10214

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AU/LSC/2013/0827**
Property	:	**Flat 7, Pearce House,205-207 Junction Road, Holloway, London N19 5QD ("the property")**
Applicants	:	**G & O Estates Limited**
Represented by	:	**Mr James Davies of Counsel instructed by Urban point Property Management Limited**
Also in attendance	:	**Mr Ian Capjohn- Property Manager**
Respondent	:	**Mr Ashraf Sardar- Property Manager** **Ms Jacqueline Smith**
Type of Application	:	**Application for a determination under Section 27A of the Landlord and Tenant Act 1985**
Tribunal Members		Ms M W Daley LLB (Hons) Mr Hugh Geddes Mrs Lucy West
Date of Hearing and determination and venue	:	**10 April 2014** and 23 May 2014 **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**23 July 2014**

DECISION

Decisions of the Tribunal

(1) The Tribunal makes the various determinations set out in the decision below.

(2) Since the Tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Clerkenwell & Shoreditch County Court.

(3) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

The application

1. This case was transferred from the Clerkenwell & Shoreditch County Court by order of District Judge Sterlini dated 27th November 2013 under case No 3XG55881.

2. The Applicant seeks a determination under section 27A of the Landlord and Tenant Act 1985 and Schedule 11 of the Commonhold and Leasehold Reform Act 2002 relating to the legal basis for recovery of service and or administration charges payable for the service years commencing on 25 December 2006, 2007,2008,2009,2010, 2011, 2012 and estimated charges for the period to 23 June 2013 under a lease dated 1 May 1961.

3. Directions were given by the Tribunal on 9 January 2014.

The matter in issue

4. At the Directions hearing on 9 January 2014 the Tribunal identified the following issues-: (i) the brought forward balance from accounts in 2001 in the sum of £600.00, which a previous LVT had ordered be paid by the landlord directly; (ii) the reasonableness of the landlord maintaining two insurance policies for the premises, and whether the Tribunal has jurisdiction to deal with this matter; (iii) the reasonableness of all of the charges for all of the years listed above. (iv) the Respondent's application for a section 20 C order.

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

The background

6. The building which is the subject of this application is a four storey block of 16 purpose built flats with 8 garages and small storage sheds for each flat in an external yard area. The Respondent is the leaseholder of flat 7. G & O Estates Limited is the Applicant and freehold owner of Pearce House.

7. The Respondent holds a long lease of the flat, which requires the landlord to provide services and the Respondent leaseholder to contribute towards the cost of the services, by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The Hearing

1. At the hearing the Applicant was represented by Mr James Davies Counsel, also in attendance was Mr Ian Capjohn and Mr Ashraf Sardar both property managers.
2. The Respondent Ms Smith represented herself.

3. At the hearing the following additional documents were provided-:

   (i) The lease plan

   (ii) Photographs depicting the general condition of the premises between 2011-2013

4. In compliance with the directions, the Applicant had provided an indexed bundle of documents. The Respondent also provided a small bundle.

The Insurance

5. At the hearing counsel set out the provisions in the lease which were relevant to the Application, counsel referred to page 32 of the lease which defined the demised premises.
6. The demise was defined *as "...the flat... being on the ground floor of the building(including one half part in depth of the joists between the ceilings of the Flat and the floors of the flat above it and the internal and external walls of the Flat up to the same level and being on the floor of the building(including one half part in depth of the joists between the floors of the Flat and ceilings of the flat below it the*

internal and external walls above the same level and the roof of the building so far as the same constitutes the roof of the Flat" and clause 4 (vii) of the lease which set out the obligations upon the leaseholder

