12689

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/OOME/LSC/2017/0103**
Property	**:**	**1st Floor Flat, 136 Oxford Road, Windsor SL4 5DU**
Applicant	**:**	**Mr Ronan Whittaker**
Representative	**:**	**In person**
Respondent	**:**	**Regis Group PLC (1)** **Ground Rents (Regis) Limited (2)** **Long Term Reversions (Torquay) Limited (3)**
Representative	**:**	**Mr McDermott of Counsel**
Type of Application	**:**	**To determine the reasonableness and pay ability of service charges**
Tribunal Members	**:**	**Tribunal Judge Dutton** **Mr N Martindale FRICS**
Date and venue of Hearing	**:**	**Slough Magistrates' Court, Slough on 13th March 2018**
Date of Decision	**:**	**26th March 2018**

DECISION

© CROWN COPYRIGHT 2018

DECISION

1. The Tribunal determines that the appropriate premium payable for the insurance of the Applicant's property being the 1st Floor Flat, 136 Oxford Road, Windsor SL4 5DU should be £300 per annum for the period June 2011 through to June 2018 resulting in a refund due to the Applicant of £1,798.42 as set out on the schedule below. Such sum should be repaid to the Applicant within 28 days.

2. The Respondent shall pay to the Applicant the sum of £300 being reimbursement of the application and hearing fee in connection with this application, such payment to be made within 28 days.

BACKGROUND

1. This application in respect of a single issue was made by Mr Whittaker the owner of the 1st Floor Flat at 136 Oxford Road, Windsor SL4 5DU (the Flat). The application is dated 10th November 2017 and seeks to recover service charges, in fact alleged excessive insurance premiums, for the periods 2011 through to 2022. The application says that he is acting on behalf of himself and the other flat owner Mr Donny Hood. Mr Hood did sign a letter indicating that he wished Mr Whittaker to represent him with regard to the Tribunal application but did not seek to be joined as a party and was not so joined.

2. Prior to the hearing we were provided with somewhat incomplete bundles of documentation. These eventually included a copy of the directions, the application and, handed in on the day, a copy of the original lease between Regis Group PLC (1) and Mr Georghaides (2). The benefit of this lease had been assigned to Mr Whittaker. On 22nd June 2017 Mr Whittaker negotiated a new lease, in effect being an extension to the existing one, of 125 years but naming Ground Rents (Regis) Limited as the landlord. This new lease refers to the original lease and incorporates those terms save for a minor amendment set out in a schedule to the new lease, which deals with matters such as interest, VAT and the registration fee. The heading 'Surrender and Grant' confirms that the matters excepted and reserved by the old lease for the benefit of the landlord are similarly excepted and reserved for the landlord of this new lease and the grant is on the basis that the old lease is incorporated, including easements and matters granted by the original lease for the benefit of the tenant.

3. In the original bundle we were provided with the Applicant's statement of case, details of what he considered to be alternative insurance quotes, a letter from Callum Baker of Pier Management who are the managing agents and a statement on behalf of the Respondents made by Mr David Bland titled an in-house legal executive lawyer. The bundle also contained copies of the certificates of insurance for the years ending June 2011 to June 2018. A copy of the policy schedule arranged through Lockton and a letter from that company dated 24th October 2017 were included and demands in respect of the rent were also provided. A certificate of incorporation showing that the landlord has now become Long Term Reversions (Torquay) Limited was also included.

INSPECTION

4. Prior to the hearing we undertook a fleeting inspection of the subject premises. The Flat is to be found on the top floor of a converted two storey terraced house built originally around the turn of 20th century. We were able to see the common parts which are unremarkable consisting of an entrance hallway to the ground floor property and then stairs rising to Mr Whittaker's flat.

HEARING

5. At the hearing Mr Whittaker represented himself and the Respondents, in whatever guise, were represented by Mr McDermott of Counsel. We will deal with the identity of the Respondents in our findings section.

6. Nobody from the Respondent or its managing agents attended the hearing, which is to say the least a great pity. Indeed towards the end of the case Mr McDermott had no alternative but to telephone Pier Management in an attempt to obtain some further instruction. We find it somewhat discourteous of the Respondents to provide no evidence on a number of issues and to not arrange for attendance by the managing agents at the very least to assist us in determining the application made by Mr Whittaker.

