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HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 27A OF THE LANDLORD AND TENANT ACT 1985

Case Reference:	LON/00AF/LSC/2013/0067
Property:	Flat 1, The Chestnuts, St Pauls Cray Road, Chislehurst, Kent BR7 6QD
Applicant:	Mr G Chesneau
Respondent:	Chestnuts Property Management (Chislehurst) Limited
Date of hearing:	7th May 2013
Appearance for Applicant:	Ms L Reynolds of Leaseholder Services Ltd, agent for Applicant
Appearances for Respondent:	Mr J Boorman, Mr D Prangnell and Mr J Rudd, all directors of the Respondent company
Also present:	Mr Chesneau (the Applicant)
Leasehold Valuation Tribunal:	Mr P Korn (chairman) Mr S Manson FRICS Mrs J Hawkins BSc, MSc
Date of decision:	10th June 2013

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Decisions of the Tribunal

The Tribunal makes the following determinations:-

- The amount payable by the Applicant in respect of the first set of linked works referred to in paragraph 25 below is reduced to £250.
- The amount payable by the Applicant in respect of the second set of linked works referred to in paragraph 25 below is also reduced to £250.
- The Applicant's contributions towards entryphone system costs in 2006/07 and in 2009/10 and its contribution towards the clearing of the blocked hopper in 2007/09 are not payable at all.
- The Applicant's contribution towards the management charge is reduced by £8.98 for 2006/07, by £14.03 for 2007/09, by £42.48 for 2009/10 and by £65.80 for 2010/11.
- All other service charge items which are the subject of this application are payable in full.
- Pursuant to section 20C of the Landlord and Tenant Act 1985 ("**the 1985 Act**"), the Tribunal orders that none of the costs incurred by the Respondent in connection with these proceedings may be added to the service charge.
- The Respondent is ordered to reimburse to the Applicant half of the application fee (half of £200 being £100) and half of the hearing fee (half of £150 being £75).

The application

1. The Applicant seeks a determination pursuant to section 27A of the 1985 Act as to his liability to pay certain service charge items in respect of the service charge years 2005/06 to 2011/12 inclusive.

2. The disputed service charge items are as follows:-

Service Charge Year	*Applicant's contribution*
2005/06	
Electronic entrance door lock replacement	*£88.17*
Front door repair	*£9.89*

Security light repair	*£23.90*
10% management charge on above items	
2006/07	
Entryphone system	*£89.84*
10% management charge on above item	
2007/09 (a 2 year period)	
Servicing of security lights	*£24.30*
Clearing gutters and inspecting roof	*£140.30*
Health and safety signs	*£4.56*
Fire-resistant lining to loft hatch and handrail	*£42.09*
Replacement of porch roof to side entrance	*£156.28*
Prior year adjustment for blocked hopper	*£126.51*
10% management charge on above items	
2009/10	
Light to landing of Flats 2-5	*£8.82*
Entryphone system for Flats 2-5	*£14.51*
Roof, gutters, driveway and damp works	*£674.83*
10% management charge on above items	
2010/11	
Roof, gutter and other works	*£907.99*
10% management charge on above items	

2011/12

Front door lock repair for Flats 2-5 *£35.44*

10% management charge on above item

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

The background

4. The Property is a three-bedroom flat in a block comprising 7 flats. Flats 1 to 5 are contained in the original Victorian building, whilst Flats 6 and 7 are contained in a later addition attached to the flank wall. Flat 1 has its own independent access directly into the flat by a door to the side of the original building. The Property is held on a long lease dated 4th February 1955 ("**the Lease**"), a copy of which is included within the hearing bundle.

5. The Tribunal did not inspect the Property or the building of which it forms part. Neither party had requested an inspection and – given the nature of the issues, the information available within the hearing bundle and the parties' ability to make oral submissions at the hearing – the Tribunal did not consider that an inspection was necessary or appropriate.

Agreed points

6. At the hearing Ms Reynolds conceded on behalf of the Applicant that the contributions towards the security light repair (2005/06) and the servicing of security lights (2007/09) were payable by the Applicant.