7. Which states-: (vii) *To insure and keep insured the demised premises against loss or damage by fire and such other risks (if any) as the Lessors think fit ...*" By the terms of the lease, Ms Smith was obliged to insure her premises.
8. Mr Davies referred to the fourth schedule clause 5 which required the landlord to insure against third party risks, there was no provision in the lease for insuring the building against risks such as subsidence or destruction by fire.
9. The Tribunal were referred to the common parts insurance provided by Genavco for the period 10.04.08 to 10.04.2009. The risk address was described as "*...the common parts Pearce House...*"
10. In paragraph D of the Applicant's statement of case, the Applicant stated that-: "*...Landlord has arranged individual insurance premiums for the? majority of the lessees in the block and they make payments to us on annual basis towards their flat insurances. The insurance premium for the flats does? not form part of the service charge accounts. The Respondent has failed to pay any of the premiums demanded since 2007...*"
11. The Tribunal were referred to the bundle which included copies of the insurance certificates provided by Genavco in relation to the Respondent's premises. The certificates dated from 2007 until 9/04/2014. The premium due for 10/04/2013 to 9/04/2014 was in the sum of £558.67.
12. Mr Davies submitted on behalf of the Applicant that the Tribunal did not have jurisdiction in respect of the reasonableness of the insurance as there was no obligation under the lease for the freeholder to insure the Respondent's demise. It was also the case that some of the leaseholders who lived in neighbouring blocks with similar lease provisions arranged their own insurance.
13. In accordance with paragraph 8 of the directions the Applicant was asked for information about the commission paid for placing the insurance. Mr Davies stated that it was 20% of the premium and that it was paid to the landlord.
14. In reply the Respondent Ms Smith referred to two letters from the Applicant one dated 10.09.2003 and the other dated 17.04.2008 which appeared contradictory in content. The first letter invited her to join the "block" insurance and the second letter informed her that the building was not insured. Ms Smith stated that she had not paid the insurance for two reasons: firstly she was unclear as to whether the insurance purportedly offered by the landlord was valid, and secondly Ms Smith considered the insurance to be expensive. Ms Smith referred the Tribunal to alternative quotations that she provided to the Tribunal in the form of a flier in which a range of cover was quoted for building and contents cover for a two bed house from £267.84...
15. The Applicant did not consider that these policies were "*like for like*" as they were insurances for freehold houses rather than leasehold flats.
16. Ms Smith stated that she did not know if there was a block policy and she also queried why it was so expensive.

17. In written closing submissions the Applicant stated that if the Applicant was required to insure the Respondent's premises because of her failure to insure the property *"...this would sound in damages..."* The Applicant further stated that the wording of Section 18 does not extend to a damages claim. Given this *"... The amount which is payable is determined according to the common law rules of causation and mitigation of loss..."*

The Tribunal Determination

18. The Tribunal have determined that it does not have the jurisdiction to deal with the claim made against the Respondent for the cost of insuring the building, as the lease makes no provision for the collection of contributions for the cost of insuring the building, save for the insurance for the common parts.
19. The Tribunal consider that in accordance with the lease terms the Respondent is obliged to contribute to the insurance for the common parts. In reaching this decision, the Tribunal considered the wording of clause 5 4(vii) of the lease and page 32 of the lease which defines the demise, and clause 5 of the fourth schedule which sets out the landlord's obligation as *"The cost of insurance against third party risks in respect of the Mansion if such insurance shall in fact be taken out by the Lessor.."*
20. The Tribunal are however very concerned that the lease makes no provision for the insurance of the fabric of the whole building eg in the event of a total loss, and consider that this could be remedied by an application from either the leaseholder or the landlord to the Tribunal under the provisions of the Landlord and Tenant Act 1987.
21. The Tribunal are also concerned about the wider implications that the current provisions have in respect of the ability of the Freeholder or leaseholder to protect her interest, or that of any lenders in the event of an insurable event happening at the building.
22. The Tribunal consider that it is in the interest of both parties for this situation to be regularised as the lack of building insurance has an impact on the value of the building and more importantly it is not clear whether under the existing arrangements the premises could be restored in the event of fire.
23. However in respect of the Applicant's claim, the Tribunal determines that-: The cost of the insurance is only recoverable as a service charge for the third party insurance. In respect of the insurance for the Respondent's demise it is not recoverable as a service charge item.

