12247

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AY/LSC/2016/0041**
Property	:	**Flat 11 Charman House, Hemans Street, London SW8 4SP**
Applicant	:	**Mr R Shakespeare (leaseholder)**
Representative	:	**None**
Respondent	:	**Mayor and Burgesses of London Borough Lambeth**
Representative	:	**Mr D Kilcoyne (Counsel)**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Judge: N Haria** **Professional Member: Mr M Cairns MCIEH**
Dates and venue of Hearing	:	**16/09/16 and 03/11/16 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**2 June 2017**

DECISION

Decisions of the tribunal

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

(2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") of the service charge payable by the Applicant in respect the major works programme of external works in 2014/2015.

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

The hearing

3. The Application was listed for hearing on the 16 September 2016. The Applicant appeared in person at the hearing and the Respondent was represented by Mr D Kilcoyne of Counsel. The hearing did not finish on the 16 September 2016 and the matter was adjourned to 3 November 2016 for a site visit and for the tribunal to hear the evidence on the remaining issues. Thereafter the tribunal issued written Directions for final written submission on the matters from both parties and to produce an agreed Core Bundle. The tribunal reconvened to consider all the evidence and make a decision.

The background

4. The property which is the subject of this application is a one bedroom flat on the second floor a purpose built block of flats on the Henmans Estate. There are 30 flats comprised in the building known as Charman House. Charman House is one of seven blocks of purpose built flats located on the Henmans Estate. The Respondent is the freehold owner and landlord of the Henmans Estate.

5. The tribunal inspected the property on the 3 November 2016 in the presence of the parties and their representatives. Photographs of the building were provided in the hearing bundle.

6. The Applicant holds a long lease of the property dated 6 December 2004 ("the Lease") granted by the Respondent which requires the Respondent as landlord to provide services and the Applicant as leaseholder to contribute towards their costs by way of a variable service charge. The specific provisions of the Lease and will be referred to below, where appropriate.

7. It is common ground that the Respondent entered into competitive arrangements with Mears Limited ("Mears"). This involved a process of tendering and the framework agreement with Mears was advertised by public notice in the Official Journal of the European Union. On the 06/08/2010 and 29/10/2010 the leaseholders were consulted as required by Section 20 of the 1985 Act about the proposed framework agreement as it is a Qualifying Long Term Agreement ("QLTA") and thereafter the Respondent entered into the framework agreement with Mears. The QLTA provided that the Respondent and Mears work with other contractors for the fair and efficient delivery of the works. Accordingly, the Respondent and the contractors formed the Supply Chain Management Group.

8. Similarly the Respondent entered into a framework agreement with Pellings for professional services.

The issues

9. At the start of the hearing the parties identified the relevant issues for determination as the reasonableness of the costs claimed in relation to the major works programme of external works in 2014/2015 ("the works").

10. The tribunal had before it detailed and lengthy documents and written submissions by both parties. The contents of these have been taken into account but are not repeated in this decision save for where relevant.

11. The tribunal accepts that the legal submissions made by Mr Kilcoyne at paragraph 4 to 8 of the Respondent's Final Written submissions following the conclusion of the hearing on 3 November 2016 is a correct representation of the law. In this case it is the Applicant who has the burden of proof to show that the costs were not reasonably incurred, the works were not of a reasonable standard and that the costs are unreasonable.

12. In making its determination the tribunal had in mind the guidance given in the case of Yorkbrook Investments Ltd v Batten [1985] 2EGLR 100, which was followed in the Lands Tribunal case Schilling v Canary Riverside Development PTD Ltd LRX/26/2005 in support of the fact that it is for the Applicants to make a prima facie case. At paragraph 15 of the Lands Tribunal decision Judge Rich QC states:

"... if the landlord is seeking a declaration that a service charge is payable he must show not only that the costs was incurred but also that it was reasonably incurred to provide services or works of a reasonable standard and if the tenant seeks a declaration to the opposite effect, he must show that either the cost or the standard was unreasonable. In discharging that burden the observations of Wood J in the Yorkbrook case makes clear the necessity for the LVT to ensure that the parties know the case which each has to meet and for the evidential burden to require the tenant to provide a prima facie case of unreasonable cost or standard

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

The Lease

14. Under the provisions of the Clause 2.2 of the Lease the Applicant is required to pay a service charge to the Respondent defined as *"...a rateable and proportionate part of the reasonable expenses and outgoings incurred by the Council in the repair maintenance improvement renewal and insurance of the Building and the provisions of services therein and the other heads of expenditure as the same are set out in the Fourth Schedule hereto"* (Clause 2.2 Schedule 4). The "Building" is defined as Charman House (Recitals 2.6, Schedule 1).

15. Schedule 4 of the Lease sets out two types of expenditure in Parts 1 and 2:

(i) Part 1 expenditure which is defined generally as *"All costs charges and expenses incurred or expended or estimated to be incurred or expended by the Council (whether in respect of current or future years) in or about the provision of any Service or the carrying out of any maintenance repairs renewals reinstatements improvements rebuilding cleansing and decoration to or in the Building ....."* and includes ten types of specified expenditure, and

(ii) Part 2 expenditure which is defined generally as *"All costs charges and expenses incurred or expended or estimated to be incurred or expended by the Council (whether in respect of current or future years) in or about the provision of any Service or the carrying out of any maintenance repairs renewals reinstatements improvements rebuilding cleansing and decoration to or in relation to the Estate ...."* and includes six types of specified expenditure. The

Estate is defined as the Henmans Estate (Recital 2.7; Schedule 1)

