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

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| **Case Reference** | : | **CHI/00MR/LIS/2011/0107** |
| **Property** | : | **Flat 21 Carlton House, Western Parade, Southsea PO5 3ED** |
| **Applicant** | : | **Carlton House Residents Management Association** |
| **Representative** | : | **Christopher Baker counsel instructed by Woodgate & Co solicitors** |
| **Respondent** | : | **Mr Timothy George Forbes** |
| **Representative** | : | **Derek Marshall counsel on Direct Public Access basis** |
| **Type of Application** | : | **For the determination of the reasonableness of and the liability to pay a service charge** |
| **Tribunal Members** | : | **Judge Tildesley OBE**<br>**W Gater FRICS** |
| **Date and venue of Hearing** | : | **25 June 2014 at Tribunal Offices, Market Street Chichester** |
| **In Attendance** | : | **Mr Baker, Miss K Woodgate, solicitor, Mr Dack FRICS, managing agent, and Mr M Milnes, Director of Resident's Association for the Applicant.**<br>**Mr Marshall and Mr T Forbes for the Respondent** |
| **Date of Decision** | : | **7 August 2014** |

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**DECISION**

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## Decisions of the Tribunal

(1) The Tribunal finds that the Applicant has applied the correct method of apportionment for determining the Respondent's proportion of the aggregate service charge expenditure for Carlton House for the years 2008/9 to 2011/12.

## The Application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Respondent in respect of the periods from 25 December 2008 to 24 June 2011 in the total principal sum of £3,436.85 together with interest.

2. Proceedings were originally issued in County Court. On 5 December 2011 DJ Cawood in Portsmouth County Court transferred the claim to this Tribunal.

3. The issue for determination is that set out in the directions by Judge Agnew given at a Case Management Conference on 10 July 2012, namely:

> "... the only issue for the Tribunal to determine was whether or not the Respondent had been charged the correct proportion of the aggregate service charge expenditure for Carlton House for the years the subject of the County Court claim, namely 2008/9 to 2011/12 and, if not, what that correct proportion should be."

4. The parties agreed that the issue was a question of law, and turned solely on the proper construction of the relevant clauses of the lease. The Tribunal acceded to the parties' request to treat the determination of the issue as a preliminary point, and reserve the consequences of the determination to be decided or agreed at a later date.

5. The summary details of the previous proceedings before the Tribunal are set out in Appendix 1 to the decision.

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

## The Hearing

7. At the hearing the Applicant and Respondent were represented by counsel, Mr Baker for the Applicant , and Mr Marshall for the Respondent.

8. The Tribunal is grateful for the comprehensive written arguments supplied by counsel together with bundles of relevant documents prior to the hearing. The documents included a witness statement from Mr Dack FRICS for the Applicant, and a statement from Mr Forbes, the Respondent. The Tribunal incorporates the parties' written arguments as part of the decision.

9. The Tribunal did not inspect the property in view of the type of determination sought by the parties

## The Background

10. Carlton House was located in Southsea, Hampshire and came into existence from a conversion of four adjoining buildings with separate entrances. Within Carlton House there were a variety of flats of one, two and three rooms over five floors. The flats either fronted Western Parade or Kent Road or were at the rear of the property.

11. The Respondent's flat (Flat 21) was a one bedroom flat with a mezzanine fronting along the side elevation of Carlton House abutting Kent Road.

12. The Respondent purchased a long leasehold interest in Flat 21 on 17 April 1997. The terms of his leasehold were found in an underlease made between Neil Frances Iles Ray of the first part, Carlton House Residents Association (Portsmouth) Limited of the second part and Thomas Ronald Downey of the Third Part. The underlease was dated 18 September 1978 for a term of 95 years from 1 March 1978.

## The Issue

13. The dispute concerned the correctness of the proportion of the service charge payable by the Respondent. For the years 2008/09 to 2011/12 the proportion demanded from the Respondent was 2.21 per cent. This proportion was calculated by taking the rateable value of the Flat 21 as shown in the Valuation List for 1973 in existence at the date of the Lease, which was £182, relative to the total of the rateable values for the other flats in the building, which was £8,374.

14. According to the Respondent, he contributed a disproportionately high percentage of the service charge when Flat 21 was compared with the other flats in Carlton House in respect of its aspect, size and number of bedrooms.

15. At the outset of the hearing the Respondent conceded that at the time the lease was granted the rateable value for Flat 21 was £182. The

Respondent, however, said that the correct proportion applicable to Flat 21 based on a rateable value of £182 was 2.20 not 2.21 per cent[1].

