10178

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BJ/LSC/2014/0263**
Property	:	**Flat 1 Chivelston, 78 Wimbledon Parkside, London SW19 5LH**
Applicants	:	**Ms Bianca Edwige Carole Pierre-Hunnius** **Mr Mats Olof Erland Fallman**
Representative	:	**None**
Respondents	:	**Parkside 78 Limited & Chivelston Management limited**
Representative	:	**Myers Fletcher Gordon Solicitors**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge and administration charges**
Tribunal Members	:	**Mr L Rahman (Barrister)** **Mrs Hawkins BSc MSc** **Mrs Flynn MA MRICS**
Date and venue of Hearing	:	**4th September 2014** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**17th October 2014**

DECISION

Decisions of the tribunal

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

(2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that only 80% of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

(3) The tribunal determines that the respondents shall pay the applicants any application and hearing fees paid in relation to the determination of the administration charge within 28 days of this decision.

The application

1. The applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and administration charges payable by the applicants in respect of the service charge years 2010-2011, 2011-2012, 2012-2013, and 2013-2014. (The applicants had not raised any issues with service charge year 2011-2012 in their application but wished to at the hearing. The respondents stated at the hearing that they would not be difficult about it. Given the evidence already provided by the respondents and the issues raised by the applicants, which overlap service charge year 2011-2012, the tribunal allowed the applicants the opportunity to challenge the service charges for that year).

2. Parkside 78 Limited started proceedings at the County Court in early April 2014 to recover the unpaid service charges due on 1st October 2013 and 1st April 2014. Parkside 78 Limited has informed the County Court of the proceedings at this tribunal and the claim has been stayed pending the outcome of the proceedings before the tribunal.

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

The hearing

4. The applicant Mrs Pierre-Hunnius appeared in person. Mr Fallman did not attend. Mr Nicholas Fallon, who provided a witness statement, gave evidence for the applicants. The applicants also wanted to call Ms Susan Britchard to give evidence. However, no witness statement had been provided. Given the clear Directions issued by the tribunal on 4.6.14, that signed witness statements of fact to be relied upon by the

applicants were to be served by 27.6.14, and in the absence of any written statements even at the hearing, the tribunal determined the applicants would not be allowed to call Ms Susan Britchard to give evidence. The respondents were represented by Ms Myriam Stacey (counsel) and Mr Michael Toohig (solicitor). Mr Michael Keating (Director of Parkside 78 Limited until 31.5.14) and Ms Suzanne Charlton (Director of Parkside 78 Limited) gave evidence on behalf of the respondents.

5. Immediately prior to the hearing the respondents handed in a skeleton argument. The start of the hearing was delayed while the tribunal and the applicant considered the skeleton argument.

The background

6. The property which is the subject of this application is 1 of 32 flats within a purpose built block known as "Chivelston". The landlord and freeholder is Chivelston Management Limited, which acquired the freehold following enfranchisement in 2008. The applicants did not take part in the enfranchisement process. Parkside 78 Limited is owned by nineteen of the lessees, who also own shares in Chivelston Management Limited, and was appointed to manage the building.

7. The respondents stated that none of the other flats other than flat 1 had any arrears or had challenged any of the service charges. The applicant stated she did not have any knowledge or evidence to the contrary.

8. The applicants confirmed in their letter dated 7.7.14 that audited accounts and expenditure were last received in 2012 and they had requested to inspect accounts in September 2013 and were give the opportunity to do so on 17.1.14.

9. The tribunal observed that Chivelston Management Limited should be the respondent and not Parkside 78 Limited, a management company. Both parties insisted that Parkside 78 Limited should be the respondent and that Chivelston Management Limited should also be added as a respondent.

10. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

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

The issues

12. At the start of the hearing the respondents stated the administration charge in the sum of £4,704.00, concerning legal fees incurred in dealing with various issues raised by the applicants, were not payable by the applicants alone. The respondent conceded the legal fees were payable by all the lessees and would be recovered as a service charge in the future. None of the lessees had yet been charged. Therefore, this was not a matter that needed to be determined by the tribunal.

13. The respondent clarified the sum of £15,000.00 concerning the porters lodge, constructed in the year ending March 2014, was not a service charge item. The landlord had paid for it and no service charge demand had been or will ever be issued to recover the construction costs. Therefore, this was not a matter that needed to be determined by the tribunal.