16. The Applicant's proportion of the service charge is calculated under the provisions of Schedule 5 as follows:

(i) **Part 1 expenditure** by dividing the aggregate of the Part 1 expenditure *"by the aggregate of the rateable values in force on 31 March 1990 of all the Flats (excluding caretakers accommodation if any) in the Building and then multiplying the resultant amount by the rateable value (in force at the same date) of the Flat"*

(ii) **Part 2 expenditure** by dividing the aggregate of the Part 2 expenditure *"by the aggregate of the rateable values in force on 31 March 1990 of all dwellings on the estate and then multiplying the resultant amount by the rateable value (in force at the same date) of the Flat"*

The Applicant's submission

17. The Applicant raised several general issues. The Applicant accepts that some works were done but submits that other works were done poorly and in some cases not done at all. The Applicant believes that all works were done by sub- contractors who were paid very small sums with Mears (the main contractor) then adding a "*colossal mark-up*". It is the Applicant's case that any profit element for the work is contained within the sub- contractor's invoice to Mears and so Mears should not add any further mark-up. The Applicant submits that as a result, the sums claimed by the Respondent are out of all reasonable proportion to the sums actually paid to the sub- contractors and the value of the work actually done.

18. The Applicant relies on the fact that Mears have been unable to provide all of the Sub- contractor invoices to substantiate the actual costs in support of its case.

19. The Applicant submits that the Respondent has overcharged individual items and misallocated the total sums between individual blocks as well as double or even triple counted items in the Estate totals.

20. The Applicant agrees that the items specified as block items are correctly listed as block costs but disputes the following items are estate costs and submits that they should be charged as block costs:

(i) the cost of the tree surgery should be a block cost as the trees are within private gardens of properties in the Hunter and Darlington blocks, and

(ii) the drainage survey and drainage works as the drains at Charman are not used in common with other premises on the Estate, and

(iii) the waste disposal costs as Charman and Lockyer are isolated from the rest of the Estate.

21. The Applicant submits that the term "curtilage" means everything around a particular building up to and including the boundary walls of the particular building. The Applicant submits that the Respondent has mis-interpreted the term "curtilage" and charged items as block costs when they should be estate costs and vice versa and also double counted.

22. In relation to the Supply Chain Management Group ("SCMG") the Applicant does not accept the Respondent's categories on works undertaken under the SCMG and those that were Non - SCMG. The Applicant submits that Asbestos works, Windows and Decorations are the only items of SCMG works and the remainder are all Non – SCMG works.

23. The Applicant claims the quality of the Decoration and Estates works is sub- standard and so the cost should be reduced.

24. The Applicant made specific submissions in relation to particular charges and these will be referred to where relevant below.

The Respondent's submission

25. The Respondent arranged a major external works programme on Henmans Estate between 2014 and 2015 ("the Works"). On 30 April 2012, prior to the Works commencing the Respondent joined the SCMG. The tribunal heard from Mr Grabowski a building surveyor employed by the Respondent that the SCMG agreement is a long term framework agreement signed by a number of local authorities and it is intended to provide value for money, tendered rates and economies of scale.

26. Under the SCMG there are fixed rates for work and so both the main contactors and the sub-contractors approved under the scheme are required to charge in accordance with these fixed rates for particular types of work. The total cost of the Works has been priced by the contractor and checked by the Respondent as the employer.

27. The Respondent engaged Mears under the SCMG to undertake the Works and Mears employed sub- contractors some of which were SCMG approved contractors and others were not. Pellings were appointed as the project managers. The Respondent produced a list of sub- contractors, the work they did, whether they were SCMG approved or not and whether their invoices had been produced.

28. All aspects of the Works were the subject of statutory consultation under section 20 of the 1985 Act around May 2103 and there is no challenge to the lawfulness of the consultation.

29. The Works were completed in 2015 and a Final Account Notice was sent to the Applicant on 23/09/2015.

30. Paragraph 11 of the Respondent's Final written submissions details the steps taken by the Respondent including consultation with leaseholders in the borough in order to enter into competitive arrangements with Mears Limited ("Mears") for the provision of building services in relation to the Respondent's housing stock at agreed basket rates. It is explained that an aspect of the Framework agreement and the SCMG is that the Respondent is required to appoint one of its contracting partners to carry out works to its stock (or risk being in breach of contract). Whichever SCMG contactor is awarded the contract the same basket rates apply for the work.

31. Similarly Pellings was appointed by the Respondent under a Framework agreement for professional works and the leaseholders were consulted on the fee charged by Pellings as part of the section 20 consultation in the Notice dated 28 May 2013.

32. The final cost of the works on the Henmans Estate was £2, 490,880.65 of which the sum of £87,853 was calculated as being chargeable to the leaseholders in Charman House. The preliminaries and professional fees added another £28,382.69 amounting to a total of £116,235.72. The Applicants proportion was calculated to be £4,766.03.

33. The Respondent on the 8 September 2016 wrote to the Applicant stating that the Estate costs portion of the Applicant's service charge bill had been miscalculated using the Blocks rateable value rather than the Estates rateable value.

34. The recalculation resulted in the following costs being reduced:

(i) Drainage survey was reduced from £5825.04 to £4072.26,

(ii) Drainage works reduced from £2798.10 to £1,956.16,

(iii) Estate works reduced to from £ 30,111.30 to £21,050.74,

(iv) Tree surgery works reduced from £4556.10 to £3,185.13.

35. The final costs of the Works was recalculated to amount to £74,826.79 and the total including preliminaries (£17,322.41) and professional fees (££8044.71) amounted to £100,193.91. The Applicant's service charge bill was consequently reduced from £4,766.03 to £4,108.27.

36. The Respondent has produced a Statement on the calculation of the Service charge for 11 Charman House (p 130 Core Bundle). This statement provides the rateable values to be as follows:

(i) Henmans Estate:51304

(ii) Charman House:5028

(iii) 11 Charman House:194

Matters Agreed

37. The cost of the Asbestos (£1,725) Brickwork (£658.46), Refuse hoppers (£1,960) and gutter cleaning (£361.20) is agreed.