16. The argument between the parties centred upon the proper construction of clause 4(1) of the underlease. In essence the Respondent contended that the proportion produced by application of the rateable value of £182 was unfair. In those circumstances, the Respondent contended that the Applicant was obliged under the terms of clause 4(1) to correct the unfairness and determine a proportion whereby each lessee paid a like amount according to the size and value of his/her property.

17. The Applicant, on the other hand, argued that the Respondent had misconstrued the wording of clause 4(1). According to the Applicant, the wording of clause 4(1) was clear. The Applicant could choose whether to calculate the proportion by using rateable values as shown in the Valuation List for 1973 or by applying such other annual sum as may be determined by it. The Applicant was, therefore, entitled to calculate the service charge proportion by reference to the rateable values and was under no obligation to use another annual sum denominator so as to secure "fairness" between the lessees.

## Consideration

18. At the previous hearing on 24 September 2013[2] the Respondent sought to argue the rateable value of £182 as appeared in 1973 Valuation List was manifestly wrong and should be reduced. At this hearing the Respondent had abandoned this line of argument and instead directed its attention to the wording of clause 4(1) of the lease.

19. The Tribunal's starting part is the wording of clause 4(1) which states that

> During the subsistence of the said term to pay to the Company an annual subscription of a proportion calculated as provided in sub clause 2(12) hereof or such other annual sum as may be determined by the Company as being necessary to ensure that each tenant of a flat in the Building paying a like amount and the Lessor paying a like amount in respect of each of the completed flats in the Building for the time being retained by him as hereafter provided the aggregate sum received by the Company shall equal the aggregate amount properly and reasonably required to be expended by the Company ***(First part)*** *(Tribunal's italics)* and the amount of any reserves reasonably required by the Company in connection with the performance and observance during the whole of the term hereby granted of the covenants on the part of the Company hereinbefore contained the wages of all the Company's employees and servants and administrative

[1] See paragraph 6 of Respondent's Statement of Case dated 4 June 2014.

[2] See appendix 1

and office expenses the insurance for the common parts of the building and other incidental expenses of the Company (including Accountant's fees and Managing Agents charges initiating and running its business (***Second part)*** such annual payments to be made in advance by two equal installments on the twenty fifth day of March and the twenty ninth day of September in every year or at such longer intervals and at such other times as the Company shall in writing notify to the Lessor and so that on default by the Tenant in the making of the whole or part of any such annual payments the Lessor shall be entitled to distrain re-enter and exercise all or any remedies of the Lessor exercisable in respect of breach of covenant ***(Third part)*** PROVIDED ALWAYS that the certificate from time to time of the Auditors for the time being of the Company or if the Company shall fail to produce such certificate within a reasonable time certificate of the Accountants for the time being of the Lessor as to the amount payable by the Tenant from time to time in accordance with this present paragraph shall be conclusive and binding on the Lessor and the Tenant and the Company".

20. Clause 2(12) provides as follows in relation to the proportion:

> "If at any time or times during the subsistence of the said term any sum or sums shall be expended by the Lessor and shall be due and unpaid to the Lessor under or by virtue of sub-clause 3(2) of this Lease the Tenant will on demand pay to the Lessor ***such proportion to be calculated by apportioning the rateable value of the Demised Premises as against the aggregate rateable value of all the flats in the said building as certified by the Lessor's Architects (Tribunal's italics)*** and the certificate of the Surveyor for time being of the Lessor as to the amount of any sum or sums due and owing to the Lessor shall be conclusive and binding on the Lessor and the Tenant and such sum or sums may be recovered by the Lessor as if the same were rent PROVIDED that if any sum shall be paid by the Tenant to the Lessor under or by virtue of this sub-clause the Tenant shall be entitled to recover the same from the Company".

21. For the purposes of this Application Mr Baker broke down clause 4(1) into three constituent parts, which were indicated in the extract quoted in paragraph 19 by the words ***First Part etc.***. The first part dealt with the method of apportionment of the service charge between the lessees. The second part identified the services which could be charged. The third part set out the machinery for collecting the service charge. The dispute was concerned solely with the construction of the first part, the method of apportionment.

22. Before considering the parties' respective arguments, the Tribunal identifies the principles of construction as set out in case law, starting with Lord Hoffman's judgment in *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 WLR 896, HL at pp912/F-913/E which encapsulated the modern construction of commercial agreements:

> "I think I should preface my explanation of my reasons with some general remarks about the principles by which contractual documents

are nowadays construed. I do not think that the fundamental change which has overtaken this branch of the law, particularly as a result of the speeches of Lord Wilberforce in *Prenn v. Simmonds* [1971] 1 W.L.R. 1381, 1384–1386 and *Reardon Smith Line Ltd. v. Yngvar Hansen-Tangen* [1976] 1 W.L.R. 989, is always sufficiently appreciated. The result has been, subject to one important exception, to assimilate the way in which such documents are interpreted by judges to the common sense principles by which any serious utterance would be interpreted in ordinary life. Almost all the old intellectual baggage of "legal" interpretation has been discarded. The principles may be summarised as follows.

