10209

FIRST-TIER TRIBUNAL

PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AP/LSC/2014/0106**
Property	:	**Flat 3 Burlington Court, 43 Burlington Road, London N17 9QF**
Applicant	:	**Mrs R. Gilkes (Leaseholder)**
Representative	:	**Mr Walker, Solicitor; Amity Solicitors**
Respondents	:	**Burlington Road (Tottenham) Management Company Limited**
Representative	:	**Ms K. Williams; Property Manager Warwick Management Limited (Managing Agents**
Type of Application	:	**Service Charges (Major Works and Annual service charges) – Section 27A and 20C Landlord & Tenant Act 1985**
Tribunal Members	:	**Judge Lancelot Robson** **Ms S. Coughlin MCIEH]** **Mr A. Ring**
Date and venue of Hearing	:	**30th June and 1st July 2014** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**24th July 2014**

DECISION

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Decisions of the Tribunal

(1) The Tribunal decided that all the notices and procedures relating to major works in respect of cyclical repair and redecoration in the period 2012 – 2014 have been carried out in accordance with Section 20 of the Landlord & Tenant Act 1985. Further the work to be done was reasonable and the estimated cost reasonable in amount.

(2) Following from the above decisions, the estimated charges of £3,750 made by the Respondent in connection with the major works are reasonable and payable in full, and to be paid within 21 days of the date of this decision.

(3) The Tribunal made an order under Section 20C of the Landlord and Tenant Act 1985 to limit the Landlord's costs in connection with this application to NIL.

(4) The Respondent shall reimburse the Applicant, Mrs Gilkes, the fees paid by her to the Tribunal in respect of this application.

(5) The Tribunal made the other determinations as set out under the various headings in this decision.

The application

1. By an application dated 4th February 2014, (received on 11th February 2014), the Applicant sought a determination pursuant to Sections 20, 27A, and 20C of the Landlord and Tenant Act 1985 (the Act), as to the reasonableness of;
   a) estimated service charges for major works to replace the flat roof of the building and attendant works, notified in a notice of intention dated 16th July 2013;
   b) annual service charges relating for the service charge years commencing 1st January 2009, 2010, 2011, 2012 and 2013;
   c) estimated service charges for the service charge year commencing on 1st January 2014;
   all pursuant to a lease (the Lease) dated 19th June 2003.

2. A case management conference was held on 18th March 2014 at which the Tribunal identified the following issues which were capable of being decided by the Tribunal, (since a previous Tribunal had decided on the service charges for the years 2009 and 2010, and the County Court had made an order relating to the service charge years 2011 and 2012);
   a) whether the estimated costs of the proposed major works (£3,750) were reasonable and payable by the Respondent;

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b) whether the annual service charges for 2013 (apparently totalling £823.34) were reasonable and payable;
c) whether the estimated service charges for 2014 (apparently totalling £886) were reasonable and payable;
d) An application under Section 20C was also made.

3. On 18th March 2014 the Tribunal noted that the Applicant was confused about the total amounts demanded by the Respondent, thus it directed the Respondent to make its statement of case first. The Tribunal also noted that Mr M. Taylor (Flat 12), Mr Djan (Flat 11) and Mr Richman (Flat 4) had applied to be joined. Only Mr Taylor attended the case management conference. The Tribunal decided not to join Mr Djan or Mr Richman as they had not made known the basis of their challenge to the service charges. Mr Taylor was permitted to be joined, as he clarified the periods which he disputed. Apart from paying part of the hearing fee, Mr Taylor took no further part in the application.

4. Extracts of the relevant legislation are contained Appendix 1 to this decision.

Hearing

5. The Tribunal noted at the start of the hearing that Mr Taylor had failed to comply with Directions and had made no contact with the Applicant, the Respondent or the Tribunal relating the basis for his case. The Tribunal thus made no determination on his application.

6. Mr Walker (who had only recently been instructed) applied at the start of the hearing to make legal submissions supported by case law relating to the proper meaning of regulations made pursuant to Section 20 of the Landlord and Tenant Act 1985, relating to a sufficient description of the major works to be included in the notice of intention. Ms Williams for the Respondent objected. The Tribunal adjourned briefly to decide the issue. On its return it informed the parties that since both sides had specifically stated in their respective statements of case that they made no legal submissions, and that the submissions offered by Mr Walker would properly require the Respondent to take legal advice, the Tribunal refused the application.