38. The Respondent admits that there was no scaffolding and cherry pickers were used instead and so the Applicant now admits the cost of £850 is reasonable.

39. The Applicant's proportion of those costs is to be calculated in accordance with the provision of the Lease.

Concrete (£17,578.59)

40. The Applicant accepted that this work was done but he initially disputed the correct measurement of the area of work and argued that the work should have taken 2 days or so. The Applicant claimed the work done was minimal and of low quality.

41. In his final submissions the Applicant does not repeat the issues raised initially and now claims to have obtained quotes from two contactors to undertake one coat of floor paint and then apply an anti slip coating to the surface. The Applicant claims he was quoted £3,800 by a small contractor for this work and £1,080 by a large contractor. The Applicant relies on these quotes and submits that the sum of £3000.00

to be reasonable and the amount charged for the work is a "preposterous overcharge".

42. The Respondent submits that the rates for this work are included in the SCMG and calculated at the fixed rates under the SCMG. The sub-contractor was Gunite; a SCMG approved sub-contractor. The concrete works were to repair any failing concrete and leave the building watertight and structurally sound. The balcony deck protection is required to protect the concrete surfaces and prevent deterioration of the balconies. The specifications at tab 6 of the Henmans Estate Works document provides the quantities to justify the final account. There were two elements to these works.

43. The first involved cleaning of the concrete using high pressure water jetting, break out repairs and repair using fast curing mortar and apply a concrete acrylic water based anti-carbonation coating with a 5 year warranty at a sum of £4,978.59.

44. The second relates to the protection of the balcony deck by preparing and applying a waterproof and anti-slip coating to the existing asphalt walkways. The Section 20 estimate for these works was £28,354.20 but in fact the cost of the works was £12,600.00.

45. The Respondent submits that the works were checked by Mr Grabowski the consultant from Pellings and Mr Andrew Marshall a senior project manager employed by the Respondent.

The tribunal's decision

46. The tribunal determines that the amount payable in respect of the concrete works is £ 17,578.59 and the Applicant is liable for a proportionate share of this cost in accordance with the provisions of the Lease.

Reasons for the tribunal's decision

47. The tribunal having inspected the works on the 3 November found no visible faults with the work. The sofits and walkways appeared to be wearing well despite having two years of wear and tear and weathering. The tribunal considered the non slip materials and finish to be of a good quality and the works to have been done to a high standard.

48. The requirement under Section 19 of the 1985 Act that costs be reasonably incurred does not mean that the relevant expenditure must be the cheapest available, although this does not give the landlord a licence to charge a amount which is out of line with the market norm Forcelux v Sweetman [2001] ELGR 173. It is therefore a matter for the landlord to show that the costs are within a range of reasonable prices.

49. Where the Applicant in a case before the tribunal is a leaseholder the legal burden of proof is on the Applicant to establish that the cost is unreasonable.

50. In this case the tribunal did not consider the estimates produced by the Applicant to be like for like comparables as the works quoted for in both estimates produced by the Applicant were not as comprehensive as those set out at tab 6 of the Henmans Estates Works document. In addition the estimate from Paul Pownleby was not on headed paper and although there were two mobile phone numbers on the estimate there was no address or VAT registration number. The Applicant has stated that Paul Pownleby is a small contractor and so he is not a like for like contractor compared to Gunite the contractor used by the Respondent.

51. The tribunal accepts that the tendering process prior to the award of the contract for the Works to Mears and professional services to Pellings involved a process of tendering and as such it ensured that the Respondent obtained good value.

52. The tribunal accepts the explanation given by the Respondent of the works undertaken and that the works were undertaken by a SCMG approved sub-contractor charging fixed rates under the SCMG framework agreement. The tribunal accepts that the SCMG framework agreement enabled the Respondent to engage a SCMG approved contractor at fixed rates agreed in advance under the framework agreement which provide value for money and economies of scale. This is supported by the copy of the Supply Chain Protocol included in the Henmans Estates Works document, which sets out at paragraph 4 the aims of the SCMG and the Supply Chain Protocol to be amongst other matters *"....to achieve improved costs, improved efficiency, including timescales and improved warranties ....."*. The Applicant did not produce any comparable evidence on a like for like basis to show that the 2014/15 market rates contained in the Mears contract were less competitive than others available in the market.

53. Accordingly the tribunal finds the costs incurred for the concrete works to be reasonable.

Decorations (£8284.40)

54. The Applicant admits the works have been done but submits that the work is of poor quality. The Applicant alleges the work would have taken two men only a couple of weeks to do the work. The Applicant considered a site visit to be desirable.

55. Following the site visit the Applicant in his Final submissions produced quotes for the work from two independent contractors. There is an estimate from a small contractor Paul Pownleby of Fix it Felton for the

works quoting £2200 and another from a larger contractor Pimlico Painters who has quoted for two coats of good quality Hammerite paint on the metal work in the sum of £8700. The Applicant submits that two coats of good quality paint is required but the metalwork, tiles and doors only had one coat of the appropriate paint and the work is of poor quality.

56. The Applicant proposed that a cost of £4,100 to be reasonable for the works.

57. The Respondent submits that the rates for this work were fixed in accordance with the SCMG and the Respondent produced a copy of the quantities at tab 7 of the Henmans Estates Works document. The areas of decorations were calculated using the schedule of rates and then multiplied the areas by m^2 or l/m. The Respondent submits that previously painted surfaces were repainted to protect the fabric of the building and maintain its appearance as usual under a 5 or 7 year cycle. The estimated cost for the decorations under the initial section 20 estimate was £10,301.03. The actual costs were significantly lower. The Respondent confirms that they have walked the Estate with the Applicant to show him the work carried out.