14. The respondent clarified the sum of £4,000.00 concerning the parking cost was not a service charge issue. The lease does not provide for parking or for charges to be made in connection with parking. The costs arise from the landlords requirements concerning permits and fees that needed to be paid to park on land owned by the landlord. The relevant fee had never been charged as a service charge and does not appear in any of the service charge demands. Therefore, this was not a matter that needed to be determined by the tribunal.

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

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

Audit fees (£4,000.00 for each of the disputed service charge years)

17. The applicant queried why it was listed as an accrual in the accounts, i.e. why the bills had not been paid given that monies had been collected by way of service charges. The applicant also stated the fee was too high. The applicant did not have any alternative quotes but believed the fee should be £2,000.00 for each year given the little work that was done. The applicant did not have a background in this area of work.

18. The respondents stated the audit fee was £4,000.00 for each year. Audit fees had been paid for the years ending March 2005, 2006, and 2007. The auditors had not invoiced the respondents since then and no explanation has been provided by the auditors as to why the

respondents had not yet been invoiced. Mr Keating met the auditors in 2010 to discuss this. He stated the respondents expected to be invoiced at some stage, given that the accounts were still being audited by the same company, therefore it was sensible to have the money in the account. If in the end the auditors did not invoice for the work they had done then all the lessees would benefit by either receiving a reduced service charge demand or a credit as there would be a surplus in the accounts. The landlord was entitled to recover under the Lease the costs of services, not only costs that were incurred.

19. Mr Keating stated the respondents did not seek alternative quotes because going to a different firm would have cost more. Mr Keating stated he asked the auditors in 2010 to justify their fees and also stated the fees had remained the same over the years.

20. The tribunal found that services have been provided albeit not yet invoiced. It was reasonable to recover the audit fee so that there would be monies in the service charge account to pay the fee when it was demanded. The lease did not stipulate that the landlord may only recover costs that had been incurred. With respect to the level of the fee, the tribunal noted the same fee has been paid for a number of years, the landlord and the management company are both lessee owned and therefore would have to contribute towards the service charges, none of the other leaseholders have challenged the service charges, and the applicants have not provided any alternative quotes to show that the level of the fee is too high. In the circumstances, the tribunal determines the audit fee is reasonable and payable.

Account & book keeping fee: year ending March 2010: £3,650.00 and year ending March 2011: £3,940.00

21. The applicant stated at the hearing the fee was excessive because the building was not big or complex. The applicant did not have any alternative quotes or a background in this area of work.

22. The respondents stated the invoices have been paid.

23. The tribunal noted the fees have been paid, the landlord and the management company are both lessee owned and therefore would have to contribute towards the service charges, none of the other leaseholders have challenged the service charges, and the applicants have not provided any alternative quotes to show that the level of the fees are excessive. In the circumstances, the tribunal determines the account and book keeping fees to be reasonable and payable.

Office records insurance: year ending March 2010: £639.00

24. Mr Keating stated the insurance was to cover service charge documents such as invoices etc which were kept in various premises, including at Flat 5. Whilst documents were kept at Flat 5, the insurance did not provide cover for the flat or the other contents of the flat, it just covered the documents.

25. The applicant stated at the hearing she thought the insurance related to contents cover for Flat 5 and alternatively, it was excessive. The applicant did not have any alternative quotes or any background in this area of work.

26. The respondents argued that this point had been raised for the very first time by the applicant at the hearing and that it should be given the opportunity to provide evidence to show that Flat 5 had its own buildings and contents insurance.

27. The tribunal noted the applicant had not previously challenged that the insurance was for the benefit of Flat 5, the tribunal noted the invoice at page 136 of the respondents bundle, and the tribunal noted the explanation provided by Mr Keating. On balance, the tribunal accepts the explanation provided by Mr Keating, that the insurance was to cover service charge documents such as invoices etc which were kept in various premises.

28. With respect to the cost of the insurance policy, the tribunal noted the landlord and the management company are both lessee owned and therefore would have to contribute towards the service charges, none of the other leaseholders have challenged the service charges, and the applicants have not provided any alternative quotes to show that the cost is excessive. In the circumstances, the tribunal determines the amount to be reasonable and payable.

Directors liability insurance: year ending March 2010: £787.00

29. The applicant stated at the hearing it should be paid by the landlord and not leaseholders as the directors are appointed by the landlord.