The cost of accountancy and auditing

24. The Respondent also queried the reasonableness and payability of the cost of auditing the service charges. The charges for auditing for 2006 were £305.50. The Applicant submitted that this was a reasonable charge for auditing and that-: *"... It is a good practise for the managing agents to get the accounts certified by a qualified auditor, which is beneficial to lessees and has many practical advantages..."*

25. At the hearing Counsel on behalf of the Applicant referred to Paragraph 1 of the 4th Schedule of the lease which was broad enough to include the cost of auditing, and also section 21 LTA 1985.
26. The Respondent's main objection to the charge was that the audit was carried out every six months. In her view this was excessive and unnecessary.
27. Mr Capjohn sought to explain this, by saying that this was not unreasonable as the service charges were demanded on a six monthly basis. In the Applicant's written closing submissions the Applicant stated-: *" In the absence of an entitlement to estimated service charges it is submitted it is reasonable for the Applicant to levy six monthly service charge accounts rather than have to wait twelve months before it can insist on payment of the costs it has incurred. As the statement of service charges is being presented to the lessee as evidence of historic cost it is submitted that it is reasonable that the statement is certified as being sufficiently supported by accounts and receipts. If it were not so certified it would be unclear what the legal effect of it would be..."*

The Tribunal Determination

28. The Tribunal have considered the wording of the lease, and have determined that nothing in the lease provides for the auditing to be carried out on a six monthly basis. Indeed the lease is silent on the issue of auditing, although the Tribunal accept that section 21 of the Landlord and Tenant Act 1985 is an implied covenant which by legislation is imported into the terms of the lease.
29. The Tribunal, having determined that there is no requirement of the lease for the audit to be carried out six monthly, then considered whether it is reasonable for the Applicant to have the service charges audited on a six monthly basis. The Tribunal have considered the number and range of the invoices/services provided at the building, and nothing about the nature of these services is outside the normal services provided.
30. The Tribunal considered the wording of section 21 of the Landlord and Tenant Act 1985, this section does not require more than one audit a year. The Tribunal determine that the amount payable by the application shall be equivalent to the sum charged for the final audit of each year, and the total amount payable shall not exceed this sum in any year.

The Major works

31. The Tribunal were informed by the Applicant's representative that no issues had been taken by the Respondent concerning the Section 20 Notice. Given this the issues were the reasonable cost and standard of the work undertaken.
32. The Tribunal were referred to the Specification of works which had been prepared. The Specification of works dated June 2006, had been prepared by Andrew Lewicki MRICS, MBEng. The Tribunal informed the parties that Mr Lewicki was known to the Tribunal, as he sat as a professional member. The Tribunal did not perceive this as causing a conflict.
33. The work set out in the schedule was for work to be undertaken to the roof and rainwater goods, brick/block work, work to the windows and

doors. There was also work which was described as external work and drainage work, which related to work to the external brick work and the paving slabs which included work to the garages and painting and decorating. There was also a sum of £750.00 which was a sum allowed for the provision of an electrical certificate to be obtained following the completion of electrical works at the property which were detailed in the specification.