7. The Tribunal then agreed with the parties that it would hear submissions from both parties on the Section 20 issues first, then deal with annual service charges.

Applicant's Case – Section 20

8. The Applicant submitted that she had not received either the notice of intention dated 18th February 2013 or the notice of estimates dated 22nd March 2013 until 16th September 2013, in connection with a county court hearing. The Applicant gave oral evidence that she was a missionary, which often required her to be absent abroad. The address held by the landlord for service, 337C North End Road, Fulham, London SW6, was shared with a friend, Mr Curtin. The Applicant had been away at the dates of service of both the notices under Section 20. She had asked Mr Curtin about the matter. Mr Curtin had assured her that he had not received any bills for the property at all. It was clarified at the hearing that the notice dated 18th February 2013 contained a bill for £3,750 being the Applicant's

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estimated contribution to the works. Thus she submitted that she was not legally obliged to pay more than the statutory amount of £250 in respect of the works.

9. When asked by the Tribunal what prejudice Mrs Gilkes believed she had suffered as a consequence of non-receipt of the notices, Mr Walker referred to the fact that her account had been passed to debt collectors for collection. There was a possibility of forfeiture, and that she might lose her home. Mrs Gilkes was asked what she would have done if she had received the notice. She stated that she agreed the work needed to be done, and would have contacted the Respondent asking for time to pay. She would also have enquired if all the other lessees had to pay, and that all the invoices had been sent out correctly. Mrs Gilkes considered that her lease entitled her to be consulted, and she had never been consulted about any matter since 1998.

Respondent's case – Section 20

10. Ms Williams submitted for the Respondent that her firm had been managing the property since 2009. The Lease required works of redecoration to be carried out every three years. A surveyor had prepared a specification for the major works in the summer of 2012. The specification was dated October 2012, and submitted to the sole director of the Respondent for approval on 12th October 2012. The specification was sent out to tender on 17th December 2012, with tenders to be sent by email by 21st January 2013. Four contractors were asked to tender. Three tenders had been received. The Tender Report was made by the surveyor on 1st February 2013. The notices had then been sent out in the ordinary post. No other lessee had complained of non-receipt of the notices. Six out of twelve lessees had paid their estimated contribution promptly. At the date of this hearing nine out of twelve lessees had paid in full, and two others were paying by an instalment option offered by the Respondent. Only Mrs Gilkes had failed to pay. In respect of this item, the debt collectors had not been contacted yet. Those who had paid were very keen to proceed, but the last payment was needed before work started.

11. In answer to questions, Ms Williams stated that it was a conscious decision to obtain tenders prior to the notices, so that a specific demand could be made for funds. If a lessee had suggested a contractor, the tender process would have been repeated. This was not the normal process, but the work was urgent. There would have been no extra charge to the client if the work had been retendered as the surveyor had agreed a fixed charge for this work.

Decision – Section 20

12. The Tribunal considered the evidence and submissions. The Tribunal noted that the works were long overdue, and this was supported by photographs taken on behalf of the Applicant, some as recently as three days prior to the hearing. It appeared to be in everyone's interests that the work should be done as quickly as possible. The Tribunal accepted her evidence that the Applicant had not received the notice herself, but there was no direct evidence or witness statement from Mr Curtin on the point. The Respondent submitted that the notices had been sent out by post. This seemed to be supported by the fact the Barclays account for the reserve fund presented at the hearing, showed that payments were being made by some lessees towards the works by 8th March 2013. The clear inference was that such lessees had received the notice of intention shortly after 18th February 2013.

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Thus the Tribunal found that there was insufficient evidence to support a finding that the Applicant's agent had not received the notices.

13. While the matter was not pleaded by the Applicant, and thus not part of its decision, the Tribunal considered that completing a tendering process prior to serving the notice of intention is not good practice. The Surveyor should have been able to make a reasonable pre-estimate. However in this case, the Tribunal accepted that this point was not fatal to the Respondent's case, particularly in view of the clear need for the work to be done, and that the Respondent had given unchallenged evidence that it would have retendered the contract if a lessee had nominated a contractor.

