11429

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BG/LSC/2015/0011**
Property	:	**Various flats at Ashmore House North, 41 Violet Road, London E3 3QQ**
Applicants	:	**(1) Flat 301 - Ms B Steiji** **(2) Flat 302 - Ms I Meskevicinte** **(3) Flat 401 - Mr F Berlonga-Echevarria** **(4) Flat 402 - Ms S Prokhorova** **(5) Flat 502 - Mr J McAlpine**
Representative	:	**Ms S Prokhorova**
Respondent	:	**Old Ford Housing Association**
Representative	:	**Ms M Mitchell (senior property manager at Old Ford Housing Association)**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Judge L Rahman** **Mrs Redmond** **Ms Dalal**
Date and venue of Hearing	:	**7 & 8 September 2015 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**26/11/15**

DECISION

Decisions of the tribunal

(1) The tribunal makes the determinations as set out under the various headings in this decision.

(2) The tribunal has decided the issues in principle and the respondent is required to determine the consequent figures as the respondent did not have the relevant figures available during the hearing.

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

(4) The tribunal determines that the respondent shall pay the applicants within 28 days any tribunal fees paid by the applicants.

(5) The tribunal does not make an order for costs under paragraph 13(1)(b) of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.

The application

1. The applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable in respect of the service charge years 2011/2012 to 2014/2015.

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

The hearing

3. All the applicants were represented by Ms Prokhorova and the respondent was represented by Ms Mitchell, its senior property manager. Also in attendance were Mr Berlonga-Echevarria (flat 401, first day only) and Ms V Okonkwo (respondents Property Manager managing Ashmore House North) and Mr Brett Mayne (respondents Regional Head of Service Charges). On the second day, Ms Shorey, a Property Manager from Rendell & Rittner, attended to give evidence on behalf of the respondent. She had not provided any witness statement and stated that she intended to give evidence on how the costs were apportioned. Ms Prokhorova was not happy that there was a failure to comply with directions and no witness statement had been provided but did not object to her evidence so long as it was only on the issue of the apportionment of the costs. In the circumstances, the tribunal

allowed Ms Shorey to give evidence concerning the apportionment of the costs.

4. Ms Prokhorova confirmed that the applicants wished to rely upon all the evidence included in their 382 page bundle ("applicants bundle"). The respondent had submitted seven lever arch files. Files 3-6 simply included invoices, which neither party referred to, and files 1-2 contained the remainder of the evidence relied upon ("respondents bundles 1 & 2").

5. Oral evidence and submissions from both parties were concluded at 5:40pm on the second day. The tribunal reconvened on 7/10/15 for its deliberation. The respondent was asked to provide the list of schedules (appropriate to the invoices), which had been prepared over the lunch break on the second day but had inadvertently not been provided to the tribunal and the applicants, and to also provide a coloured copy of the plan to show the boundary of the estate. The applicants provided a written response in their letter dated 4/10/15.

The background

6. There was much confusion between the parties but both parties eventually confirmed at the hearing that the relevant property is a block referred to as Ashmore House North and South comprising 44 flats. Ashmore House North has 6 floors and Ashmore House South has 7 floors. Each part has its own separate entrance at the front and the use of its own lift (one each) and both have a shared exit at the rear of the block. Unlocked fire doors interconnect both parts of the block at floors 2-5.

7. Four of the flats in Ashmore House North are rented, of which three occupy the ground floor and the fourth is on the first floor. Two of the rented flats on the ground floor have their own entrance from street level and the third is accessed via the communal door. The rented flat on the first floor is also accessed via the communal door. The remaining 8 flats in Ashmore House North are each owned under a "shared ownership" arrangement. The remaining 32 flats are all rented and occupy Ashmore House South.