The tribunal's decision

58. The tribunal determines that the amount payable in respect of the decorations is £8284.40, and the Applicant is liable for a proportionate share of this cost in accordance with the provisions of the Lease which is £ 8284.40.

Reasons for the tribunal's decision

59. The tribunal considered the estimates produced by the Applicant. The works quoted for in both estimates produced by the Applicant were not as comprehensive as those set out at tab 7 of the Henmans Estates Works document, varied massively and were not even comparable with each other. In addition the estimate from Paul Pownleby was not on headed paper and although there were two mobile phone numbers on the estimate there was no address or VAT registration number. The Applicant has stated that Paul Pownleby is a small contractor and so he is not a like for like contractor compared to Armour Group; a SCMG approved sub- contractor. The tribunal noted that the quote from Pimilco Plumbers for the works was £8,700 and so slightly more than that incurred by the Respondent and it was for two coats of Hammerite paint on the metal work as opposed to the one coat applied by the Respondent.

60. At the site inspection the tribunal inspected the works undertaken and found them to be of good quality. The Applicant had been unaware that

the works also included painting and repair to the copings on the walls and painting of the blocks wall tiles. The works had survived two years of wear and tear and were still in a reasonable condition.

61. The tribunal accepts the explanation given by the Respondent of the works undertaken and that the works were undertaken by a SCMG approved sub-contractor charging fixed rates under the SCMG framework agreement. The tribunal accepts that the SCMG framework agreement enables the Respondent to engage a SCMG approved contractor at fixed rates agreed in advance under the framework agreement which provide value for money and economies of scale for the reasons stated above.

Window Overhaul (£9494.47)

62. The Applicant has reiterated from the outset that no works were done to the windows in his flat. This is corroborated by the work sheet relating to Flat 11 which has not been signed. The Applicant objects to the charge of £152 being attributed to works done at Flat 11 when he is adamant that no such works have been done. The Applicant pointed out that there is no work sheet in relation to works done at five flats (numbers 12a, 18, 21, 26 and 28) yet £321 is claimed for flat 18; £627 for flat 21; and £762 for flat 28. There is no charge incurred for works to flats 12a and 26. The Applicant states that he asked the occupants of flats 12a and 18 who had occupied their flats before 2014 and they both confirmed no work had been done.

63. The Applicant submits that although the Respondent's work sheets show that work was done to 28 out of the 30 flats at Charman House in his view having lived at Charman House for 23 years it is unlikely or even impossible to get entry to 28 flats at any one time or over several visits.

64. The Applicant questions the need for the window overhaul works on the basis that the windows are of good quality and were installed around the year 2000.

65. The Applicant queries why the original amount for window overhaul was £12,492.75 when the section 20 figure for these works was £9626 and the Respondent in its breakdown of costs for Charman House claims £9,494.47 in relation to window overhaul. The Applicant suspects that there is something wrong and suggests that the Respondent did not pay £2,999.28 to the contractor.

66. The Respondent has produced signed record sheets for window overhaul works to twenty two of the thirty flats at Charman House. The Respondent also has record sheets for a further three flats (flats 5,11 and 24) but these are unsigned and there are no record sheets for the

remaining 5 flats. The Respondent relies on the record sheets as showing that a substantial amount of work was done on most of the windows at Charman House.

67. The Respondent explained that the rates for these works were fixed under the SCMG. The existing windows are PVCu double glazed units and have a 15 year life expectancy and the windows were given an overhaul to undertake any necessary maintenance. Mr Grabowski gave oral evidence to the tribunal that the sub-contractor Ashford inspected the windows and drew up a schedule of repair and replacement which was signed off by the clerk of works. Inspections were undertaken at each flat and repairs have been undertaken. The Respondent has produced a Schedule in relation to the window overhaul works which shows that there was no charge made in relation to any works at flats 12A and 26 and windows were replaced at some but not all of the flats in the Block as per the Schedule. The Respondent stated that although the total cost for the window overhaul works was £12,493.75 they had paid Mears only £9494.47 and this is the amount claimed, this amount is similar to the estimated costs under the section 20 Consultation of £9,626. The reason for the reduction from £12,493.75 was not clear.

The tribunal's decision

68. The tribunal determines that the amount payable in respect of the window overhaul is £9494.47 and the Applicant is liable for a proportionate share of this cost in accordance with the provisions of the Lease.

Reasons for the tribunal's decision

69. The total cost of the window overhaul works as shown on the Respondent's Schedule is £12,493.75, the Respondent had undertaken a section 20 Consultation for the works estimated at £9,626 but in fact the Respondent has paid Mears £9494.47 and this is the sum it seeks to recover. The window overhaul works are specified in appendix B of the Section 20 notice dated 28 May 2013.

70. The Respondent has covenanted under the Lease to maintain repair and renew the window frames (1st Schedule paragraph 3.2.1).

71. The tribunal on the site visit undertook an external inspection of the windows that the Respondent claimed had been replaced. The replaced windows could be easily distinguished from the older windows as the new windows had trickle vents and where windows were open from the type of hinges and the manufacturers mark inside the windows. Having inspected the windows the tribunal accepts that the windows shown on the Schedule as replaced have been replaced.

72. The total cost of the overhaul works in relation to the five flats for which the Respondent is unable to produce a signed form amounts to £1,710. The cost of the works for which the Respondent has unsigned forms amounts to £479. Deducting these sums from the total cost of £12,493.75 amounts to £10,304.75. However, the Respondent is claiming the lower sum of £9494.47 and accordingly the tribunal did not consider any further deduction in relation to those flats for which the Respondent was not able to produce a signed form and where the forms are unsigned.