Annual Service charges 2013 and 2014
Tribunal's note

14. On the first day of the hearing, Ms Williams agreed with the Tribunal that there was no way a lessee could reconcile the annual accounts which covered a period from 1st July to 30th June with the service charge estimates, based on the documents sent to them as the service charge accounts covered the period from 1st January to 31st December. The annual accounts would include information not available to the lessees. Ms Williams then prepared an additional statement of expenditure calculated from 1st January in each year comparing the 2013 budget for the block with the 2013 expenditure, together with the budget expenditure for 2014, and the charge to individual lessees for 2014. This was presented on the second morning of the hearing. The Tribunal adjourned for a short period so that the parties and the Tribunal could consider this document. The statement also included those items conceded by the Respondent in its statement of case and at the hearing the previous day. The Tribunal has used this statement as a template for its decision in Appendix 2.

Applicant's case – Annual Service Charges
Conceded and Agreed matters

15. The Applicant disputed the ability under the Lease to recover management fees, Company Secretarial Fees, Directors and Officers Insurance through the service charge. The 2011 Tribunal decision had ruled on the first two items. The Directors and Officers insurance was a new charge, but was similarly not chargeable. These were all conceded by Respondent in its statement of case. The Applicant also complained that charges subject to the 2011 decision were being still being added to the service charges in breach of the Lease and the 2011 decision, without any justification. The Tribunal made it clear to the parties at the hearing that it considered continuing to add non-chargeable items to the service charge to be unprofessional and potentially contempt of the Tribunal.

16. The Applicant initially disputed the buildings insurance premium for the block, the charges for general minor repairs, the health and safety inspections, the asbestos re-inspection report, and the electricity. The Respondent having supplied relevant documents and explanations in the Respondent's statement of case, the Applicant was prepared to accept these charges, although continued to be dissatisfied with the Respondent apparently not responding to a proposed insurance claim by the Applicant relating to overflowing drains, and certain electricity blackouts affecting the building which the electricity supplier had suggested were due to wiring problems in the building. The Tribunal has no

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jurisdiction in this application relating to the latter items, as no charge for rectifying these items had been made, but Ms Williams asked the Applicant to contact her with a view to investigating these matters.

17. The Respondent agreed that the documents showed that no Health and Safety inspection had been carried out in 2013, therefore that cost (£600) should be deleted for 2013.

Audit and Accountancy

18. The Applicant submitted that she had repeatedly asked for summaries of the service charge account, and to inspect receipts and invoices relating to the accounts, but no evidence had been forthcoming. Mr Walker observed that there was a late filing fee charged by Companies House in the service charge for June 2013. This should not be added to the service charge. Mr Walker suggested that the value to the Applicant of the accounts was only £200 in view of the problems identified at the hearing.

19. The Respondent submitted that Mr R. Abdul, the sole Director (Tribunal's note; in fact the sole member of the Council) drafted the accounts for the certifying accountant, for which he charged £100. The reviewing and certifying accountant, IBIZSP. Com Limited, charged £300. The Applicant's demands for summaries and inspection related to earlier years, not 2013 and 2014.

20. The Tribunal considered the submissions and evidence. Despite considerable effort, neither Ms Williams nor her colleagues were able to demonstrate to the Tribunal that the accounts supplied in the bundle provided clear or accurate descriptions of transactions, or supported the actual sums being demanded. Part of the problem appeared to be that the accounts of the Respondent company were being confused with the service charge accounts for the building. Ms Williams agreed in answer to questions from the Tribunal that the various accounts sent to the lessees could not be reconciled. This was due to Mr Abdul's insistence that the end of company's financial year should remain at 30th June rather than 31st December. The Tribunal was also slightly troubled that Mr Abdul, who was not independent, was charging for accounting work. It eventually accepted the submission that the work being done was intended to reduce costs for the Respondent company. Nevertheless, the Tribunal decided that the accounts produced for 2013 were, at best, confusing, and were of no value to the lessees. Thus no charge was reasonable for that period. The Tribunal decided to allow an estimated sum of £400 for 2014, on the assumption that it was still possible for the accounts to be done properly for that year.

