8966

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/00AT/LSC/2012/0741** |
| **Property:** | **357 Convent Way, Southall, Middlesex UB2 5UN** |
| **Applicant:** | London Borough of Hounslow |
| **Respondents:** | Mr L and Mrs N Jiwa |
| **Date of hearing:** | 4th April 2013 |
| **Appearance for Applicant:** | Mr R Bhose, Counsel for Applicant |
| **Appearance for Respondents:** | Mr S Ali, fellow leaseholder of Respondents |
| **Also present:** | Mr and Mrs Jiwa<br>Mr R Hardwick of Brethertons, Solicitors for Applicant<br>Mrs C Eton, in-house solicitor for Applicant<br>Mr R Pettifor, Project Manager for Applicant<br>Mr K Khan, observing |
| **Leasehold Valuation Tribunal:** | Mr P Korn (chairman)<br>Mrs H Bowers BSc (Econ), MSc, MRICS<br>Mr A Ring |
| **Date of decision:** | 8th May 2013 |

## Decisions of the Tribunal

The Tribunal makes the following determinations:-

- The service charges of £17,186.79 are payable in full.

- The Tribunal makes no order, pursuant to section 20C of the Landlord and Tenant Act 1985 ("**the 1985 Act**"), prohibiting or restricting the Applicant from adding to the service charge all or any of the costs incurred by it in connection with these proceedings.

## The application

1. The Applicant seeks, and following a transfer from the County Court the Tribunal is required to make, a determination pursuant to section 27A of the 1985 Act as to the Respondents' liability to pay service charges of £17,186.79 in respect of major works carried out in during the period 2005 to 2007 and demanded on 7th January 2011.

2. The County Court claim also included a claim for the Applicant's solicitors' costs incurred in seeking to enforce the terms of the Respondents' lease plus interest, but these aspects of the claim were not transferred to the Tribunal for determination. The Respondents made a counterclaim in the County Court for compensation for having been deprived of the use of the storage shoot, a large open area for drying clothes and a recreation area, but – as stated as the pre-trial review – the Tribunal has no jurisdiction in respect of the counterclaim.

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

## The background

4. The Property is on the first floor of a purpose-built block of flats ("**the Building**") comprising 16 units, and the Building forms part of a wider estate ("**the Estate**"). The Property is held on a long lease ("**the Lease**") dated 22nd July 1991, a copy of which is included within the hearing bundle. The Respondents are the original leaseholders.

5. The Tribunal did not inspect the Property (or the Building or Estate). Neither party had requested an inspection and – given the nature of the issues, the length of time since the works had been carried out and the availability within the hearing bundle of colour copy photographs and other material – the Tribunal (mindful also of the cost involved) did not consider that an inspection was necessary or appropriate.

## APPLICANT'S CASE

6. Mr Bhose for the Applicant said that the works commenced in September 2005 and were completed in or around June 2007. As he understood it, the Respondents' objections/concerns were those referred to at the pre-trial review, namely:-

   - failure to consult as required by section 20 of the 1985 Act;
   - whether the works all fall within the Applicant's repairing obligations under the lease such that the cost falls to be recoverable through the service charge;
   - whether the cost of the works is reasonable; and
   - the application of section 20B of the 1985 Act.

### Consultation

7. On the issue of consultation, Mr Bhose submitted that the Respondents' case had not been properly pleaded. They had made a simple denial that the Applicant had consulted but had not substantiated the point. The Applicant's case was that the Respondents were simply wrong on this point and that the Applicant had consulted. In addition, this was not a point that the Respondents had raised prior to the Applicant taking steps to recover the unpaid service charges.

8. If, as now appeared to be the case, the Respondents were claiming that they had not at any stage received the relevant consultation notices and documents, the Applicant's position was that this was not so. The various documents – copies of which were contained in the hearing bundle – had been sent to the Respondents by first class post, and none of the letters had been returned to the sender by the Royal Mail.

9. The Applicant's position was that the works were undertaken under a long term partnership agreement which had been publicly procured prior to the coming into force of the Service Charges (Consultation Requirements) (England) Regulations 2003 ("**the Regulations**") and that therefore its initial letter to leaseholders in July 2003 constituted non-statutory consultation. Although it entered into the relevant strategic partnering agreement after the Regulations came into force, that agreement was not a long-term qualifying agreement because by virtue of paragraph 3 of the Regulations it was excluded from the statutory definition being an agreement for which public notice had been given before the date on which the Regulations came into force. Where qualifying works are proposed to be carried out under such an agreement the landlord must consult the leaseholders in accordance with paragraph 7 of the Regulations.