73. The tribunal accepts the explanation given by the Respondent of the works undertaken and that the works were undertaken by a SCMG approved sub-contractor charging fixed rates under the SCMG framework agreement. The tribunal accepts that the SCMG framework agreement enables the Respondent to engage a SCMG approved contractor at fixed rates agreed in advance under the framework agreement which provide value for money and economies of scale for the reasons stated above.

74. The tribunal noted that the Respondent did not replace all the windows but only those that required replacing following an inspection of the windows. This shows the Respondent acted reasonably and did not incur costs unnecessarily. Since the amount sought to be recovered by the Respondent is lower than that actually incurred by Mears the tribunal finds the sum charged to be reasonable.

Window cleaning (£858.30)

75. The Applicant was initially of the view that it was uncertain that the clean of windows other than the stair windows was done. The Applicant now accepts that the windows were cleaned but considers the charge to be too high and suggest that a charge of £300 to be more reasonable.

76. The Respondent claims the windows are PVCu double glazed units and in overhauling the windows the windows have been cleaned to remove any dirt and debris in order to maximise their future life expectancy. The Respondent claims the work was checked by Pellings and although the contractor SCION was used to undertake the work, the cherry pickers were supplied by HSS a contractor not part of the SCMG. The Respondent submits that the costs to clean windows of 30 flats is reasonable.

The tribunal's decision

77. The tribunal determines that the amount payable in respect of the window cleaning is £858.30 and the Applicant is liable for a proportionate share of this cost in accordance with the provisions of the Lease which is £ 858.30.

Reasons for the tribunal's decision

78. The tribunal notes that although the works to overhaul the windows were part of the section 20 consultation, the window cleaning was not included.

79. The tribunal accepts that it is reasonable to include window cleaning as part of the general process of window overhaul. The justification for the works being necessary is to prolong the life span of existing components of the windows.

80. On the site visit the tribunal noted that the windows including those that had not recently been replaced all looked reasonably clean, particularly taking into account the location of the building fronting on to a busy main road in Lambeth, London. Window cleaning includes cleaning the windows as well as the frames of the windows. White PVCu windows of City buildings will generally look grimy and discolour over time if not cleaned. The windows and window frames of Charman House looked reasonably clean.

81. The costs included the cost of a cherry picker to reach the windows above ground floor. The costs apportioned equally across the 30 flats amounts to about £30 per flat. The Applicant did not produce any evidence to show how he has concluded that £300 is a reasonable sum. In the absence of any evidence to the contrary, on the evidence the tribunal finds the charge of £858.30 for the window cleaning to be reasonable.

Estate Works (initial cost £30,111.30, recalculated cost £ 21,050.74)

82. The Applicant initially claimed that this charge is "fraudulent". In the Applicant's final submissions the Applicant states that he considers a figure of £4,381 to be acceptable comprising £1,000 in respect of the painting of the bollards and railing and £ 3,381 for the rebuilding and re-pointing of the wall behind Darlington House. The Applicant calculated the sum of £3,381 by applying the basket rates for taking down and rebuilding a 16 sq m wall.

83. The Applicant submits that the *"...curtilage of a property includes the building itself, what is attached to it and what is obviously part of the property. The cartilage then goes down to, and includes the boundary fences and walls but not the land beyond.....Evans Johnson and Webb House have clearly defined boundary walls .....in order to defeat the Applicant, the respondent is deliberately altering the law of cartilage. This alteration is very clearly set out in the evidence of John Grabowski (page 103 of the Applicant's Bundle) ....."*

84. The Applicant argues that under the "law of curtilage" the boundary walls and things within them such as the retaining walls, paving, paths, demolition/removal of pram shed and rear patio areas are not estate matters. They are block matters. The Applicant accepts that the painting of the bollards and the painting of the railings outside the old community hall to be estate works. The Applicant has obtained estimates from Paul Pownleby and Pimlico Painters Ltd for these works and they are respectively £925 and £3380.

85. The Applicant in his final submissions repeats allegations made at the start of the proceedings that the Respondent's charge for the estate works was *"...some sort of fraud or some form of preposterous overcharging or perhaps egregious error ..... double counting, misallocation...."*.

86. The Applicant considers that there has been double charging as an allocation has been made by the Respondent for brickwork as both estate works and block works. The Applicant submits that brick work at Evans Webb and Johnson Houses has been charged as a block cost and so the charge to estate works for the boundary walls of those Houses amounts to a double charge.

87. The Applicant highlights the admission by the Respondent at paragraph 11.7.2.3, 11.7.2.4 and 11.7.2.5 of its Final Written Submission that the SCION invoices produced by Mears and provide a total amount of £357,789.49 but when compared with the costs of each item the total comes to £310,351.63 and so there is a shortfall of £47,437.86.

88. The Respondent has since clarified that upon checking the calculations of the allocation of £30,111.30 for Estates works to Charman House is a miscalculation. The Respondent submits that the correct amount of the total sum of £214,794 attributable to Charman House is calculated by dividing the total cost by the rateable value of the Estate which is 51304 and multiplying by the rateable value of Charman House which is 5028. This gives the sum of £21,050.74 as being chargeable to Charman House.

89. The Respondent vigorously denies the Applicant's allegations of fraud. The Respondent states that the Estates works are set out at tab 10 of the Henmans Estate bundle but in fact the works are set out at tab11. In his witness statement Mr Grabowski states that the Estates works include *"....the boundary walls, retaining walls, paving , paths, the demolition and removal of pram sheds, renewal of bollards, man hole covers , traffic calming measures and rear patio areas..".*

90. The Respondent states that the Estate works were undertaken by SCION. Mears have been invoiced by £357,789.49 by SCION for works including the Estates works (£214794.62) but also including window cleaning (£1,545) drainage surveys (£41,552.01), drainage works (£

19,960) and tree surgery (£32,500). The Respondent has paid Mears a lower amount of £310,351.63.