> (1) Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.
> (2) The background was famously referred to by Lord Wilberforce as the "matrix of fact," but this phrase is, if anything, an understated description of what the background may include. Subject to the requirement that it should have been reasonably available to the parties and to the exception to be mentioned next, it includes absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man.
> (3) The law excludes from the admissible background the previous negotiations of the parties and their declarations of subjective intent. They are admissible only in an action for rectification. The law makes this distinction for reasons of practical policy and, in this respect only, legal interpretation differs from the way we would interpret utterances in ordinary life. The boundaries of this exception are in some respects unclear. But this is not the occasion on which to explore them.
> (4) The meaning which a document (or any other utterance) would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean. The background may not merely enable the reasonable man to choose between the possible meanings of words which are ambiguous but even (as occasionally happens in ordinary life) to conclude that the parties must, for whatever reason, have used the wrong words or syntax: see *Mannai Investments Co. Ltd. v. Eagle Star Life Assurance Co. Ltd.* [1997] A.C. 749 .
> (5) The "rule" that words should be given their "natural and ordinary meaning" reflects the common sense proposition that we do not easily accept that people have made linguistic mistakes, particularly in formal documents. On the other hand, if one would nevertheless conclude from the background that something must have gone wrong with the language, the law does not require judges to attribute to the parties an intention which they plainly could not have had".

23. Mr Baker cited two further authorities dealing with the principles of construction, namely:

- Full effect must be given to what the lease actually provides; not what it might have provided (*Monypenny v Monypenny* (1861) 9 HL CAS 114, per Lord Wensleydale).

- The ordinary meaning of the words used prevails, unless there is ambiguity or the context shows that the ordinary meaning cannot be given *(Melanesian Mission Trust Board v Australian Mutual Provident Society* (1996) 74 P&CR 297, PC per Lord Hope).

24. Mr Marshall cited the judgment of Sir Thomas Bingham MR as he then was in *Arbuthnott v Fagan Denny v Gooda Walker Ltd* (in liquidation) [1995] CLC 1396:

> "Courts will never construe words in a vacuum. To a greater or lesser extent, depending on the subject matter, they will wish to be informed of what may variously be described as the context, the background, the factual matrix or the mischief. To seek to construe any instrument in ignorance or disregard of the circumstances which gave rise to it or the situation in which it is expected to take effect is in my view pedantic, sterile and productive of error. But that is not to say that an initial judgment of what an instrument was or should reasonably have been intended to achieve should be permitted to override the clear language of the instrument, since what an author says is usually the surest guide to what he means. To my mind construction is a composite exercise, neither uncompromisingly literal not unswervingly purposive: the instrument must speak for itself, but it must do so in situ and not be transported to the laboratory for microscopic analysis".

25. Mr Baker for the Applicant contended that the method of apportionment as set out in clause 4(1) was simple and straightforward. The landlord in its discretion could choose between a method which calculated the contribution for each flat by apportioning its rateable value against the aggregate rateable value of all the flats in the said building or a method which used such other annual sum so as to ensure that each tenant of a flat in the Building paid a like amount. In this case the landlord had chosen the first method based on rateable value, which it was entitled to do.

26. According to Mr Baker, the meaning that he had attributed to clause 4(1) was the one which a reasonable person having all the relevant background knowledge would have adopted. Mr Baker said the general provisions of the General Rate Act 1967 which required the drawing up and the maintenance of Valuation Lists containing particulars of the value of each hereditament would have formed part of the relevant background.

27. In Mr Baker's view, the original parties to the under lease which was made in 1978 would have understood that the rateable value of the flat

and of each and all of the other flats in the building meant the value shown in the Valuation List, subject to any alteration being made to that list or a new list. Any other interpretation would have resulted in considerable uncertainty and practical difficulty in operating the lease provisions for a total of 52 flats.

28. Mr Baker was adamant that the wording of clause 4(1) was clear and unambiguous. In his view, the clear wording gave no scope to import the concept of fairness as a means for informing the landlord's choice between the two methods of apportionment as set out clause 4(1).