8. The tribunal did not consider that an inspection was necessary to the issues in dispute.

9. The applicants each hold a long lease of their respective properties which requires the landlord to provide services and the tenants to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

10. The parties identified the relevant issues for determination as set out under each of the sub-headings below.

11. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

The estate boundary

12. The head lease defines the "Estate" as meaning "*the land and any buildings on it constructed or to be constructed on the area shown edged blue on Plan 2*". Plan 2 on page 382 in the applicants bundle is quite faded and in black and white, therefore it was not possible to identify the area edged in "blue". A clearer copy, albeit still in black and white, was provided on behalf of the applicants at the hearing, which enabled the estate boundary to be identified. The coloured plan provided by the respondent after the hearing provides a map/plan of the area but is not a copy of "Plan 2" and did not identify any area edged in blue, therefore it was not of much assistance.

13. Both sides agreed that blocks A1-6 and D1-3 were part of the estate. However, the applicants argued that block "C", west of Violet Road, was also a part of the estate as it looked very similar in terms of its internal decorations to blocks A1-6 and D1-3 and shared the same concierge service. The respondent argued that whilst block "C" shared the same concierge service and had similar decorations, it was not part of the defined estate.

14. Having carefully looked at the various plans provided by the parties, in particular the plan provided on behalf of the applicants at the hearing, we find that block "C" is not part of the estate. The estate boundary runs along Violet Road and excludes the area to the west of Violet Road. The fact that block "C" has the same concierge service and may have the same decorations is not determinative of the issue and is not inconsistent with block "C" not being part of the estate. The same company can provide a concierge service on different estates and the same decoration may be used on different estates. It is the lease that defines the estate boundary.

Car park maintenance charge

15. The applicants stated that they were charged for the maintenance of the car park which they did not have access to or use of. The respondent stated that the applicants were not charged for the maintenance of the car park and explained the way in which the various charges had been accounted, namely, that the applicants paid a percentage of the estate

charge which did not include a charge for the car park. The car park was charged separately. The applicants accepted the explanation provided.

Charge for landscaping above the car park

16. The applicants stated that they were charged for the landscaping of a small area above the car park. The photographs provided by the applicants (page 62) show that this comprised of three small trees and some bushes above the entrance to an underground car parking area. They stated they were not benefitting from this area and did not have use of the area and therefore a charge was not payable. They relied upon the definition of "Service Charge" under the head lease (page 340), the relevant part of which stated; "*(2) In calculating the Service Charge the Landlord shall be entitled to disregard the floor area of any Lettable Unit not benefitting from any of the Services*".

17. The respondent stated the area was part of the estate and therefore the cost of the landscaping was recoverable.

18. The tribunal noted that "Lettable Unit" is defined as "*...any area within the Estate designed for exclusive use or occupation*" (page 338). The tribunal found the relevant area was not for exclusive use or occupation, it was not gated, access was not restricted, it was simply a small area above the entrance to an underground car parking area and is clearly within the boundary of the estate. It is irrelevant whether or not the applicants were using the area or had any use for it or were benefitting from it. The tribunal found the relevant landscaping charge to be recoverable.

Charge for landscaping the park between blocks A1, A2, A3, A5, and A6

19. The applicants stated that the relevant area was private and gated and referred the tribunal to the photos of the relevant area on pages 165-167. They stated it was a "Lettable Unit" therefore they should not pay towards its upkeep.

20. Ms Okonkwo stated that the relevant area had been gated since 2014 for security reasons due to an attempted rape. However, all the tenants on the estate, including all the applicants, still had access to the area, which was accessed by buzzing the 24 hour concierge service. The gate was installed without planning permission and an application had now been submitted for retrospective planning permission. The gates were now open, and she further confirmed that shared owners had access to these areas and would continue to do so even if planning permission is granted.

21. Mr Berlonga-Echevarria stated that the tenants had a meeting at the end of 2013 to discuss the gate. The gate had been installed since 2012 and they did not know why it had been installed. The concierge is located within the gated area and he had accessed the area to visit the concierge. He pressed the buzzer for access as his fob key did not open the gate. He stated that they had never tried to enter the gated area to use the park and had never asked to enter the area for walks etc. He stated that he had never been told by anyone that he could not use the gated area. He assumed that he was not allowed in as it was gated. Since March 2015 the gates have been open.