APPLICANT'S CASE

Items not chargeable because no benefit to Applicant

7. Ms Reynolds for the Applicant said that the Property was separate from the rest of the building in that had its own independent access directly into the flat by a door to the side of the building. The Applicant did not use the main door or the entrance-way and hallways inside the main building. It therefore followed that neither the entryphone system for the building nor the entrance door to the building served or benefited the Property and that therefore the Applicant should not have to pay towards the repair and maintenance of the entryphone, the electronic entrance door lock or the repair of the entrance door itself. Similarly, the roof over the porch area also only served Flats 2-5, and so the Applicant should not have to contribute towards the replacement of the porch roof.

8. The health and safety signs were for the communal hallways to Flats 2-5 and again did not benefit the Property and so the Applicant should not have to pay towards their cost. As regards the light to the landing of Flats 2-5, the argument was the same – the Applicant did not use this landing and therefore should not have to pay towards its lighting.

9. In connection with all of the above items, Ms Reynolds also drew the Tribunal's attention to what she considered to be the pertinent provisions of the Lease. Clause 2(iv) of the Lease contains a covenant on the part of the tenant *"to pay and contribute a rateable proportion ... of the reasonable expenses of making repairing maintaining supporting rebuilding and cleansing all ways passageways pathways sewers drains pipes cisterns gutters main walls roof party walls party structures and fences easements and appurtenances belonging to or used or capable of being used by the Tenant in common with the Lessor or the Tenants or occupiers of the premises of which the demised premises form part ...".* Her argument was that the Applicant is only required under the terms of the Lease to contribute towards the cost of items "belonging to or used or capable of being used by" him in common with others, and none of the above items fitted within this wording as he did not use them and nor were they capable of being used by him.

Failure to consult

10. In relation to the cost of clearing the gutters and repairing the roof, although part of the cost was attributed to the 2007/09 service charge years Ms Reynolds submitted that the amount concerned should have been allocated to the 2009/10 service charge year. She noted that the total value of the proposed expenditure on roof and gutters produced by the Respondent's contractor Housemartins Construction Limited was £2,352.35 and yet the figure for roof and gutters in the 2009/10 service charge accounts was £1,352.35, exactly £1,000 less than Housemartins' figure. This was explained by the fact that exactly £1,000 was attributed to roof and gutters in the 2007/09 service charge accounts, and Ms Reynolds' submission was that the £2,352.35 had been split in this way simply to avoid taking the cost over the consultation threshold as the Respondent did not wish to be under an obligation to go through the section 20 consultation process.

11. Ms Reynolds also remarked that the invoices from Housemartins relating to the above works each contained a very brief description of the works and were all dated April or May 2010.

12. In the Applicant's view, the two sets of work to the roof/gutters (one attributed to 2007/09 and the other to 2009/10), and the works to the driveway and the damp works (all attributed to 2009/10) were all one job. The total cost was £4,809.91, of which the Applicant's share was £674.83 and this was over the consultation limit. No consultation took place, and the Applicant would have liked the opportunity to nominate a contractor. There was no reason to believe that the works were urgent and that therefore it would have been difficult for the Respondent to consult. As, in Ms Reynolds' submission, the Respondent

had failed to comply with the section 20 consultation requirements, the maximum amount that could be recovered from the Applicant was the statutory limit of £250.

13. As regards the repair and maintenance work detailed in the 2010/11 service charge accounts, the Applicant considered all of **this** work to be one job for the purposes of the obligation to consult. Some of the work was covered by an invoice from Housemartins dated 15th December 2010 and the remainder was covered by an invoice from Housemartins dated 26th January 2011. The VAT rate for the first invoice was 17.5% whereas the VAT rate for the second one was 20% and so the motivation for creating two separate invoices may have been to save VAT, but it was clearly one contract and therefore needed to be aggregated in order to calculate whether it was over the consultation threshold. The aggregate cost was £6,471.83, of which the Applicant's share was £907.99. Again, in Ms Reynolds' submission, the Respondent had failed to comply with the section 20 consultation requirements, and therefore the maximum amount that could be recovered from the Applicant was the statutory limit of £250.

Section 20B

14. In relation to the prior year adjustment for the blocked hopper (2007/09), the Applicant's argument was that the Respondent had failed to make the demand for payment in time for the purposes of section 20B of the 1985 Act. Ms Reynolds referred the Tribunal to the copy invoice in the hearing bundle in relation to the blocked hopper dated 20th July 2005. As it was included in the service charge demand for the year to 23rd June 2009 and the expenditure had not previously been advised to the Applicant the Respondent's demand for payment was too late and the item was not payable. In addition, the invoice referred to Flats 1-6 Chestnuts Royal and so Ms Reynolds queried whether it even related to the building of which the Property formed part.