29. Mr Marshall for the Respondent placed a different construction on the first part of clause 4(1). According to Mr Marshall, Clause 4(1) was poorly worded. A full stop was required after the word *"provided"* followed by a new sentence starting with *"The aggregate sum etc..."*. Further the phrase *"or such other annual sum as may be determined by the Company as being necessary to ensure that each tenant of a flat in the Building paying a like amount and the Lessor paying a like amount...."*. was grammatically incorrect. In his view either the word *"that"* should be omitted or *"paying"* should read *"pays"*. Finally Mr Marshall pointed out that *"like" amount* could either mean that each leaseholder pays the same amount or that each pays a similar amount according to the accommodation occupied.

30. Although Mr Marshall considered that the sense of the clause was tolerably clear in that the service charge proportion paid by each leaseholder was informed by the rateable value, he maintained that the meaning of clause 4(1) was ambiguous and required judicial interpretation. Mr Marshall said it was the Respondent's position that the intention of the original parties when the lease was made was to have a system which achieved fairness between the leaseholders, based initially on the rateable value (as a broad indication of the area of accommodation they each occupied) or where that did not achieve fairness, on a determination whereby they each paid a like amount according to the size and value of their property.

31. According to Mr Marshall, the Respondent's case was that the correct proportion of the service charge applicable to his flat was in the first instance to be determined by the rateable value which must then be cross-checked against the second limb of clause 4 namely, *such annual sum as may be determined by the Company as being necessary to ensure that each tenant of a flat in the Building paying a like amount.* Mr Marshall contended that his construction of clause 4(1) was consistent with the original intention of the parties of achieving fairness between the leaseholders. Mr Marshall maintained that his construction did not involve a re-writing of the lease.

32. Mr Marshall referred to the Respondent's analysis of comparative information on the flats in the property including amongst other

matters, type of flat and number of rooms[3]. According to Mr Marshall, the analysis showed that there was general consistency and logic to the rateable values for the flats in the property, except the Respondent's flat. Mr Marshall said the analysis showed that the Respondent was paying up to 23 per cent more than his neighbours.

33. Mr Marshall stated that the analysis at Table E showed that if a figure of £143 was used as the rateable value for Flat 21 it would place the flat below most first floor and above flats of larger size, utility and aspect but still leave flat 21 at an average valuation premium of more than 18 per cent to its basement and ground floor one bedroom neighbours.

34. Mr Marshall concluded that on a proper interpretation of the lease, Flat 21 ought to be assumed to have a rateable value of only £143 and not £182 so that the Respondent's contribution would be reduced from 2.17 per cent to 1.72 per cent Further, there would have to be an adjustment to reflect the pro-rata reduction shared amongst the other leaseholders so that the final contribution percentage, shared amongst the 51 leases, would result in a corrected figure of 1.74 per cent Mr Marshall asserted that any other conclusion would run counter to the wording and intention of the lease.

35. The Tribunal observes that the dispute between the parties was a narrow one. The dispute concerned just the first part of clause 4(1) of the lease, namely, *"an annual subscription of a proportion calculated as provided in sub clause 2(12) hereof or such other annual sum as may be determined by the Company as being necessary to ensure that each tenant of a flat in the Building paying a like amount"*. The resolution of the dispute depended upon a choice between the respective parties' construction of lease. Mr Marshall accepted that the determination did not involve an evidential question. Further, the parties were in agreement on the legal principles underpinning the proper construction of the lease. The authority of *Arbuthnott* cited by the Mr Marshall did not add to Mr Baker's comprehensive analysis of the authorities. Finally Mr Marshall conceded that the choice of the method of apportionment rested with the Applicant in its capacity as landlord subject to testing its choice against the criterion of fairness.

36. The issue, therefore, facing the Tribunal is straightforward. The Tribunal prefers either:

- Mr Baker's construction of the landlord making a choice between a method of apportionment based upon the rateable value or a method which used a different annual sum.

or

- Mr Marshall's construction of the landlord starting with rateable value, which was then cross checked against the

[3] See Respondent's statement of case Tables A to F at pages 32-41.

criterion of paying a like amount, and if it did not met the criterion, the landlord would choose another method based on a different annual sum.

37. The Tribunal prefers Mr Baker's construction. In the Tribunal's view, the natural and ordinary meaning of the disputed part of clause 4(1) was that the Applicant in its discretion had a choice between a method of apportionment based upon rateable value or a method using another annual sum. Thus the Applicant was entitled by the terms of the lease to choose the rateable value method.

38. The Tribunal's preferred construction was supported by reference to the phrase of *or such other annual sum* which demonstrated that it was simply a choice between two methods. Further the parties at the time of making of the sub-lease would have understood what was meant by rateable value, and that such values would have been ascertained from the 1973 General Rating List.