34. The first issue raised by the Respondent was the fact that the garages were privately let, by the Landlord. Ms Smith queried the cost of these works and the fact that they were included in the leaseholders major works costs. She also pointed out that the paving slabs had been broken as a result of the cars that were owned by those renting the garages driving over the paving stones.
35. The Applicant's position was that in accordance with page one of the lease which included the garages and gardens in the definition of the mansion, the cost could be payable in accordance with the lease, however there was a letter dated 7.12.2006, which made it clear to the leaseholders that the cost of the garage repairs was being removed.
36. The letter dated 7.12. 2006 recorded the leaseholders' response to the section 20 consultation. Paragraph one stated-: *"...The works proposed to garages have been removed from the specification and based on responses received we will be opting for the tender price without replacement windows..."*
37. The Tribunal were referred to the certificate of practical completion. The Tribunal also referred to minutes of meetings dated 17.07.2008 and 12.11.2008 in which snagging items were referred to and deductions were made.
38. Ms Smith at the hearing commented on the fact that the works to the roof were minor in nature, and had resulted in the scaffolding being in place for a prolonged period of time. She also queried the standard of the paint work and whether the preparation had been adequate.
39. Ms Smith also had photographs of broken paving slabs, which caused her to question whether this work had been carried out to an appropriate standard.
40. In her closing argument Ms Smith repeated her objection to the cost of the work, and also stated that she was still dissatisfied with the breakdown of cost. Ms Smith queried the apportionment of the painting cost between the studios and the flats, and also repeated her view that the paving slabs had not been properly replaced.
41. In the closing argument the Applicant referred to the fact that the Respondent had limited her challenge to only two specific aspects of the Major works painting and replacement of the paving slabs; in reply the Applicant stated at paragraph 18. *"...The Tribunal is invited to place reliance on the professionalism of Mr Lewicki in certifying the value of the works. Mr Lewicki is unlikely to have certified work as having been completed when it had not been. In addition Mr Lewicki identified a list of snagging items which included the removal of paint overspill. Such a snagging list is indicative of a professional approach and attention to detail."*
42. The Applicant also placed reliance upon the photographs produced by the Applicant of the paving slabs dated 12.03.2014 which indicated that

the condition of the slabs was "*...in a much better condition than in the 2007 photographs...*"

43. Counsel on the Applicant's behalf accepted that the Respondent had not seen the final account until the hearing, however the Applicant placed reliance on the fact that the section 20 procedure had been complied with, and that this offered the Respondent some protection that the cost had been subject to scrutiny prior to the cost being incurred.
44. The Applicant stated that the cost of the Major Works were reasonable and had been carried out to a reasonable standard.

The Tribunal Determination

45. The Tribunal in determining this issue derived little assistance from the photographs, as the Tribunal noted that the work had been undertaken in 2006, whereas the earliest photographs dated from at least a year following the work being undertaken, and the majority of the photographs were taken in 2013, some 7 years after the work was undertaken. The Tribunal noted that the difficulty in relying on the photographs was that the Tribunal had no accurate photographic record of the condition of the property when the work was completed.
46. The Tribunal also noted that there was no record of complaints made by the Respondent shortly after the work was undertaken which would in part have confirmed that some of the matters she now complains of were evident at that time.
47. The Tribunal have derived some assistance from the notes made by Mr Lewicki; in particular the Tribunal noted a post contract meeting held at the property on 20 November 2007. At that meeting Mr Lewicki provides a number of snagging items. Amongst those items identified were "*... Add a piece of timber to bin store No4, Re secure frame to bin store No. 5...*" Of the door frame it was noted that the handle needed to be "*made good*" and the kick plate of the door.
48. The Tribunal noted that, although the contract price was £41,922.15, this sum was reduced on certification to reflect Mr Lewicki's assessment of the value of the actual work as £35,951.61.
49. The Tribunal have noted that Mr Lewicki who was a Member of the Royal Institute of Surveyors was engaged through A L Surveying Services Ltd who were independent from the Applicant, and therefore given the structured nature of the contract monitoring, the Tribunal are satisfied that the work was undertaken and that the costs incurred were reasonable.

The Managing Agent's charges

50. In the statement of case the Applicant stated that during the service charge period they charged £940.00; the Respondent's share of this was £50.00 plus Vat for six months (£100 plus Vat in total). The Applicant stated that-: "*... We believe the fee we have charged is a very basic and reasonable to provide the services...*" This figure had remained consistent for the period in issue.
51. The Tribunal were informed that the services involved ensuring that the property was adequately insured, sending insurance cover to the lessees, administering claims under the policy on the building, protecting the interest of the lessor from infringements, processing of all bills received, preparing accounts and invoices, setting budgets and dealing with queries.