30. Mr Keating stated it was normal practice for a limited company to have liability insurance for its directors. This particular insurance covered the directors of Parkside 78 Limited. It was submitted that the insurance relates to management functions, which if an external management agent were to be used, would have charged a fee to reflect that additional cost. The respondents submitted it was recoverable under clause 2(xi) of the lease, which stated *"...The lessee...covenants with the lessor...to pay and contribute to the lessor by way of further rent a service charge equal to 3.39 per centum of the expenses of...the*

cost of employing managing agents for the management of the buildings and the collection of the rents and service charge or (if the lessor does not employ managing agents) a fee for the lessor based on the forgoing amounts..."

31. The tribunal noted the invoice referred to by the respondents at page 138 of the respondents bundle. It states the insurance cover relates to liability insurance for the directors and officers of Chivelston Management Limited. It does not relate to insurance cover for the directors of the management company Parkside 78 Limited. The tribunal therefore determines, based upon the respondents own argument, this cost is not payable by the applicants. Even if the insurance cover were for the directors of Parkside 78 Limited, the cost would not have been recoverable under clause 2(xi) as Parkside 78 Limited is employed as a managing agent, for which it charges a management fee.

Gardening: £6,550.00 for year ending March 2010 and £7,363.00 for year ending March 2013

32. The applicants state they were never consulted about the gardener. The gardener was only at the premises at the weekends and mowed the lawn until late Saturdays, until the applicant complained. It is a mature garden and therefore did not need much work. The cost of the gardening was too much. The applicants did not have any alternative quotes for other gardeners. Had the applicants been consulted, they would have stated the cost was too much.

33. The respondents state the invoices covering all the disputed service charge years are on pages 50-122 of their bundle. The gardening cost for the year ending March 2010 was £6,550.00 and not £7,066.21 as suggested by the applicants. For the year ending March 2013 the budget was £10,000.00 but the actual cost was £7,363.00. The gardeners work throughout the year. Three men work for three hours each week. At the hearing Mr Keating stated the gardeners came every Tuesday. The gardens were mature and needed a lot of maintenance. They monitored the works and when standards dropped, the gardeners were changed. During the disputed service charge years they had changed gardeners twice and were now onto their third gardener. Mr Keating confirmed at the hearing the gardeners did not have any written or long term contracts. Each gardener had open-ended contracts. The two gardeners that were dismissed were given three months and one months notice before dismissal. Overall, the gardens are a very good feature and well maintained and there have not been any complaints from others.

34. The tribunal accepts there were no written contracts, the contracts were open-ended, and not long term contracts. There is no evidence to the contrary. Therefore, they were not qualifying long term agreements which needed to be consulted upon. With respect to the gardening

costs, the invoices speak for themselves and the applicants have not provided any alternative quotes to show that the gardening costs were too high. The tribunal noted the landlord and the management company are both lessee owned and therefore would have to contribute towards the service charges and none of the other leaseholders have challenged the service charges. In the circumstances, the tribunal determines the gardening cost to be reasonable and payable.

Management fee: £8,000.00 for year ending March 2010

35. The applicants state that management was non-existent. Four directors were appointed, one for each block. There was only one AGM. Mr Fallon stated he had obtained a comparable management price (page 92 of the applicants bundle). It showed a charge (not inclusive of vat) of £265.00 per flat (based upon there being 30 flats) and an additional 12.5% of the cost of any major works.

36. The respondents state the charge is reasonable and within the guidelines recommended by RICS (which suggests £600 per flat totalling £19,200.00 per annum). The management company is very active, looks after the property, finds contractors to provide various services, arranges insurance, etc. The management company has its own overheads to pay.

37. The tribunal determines the management fee is reasonable and payable. The applicants state management is non-existent. However, there is no evidence put forward by the applicants to suggest the building is poorly managed. On the contrary, the evidence shows the management company arranges for works to be carried out, arranges gardeners, insurance, sends out service charge bills, etc. With respect to the level of the fees, the applicants share of the management fee for the year ending March 2010 equates to £271.20, only £6.20 more than the quote obtained by the applicants (excluding the further 12.5% of the cost of any major works), which does not support the applicants argument that the management fee charged by the respondents are excessive.