91. The Respondent has no explanation as to the basis on which Mears made a decision to employ SCION but submits that conversely there is no reason to believe that they were not chosen as a sub- contractor who gave a competitive quote for the work. The Respondent states that the rate for the work carried out as Estate work by SCION appears in the specification drawn up between the Respondent and Mears and appears to be precisely in line with the basket rates agreed under the Framework agreement and SCMG. The Respondent submits that even though SCION was not a SCMG sub-contractor the cost of the Estate works were calculated using SCMG rates and so were competitive market rates.

92. In relation to the issue as to whether any particular work should be charged as Estate work or Block costs. The Respondent relies on the provisions of the Lease in support of the claim that all of the pathways and walls which were renewed were located on the Estate and charged properly as an Estate cost as opposed to a block cost even where the walls are located more closely to and surround a particular block as they serve an estate function by separating the footpaths from non-pedestrian areas on the Estate.

93. The Respondent refers to the Lease which defines "the Building" as Charman House and the Estate as Henmans Estate. The Respondent points out that the Applicant accepted that the blocks known as Darlington, Hunter, Evans, Johnson, Webb and Lockyer Houses are all located on the Henmans Estate. The Respondent states the Lease draws a distinction between the landlords obligations in relation to parts of the Building (Clauses 3.2.1, 3.2.3) and structures within the cartilage of the Building (Clause 3.2.5). The Lease provides that "Forecourts" are not part of the Building and are described separately (Clause 3.3). Schedule 4 Part 1 which specifies costs that are in connection with the Building makes no mention of items outside the four walls of the Building but within the "curtilage" of the Building as suggested by the Applicant. Schedule 4 Part 2 which specifies costs that are in connection with the Estate includes matters such as *"roads pavements sewers drain pipes water courses party walls party structures party fences walls or other conveniences which may belong to or be used for the Building in common with other premises on the Estate.....gardens forecourts unadopted roadways and pathways within the cartilage of the Estate."*

94. The Respondent accepts that a section of the pathway at the rear of Charman House was missed and not repaired.

The tribunal's decision

95. The tribunal determines that the amount payable in respect of the Estate works is £20,591.26 and the Applicant is liable for a proportionate share of this cost in accordance with the provisions of the Lease.

Reasons for the tribunal's decision

96. The tribunal finds no evidence in support of the allegations of fraud. The tribunal had warned the Applicant at the start of the hearing that he should abstain from making such serious allegations without proof. Fraud is a matter for criminal prosecution and not a matter for this tribunal.

97. The tribunal considers the Applicant's submission on the application of "curtilage law" to be misconceived. The provisions of the Lease determine what can be charged as an Estate cost and what can be charged as a Block or Building cost. The Respondent's submissions accurately represent the provisions of the Lease.

98. The document at p144 of the Core Bundle sets out the Estate Works and the costs. The evidence shows the Estate works do not include a charge for the drainage and tree works which have been charged separately. The tribunal finds no evidence of double counting.

99. The detailed specification for the Estate works is set out at tab 11 of the Henmans Estate works document.

100. The tribunal accepts the explanation given by the Respondent of the works undertaken and that the works albeit undertaken by a non - SCMG approved sub-contractor were charged at rates inline with those fixed under the SCMG framework agreement. The tribunal accepts that the basket rates agreed under the SCMG framework agreement enables the Respondent to ensure the cost of the works done provide value for money.

101. The tribunal having undertaken a site visit considered the works to be of good quality.

102. The initial section 20 estimate for the Estate Works was £42,880.95, the actual cost of £21,050.74 is significant reduction on the estimated cost. The tribunal has deducted £459.48 in relation to the works that the Respondent admits have not been done to the path at the rear of Charman House.

Tree Surgery (Initial cost £4,556.10 recalculated cost £3,185.13)

103. The Applicant disputes the number of trees removed and also considers that the charge should be a Block cost and not an Estate cost. The Applicant claims that six trees were removed and not fourteen.

104. The Applicant has produced a photograph taken in 2014 before the trees were removed and an architect's drawing in support of his claim that there were six trees. The Applicant has also produced five witness statements with statements saying that there were between six to eight trees. The Applicant seeks to explain the inconsistencies in the witness statement as there was an area where a high fence and the greenery beyond would have caused some confusion.

105. The Applicant disputes the Google images produced by the Respondent which he states appears to have been taken around 2006 when there were more trees and he submits that the image is some sort of computer composite of at least two or more images.

106. The Applicant states that all six trees were in the private properties at Hunter and Darlington House and so the cost is a Block cost and not an Estate cost. The Applicant estimates that £500 per tree is a reasonable cost of the tree works and submits that a sum of £3000 to be reasonable.

107. The Respondent submits that the tree surgery work was undertaken to trees adjacent to buildings on the Estate where they were considered to be a health and safety hazard, defective or a threat to the stability of the buildings and these works involved the removal conifers including their stumps from communal areas.

108. The Respondent has produced a quotation for the works from SCION at tab 10 of the Henmans Estate works bundle. This quotation details the scope of the works proposed and describes the work as relating to 14 conifer trees. The total estimated cost of the works is £32,500.00.

109. The Respondent claims that the fourteen trees were removed. The tribunal heard from Mr Grabowski stated that fourteen trees that had been removed. He illustrated with the use of photographs that several of the trees that appeared to be single trees were in fact two trees growing together. The Respondent refers to the architects drawing (core bundle p211) which shows more than 14 trees around the communal area.