10. The Applicant served a Notice of Intention on the Respondents on 19th July 2005, referring them back to the original July 2003 non-statutory consultation. The Respondents did not make any observations on the Notice of Intention.

11. In his oral evidence at the hearing, Mr Pettifor said that several letters had been sent to the Respondents in connection with the works and that the Applicant's letter to the Respondents dated 30th November 2010 appeared to indicate that the Respondents had attended a consultation meeting despite their protestations that they had not been consulted regarding the works at any stage.

**The Lease**

12. Mr Bhose took the Tribunal through the relevant provisions of the Lease, including the landlord's repairing covenants and covenants to provide services contained in sub-clauses 5(b) to (d) and the tenant's obligation to contribute towards the cost of improvements contained in clause 4(e). The Sixth Schedule set out the service charge payment mechanism and the Seventh Schedule briefly summarised certain of the services themselves. The Building was defined by reference to a plan and the Estate was described in the Lease as the "Premises" and was defined as meaning *"the Building and the outbuildings gardens and grounds thereof (if any) and any other neighbouring building for the time being managed by or on behalf of the Council as a single administrative unit together with the Building all of which (as at present constituted) are edged red on the Plan".*

13. In Mr Bhose's submission, the Applicant was entitled to recover from the Respondents through the service charge contributions towards the cost of (a) all works necessary to keep in good condition those parts of the Estate that the Respondents had a right to use, (b) all services listed in the Seventh Schedule and (c) any improvements to the Estate which affected the Property. In his submission, this covered all of the works which form the subject matter of this application.

**Reasonableness of cost and Mr Pettifor's evidence**

14. The scope of the works was set out in detail in the Notice of Intention and included redecorating the internal common parts (last undertaken in 1998), covering the entrance lobby walls with low maintenance panelling of a high quality finish, plastering and painting of other walls, replacement of the rainwater goods, external redecoration and extensive works to various parts of the Estate (including upgrading/extending lighting, extending the CCTV system, erecting railings, re-routing paths, remodelling car parking provision, soft landscaping work, remodelling play areas and carrying out drainage/plumbing work).

15. As to the reasonableness of the cost, the Applicant relied primarily on the expert witness evidence of Mr Pettifor. In his expert report, Mr Pettifor sets out his

qualifications and experience and addresses a number of issues in detail. It is not considered necessary or helpful to summarise his report in detail, but certain points are worth highlighting. Mr Pettifor states that an agreed maximum price ("**AMP**") was developed by obtaining sub-contractor quotes using an open-book approach. Once the quotes were agreed the costings were applied to the schedule of works. The AMP was then calculated by combining the cost of the work itself with a proportion of the contract 'preliminaries', the contractor's overheads and a profit element at 9.81%, and the AMP created a cap on expenditure save for any agreed variations to the works.

16. There were some agreed variations to the works, but prior to the agreement of the final account the company responsible for setting the AMP unfortunately went into administration, which led to problems with accessing some of the relevant paperwork to support changes in the cost. It was therefore decided to reduce the amount rechargeable to leaseholders for each element of the works to the amount specified in the original section 20 notice (where it would otherwise have been higher).

17. In his report Mr Pettifor describes some of the details of the works and elements of the decision-making process as to what works needed to be done, and he also refers to the process of obtaining competitive quotes. The professional fees were charged at 5% which Mr Pettifor considers low for this type of work. The administration fee was £222.67 which he considers to be reasonable for the work involved in carrying out the consultation.

18. In his oral evidence at the hearing Mr Pettifor observed that the Respondents had not provided any written response to the Applicant's detailed statement of case and had made no comments regarding the works over the many weeks during which they were carried out. He also reconfirmed various points covered in his report.

19. Mr Pettifor commented in his oral evidence on the cost of work to doors within the Building, saying that there were more doors needing fixing than was suggested in the Respondents' defence to the original County Court claim and that a large part of the cost related to fire doors and doors to intake cupboards. As regards electrical installations, he disagreed with the statement in the Respondents' defence to the original County Court claim that no electrical work was carried out, stating that certain light fittings had been replaced. As regards the creation of new parking spaces, he said that residents had complained that the Estate was overcrowded with cars and that the creation of new parking spaces was a response to this complaint. With regard to drainage, the charges were for physical work to the drainage, not for sewerage charges.