52. The Respondent's main issue with the management was that she did not understand what the charges were for, and was not happy that repairs and other issues such as insurance were being dealt with by the managing agents to an appropriate standard.
53. The Respondent also queried the managing agent's knowledge of the property.
54. In reply to this issue, Mr Capjohn stated that he visited the property 3 or 4 times a year. Mr Capjohn stated that, although he managed a large number of properties and responded regularly to the correspondence that was generated from this and other properties, the details of the telephone number for the managing agents was on the budget and contact information was provided on every correspondence sent out; given this the Respondent was able to raise any queries that she had concerning the charges.
55. The Tribunal noted that the cost of the managing agent's fees had been provided for in clause 6 of the fourth schedule of the lease. This stated that the appropriate fee was 10% of the service charges.
56. Counsel acknowledged this however he stated that this sum was not reasonable and did not reflect the value of the work undertaken at the property. In his closing submission he stated that this would result in under recovery for most years, and for years containing major works would result in a "significantly higher figure than in other years..."

The Tribunal Determination

57. The Tribunal determine that the management fees should be capped at 10% of the cost for each of the years in question. In reaching this decision the Tribunal have relied upon the wording of the lease which states-: *"...The Lessors shall be entitled to add the sum of ten per cent to any of the above items for administration expenses and where any repairs redecorations or renewals are carried out by the Lessors they shall be entitled to charge as the expenses or cost thereof their normal charge (including profit) in respect of such work..."*
58. The Tribunal accept that given the level of expenditure at the property, in most of the years in issue, this would result in under recovery of the actual cost of managing the premises, however this in the Tribunal's view suggests that there are major flaws with the lease, which would in the Tribunal's view give weight to the Tribunal's view that grounds exist for the lease to be varied.

Repairs

59. The Applicant had set out various repairs which had been carried out for the periods in issue. For the year ending 2006 the cost of repairs was £781.89, in 2007 the cost was £328.77 and £392.09 and in 2008 the sum was £328.77 for June 2008 and £392.09 for the year ending 25 December 2008. The sums for 2009 were £1,075.25 and £1825.51, and in 2010 the figure for repairs was £149.81 and for 2011 the repair costs were £1377.00 and £85.00 and for 2012 the repair costs were £741.00 and £921.00.
60. The Applicant referred the Tribunal to the invoices for the repairs, which were included in the bundle.
61. The Respondent stated that most of the issues related to lighting and the stop valve had been issues since she lived in the property.

62. The Tribunal were informed by the Respondent that there was no communal lighting at the premises and that the wiring came from the flats and that under the terms of the lease the individual lessees were responsible for maintaining the electricity cables and wiring at the premises. However the Applicant relied upon the fourth schedule of clause 1 of the lease, which refers to "electric cables and wires". The Landlord was obliged to repair the lights in the event of default from the leaseholders.
63. The cost payable by the Respondent was 1/16 of the cost.
64. Ms Smith stated that the lighting was treated differently in different parts of the building in that at the back the works were not carried out whilst at the front the repairs were undertaken and those at the back might have undertaken the responsibility for themselves as they might not be aware that the cost of the repairs was recoverable. Ms Smith was also concerned that one of the repairs that she had been required to contribute towards was the cost of installing a gate. The Respondent considered that this was for the benefit of the garages rather than the leaseholders.
65. Mr Capjohn stated that he was not aware of any difference in the treatment of the two parts of the premises. He also did not accept that the gate only benefitted the garages by preventing parking; it also prevented driving on the slabs and fly tipping.
66. The other items of repair related to repairs to the water tank and ball valves, the tanks were over 50 years old. There was also an issue with the removal of rubbish at the premises. This was carried out by two men taking 8 hours.
67. The Applicant submitted that the cost of this work was reasonable and that the work undertaken was supported by invoices. The Respondent was concerned that the items repaired appeared to need constant repairing and that the work was not carried out evenly throughout the building.