22. The tribunal found the dispute concerning the date on which the gate had been installed to be irrelevant as the tribunal accepts the respondents evidence, on balance, that all the tenants on the estate had access to the gated part. No evidence to the contrary has been provided. The evidence from the applicants is that they had never tried to enter the gated area, they had never asked to enter the area, and they had never been told by anyone that they could not use the gated area. An incorrect assumption was made, without testing to see whether they would be allowed to use the gated area, that they were excluded. Therefore, any relevant service charge concerning the gated area is payable.

Charge for concierge service

23. The applicants stated that the cost of the service was not recoverable under the lease and if recoverable, the service provided was so poor that no charge was payable.

24. The respondent stated that the head lease provided for the provision of a concierge service and the charge was therefore recoverable. They provided a cleaning service but were not required to hold keys and parcels.

25. The tribunal asked the respondent to comment on the email on page 149 of the applicants bundle, from Stuart Fuller (Estate Manager at Randall & Rittner) to Ms Prokhorova, dated 27/11/14, stating "...You **DO NOT** receive concierge services and **are not** paying for them...". The respondent confirmed that the author of the email was an estate manager, there was no further statement from him to clarify what had been stated in the email, the respondent did not know much about the concierge charge, and that it was all dealt with by Randall & Rittner.

26. In view of the evidence before the tribunal, from those providing the concierge service and confirming categorically that the applicants were not receiving the concierge service and were not being charged for the service, the tribunal determine that the cost of the concierge service is not recoverable from the applicants.

Play area

27. This is the area on the plan on page 382 of the applicants bundle between blocks D1/A4 and D2/D3. A photograph of the play area is also on page 58 of the applicants bundle.

28. The applicants argued that it is a public area, it is not gated, all the children on the estate and those not on the estate use it, therefore the whole estate should contribute towards its cost.

29. The respondent clarified that the whole estate, including blocks A1-6 and D1-3, contributed towards the cost.

30. The applicants argued that block "C", west of Violet Road, was also a part of the estate and should contribute towards the cost.

31. For the reasons already given, we find that block "C" is not part of the estate, therefore, the occupants of block C are not required to make a contribution towards the service charge costs concerning the play area.

Lift

32. Ms Shorey on behalf of the respondent referred the tribunal to the plan on page 382 of the applicants bundle. She stated that for the purpose of billing, Ashmore House North was referred to as "D1" and Ashmore House South was referred to as "A4". A separate block, referred to as "D2" and "D3", was also of relevance as up until 31/3/14 the applicants were paying towards the cost of three lifts, namely, the lift for Ashmore House North (D1) and the two lifts in D2 and D3. The applicants were not contributing towards the cost of the lift relating to Ashmore House South (A4). Since 31/3/14, the applicants were only charged for the lift in Ashmore House North (D1).

33. The applicants argued that the lease referred to the "Building Expenditure" as "*...the aggregate of all reasonable costs...reasonably and properly incurred by the Landlord...in connection with the Building...*" and the "Building" is defined as "*...that building on the Estate known as Blocks D1 and A4...*" (page 336 of the applicants bundle). Therefore, they should each pay their respective proportion for the cost of the two lifts in their block, namely, Ashmore House North and South.

34. The respondent then stated at the hearing that it agreed with the applicants interpretation of the lease.

35. Given the agreement between the parties, the tribunal confirms that the applicants are liable to pay (their respective proportion under the terms

of their individual leases) towards the cost of the two lifts in Ashmore House (North and South) only.

Insurance

36. For the reasons given in the preceding paragraphs, the applicants argued that they should only pay their respective proportion of the building and lift insurance cost in relation to Ashmore House (North and South) only.

37. The evidence from the respondent, concerning how the cost was apportioned, was unclear. Those appearing on behalf of the respondent initially stated that they could not explain how the cost was apportioned. The tribunal found this very surprising given that this was a significant issue that had been raised from the outset and Ms Shorey had specifically attended to explain how the costs were apportioned. Ms Shorey then stated that the insurance costs were apportioned in the same way that the cost of the lift had been apportioned. The respondent then conceded at the hearing that they agreed with the applicants.