**Section 20B**

20. The Applicant submitted that it served a notice on the Respondents on 7th February 2007 under section 20B(2) of the 1985 Act (described as a section 20B notice) which referred to the Notice of Intention dated 19th July 2005 and informed the Respondents of the total costs incurred to date based on the total value of interim demands presented to the Applicant by the contractor. The notice also informed the Respondents that they would receive an invoice in due course. A formal demand was made on 27th January 2011, calculated by dividing the actual cost of the Building works between the flats in the Building, the actual cost of Estate works between the flats on the Estate and adding professional fees and the administration fee.

21. In written and oral submissions, Mr Bhose referred the Tribunal to the case of *Brent London Borough Council v Shulem B Association Ltd (2011) EWHC 1663 (Ch)* in which Morgan J held that in order to meet the statutory requirements of section 20B(2) the landlord needed to specify a figure for the cost incurred costs in relation to the relevant works or services. In this case the Applicant had specified a figure which related to costs incurred in respect of the works, being based on the total value of interim demands received. Alternatively, the amount in the section 20B(2) notice could be regarded as representing the outer edge of the costs that the Applicant would later take into account when demanding contributions.

**RESPONDENTS' CASE**

22. When asked by the Tribunal why the Respondents had not produced a response to the Applicant's statement of case Mr Ali said that they had not received the Applicant's statement of case. The Respondents were, though, happy to proceed with the hearing and did not need further time to consider the Applicant's statement of case.

23. Mr Ali also said that the Respondents had not received any of the consultation notices or related documents or letters from the Applicant at any stage since 2005, although Mr Jiwa slightly modified this response later on in the hearing by saying that he received the letter dated 14th October 2009 regarding the intention to carry out works and the letter dated 27th January 2011 providing final details of his contribution to the cost of the works.

24. Mr Ali also made a comment regarding the alleged lack of detail in the main consultation notices, stating that there was no detailed breakdown.

25. Regarding the entrance lobby and corridor, the Respondents felt that the cost of the work was very high and Mr Ali's calculations were that the cost of that work equated to £110.25 per square metre which he believed was much more than the market rate. Mr Pettifor, in his oral evidence, did not accept this. He said that a lot of time needed to be spent surveying the Building and defining the scope of the work, and that if the prices quoted for the job had been too high

the project manager would have re-tendered. On a previous project run by him, Mr Pettifor said that it had cost £51 per square metre to remove old vinyl flooring and to lay a new vinyl floor, but he was unable to comment on the accuracy or otherwise of Mr Ali's £110.25 per square metre figure as he had not personally measured the relevant area, save to say that possibly Mr Ali's calculation did not take the stairs into account.

26. As regards the creation of extra parking spaces, Mr Ali did not accept that more parking spaces were needed and he felt that the Applicant's primary motivation for creating extra parking was to serve its own development needs. On this point, Mr Pettifor was unable to say how many parking spaces there had been previously and how many there were now.

27. Taking the aggregate of the cost of internal finishes, internal redecoration and woks to communal stairs, Mr Ali felt that this was a disproportionate amount to spend on such a small and uncomplicated area. He also felt that as MDF sheets were only placed on the ground floor whereas the original intention was to use them more extensively, the overall cost should have been reduced.

28. Mr Ali suggested that some works had been done which were unnecessary but he did not substantiate this point clearly. He also suggested that the Estate play area, to which some improvement works had been carried out, were being used by people who were not resident on the Estate.

29. Certain other points were raised in the written defence to the original County Court claim, including comments regarding the cost of the work to the doors and to electrical installations. Some of the points included in the defence were not very detailed or clear and were not later substantiated in more detail.

30. Mr Ali cross-examined Mr Pettifor who accepted that in the end the only work done to the internal stairs was the adding of new aluminium treads.

## TRIBUNAL'S ANALYSIS

31. The Tribunal notes that the Respondents claim not to have received the Applicant's statement of case and not to have received any of the consultation notices or related documents or letters from the Applicant at any stage since 2005, save for a couple of letters.