Management charge

15. The Applicant accepted that the Respondent was entitled under the Lease to make a 10% management charge. His argument in relation to the management charge was simply that if the Tribunal were to disallow any of the other service charge items then it should reduce the management charge accordingly.

Interim service charge for 2012/13

16. Ms Reynolds raised a point regarding the advance service charge for 2012/13. She said that there was no provision for charging an advance service charge in the Lease, but she conceded that this issue had not been raised as part of the Applicant's case prior to the hearing.

No invoices for certain items

17. The original application sought to argue that certain items were not payable because the Applicant had not seen copies of the relevant invoices, but this line of argument was not pursued in written submissions or at the hearing.

RESPONDENT'S CASE

18. In its written statement in response to the Applicant's statement of case the Respondent states that it is not a professional landlord, and the directors have relied upon the professional advice and expertise of their managing agents and legal advisers. Neither the company nor the directors have received any commission, repayment or other benefit from a third party as a result of placing business or awarding contracts.

19. The Respondent's written statement also contains a number of points on which the Respondent purports to 'seek a determination' from the Tribunal, but the Tribunal explained at the hearing that the Tribunal's determination had to be limited to the issues raised by the Applicant in his application.

20. In relation to the interpretation of the Lease, the Respondent's written statement questions what is meant by tenant's covenant to contribute towards the cost of items "used or capable of being used by the Tenant" and notes that in normal language one does not 'use' a roof but one still enjoys the benefit it provides by way of protection. It also states that the Lease makes no specific mention of the main building and the annexe as being separate structures and that it was therefore probably intended that the whole building be treated as one for service charge purposes. At the hearing Mr Boorman for the Respondent said that the building was one entity and one structure and that therefore all leaseholders should be obliged to pay a contribution towards the upkeep of all of it. In relation to the communal hallways, whilst it was accepted that the Applicant did not have any direct benefit from them, he had the indirect benefit of their being capable of being used by contractors to access the roof and other external parts as otherwise they would need to put up scaffolding which would increase service charge costs for all leaseholders.

21. Regarding the porch, from looking at the Lease plan it seemed that this was included within the coloured area and therefore included within the area over which the Applicant had a right of way.

22. As regards the section 20 consultation issue, Mr Boorman said that all of the items which had been listed separately were separate projects and therefore no consultation was required. This point is also made in written submissions. The Respondent left the decision-making on this point to the managing agents and relied on their expertise.

23. In relation to the charge for the blocked hopper, the Respondent accepted that the demand had been made too late for the purposes of section 20B.

However, the Respondent's view was that the Applicant had already agreed that it was payable and was therefore unable to change his mind on this point.

TRIBUNAL'S ANALYSIS

24. Although this point is not made as a criticism, as the submissions were not drafted by lawyers, there are aspects of both sets of written submissions which the Tribunal finds hard to follow and/or unfocused. In the Applicant's written submissions, the section on 'Disputed Demands for Maintenance of the Communal Areas' is somewhat unclear and the Statement of Case does not seem fully to track the issues raised in the application. The Respondent's written submissions, on the other hand, suffer from being too focused on seeking a determination on issues which do not form part of the application rather than concentrating on addressing the issues raised by the application, although these are addressed to some extent.

Consultation

25. In relation to the section 20 consultation issues, the Tribunal notes the various submissions made on behalf of each party. The Respondent asserts that the various projects were all separate, and the Tribunal accepts that the Applicant has not provided absolute proof to the contrary. However, the standard test in civil cases is whether a case has been proved 'on the balance of probabilities', in other words, whether it is more likely than not to be true.

26. The Tribunal notes the accounting points made by the Applicant in relation to the various works. It does seem to the Tribunal on the balance of probabilities that the amount allocated to roof and gutter work in the 2007/09 service charge years was part of the same set of roof and gutter work as was charged in the 2009/10 service charge year and also that the two invoices from Housemartins dated 15th December 2010 and 26th January 2011 related to works which were connected for consultation purposes. The Tribunal also prefers the Applicant's evidence on the question of whether various works which were itemised separately in the service charge accounts were in fact linked for consultation purposes.