Cleaning

21. The Applicant submitted that the cleaning was not being done properly, and was being done irregularly. It was often done by the Applicant or a neighbour. Copies of invoices had not been supplied by the Respondent prior to the application. Sometimes it was 6 weeks before the cleaners returned. The Tribunal was referred to a photograph showing rubbish outside the front door to Flat 3. When it was done, the cleaning took less than an hour. The stairs were swept and washed. The Applicant lived on the ground floor next to the parking area and was in a good position to see when the contractors came and went. In answer to questions the Applicant confirmed that there were two sets of stairs in the

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building, and that sometimes two cleaners came. The lights were often not working. One of the main gates was off its hinges and had not been fixed for many months. The cleaners did not always come on the same day. The Applicant had no alternative figure in mind for the charge.

22. The Respondent produced a specification for cleaning on the second day of the hearing. The cleaning was done every second week. The cleaners were also required to check the light fittings and report back. No reports of defective lighting had been made by the cleaners. Dumped bulky items of waste were notified to the managing agents by the cleaners, and authority was given to clear them. Staff of the managing agent visited monthly. Reports of visits were made, but were not in the bundle. The lessees did not report problems. The broken gate was a surprise. It had not been picked up in the Health and Safety inspection, although it was agreed that it should have been. The cleaning cost was £58.80 per month to cover two visits.

23. The Tribunal considered the evidence and submissions. There was anecdotal evidence from the Applicant that the cleaning was not done regularly. It was not clear from the evidence if the lighting problems related just to the common parts, or more generally to the electrical supply to the building. However the photographs taken as a whole did not suggest that the block suffered from long term neglect of the cleaning. It was mostly occupied by short term tenants, and was hard used. The invoices covering the charge (11 months) were in the bundle. It seemed that the charge of £58.80 covered two hours of work twice a month. The cost charged seemed reasonable. The Tribunal saw no persuasive evidence to reduce the charge demanded.

Gardening

24. The Applicant gave unchallenged evidence relating to the areas concerned. There was a lawn to the rear of the block with some trees. There was a small front lawn. There were no flower beds. She considered that the gardening had only been done once since April 2014 and the hearing. She had only returned to the block in March 2013, so could not comment on the period prior to that date. The men did the work well when they came, but she considered it had only been 4-5 times in the year 2014. Two men worked for 2 hours when they came. They moved the leaves and the rubbish. They were supposed to come every 2 weeks, winter and summer.

25. The Respondent produced a specification for the gardening on the second day of the hearing. The gardeners came every two weeks throughout the year. In the winter there were other things within the job specification to take up their time. The charge made was an annual one, not based on the number of hours. The monthly cost was £166.80 for 2 visits, (i.e.£83.40 per visit). The various photographs taken by the Applicant showed that the edges were trimmed and the grass was cut. There was no litter on the ground near the bins. The waste recently dumped at the entrance, complained of by the Applicant was not in the grounds, but on the public road.

26. The Tribunal considered the evidence and submissions. The Applicant gave anecdotal evidence that the gardeners did not come every second week, but the

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photographs again showed no evidence of long term neglect of the gardening, which was likely to be the case if only 20% of the visits were being made (fencing is dealt with below). The invoices were in the bundle. Again, the Tribunal decided on the balance of probabilities that it should not reduce the charges demanded.

General Minor Repairs

27. The Tribunal noted that the invoices refer to six items under this heading, three of which relate to removal of dumped waste. The others all related to drainage.

28. The Applicant complained about recurrent problems with the drains and on three occasions in the last year. On one occasion sewerage had come up into her bathroom. apparently due to a blockage in stand pipes higher up the building.

29. The Respondent submitted that it had instigated a 6 monthly clean of the drains. The problems were usually related to things being put down drains by residents. Ms Williams agreed that there was a plan for regular cleaning of the drains, but not the down pipes. She also agreed that no action had been taken on the report at p.24 of the bundle suggesting that there may be a drain collapse in (effectively) the public system. She agreed to report this to the relevant authority immediately for investigation.

30. The Tribunal considered the evidence and submissions. The Applicant did not dispute that the various repairs had been done and the supporting invoices for the sum demanded were in the bundle. The Tribunal decided that the figure of £965 for 2013 was reasonable, and the estimated figure for 2014 of £1,100 was also reasonable, given the ongoing commitment to regular drain maintenance.

Health and Safety Inspection

31. As noted above, the Respondent conceded the figure of £600 allocated for this item in 2013 as the inspection had not taken place. The same figure was demanded for 2014. Although high the figure was not contested by the Applicant and the Tribunal, using its knowledge and experience considered it was consistent with current charges made for such inspections. The 2014 inspection had now taken place. The Tribunal was surprised that the inspection had overlooked the left main access gate off its hinges, but despite this, it had not been seriously challenged and thus the Tribunal was prepared to accept the estimated demand for that figure in 2014 was reasonable.