Hand rails: £11,100.22 (year ending March 2011)

38. The applicant stated at the hearing there was no consultation or tendering. Had they been consulted they would have stated the cost was excessive. The applicant stated that £3,500.00 would have been a reasonable amount to pay for the work. The applicant stated at the hearing that she had a builders quote from Mr Gill, who also lived in the same building. She stated she did not have any witness statement or a written quote from Mr Gill as she had only been provided with a verbal quote today. The applicant stated she did not have time to get a quote before today. The applicant also stated the work was carried out by an entertainment company and the handrails have not been re-

dipped as claimed by the respondents but have been replaced with completely new handrails. The applicant initially stated the original handrails were wooden but then conceded they may not have been wooden. The applicant stated at the hearing she could not say whether the handrails were in a poor state or not as she could not remember what state they were in, as she lived on the ground floor and there were no handrails on the ground floor.

39. Mr Keating stated the Board made the decision to repair and restore the handrails because they were in poor condition. The Board decided not to consult on the matter as they thought it was a good idea to repair them. The handrails were chrome, the paintwork was peeling off and the metal underneath was exposed, and there were dents also. The handrails had not been repaired during the time that he had been living at the premises, since 1996. The options were to either completely replace the existing handrails with wooden handrails or repair and restore the existing handrails. The Board decided to repair and restore the existing handrails because they would be in keeping with the general decor and style of the building. The works were substantial as there were 45 pieces of chrome piping which had to be carefully removed, the paint stripped, the dents repaired, re-chromed, and refitted.

40. The work was spread over three months and carried out as four separate jobs. The building has four entrances and stairways. Each entrance and stairway was done one after the other so that the works could be monitored and the quality of the work could be assessed.

41. Mr Keating further stated he was satisfied the price paid was reasonable compared to the cost of replacing a car bumper for example. He did not like having to pay a lot of money but the work had to be done and he was satisfied the work was being done properly. The company used for the works did similar works in bars and restaurants.

42. Ms Suzanne Charlton also stated the handrails were in a poor state and needed to be addressed.

43. The tribunal finds that whilst the works were staggered, it was one set of works completed within the same accounting year, therefore, given the contribution by each flat was above the £250.00 threshold, the lessees should have been consulted prior to the works being carried out.

44. The tribunal had directed at the case management conference that it was unclear whether the applicants were raising any issues regarding whether the landlord had complied with the consultation requirement under section 20 of the 1985 Act and if any such issue was being raised, the applicants must clearly specify this in their statement of case and must state what, if any, prejudice they have suffered as a consequence

of a lack of consultation. The respondents were to deal with any such issues raised by the applicants.

45. The tribunal noted the applicants had stated in the Scott schedule as follows *"Replaced wonderful wooden handrails for steel. No consultation...£100 is most one should pay"*. The respondents replied that the works were four separate works. The applicants in response stated as follows *"Not complied with consultation requirements under section 20. Whether wooden, gold or silver we were never consulted. Photo submitted shows no resemblance. The building is not in an art nouveau style as most people would recognise, but a simple basic brick mansion block. A photo can be sent to the respondents of a building in art nouveau style if desired. £100 is recommended to pay"*.

46. The tribunal noted the applicants had not suggested that the works were not required. The applicant stated at the hearing that she could not say whether the handrails were in a poor state or not.

47. The tribunal noted the applicants had failed to specify in the Scott schedule or the subsequent response what if any prejudice they had suffered as a consequence of a failure to consult.

48. The applicant stated only at the hearing that the cost was excessive, based upon a verbal quote given to her by Mr Gill on the day of the hearing. The tribunal refused to give permission for Mr Gill to give evidence as the tribunals directions were clear, that any witness statements of fact upon which the applicants relied should have been submitted by 27.6.14 and any prejudice claimed must be clearly specified in the statement of case so that the respondent would have the opportunity to reply. The applicants failed to do either, failed to have a written statement or quote even at the hearing, and failed to provide a reasonable explanation for the failure. Had the tribunal allowed Mr Gill to give evidence the respondent would have been entitled to adduce further evidence on the issue, which inevitably would have resulted in the matter being adjourned. The tribunal considered this to be disproportionate, given the applicants had already been given the opportunity to raise these issues before and the disagreement was over £247.88 only (the applicants share being £347.88 and the applicants stating they were agreeable to pay £100.00).