32. The Tribunal also notes that the Applicant did not send any of the above items by hand or by special delivery but stated that it sent them all by post. It was therefore in each case relying on the Royal Mail.

33. It is well known that letters do go astray from time to time. The Royal Mail is also sometimes unable or unwilling to deliver letters, for example if insufficient postage is paid, although in these cases the relevant letter is returned to the sender except in those relatively rare cases where it is lost in the system.

34. Considering all of the evidence in the round, the Tribunal finds it difficult to believe that the Respondents did not receive any of the consultation letters/documents (other than the two letters belatedly accepted as having been received) and that they did not receive the Applicant's statement of case either. In relation to the consultation documents, the likelihood of all of the these letters and documents going astray and not being returned to sender over a long period of time, despite being correctly addressed, is very small. In addition, there is some evidence from one of those letters to suggest that the Respondents attended a consultation meeting and therefore knew about the consultation process, although the Tribunal accepts that the said letter is not conclusive of this point in isolation. The Tribunal also notes that the Respondents seemingly changed their position during the course of the hearing, initially stating that no letters at all had been received and then conceding that two letters had been received, those two letters coincidentally being ones which it suits their case to concede as having been received.

35. As regards the alleged non-receipt of the Applicant's statement of case, it is surprising that the Respondents should have apparently shown no curiosity as to the absence of that statement of case in advance of the hearing and not done anything to record their concern or to request an extension of time to enable them to respond. This surprise is compounded by the Respondents seemingly being perfectly happy to proceed with the hearing on the day itself without an adjournment.

36. The Tribunal therefore finds, on the balance of probabilities, that the Respondents did receive the relevant consultation documents.

37. As regards the suggestion at the hearing that the consultation documents were defective in some way, if the Respondents had wished to raise this point as part of their defence they should have produced a properly pleaded statement prior to the hearing in compliance with directions. They failed to do this, beyond the very general comments contained in their defence to the original County Court claim, making it impossible for the Applicant to consider this point in advance of the hearing. In addition, the point was not clearly articulated at the hearing, and therefore the Tribunal does not accept that the Respondents' have established a 'prima facie' case that the consultation process was carried out in a defective manner.

38. As regards the Section 20B point, the Respondents did at least raise the point prior to the hearing but they have not produced a detailed statement of their case on this point beyond the very general comments contained in their defence to the original County Court claim. The Applicant for its part has dealt with the point in detail. In the *Shulem B* case, the judge (Morgan J) stated that a written notification under section 20B(2) must state that the relevant costs have been incurred, these being the costs which the landlord wants to take into account in determining the level of service charge. As to what a landlord has to do to comply with section 20B(2) where it does not at that stage know the exact cost, Morgan J stated that it is sufficient to specify a figure for costs which the landlord is content to serve as a maximum cap on the amount that

will be payable and that in specifying such a figure the landlord is entitled to err on the side of caution and specify a figure which it feels will suffice to enable it to recover all of its actual costs in due course once all uncertainty has been removed.

39. On the basis of the decision and reasoning in *Shulem B* and on the basis of the evidence provided in this case, the Tribunal accepts that the section 20B(2) notice dated 7th February 2007 was valid and was sufficient to preserve the Applicant's right to recover the actual service charge at a later date, subject obviously to there being any valid challenge other than under section 20B. Whilst it is arguable that the section 20B(2) notice should have specified not only the total cost to date but also the Respondents' specific contribution based on that total, and whilst it is also arguable that the amount specified should have been expressed as the maximum amount recoverable rather than the cost incurred to date, on balance (bearing in mind also the unfocused nature of the Respondents' challenge) the Tribunal considers the letter to have been just sufficient to qualify as a valid section 20B(2) notice.

40. As regards the interpretation of the relevant provisions of the Lease, the Tribunal considers the definition of the Estate to be unusual, as the defined term used to describe the Estate is "Premises" which is a word more usually used to describe part of a building. Nevertheless, that oddity aside, the Tribunal is satisfied that the definition of "Premises" is intended to – and is wide enough to – cover the whole of the Estate. The Tribunal agrees with Mr Bhose's analysis (in paragraph 13 above) as to the categories of works/services in respect of which the Applicant is entitled to charge a service charge. In Mr Bhose's submission, all of the works to which this application relates fall within one or more of the categories referred to in paragraph 13 above. The Tribunal accepts that this is clearly the case in respect of the various works/services within the Building to which reference has been made. What is less clear is whether it is the case in respect of all of the works/services to the Estate, given the unusual way in which aspects of the service charge provisions are phrased, in particular the reference to those parts of the Estate which the Respondents have a right to use and the reference to improvements to the Estate which "affect" the Property.