38. Given the confusing evidence from the respondent and the subsequent agreement between the parties, the tribunal confirms that the applicants are liable to pay (their respective proportion under the terms of their individual leases) towards the building and lift insurance cost for Ashmore House (North and South) only.

39. With respect to the estate insurance cost, the respondent stated that this covered the cost of items such as boilers and engineers and that the cost was divided amongst all the flats within the estate and that each flat paid its own proportion as required under their respective leases. The applicants stated that they agreed with the way in which the cost was apportioned but wanted to see evidence that the relevant insurance cover had been purchased. By way of an example, the respondent referred to page 125 of file 2. This referred to the estate costs for the year ending March 2014 and included the insurance cost. Page 128, dealing with the same service charge year, referred to the insurance cost for "Building D", which meant D1-3. Therefore, the respondent submitted, this demonstrated that separate estate insurance cover had been purchased. The respondent also stated that the accounts had been audited and therefore any relevant invoice would have been seen. The applicants were not satisfied and wanted to see the relevant invoice.

40. We are satisfied, on balance, that the relevant estate insurance cover had been purchased. The example provided by the respondent clearly shows a separate insurance cost for the estate and the accounts are signed as having been audited (page 124).

Estate charges generally

41. The respondent stated that the estate charges are listed on page 125 of file 2 and the estate covers the area within the estate boundary identified in the plan attached to the head lease (page 382 of the applicants bundle). The cost is split amongst the flats within the estate boundary except the cost of the "staffing", which is split amongst all the flats within the estate boundary and also two blocks outside the estate boundary which share the staff.

42. The applicants stated they were happy to pay for the playground but the two blocks outside the estate boundary should also contribute, they should not have to pay for any of the charges concerning the gated area, and the rest of the estate should contribute towards the bicycle storage and the bin areas as they also use them.

43. As explained earlier in our decision, we find that block "C" and any other block outside the estate boundary are not part of the estate, therefore, they are not required to make a contribution towards the service charge costs concerning the play area.

44. As explained earlier in our decision, we find that all the tenants on the estate had access to the gated part, which forms part of the estate, and therefore any relevant service charge concerning the gated area is payable by the applicants.

45. With respect to the CCTV in the car park, as already explained by the respondent, the applicants pay a percentage of the estate charge which does not include a charge for the car park, which is charged separately.

Reserve fund

46. There are separate reserve funds for the block, the estate, and the boiler. The respondent confirmed at the hearing that the occupants of the rented flats do not pay into the reserve funds but the respondent, as their landlord, paid into the reserve fund based upon a square footage of each of the rented property.

47. With respect to the block reserve fund, the applicants initially stated at the hearing that they accept that the lease allows for a reserve fund but wanted to know how the figure was calculated. The respondent explained that the figure was based upon other similar schemes of a similar size and that a surveyor would in the near future be appointed to put in place a 10 year plan to ensure that there was an adequate reserve fund for possible future major works. The respondent also explained that there was a collective reserve fund for D1, D2, and D3 and that up to 31/3/13 a total of £2,984 had been collected and for the year ending 31/3/14 a further £2,000 had been collected. For the year ending 31/3/15 there was a separate reserve fund for D1 only. The respondent had not yet decided how the D1-D3 funds already collected

were to be separated, but it was anticipated that it would be done on a per unit/square footage basis. Once the money had been separated, the money would be used for D1 only.

48. In response, the applicants stated that it was the landlords responsibility to pay for any improvements, redecoration costs were already covered by the service charge, and it was not fair to pay into a reserve fund as the landlord would keep the money if the applicants decided to sell their flats.

49. With respect to the estate reserve fund the respondent explained that it was split as per the estate costs and was to be used for anything on the estate such as paving and the play area. By way of an example, Ms Prokhorova had paid a total of £96.34 for the period of 18 months up to 1/4/13 and had paid £64-43 for the year ending 31/3/14. The applicants stated that they had not been given the surveyors report and Randall & Rittner had simply decided the amount.