49. The tribunal found no persuasive evidence that the works were not necessary, should have been done in a different way, or that the cost of the works was excessive. The tribunal therefore found the applicants had failed to establish any prejudice. In the circumstances, the tribunal grants the respondents application that the tribunal dispense with any consultation requirements under section 20ZA. The tribunal finds the amounts claimed are reasonable and payable.

Audit letters (£353.00) and Engineers fee re insurance inspection(£172.00) for year ending March 2011

50. The applicant stated at the hearing she did not take issue with these items once the respondents had explained the audit letters were produced because three flats needed letters for accounting purposes and the engineers fee resulted from the insurers requiring evidence the lifts were being serviced properly.

CCTV: £2,484.00 (year ending March 2011)

51. The applicants state they were not consulted. The CCTV was installed in flat 17, only flat 17 has access to it and was watching everyone, it was only fair that all the flats could view the CCTV through a built in TV system. Therefore, the applicants should not pay for it. The applicant accepts the need for CCTV and accepts the amount paid was not excessive.

52. The respondents state the CCTV is not installed in flat 17 but is housed above a lift shaft above flat 17, which is accessed via flat 17 or via the roof, and only Mr McDougal, one of the Directors and who works for BT as an engineer, had access to it. Mr Keating stated that during the course of the first year the CCTV was viewed only once to try and identify those responsible for fly-tipping.

53. The tribunal found the respondents did not need to consult on this matter as the contribution by each flat was below the £250.00 threshold (cost to each flat was £84.20). The applicants accept the need for CCTV and did not challenge the costs involved. The tribunal found the amount reasonable and payable. The other matters raised, namely, whether all the flats should have access to the CCTV and whether or not they were being spied upon, are not service charge disputes. Were the tribunal required to determine the issue, the tribunal would have accepted, on the evidence before the tribunal, that the CCTV was for the communal good and not just for the benefit of flat 17.

Percentage payable under the service charge demands dated 1.4.13 (£1,460.00), 30.9.13 (£1,460.00), and 31.3.14 (£8,386.59)

54. The applicants state they have been over charged £100.00 for the flat and £9.00 for the lift with respect to each service charge demand. They say, by way of an example, that flat 3 pays £160.00 towards the cost of the lift and £1,200.00 for the service charge (page 35 of the applicants bundle) yet they are asked to pay £169.00 towards the cost of the lift and £1,291.00 for the service charge (page 27 of the applicants bundle). The applicants state that according to the draft lease dated 25.6.2009 (page 35 of their bundle), the cost of providing a lift service shall be equally shared between flats 1 to 17 (clause 2(2)(a)(vii)) and the

proportion of the service charge payable shall be calculated as set out at clause 2(2)(c)). Therefore, there should not be any difference between what the applicants and flat 3 are required to pay. The applicants state that they used to pay the same amount as flats 3, 5, and 17 but now pay more than those flats. The applicants however accept that what they are actually being charged is what is stipulated in their own lease.

55. The respondents state the amounts payable by each flat is set out on page 2 of their bundle. The applicants pay 3.39% of the costs of the flat and 6.31% of the costs of the lift. Flats 1-32 pay differing amounts of the cost of the flat and flats 1-17 pay differing amounts of the cost of the lift. However, the total amount paid by all the flats equals to 100% for the flat and the lift.

56. The respondents state that historically, prior to the enfranchisement, all the leases provided for a different individual percentage contribution. However, as part of the enfranchisement process, the new leases (for those taking part in the enfranchisement process) were varied so that the total contribution payable by those leaseholders was divided equally between them. The respondents calculated the total amount payable by those without new leases under their own existing leases, and then divided the remaining balance equally amongst those with new leases (3.16% contribution towards the flat and 5.98% contribution towards the lift). The applicants chose not to take part in that enfranchisement, therefore, their service charge proportion remained unchanged. A copy of the applicants lease is in tab 10 of the applicants bundle. Clause 2(2)(a) states the applicants are to pay 3.39% of the expenses of the flat and clause 2(2)(B) states the applicants are to pay 6.32% of the cost concerning the lift.