38. The Tribunal finds that the wording of clause 4(1) was not ambiguous. There was no requirement to test the rateable value method against some notion of fairness. The reference to *paying a like amount* applied to the method using such other annual sum and not to the rateable value method. In this respect, the alternative method of calculation which the Applicant may choose under clause 4(1), was for each flat in the property to bear *a like amount* which was equal division.

39. Mr Marshall's valiant attempt to introduce a benchmark of fairness was not only defeated by the plain wording of clause 4(1) but also by the parties' understanding of the effect of using a rateable value method, which would be part of the admissible background. The parties would know that the use of rateable value was a comparative rather than an absolute measure for determining the correct proportion of the expenditure for which the lessees of Carlton House would be liable.

40. Equally the Tribunal is satisfied that there was no justification for the correction of the purported grammatical errors in clause 4(1) relied upon by Mr Marshall. The Tribunal agrees with Mr Baker's observation that the insertion of a full stop after the word *provided* in the sixth line of Clause 4(1) was clearly wrong. As Mr Baker contended, the insertion of the proposed full stop would defeat the purpose of the service charge clause which was to ensure that the aggregate sum of the charges levied by the Applicant would equal the aggregate amount properly and reasonably expended by it on services.

41. The Tribunal considers Mr Marshall's construction that the Applicant was required to calculate first the service charge contribution in accordance with rateable value, and then check that calculation against the criterion of a *like amount* was tortuous and in effect amounted to a rewriting of the clause.

42. Mr Marshall's difficulties were amplified by the contradictions in his arguments. On the one hand, Mr Marshall stated that the meaning of clause 4(1) was tolerably clear but, on the other hand, he argued that the clause was ambiguous and required judicial interpretation. Similarly, his proposition that Flat 21 should have an assumed rateable value of £143 ran counter to the Respondent's concession that at the time of the grant of the lease the rateable value for Flat 21 was £182. Finally despite his conclusion about the unfairness of the rateable value method, Mr Marshall reverted to this method with his use of the proxy rateable value of £143 rather than applying the other limb of *such other annual sum*.

43. The Respondent believed he was being treated unfairly. He considered that his service charge contribution was too high because of the purported error in the rateable value for his flat. The Tribunal formed the view that Mr Marshall's skilful argument on the Respondent's behalf had in reality nothing to do with the principles of construction but was another attempt to ameliorate the consequences of the purported error in the rateable value for Flat 21.

## Decision

44. The Tribunal decides that the correct construction of clause 4(1) is that the Applicant can choose whether to calculate the proportion of service charge payable by the Respondent in the manner provided for in clause 2(12) (rateable value method) or it can choose such other annual sum as may be determined by it. The Applicant is, therefore, entitled under the terms of the lease to determine the Respondent's contribution by means of the rateable value method of apportionment.

45. The Tribunal finds that the Applicant has applied the correct method of apportionment for determining the Respondent's proportion of the aggregate service charge expenditure for Carlton House for the years 2008/9 to 2011/12.

46. The Tribunal stays the proceedings until 4 October 2014 to enable the parties to reach an agreement on the consequences that flow from the Tribunal's determination including the percentage proportion based on a rateable value of £182 for Flat 21. **By no later than 4pm on 7 October 2014** the Applicant to inform the Tribunal in writing on whether an agreement has been reached. If not the application will listed before Judge Tildesley to determine the outstanding matters.

## RIGHTS OF APPEAL

2. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

3. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

4. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

5. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

## Schedule One: Previous Hearing on 24 September 2013

1. Following an oral hearing on 24 September 2013, the Tribunal decided that:

    - The due proportion derived from a calculation using the 1973 Valuation List was 2.17 per cent.

    - There being no challenge to the amounts in the service charge, the Respondent was liable for the above proportion.

    - No section 20C order.

2. At the hearing on 24 September 2013, the Respondent sought to argue that, in determining the proportion, the rateable value for Flat 21 should be lower than that used by the Applicant (which was £182, taken from the valuation list). He relied on a letter dated 14 May 2013 from Mr Gary Martin, a Customer Service Manager at Council Tax West of the Valuation Office Agency, recording that the council tax list was altered on 8 May 2006 to change the entry for the Flat from Band B to Band A with effect from 1 April 1993, on the basis that the Flat had one bedroom not two. The argument was rejected by the Tribunal and had been abandoned in this application.

3. By a written decision dated 10 March 2014, on application by the Respondent to set aside or for permission to appeal against the above decision, the Tribunal set aside its decision pursuant to Rule 51 by reason of a procedural irregularity, and refused permission to appeal. The Tribunal directed the application be reheard before a different Tribunal.

## Appendix 2 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.