50. With respect to the reserve fund for the boiler, the applicants stated at the hearing they accept the need for a reserve fund but did not know how much should be paid. According to the respondent, Ms Prokhorova had paid £90.98 up to 31/3/13 and £111.71 up to 31/3/14.

51. We find that under the terms of the head lease the landlord is entitled, in relation to the building and the estate, to have a reserve fund. The head lease states under the definition of "Building Expenditure" and "Estate Expenditure" that the landlord is able to raise "...*such sums as the Landlord shall in its reasonable discretion consider desirable to set aside from time to time and as is reasonable and proper for the purpose of providing for periodically recurring items of expenditure in connection with...*" the building and estate respectively (page 336-337 of the applicants bundle).

52. The amount to be collected for the reserve fund is at the landlords "reasonable discretion" which he/she considers "desirable to set aside". Although the landlord intends to appoint a surveyor in the near future to put in place a 10 year plan, the landlord is not required to have a surveyors report. We note that the estate is relatively new and that the sums for the reserve funds have been based upon similar sized developments. We also note that the applicants have failed to provide any evidence to demonstrate that the amount is excessive or unreasonable.

53. In the circumstances, we find the amounts charged for the reserve funds are reasonable and payable.

54. We note the evidence, in relation to the reserve fund for the building, is that the landlord initially had a fund for D1, D2, and D3 and had now

changed that to a separate reserve fund for D1 only. However, in view of the parties agreeing that the cost of the lift and the building and lift insurance are to be shared by the whole of Ashmore House (North and South), this may have a bearing on how the building reserve fund is to be allocated. We did not hear arguments on the point and remain silent on what the outcome is to be.

Cleaning

55. The applicants complain of an unacceptable standard and frequency of cleaning of the corridor and refuse cupboard, discarded cigarette ends and litter in the corridors of Ashmore House North, unhygienic conditions in the refuse cupboard, staining of the carpet tiles on the ground floor of Ashmore House North, and the lift had never been washed up until March 2015. The applicants referred to photographs on pages 158-162 demonstrating evidence of a lack of cleaning. (Photographs of broken light fitting on the stairs were taken in October 2014 (pages 158-159). Photographs of garbage next to Ashmore House were taken in April 2013 (page 160). Photographs of refuse bags on the floor of the refuse area and litter on the stairs were taken in November 2013 (page 162)). After complaining to the landlord, a meeting took place in November 2013.

56. Ms Okonkwo stated that as the property manager of Ashmore House North she carried out six weekly block inspection in partnership with the estate manager. She believes the building is well maintained and the carpets are in good condition. The bin rooms are checked every Monday, Tuesday, Thursday, and Friday and washed out weekly after the bin collection. The cleaning is done on a weekly basis, which includes vacuuming the corridor and landing, wiping clean all entry phone panels, and dusting all surfaces in the corridor and landing. The foyer and lift are cleaned daily. The cleaning schedule is set out on page 129 of file 1 and page 127 sets out the duties for the cleaners. She uses the lift and has found it clean. She has sent out letters to tenants to not overload the bins. She was present at the meeting in November 2013 where they discussed issues concerning the cleaning. The tenants requested more frequent cleaning. When it was explained that it would cost more, the tenants had stated that they did not want more frequent cleaning.

57. Ms Shorey stated she visits the block once every three weeks and has been doing so since April 2014. The cleaning generally was to a good standard. They have estate operatives who are sent out if a particular incident is reported.

58. In response, Ms Prokhorova stated she did not know if there were weekly cleans but she sees cigarette stubs.

59. In view of the oral testimony from Ms Okonkwo and Ms Shorey, supported by the schedule of works referred to, and the comment by Ms Prokhorova that she did not know if there were weekly cleans, the tribunal accepts, on balance, that there were weekly cleans. The photographs are not persuasive in that they only provide a snapshot and do not demonstrate that the litter had been there for any prolonged period. It is reasonable to expect, given the size and composition of the estate, that there would be some littering and overloaded bins. The evidence from Ms Okonkwo, that the tenants at the meeting in November 2013 did not want more frequent cleaning as it would cost more money, was not challenged at the hearing.