41. The problem for the Respondents as regards the interpretation of the relevant provisions of the Lease is that apart from the very brief comments contained in their defence to the original County Court claim regarding the Lease they have not demonstrated any real attempt to offer any detailed arguments on this issue. It might be that they would have a persuasive case for arguing that particular works or services do not fit within the categories of works or services covered by the service charge – for example that certain categories of work could not properly be said to benefit the Property – but they have not articulated that case and therefore the Tribunal is forced to conclude on the balance of probabilities on the basis of the evidence before it that all of the works and services to which the application relates are works/services in respect of which the Applicant is entitled to charge a service charge.

42. In relation to the reasonableness or otherwise of the cost of the various service charge items and the necessity or otherwise of carrying out the various works, again the Respondents' case suffers from not having been properly articulated in writing prior to the hearing.

43. Specifically as regards the works to the entrance lobby and corridor, the objection as to the cost per square metre is a point referred to in the defence to the County Court claim but not in much detail, and the Respondents have not provided any supporting evidence for their position other than Mr Ali's non-expert opinion on the total area to which the works related and his unsubstantiated opinion as to the amount per square metre that it would be reasonable to pay. It is true that Mr Pettifor was unable to confirm the precise area of the entrance lobby and corridor, but the Tribunal considers him to have been a credible witness and that his expert evidence is to be preferred to the non-expert evidence of Mr Ali on this issue.

44. On the issue of the aggregate cost of the internal finishes, internal redecoration and works to communal stairs, it is possible that there exist the makings of an argument that the aggregate cost is higher than is reasonable, but the Respondents' arguments have not been articulated in sufficient detail or substantiated in any way. Furthermore, the point is not argued in the defence to the original County Court claim and nor is there is any written response to the Applicant's statement of case on this point (or on any other point).

45. A specific point was made by the Respondents regarding the number of MDF sheets used, but even if true this only demonstrates that the amount needed to be spent on that specific aspect of the internal works should have been reduced accordingly (which it may well have been), not that the overall cost of the internal works was unreasonable.

46. The Respondents also raised concerns regarding the necessity of carrying out certain of the works, such as the works to the play area and parking area. As regards the play area, it may well be that non-residents are not barred from using the play area but that does not mean that it is unreasonable to carry out works of repair and/or improvement to that area. As regards the parking, it is possible that the extension of the parking is not primarily in the interests of the residents, but the Respondents failed to make a persuasive enough case on this point and the Applicant offered a sufficiently plausible analysis for the Tribunal to conclude – on the balance of probabilities – that the cost of these works is reasonable and properly recoverable.

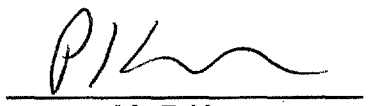
47. The Respondents raised various other points in the defence to the original County Court claim, including regarding the charges relating to drainage, electrical installations and for work to doors within the Building. In the Tribunal's view, the Applicant's evidence on these points – in particular that of Mr Pettifor – was sufficiently strong to counter the relatively brief and poorly substantiated arguments advanced on behalf of the Respondents.

48. In conclusion, the Tribunal determines that the service charges of £17,186.79 are payable in full. Whilst it is possible that the Respondents could have mounted a credible case on certain issues such as the cost of flooring and the necessity of creating more parking, ultimately their case was not presented clearly enough and they did not produce enough evidence to support their position that the Tribunal was able to find in their favour on any of the issues.

**Costs**

49. The Respondents applied for a section 20C order, requesting the Tribunal to order that the Applicant could not put any costs incurred by it in connection with these proceedings through the service charge. However, in view of the fact that the Respondents have lost on all issues and also failed to provide a detailed formal statement of their position in advance of the hearing (apart from the brief defence to the original County Court claim) the Tribunal does not consider it appropriate to make such order and accordingly declines to make a section 20C order in this case.

50. No other cost applications were made.

Chairman: 

Mr P Korn

Date: 8th May 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.