57. The tribunal found the percentage payable by the applicants are 3.39% of the expenses of the flat and 6.32% of the cost concerning the lift, as stipulated in their lease. The percentage payable by flats 3, 5, and 17, under new leases, is irrelevant. What other flats agree to pay amongst themselves is a matter for them and there is nothing objectionable, so long as the applicants do not pay more than what is stipulated in their own lease and the respondents do not recover more than 100% of their costs. The applicants accept that what they are actually being charged is what is stipulated in their own lease. The tribunal found the amounts being charged are correct and payable under the lease.

£730.00

58. The respondents clarified at the hearing that £730.00 was not payable by the applicants as the matter had been resolved and clarified in the letter dated 26.11.13 (page 157 of the applicants bundle), in which it was stated that the respondents would be crediting the applicants service charge account with the payment of £730.00 following assurances that

there were no money laundering regulation issues regarding the remittance of funds from Spaininvest Inves.

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

59. At the end of the hearing, the applicants made an application for a refund of the fees that had been paid in respect of the application/ hearing. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the respondents to refund any fees paid by the applicants only in relation to the application and hearing fee, if paid, concerning the administration charge, within 28 days of the date of this decision.

60. The applicants applied for an order under section 20C of the 1985. Having heard submissions from both parties the tribunal determines as follows. The tribunal accepts the applicants should never have challenged the issues concerning the porters lodge and the parking fees at this tribunal, which were never service charge disputes. The issue concerning the £730 had already been resolved in November 2013 and should not have been raised as an issue for this tribunal to determine. The tribunal noted the respondents had won on nearly all the relevant issues. However, the tribunal noted the respondents had unfairly pursued the applicants for the administration charge in the sum of £4,704.00, which was only conceded by the respondents on 28th July 2014. Whilst the administration charge was of a high value, the tribunal found that most of the work and the costs incurred by the respondents in these proceedings concerned the other matters on which the respondents had been successful. The tribunal finds that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act so that the respondents may only be allowed to pass 80% of their costs incurred in connection with the proceedings before the tribunal through the service charge.

Name: Mr L Rahman **Date:** 17.10.2014

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

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

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

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

Section 19

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

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

Section 27A

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

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

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

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

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

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

Section 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) the appropriate 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.]

The Supreme Court in **Daejan Investment Limited v Benson et al** [2013] UKSC 14 set out the approach to be adopted on an application under section 20ZA(1) to dispense with compliance with the consultation requirements. It stated:

- The tribunal should focus on the extent, if any, to which the tenants were prejudiced in either paying for inappropriate works or paying more than would be appropriate as a result of the failure by the landlord to comply with the regulations;

- That no distinction should be drawn between a "serious failing" and "a technical, minor or excusable oversight" save in relation to the prejudice it causes;

- That the financial consequences to the landlord of not granting dispensation is not a relevant factor when the tribunal is considering how to exercise its discretion under section 20ZA;

- The nature of the landlord is also not a relevant factor.

- The tribunal has the power to grant a dispensation on such terms as it thinks fit - provided that any such terms are appropriate in their nature and effect;

- In effect the tribunal can conclude that it would be reasonable to grant a dispensation if the landlord accepts appropriate conditions;

- This can include a condition as to costs - eg that the landlord pays for the tenants' reasonable costs incurred in connection with the landlords application under section 20ZA.

The Supreme Court further set out the approach to be adopted when prejudice is alleged by tenants owing to the landlords failure to comply with the consultation requirements. It stated:

- The tribunal should identify the prejudice, if any, that the tenants would suffer if an unconditional dispensation was given. It should also identify the extent of that prejudice;

- The tribunal should view the tenants arguments in this respect, sympathetically, for instance by resolving in their favour any doubts as to whether the works would have cost less (or for instance, that some of the works would not have been carried out or would have been carried out in a different way) if the tenants had been given a proper opportunity to make their points;

- The more egregious the landlords failure, the more readily would a tribunal be likely to accept that the tenants had suffered prejudice;

- Once the tenants have shown a credible case for prejudice, the tribunal should look to the landlord to rebut it;

- Save where the expenditure is self-evidently unreasonable, it would be for the landlord to show that any costs incurred by the tenants were unreasonably incurred before it could avoid being required to repay as a term of dispensing with the consultation requirements;

- On the other hand, tenants have an obligation to identify what they would have said, had the consultation requirements been met.

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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
  (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
  (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
  (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
  (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
  (a) specified in his lease, nor
  (b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) 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.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject matter of an application under sub-paragraph (1).