60. We therefore find that the cleaning was to a reasonable standard. The applicants did not suggest and we note that the cost of the cleaning was not excessive.

Withholding payment of the service charge by virtue of section 21A of the 1985 Act

61. The applicants state they are entitled to withhold payment of the service charge by virtue of subsection (1)(a) as the landlord had failed to supply documents by the time the landlord was required to supply it under section 21.

62. We note that the applicants requested an explanation concerning the service charge accounts at the end of February 2013 (page 118 of the applicants bundle), requested a breakdown of the costs in September 2013 (page 101), and requested a detailed report in October 2013 (page 104).

63. The response from Mr Mayne on 15 October 2013 was that there was no expenditure in relation to the year 2011/2012 and in relation to the actual costs incurred during 2012/13, he would investigate this and ensure that copies of invoices with breakdowns were sent to Ms Prokhorova within the next month (page 127 of the applicants bundle). Ms Mitchell stated that Ms Prokhorova was sent an email in November 2013 with copies of the budgets and a selection of invoices (page 110-111). The respondent further relied upon an email from Mr Berlonga-Echevarria to his fellow residents in November 2013 in which he stated *"At the meeting Vivien produced a document with what I believe must be a proper breakdown of the monies spent within the whole development...Sveta has a copy..."* (page 109).

64. Ms Prokhorova stated the documents attached to the email in November 2013 were the breakdown of the interim service charge for the year ending March 2014 (page 40) and a payment reminder (page 46) and were inadequate. Mr Berlonga-Echevarria stated that the email referred to was a private email to residents and a document was provided at the meeting which he saw but did not have time to

consider. He maintained that the information provided was not adequate.

65. On balance, in particular in view of the email from Mr Berlonga-Echevarria, we are satisfied that the relevant breakdown of the costs had been provided in November 2013.

66. In any event, we note that the respondent has now provided the audited account for the period up to 31/3/13 (page 829-856 of respondents file 1), the audited account for the year ending March 2014 (page 123 of respondents file 2), an estimate for the year ending March 2015 (page 885 of file 1), and has provided all relevant invoices in 4 lever arch files. Therefore, the respondent satisfies subparagraph (3)(a) which states "*An amount may not be withheld under this section in a case within paragraph (a) of subsection (1), after the document concerned has been supplied to the tenant by the landlord...*".

67. We therefore find the service charges are payable.

Application under s.20C and refund of fees and costs

68. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines the applicants acted reasonably in connection with the proceedings and were successful on a significant part of the claim concerning the issue of apportionment, therefore, it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act so that the respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge. For the same reasons, the tribunal orders the respondent to refund any fees paid by the applicant within 28 days of the date of this decision.

69. Both parties applied for an order for costs at the hearing.

70. The tribunal may make an order in respect of costs only if a person has acted unreasonably in bringing, defending or conducting proceedings (paragraph 13(1)(b) The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013). The word "unreasonable" is not defined but it was held in Ridehalgh v Horsefield [1994] 3 All ER 848 "'*Unreasonable' also means what it has been understood to mean in this context for at least half a century. The expression aptly describes conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a*

reasonable explanation. If so, the course adopted may be regarded as optimistic and as reflecting on a practitioners judgment, but it is not unreasonable."

71. The tribunal makes no order as to costs under paragraph 13(1)(b). There is no evidence to suggest that either parties behaviour was vexatious or that it was designed to harass the other. In all the circumstances, the tribunal is satisfied that neither party acted unreasonably.

Name: Mr L Rahman **Date:** 26/11/15

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

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

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

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

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

   and the amount payable shall be limited accordingly.

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

Section 27A

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

(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

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

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

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

Section 20C

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

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

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

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

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