110. The Respondent has no evidence of the precise location of the trees other than the trees being located around a communal area. The Respondent states that there is no evidence that any tree was located within the gardens of a leaseholder (at 1 Darlington or 3 and 7 Hunter) to whom the gardens had been sold. In relation to tenants who have

sole use of their gardens the gardens are not demised to such tenants under the relevant standard tenancy conditions.

111. The Respondent submits that the fact that a tree may be positioned near a building does not make the cost of its removal a Building Cost. The Respondent relies on the provisions of the Lease which treats all areas beyond the buildings as part of the Estate.

The tribunal's decision

112. The tribunal determines that the amount payable in respect of the tree works is £3,185.13 and the Applicant is liable for a proportionate share of this cost in accordance with the provisions of the Lease.

Reasons for the tribunal's decision

113. The Applicant accepts the works were done the issue is as to the number of trees removed and as to whether the cost should be charged as a block cost or an estate cost. There is a conflict of evidence between the parties as to the number of trees removed. The witness statements put forward in evidence by the Applicant are inconsistent as to the number of trees.

114. The works described relate to trees and hedge in the communal area of Henmans Estate. The Architects drawing show the location of the various trees.

115. The Lease defines the Estate as the Henmans Estate, and the Building as Charman House. The 4th Schedule of the Lease clearly distinguishes between expenses and outgoings which relate to the Building (Charman House) under Part 1 and those that relate to Estate upon which the Building is situated under Part 2. The up keep of the gardens is an Estate cost. The tribunal agrees with the Respondent that even where a tree is located close to a building on the Estate its upkeep falls with the Estate costs. The trees are within the "*curtilage of the Estate*".

116. The tribunal considered the Architects plan which is dated June 2015 to be the most reliable record of the number of trees in the common parts area. Although the Respondent had not been able to produce a copy of the invoice in support of the works there is a quotation from SCION to undertake the works. The scope of the works is described as, *"To fell the large conifer trees in the communal area of Henmans estate Lambeth"*. The detailed description of the works is to fell 14 conifer trees, "*process and remove all arisings from site, remove stumps with the aid of a stump remover and make good levels, remove stump from front entrance of Hunter House and reduce hedge on either side of the entry to the communal area between Hunter and Darlington*".

117. The tribunal on a balance of probabilities considers it to be likely that the works undertaken were those shown on the SCION quotation. The Applicant states that he considers the sum of £500 for the removal of each tree to be reasonable, he has given no indication as to how he arrived at this figure. The Applicant has not produced a like for like quotation for the works undertaken. In the absence of any evidence to the contrary, the tribunal is persuaded that the sum of £32,500 for the tree works to be reasonable.

Drainage survey (Initial cost £5,825.04 recalculated cost £4,072.26), and
Drainage works (Initial cost £2,798.10 recalculated cost £1,956.16)

118. The Applicant argues that the Lease is clear the cost of the drainage survey is not an Estate cost but a block cost. The Applicant relies on the provisions of paragraph 2 of the 4th schedule Part 2 which defines the Estate costs provides as follows: "*The cost and expense of making repairing maintaining improving ..... sewers drain pipes watercourses .....or other conveniences which may belong to or be used for the Building in common with other premises on the Estate*". The Applicant argues that the drains of both Charman and Lockyer are physically separate from the rest of the Estate and are not used in common with other premises on the Estate. The Applicant states that the Charman drain runs along a straight line to the main sewer.

119. The Applicant contends that the cost of the survey is unreasonable and states it would be a morning's work for two men plus drain camera equipment and estimates the maximum cost should be £500.

120. In relation to the drainage works the Applicant states that this is not an Estate cost and as no works were done at Charman House he is not liable for the cost.

121. The Respondent states that the total cost of the drainage survey across the Estate was £41,552 and £4072.26 of the total cost has been apportioned to Charman House by applying the rateable values. The drainage surveys were undertaken by SCION a Non SCMG contractor and the Respondent has produced a copy of the invoice for the work. The Respondent has produced a copy of the drainage survey undertaken on the 16 August 2013 and states that large repairs were identified and further surveys necessary due to blockages.

122. The Respondent relies on the invoice from SCION in relation to the drainage works across the Estate of £19,960.

123. In relation to whether the costs should be Estate costs or Block costs the Respondent argues that the Lease draws a distinction between the

landlords obligations in relation to parts of the Building including the *"....the sewers drains channels .....and supply lines in under and upon the Building"* (Clause 3.2.2) and structures such as *"...the boundary walls and fences of and in the cartilage of the Building and not being part of the Flat"* (Clause 3.2.5). The Respondent points to the provisions of Part 1 of the 4th Schedule which specify the costs which are to be Building costs and these do not include any costs outside the four walls of the Building, whereas by contrast the provisions of Part 2 of the 4th Schedule include costs for matters within the Estate.

The tribunal's decision

124. The tribunal determines that the amount payable in respect of the drainage survey is £4072.26 and the Applicant is liable for a proportionate share of this cost in accordance with the provisions of the Lease.

125. The tribunal determines that the amount payable in respect of the drainage work is £1,956.16 and the Applicant is liable for a proportionate share of this cost in accordance with the provisions of the Lease.

Reasons for the tribunal's decision

126. The drain that was the subject of the survey serves Charman House and is connected to the main sewer. The Applicant states that the drain runs along a straight line from Charman House to the main sewer. It is therefore not a drain which runs *".....in under and upon the Building"* (Clause 3.2.2 of the Lease) but it runs from the Building to the main sewer. Since it does not fall within the provisions of Clause 3.2.2 it cannot be a Building cost falling within Part 1 of the 4th schedule.