Asbestos Re-inspection Report

32. The Applicant challenged the existence of such a report in the absence of a copy or invoice. The Respondent produced a copy of both at the hearing. The actual cost was £246 in 2013 against the budgeted figure £150.

33. The Tribunal noted that the 2013 report revealed that the surveyor had only gained access to one area. The report itself was of little use without a copy of the original inspection report. Answering questions, Ms Williams stated that the original report had been made in 2011, and produced a copy of that report on the second morning of the hearing. No asbestos had been found in the common parts that had been accessed, although there were several areas which either required

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keys or the support of an electrician and were therefore not inspected. It was presumed to be present in the main roof, but it was impossible to gain access without scaffolding. No return visits had been made. The Asbestos Register required the landlord to assume asbestos was present unless an area had been inspected. The problems were the inaccessible parts of the building.

34. The Tribunal decided that the cost of £246 for 2013 was unreasonable. The report was of limited use, particularly due to locked areas. Only one of the areas mentioned in the original report had been accessed during the re-inspection. This appeared to be due to a co-ordination problem which rested with the management, not the surveyor. The reasonable cost for that work was £150. The Tribunal decided that the estimate of £250 for 2014 was reasonable since a report on the internal areas had already been completed at a cost of £150 and a further visit would be arranged to inspect the roof when the scaffolding was erected for the major works. Also the parties are still entitled to challenge estimated demands when the final accounts become available.

Electricity

35. The Applicant agreed with the consumption figures, but stated that there were electrical faults in the building. Black outs had occurred on several occasions, affecting more than one flat. Flats 4 and 12 had reported that they were affected. She had been informed by the supply company that they had written to the Respondent stating that the installation in the building required attention. The Applicant referred to a letter of complaint she had written to the managing agents about this issue, but had no copy available.

36. Ms Williams for the Respondent stated that it had no knowledge of any such letters from the supply authority or the Applicant. No one else had reported problems. An electrical test had been done in 2010. Ms Williams suggested it was a grid problem.

37. The Tribunal decided that the sums charged for 2013 were reasonable, particularly because a defective meter had been detected, and a significant refund obtained. In effect the Applicant had gained a credit. The estimated sum of £500 for common parts electricity was not challenged for 2014. The issue relating to blackouts did not affect the consumption charges, and was thus not in the Tribunal's jurisdiction.

Reserve Fund

38. The Applicant submitted that there was no proper record of the fund. She wanted to know what had been paid into the fund, and what it was used for.

39. The Respondent produced copies of a Barclays client saver account opened on 11th January 2013. It was a designated client account. Ms Teece for the Respondent submitted that the balance of the previously demanded reserves had been paid into this account from a Nat West Account previously used for the purpose. In answer to questions she stated that all the sums collected in respect of the proposed major works had been paid into this account (although some lessees had paid into the previous account in error, and that money had had to be transferred into the correct account). The initial payment of £4,375 included a

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lessee's payment of £3,750, and the balance of the money (£625) was what had been left over in the previous account. When questioned about the lack of an accounts trail for difference between the annual estimate of £12,875 in 2013, and the actual expenditure for 2013 shown in the statement prepared by Ms Williams on 30th June of £8,259, it was revealed that the managing agent's custom and practice since 2009 was to leave such balances in the account to finance shortfalls in the service charge collection. The Tribunal pointed out that there was no proper audit trail, and no evidence of any credits or even an account being given to lessees. This was highly irregular.

40. The Tribunal was most concerned about the Respondent's agent's treatment of overpayments to the service charge. Further, although the Lease allowed for collection of estimated amounts for current service charge years, the Respondent was collecting £1,200 per annum as a reserve from the lessees collectively, for no declared purpose. Furthermore the use of payments made from the reserve fund was not transparent in the company's accounts. This money was also being used to offset underpayments to the service charge, but with no proper accounting to the lessees. This appears to be a breach of the RICS Service Charge Residential Management Code (2nd Edition), Parts 9 and 10; and the general accounting principles of trust law. The Tribunal understands the difficulties faced by the Respondent, which is a company limited by guarantee set up to provide services under a form of lease which does not provide for a full recovery of the charges necessary to sustain the services and management of the building, particularly when all but one of the lessees entitled to be members of the Respondent company show no interest. However the right course appears to be to increase the service charge estimate for the current year, account clearly to the lessees, and vigorously pursue debtors. The Tribunal decided that the demand for the reserve fund was entirely unreasonable.