27. The Tribunal would stress that the evidence to support the Applicant's position was not overwhelmingly strong, but the Respondent has had the opportunity to produce evidence to demonstrate that the various works were unconnected, and on the balance of probabilities the Tribunal's view is that the following sets of works are linked for the purposes of determining whether there should have been consultation:-

First set of linked works

Gutter/roof work 2007/09	*£1,000*

Gutter/roof work 2009/10	*£1,352.35*
Cherry picker for gutters, roofs & walls 2009/10	*£705.00*
Scaffolding for gutters, roofs & walls 2009/10	*£1,321.88*
Safety eyebolts	*£141.00*
Walls – Driveway 2009/10	*£532.98*
Walls – External 2009/10	*£94.00*
Walls – Internal 2009/10	*£662.70*

TOTAL	*£5,809.91*

Second set of linked works

Safety harnesses for roof work	*£234.00*
Downpipes and guttering	*£1,286.63*
Parapet wall on main roof	*£180.00*
Roof of Flat 7	*£484.10*
Roof of main building	*£1,392.60*
Roof of meter cupboard	*£1,200.00*
Roof tiles	*£176.25*
Rubbish removal	*£402.00*
Scaffolding	*£1,116.25*

TOTAL	*£6,471.83*

28. The Applicant's share of the cost of the first set of works is £815.13 and his share of the cost of the second set of works is £907.99, both of which are over the consultation threshold of £250. The Applicant has provided evidence of lack of consultation and the Respondent does not deny lack of consultation, nor does the Respondent argue that the consultation requirements should be dispensed with. Instead, the Respondent argues that the consultation requirements did not apply to these works because they comprised separate sets of works, none of which was above the consultation threshold. For the reasons given above, the Tribunal does not accept this, and therefore the maximum amount payable by the Applicant in respect of each of these sets of works is £250.

Items not used by the Applicant

29. The Applicant seeks to argue that he should not have to contribute towards the cost of certain items because he does not benefit from them. In support of this submission, he argues that the Property has its own separate entrance and that he does not 'use' the entrance to the main building, or the porch, or the internal hallways or the main roof. He also argues that he is supported in his submissions by the wording of the Lease. The Tribunal also notes the Respondent's alternative arguments on these issues.

30. As a general proposition, the Tribunal does not accept that a tenant is exempt from contributing towards a service charge simply because it could be argued that the tenant does not use the item or service in question. It might be argued, for example, that a ground floor tenant does not 'use' the roof or the lift, but in principle the Tribunal considers that a landlord is entitled to manage the building as a whole and charge each tenant its percentage of each service charge item.

31. In this case, it is common ground between the parties that the Property is accessed separately, and there is also the wording of the Lease to consider. Under the Lease, the tenant is obliged to pay a proportion of the cost of *"making repairing maintaining supporting rebuilding and cleansing all ways passageways pathways sewers drains pipes cisterns gutters main walls roof party walls party structures and fences easements and appurtenances belonging to or used or capable of being used by the Tenant in common with the Lessor or the Tenants or occupiers of the premises of which the demised premises form part ..."*. The Tribunal notes the phrase "used or capable of being used by the Tenant", which needs to be given some meaning. Generally speaking, one does not refer to a tenant 'using' a roof or an external wall, and in the absence of an express exclusion the Tribunal would expect a tenant to be obliged to contribute towards the maintenance of the roof and the external walls regardless of the extent to which the tenant could be said to 'use' the roof or walls. In this case, it is true that the Applicant has his own separate entrance, but in the Tribunal's view the building as a whole is still one structure which it is in all tenants' interests to be maintained. It is true that the Applicant has more of an interest in the maintenance of the overall structure than – for example – in the maintenance of the porch roof – but it would need

much clearer wording in the Lease to exempt the Applicant from contributing towards the maintenance of certain parts of the building but not others.

32. The same argument applies to the maintenance of the internal common parts of the main building. It is true that the Applicant does not need to use these areas in order to access the Property, but in the Tribunal's view they are part of the structure of the building and therefore the Respondent is entitled to treat their maintenance as part of the maintenance of the building as a whole.