127. The most important principle when interpreting a lease is to read the lease as a whole that the wording in the lease its ordinary common sense meaning, so far as possible. It may be helpful to set out here the relevant parts of paragraph 2 of the 4th schedule Part 2 which defines the Estate costs and provides as follows: *"The cost and expense of making repairing maintaining improving ..... sewers drain pipes watercourses .....or other conveniences which may belong to or be used for the Building in common with other premises on the Estate"*.

128. The tribunal appreciates the point made by the Applicant that the drain serves Charman House alone and does not serve any of the other parts of the Estate but the tribunal considers the provisions of Part 2 of the 4th Schedule of the Lease to be wide enough to include not just costs in relation drains which are used for the Building in common with other premises on the Estate but also drains which belong to the Building. The tribunal considers the use of the word "or" as a disjunctive in

paragraph 2 separates drains which may belong to the Building from drains which are used for the Building in common with other premises on the Estate. Accordingly regardless of whether the drain is solely by a particular Building or is shared with other Buildings the costs of *"repairing maintaining improving..."* such drains are to be treated as an Estate cost.

129. In relation to the costs incurred to conduct the survey, the Applicant has put forward no comparable evidence and other than saying it would be a morning's work for two men plus drain camera equipment there is no information as to how he estimates the maximum cost of the drain survey should be £500 as opposed to £4072.26.

130. Since the tribunal has found that the costs of the drainage survey and the drainage works are Estate costs the Applicant is liable to pay a proportion of the costs incurred in accordance with the provisions of the Lease. This is so even if no drainage works were undertaken to the drains serving Charman House.

131. The work was undertaken by SCION and although SCION is a Non SCMG contractor an invoice has been produced to support the amounts charged for the drainage survey and the drainage works. The tribunal finds the sums charged to be reasonable.

Preliminaries (Initial cost £20,337.98 recalculate to £17,322.41)

132. The Applicant considers the charge for preliminaries to be excessive. The Applicant questions the charge for preliminaries when sub-contactors have their own foremen/women and the overall checking of standards was the responsibility of Pellings.

133. The Respondent explains the charge for preliminaries covers items such as management and staff, site accommodation, attendant labour costs, miscellaneous labour costs, facilities and services, temporary works, mechanical plant and non mechanical pant. The preliminaries cost is a competitively tendered percentage produced from Lambeth's Procurement Framework. The preliminaries are charged at 23.2%.

The tribunal's decision

134. The tribunal determines that the amount payable in respect of the preliminaries is £16,605.62 and the Applicant is liable for a proportionate share of this cost in accordance with the provisions of the Lease.

Reasons for the tribunal's decision

135. Preliminary costs are standard across all major works projects and cover the enabling work and set up of the site before the start of the works on site. The costs usually include the costs of setting up the site, the management of the site, the site foreman fees, the quantity surveyors fees, the welfare areas, resident liaison officer charges and the cost of insurance.

136. The tribunal considers a charge of 23.2 % for the preliminaries to be on the high side but appreciates that the cost of administrating contracts on a site with occupied buildings is reflected in the higher cost of the preliminaries as there is a greater need for attention to detail in health and safety matters eg in the disposal of materials etc.

137. The tribunal also noted that the percentage charge for the preliminaries had been competitively tendered and produced from Lambeth's Procurement Framework. This process is likely to have resulted in a competitive percentage charge for the preliminaries.

138. The Applicant had not produced any evidence of the preliminary costs charged on similar contracts and so there was no like for like comparable.

139. Considering the evidence the tribunal finds the percentage charged to be reasonable. The tribunal has recalculated the amount charged for the preliminaries on the basis of the awards made in this decision. The tribunal has found all the recalculated costs charged to be reasonable save for the Estate Works cost which has been reduced to £20,591.26 and the Waste Disposal cost of £2,791.37 which the Respondent has agreed to remove from the charges. This gives a revised total charge of £71,575.93 and so the preliminaries cost at 23.2% amounts to £16,605.62.

Professional fees (£8,044.71)

140. The Applicant disputes the charge made for professional fees and provides a long list of works which he feels have been badly supervised by Mr Grabowski of Pellings.

141. The Respondent states that professional fees were paid to Pellings who project managed the works on behalf of the Respondent. The percentage rate was competitively tendered and produce via the Lambeth's Procurement. The Respondent states that the appropriate percentage should be 4.16% of the basic costs plus the cost of the preliminaries.

The tribunal's decision

142. The tribunal determines that the amount payable in respect of the professional fees is £3,668.35 and the Applicant is liable for a proportionate share of this cost in accordance with the provisions of the Lease.

Reasons for the tribunal's decision

143. The Breakdown of Charman House charges (Core Bundle p114) accompanying the letter dated 8 September 2016 to the Applicant from Chris Flynn of Lambeth Home Ownership Services appears to have an error and charged professional fees at 8.73%. The correct percentage that should have been applied is 4.16%. Applying this percentage to the revised total costs of £71,575.93 plus preliminaries of £ 16,605.62 amounts to £3,668.35.

144. The tribunal for the reasons given through this decision considers the Applicant has made serious unfounded accusations against the Respondent and its employees based on error that have come to light and on his misconceived application of the law. Where there has been an error the Applicant has without any evidence jumped to the conclusion that the Respondent is perpetrating some sort of fraud instead of accepting it as a simple error.

145. The tribunal considers the Applicant's criticism of Mr Grabowski to be unjustified. Mr Grabowski has overseen to its conclusion a difficult major works project. There have inevitably been some errors along the way but where errors have been found the Respondent has acted to put them right.

Application under s.20C

146. In the application form, the Applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal refuses the application for an order under section 20C of the 1985 Act. The tribunal has found largely in favour of the Respondent in this case and so the tribunal does not consider it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Name: Judge Haria **Date:** 02 June 2017

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.]

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

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).

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.