The Tribunal Determination

68. The Tribunal in reaching its determination carefully considered the invoices. The tribunal noted that the arrangements for communal lighting were not satisfactory at the premises and without more fundamental work it is likely that there will continue to be running and reactive repairs at the premises, however the alternative option is for major works, and it is not for this tribunal to determine that this is the only way in which the work to the lighting can be carried out at the premises.
69. The Tribunal notes, that there may be a point at which this is determined as no longer a viable option of repairing the lighting at the property, however on a balance of probabilities and on the information before the Tribunal, the Tribunal consider that the cost of this work is reasonable and payable.
70. In respect of the repairs to the tanks and the rubbish removal, the Tribunal also consider that these items are reasonable. The Tribunal in this determination have not gone through all of the evidence presented on each item or separately set out its reasoning on each of the items in turn. However, the Tribunal considered each of the items at the hearing, and on that basis, although it carefully considered the

Respondent's submissions, the Tribunal were persuaded by the evidence produced by the Applicant in support of the repairs, that the work was undertaken for a reasonable cost and to a reasonable standard.

The Professional fees

71. The professional fees were for the cost of the surveyor for the major work and also for reports for asbestos and health and safety. An issue was raised by the Respondent that she had not seen copies of the reports, although the Tribunal had asked for copies of the reports to be produced by the Applicant. Copies of the report were provided to the Tribunal under cover of a letter dated 24 April 2014.
72. The Respondent in her reply and at the hearing stated that there was "... *no point in obtaining reports if the work was not carried out*" accordingly the cost of the reports was not reasonable.

The Tribunal Determination

73. The Tribunal has considered the reports provided and has also considered whether in all the circumstances the cost of these reports was reasonable. The Tribunal noted that these reports have been commissioned by the managing agents, on the landlord's behalf, and that the reports had been prepared by independent experts.
74. Clause 8 (VI) of the lease provides an obligation to permit the landlord to inspect with his surveyor the condition of the property and part of the mansion.
75. The Tribunal were satisfied that it was reasonable for the reports to be commissioned, and that the work represented by the content of the report was carried out to a reasonable standard, accordingly the cost occasioned by these reports is reasonable and payable.

The Set off of £600.00

76. At the pre-trial review the Tribunal were referred to a set off of £600.00 that the Respondent raised in relation to an earlier LVT decision. At the hearing the Tribunal did not consider evidence in relation to this matter, due to constraints of time. The Tribunal also lack jurisdiction to provide remedies for enforcement which would more usually be dealt with at the county court. As this case is a referral from the county court, and this matter does not concern the reasonableness of charges, the Tribunal have made no determination on this issue. The Respondent may produce any evidence that she has in support of this determination as a defence in the county court. The county court may then consider any issues raised by the Applicant such as whether the set off is caught by the limitations act.

Application under s.20C and refund of fees

77. The Tribunal noted that there is no application for a refund of the fees, or any information concerning whether the Applicant intends to claim any cost associated with this hearing as a service charge.

78. The Tribunal makes no order for reimbursement of fees in relation to the issue of the cost of the Tribunal hearing. The Applicant in their

closing submissions accepted that there was no provision in the lease for the cost to be claimed as a service charge item. At paragraph 40 of their submission the Applicant states-: *"The power under Section 20C is only available where a landlord could apply the costs in question to the service charge account. There is no entitlement under the Fourth Schedule of the Lease for the landlord to apply legal costs to the service charge account..."* The Applicant instead places reliance on Clause 3 d) of the lease which provides for the Applicant to pay all costs charges and expenses ... incurred by the Lessors for the purpose of or incidental to the preparation and service of a notice under Section 146 of the Landlord and Tenant Act 1925..."

79. The Tribunal therefore makes no order under Section 20C of the Landlord and Tenant Act 1985.The tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the County Court.

Name: Ms M W Daley **Date:** 23 July 2014

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 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

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.

Leasehold Valuation Tribunals (Fees) (England) Regulations 2003

Regulation 9

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

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).