33. The question then arises as to whether the phrase "used or capable of being used by the Tenant" has any practical application here, and in the Tribunal's view it does. Although it is artificial to refer to a tenant using the roof or the external walls, it is not artificial to refer to a tenant using a service or facility. Therefore, to the extent that the Respondent provides a **service** which is not "used or capable of being used" by the Applicant it follows that he should not have to contribute towards its cost. Applying this distinction to this case, in the Tribunal's view the provision and maintenance of the entryphone service falls into this category. It is a service and is one that is neither used nor capable of being used by the Applicant. Therefore, this cost is not payable by the Applicant.

Section 20B

34. The Tribunal has considered the parties' respective arguments in relation to the blocked hopper. It is common ground between the parties that the demand was made too late for the purposes of Section 20B of the 1985 Act. The Respondent claims that the Applicant had previously agreed that this sum was payable, but the Applicant denies this and the Respondent has not produced any evidence to back up its submission on this point. The Tribunal therefore determines that this item is not payable by virtue of Section 20B.

Interim service charge for 2012/13

35. As explained by the Tribunal at the hearing, this point was not pleaded (or, at the very least, not properly pleaded) by the Applicant prior to the hearing and therefore the Respondent was given no opportunity to consider the issue and take advice on it prior to the hearing. Had the Applicant wanted to include this issue as part of his case he should ideally have included it in his application or – failing that – raised it well before the hearing together with an explanation as to why it did not form part of the original application. In the circumstances of this point not having been properly pleaded, the Tribunal considers that it would unfair on the Respondent for it to make a determination on this issue.

Management charge

36. The Tribunal agrees that the management charge should be reduced to reflect the fact that it has disallowed certain service charge items, as the management charge is calculated as 10% of the overall service charge.

Determination and Costs

37. The amount payable by the Applicant in respect of the first set of linked works referred to in paragraph 25 above is reduced to £250.

38. The amount payable by the Applicant in respect of the second set of linked works referred to in paragraph 25 above is also reduced to £250.

39. The Applicant's contributions towards entryphone system costs in 2006/07 and in 2009/10 are not payable at all.

40. The Applicant's contribution towards the clearing of the blocked hopper in 2007/09 is not payable at all.

41. The Applicant's contribution towards the management charge is reduced as follows:-

    2006/07 – reduced by £8.98 (10% of contribution to cost of entryphone works)

    2007/09 – reduced by £14.03 (10% of contribution to gutter/roof works as attributed to incorrect year)

    2009/10 – reduced by £42.48 (10% of contribution to entryphone works plus 10% of contribution to first set of linked works less 10% of the £250 payable in respect of those linked works)

    2010/11 – reduced by £65.80 (10% of contribution to second set of linked works less 10% of the £250 payable in respect of those works)

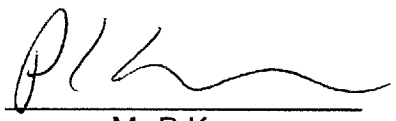
42. All other service charge items which are the subject of this application are payable in full.

43. The Applicant applied for a section 20C order, requesting the Tribunal to order that the Respondent could not put any costs incurred by it in connection with these proceedings through the service charge. In view of the fact that the Tribunal has found in the Applicant's favour on a number of points, the Tribunal accordingly makes a section 20 order that none of the costs incurred by the Respondent in connection with these proceedings may be added to the service charge, although in any event Mr Boorman accepted on behalf of the Respondent that it does not have the power to recover such costs under the Lease.

44. The Applicant also applied for an order that the Respondent refund the application and hearing fees pursuant to paragraph 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003. In view of the fact that the Applicant has succeeded on a number of significant points but the

Respondent has not in the Tribunal's view behaved improperly or unreasonably in connection with these proceedings, the Tribunal considers that the most equitable approach is to order the Respondent to reimburse half of the £200 application fee and half of the £150 hearing fee.

45. The Applicant also applied for penalty costs against the Respondent pursuant to paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 which allows a leasehold valuation tribunal to order a party to proceedings to pay up to £500 to another party to those proceedings towards their costs in circumstances where the first party has in the opinion of the leasehold valuation tribunal *"acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings"*. The Tribunal does not accept that the Respondent has acted in this manner and accordingly makes no order for penalty costs against the Respondent.

Chairman: 

Mr P Korn

Date: 10th June 2013

APPENDIX

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 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, 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 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 leasehold valuation 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 a leasehold valuation tribunal;
(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

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

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

Section 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 had been 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.