensure that there is sufficient income to protect ordinary expenditure of approximately £24,000 p.a., which should be adequate to enable the agents to effectively manage the building, but that there should be an additional sum of £4,000 to meet inflationary pressures or some unforeseen event.

61. Mr. Gupta made a fair point that the costs were somewhat vague and having asked for a budget because they appeared to be considerably higher, there is no good reason for not being able to justify the figure sought. The Tribunal is concerned that the excess sums paid each year are swept into the reserves, and not apparently credited back to the lessees. The Tribunal finds that the sum of £28,000 is reasonable in the current year together with a contribution to the anticipated major works of £9,500. The anticipated works are in the region of £30,000 and there is £31,000 in the reserves. It is unwise to leave the reserve fund empty and there should be allowance for costs being higher than currently anticipated: the works are at high level, will require extensive scaffolding, it is possible that other associated works may be needed whilst the main works are being done. Mr. Accordingly, the Tribunal finds that an estimated sum of £1250 per flat is reasonable and payable for the service charge year 2013.

Costs

62. The Applicant incurred fees of £250 which were paid to the Tribunal to bring the application. The Tribunal finds that the Applicant made reasonable requests for information and asserted his position on many points in correspondence prior to proceedings being issued, and many points were fairly made. He took a reasonable stance on the question of waiving the failure to comply with section 20 consultation procedure. Accordingly, the Respondent shall pay to the Applicant the sum of £250 by way of reimbursement of costs.

63. As to costs of £100 for the Respondent's unreasonable behaviour, the provisions entitle the Tribunal to look only at the conduct since issue of proceedings. All of the examples given by the Applicant related to conduct before the proceedings. In any event, the threshold test is high and we are not satisfied that it has been met in this case.

Judge Oxlade

Judge of the First Tier Tribunal

23rd July 2013

Appendix A

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

Section 18

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

- (a) which is payable directly or indirectly for services, repairs, maintenance, improvement or insurance or in the landlord’s cost of management, and
- (b) the whole or part of which varies or may vary according to the relevant costs.

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

(3) For this purpose

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

Section 19

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

- (a) only to the extent that they are reasonably incurred; and
- (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.

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

Section 27 A

(1) “ An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -

- (a) the person by whom it is payable,
- (b) the person to whom it is payable,
- (c) the amount which is payable,
- (d) the date at or by which it is payable, and
- (e) the manner in which it is payable.

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

(3) An application may also be made to a leasehold valuation tribunal for a determination whether it costs were incurred for service, repairs,

maintenance, improvements, insurance, or management of any specified description, a service charges would be payable for the costs and if it would as to -

- (a) the person by whom it is payable,
- (b) the person to whom it is payable,
- (c) the amount which is payable,
- (d) the date at or by which it is payable, and
- (e) the manner in which it is payable.

In respect of procedural points:

Section 21B

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

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) a LVT".

In respect of Costs

Section 20C

"(1) A tenant may make an application for an order that all or any of the costs incurred or to be incurred by the Landlord in connection with the proceedings before .. the LVT.. are not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

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

In respect of Fees

Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003

Regulation 9 (1) provides:

“Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a Tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings”.

Costs

Commonhold and Leasehold Reform Act 2002 Schedule 12

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

(4) The circumstances are where –

(a)

(b) He has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively, or otherwise unreasonably in connection with the proceedings.”