41. While not forming part of its decision, the Tribunal considers that all lessees and those advising the Respondent should take urgent steps to revitalise the Council of Management of the Respondent. If this is not done soon, the Respondent is likely to be unable to continue the management of the building, and lessees' respective investments will be prejudiced.

Costs - Section 20C and Rule 13

42. The Applicant made a Section 20C Application. The Tribunal noted that the previous Tribunal in Case LON/00AP/LSC/2010/0854 had decided that there was no power in the Lease for the Respondent to charge its costs of an application to the Tribunal to the service charge. This Tribunal found no evidence before it which might allow it to alter that decision. Nevertheless, for the avoidance of doubt it decided to make an order limiting the Respondent's costs chargeable to the service charge in connection with this application to NIL.

43. The Tribunal also outlined to the parties its discretionary powers to make orders for costs against parties behaving unreasonably, and to order a respondent to reimburse an applicant for fees paid to the Tribunal, both now under Rule 13. The Tribunal made it clear that it did not consider an unreasonable costs order appropriate in the circumstances of this case, but allowed the Applicant to apply for an order for reimbursement of her fees paid to the Tribunal under Rule 13(2)

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of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013. The Respondent opposed the application.

44. The Tribunal noted that without the application the parties appeared to have reached a stalemate. It was appropriate for the Applicant to make the application. The application has also resulted in settling an important issue relating to the use of the reserve fund. The Tribunal decided that Respondent should reimburse the Applicant for her fees paid to the Tribunal such sum to be payable within 21 days of the date of this decision. The Tribunal further noted that the fees paid by the Applicant appeared unusual (£440 for the application fee and £95 for the hearing fee). It has therefore asked the Tribunal office to confirm the correct amount payable by the Applicant, and to make any necessary adjustment.

Signed: Lancelot Robson
Tribunal Judge

Dated: 24th July 2014

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Appendix 1

Landlord & 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 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

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(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 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 -

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(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

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

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

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

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

Section 20C

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

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

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

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

The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013

Rules 13(1) - (3)

13.-(1) The Tribunal may make an order in respect of costs only-
(a) under Section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
(b) if a person has acted unreasonably in bringing, defending, or conducting proceedings in-
(i) an agricultural land and drainage case,
(ii) a residential property case, or
(iii) a leasehold case; or
(c) in a land registration case.

(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

(3) The Tribunal may make an order under this rule on application or on its own initiative.

(4) – (9)...

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Appendix 2

Final annual service charge payable by the lessee of Flat 3 – service charge year commencing 1st January 2013

(Based on Respondent's statement presented to the hearing on 1st July 2014)

First-tier Tribunal decision

Item	2013 Budget	2013 Expenditure	Tribunal Decision	2014 Budget	Tribunal Decision
Administrative					
Audit & Accountancy	£570	400	Nil	400	400
Management Fee	£2,625	Conceded	Nil	2,757	Nil
Company Secretarial	£370	Conceded	Nil	370	Nil
Insurance					
Block Buildings	£2,450	£2,472	£2,470	2,720	2,720
D & O Insurance	200	Conceded	Nil	320	Nil
Contracts Maintenance					
Cleaning	£710	647	647	710	710
Gardening	£2000	1,835	1,835	2,000	2,000
General Repairs					
General Minor Repairs	£1,000	965	965	1,100	**1,100??**
Other					
Health & Safety insp.	£600	Conceded	Nil	600	600
Asbestos Reinsp.	£150	246	150	250	250
Electrical Testing	Nil	Nil	Nil	Nil	Nil
Insurance ReVal.	Nil	Nil	Nil	834	834
Utilities					
Electricity	£1,000	-2,500	-2,500	500	500
Reserves					
Reserve Fund	£1,200	1,200	Nil	1,200	Nil
	12,875	5,265	3,567	13,761	9,114
Individual Contribution (1/12th)	1,072.92	438.75	**297.25**	1,146.75	**759.50**

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