7. Be that as it may we had to deal with what was before us. Mr Whittaker told us that he had purchased the property on October of 2006 and that there had been an ongoing problem with the landlord since that time. It appears that Pier Management have at all times been managing agents and although he had endeavoured to reach some form of agreement with Pier Management that had not been possible.

8. The basis of his submission was that he considered that he was paying a too great a premium for what was a one bedroom first floor flat. Whilst he agreed that the landlord did not have to accept the cheapest quote, he was of the view that the premium had not been reasonably incurred nor was it reasonable in amount.

9. Mr Whittaker told us that he had obtained three alternative quotes but had not been able to obtain insurance on a like for like basis. The reason for this was to be found in a letter he had received from Callum Baker of Pier Management which set out the cover presently provided by the landlord. This letter told us that the cover was an 'all risk' policy on a portfolio basis. The sums insured were considerably higher than any of the 'comparables' that Mr Whittaker had put forward. Further they included a number of extensions to the policy, for example, trace and access, illegal cultivation of drugs, tree felling and lopping, alterations and additions, fly tipping, loss of metered gas oil water electric and the replacement of keys and locks.

10. It was said by Mr Whittaker that these additional provisions made it very difficult for him to obtain a comparable quote. What he had done, however, was to make use of the website comparisons and had obtained quotes from Barclays, Churchill and Privilege. The Barclays quote was for £92.74, Churchill for £105.22 and Privilege for £104.16 or on a platinum basis £153.44. We were provided with print offs indicating the basis upon which these insurance quotes had been obtained and we noted all that was said.

11. Mr Whittaker took us through the statement from the Respondent. He drew our attention to paragraph 8 where an extract from the case of Universities Superannuation Scheme Limited v Marks and Spencers was quoted and the words 'for the benefit of all tenants' was something that he thought was relevant and should be applied in this case. He had also researched the case of Williams v the London Borough of Southwark a case from apparently 2000 where the question of commission had been challenged. In this case he understood that commission was being paid at 15% of the asset value which he concluded could produce commission in the region of £3m.

12. He also referred us to paragraph 14 of the Respondent's statement of case which set out what was undertaken by Regis Group in return for the commission. He said that the various items listed there had never been undertaken. The health and safety survey is mentioned as being part of the administrative burden but he pointed to his statement of account at page 36 of the bundle which showed that he was charged £40 for a health and safety survey. His submission was that the Respondents had taken no steps to test the market although at paragraph 30 it says as follows *"Whilst the Respondent accepts this property is insured within a portfolio, each property is rated on an individual basis taking into account any risk in claims experience."* He asked what evidence there was to show this was the case. This, however, he said was inconsistent with the following paragraph which indicated that the Applicant obtained a benefit of having the same level of cover as a large multi-flat block.

13. He had apparently offered to take over the insurance but that offer had not been accepted. He considered that an alternative premium should be £150 but that he had always wished to try and compromise and would accept the sum of £300 for each year in respect of insurance. He did indicate that he had intended to go back to the time that he originally purchased the flat in 2006 but thought that the limitation period may prevent him from doing so.

14. He told us that no offer had been made to the Respondents to settle the insurance at £300 per annum.

15. He was asked by us about the sums insured. It appears that Barclays had a sum insured of £500,000 but both Churchill and Privilege appeared to have sum insured for the property of £1m. He was not sure how this figure had been reached.

16. In his application he raised the question of an administration fee. It was not wholly clear what this was intended to be. He did confirm, however, that he made no complaint of the administration charge which appeared to be added to the insurance premium in each which for example the year to June 2018 was £14.99.

17. Asked whether he had any idea of the basis upon which the property value was increased each year he said he did not. He was also asked whether he had told those insurers from whom he sought a quote that he was not the owner occupier, that the property was sub-let and also that in certainly one case it was raised that there are common parts. He said he had but that appeared to be inconsistent

with at least two of the quotes before us. It appears also that any quote he had obtained did not include terrorism cover.

18. Mr McDermott responding for the Respondents asked us to note the change of name from Ground Rents (Regis) Limited to Long Term Reversions (Torquay) Limited. Two early issues he wanted to deal with were firstly that the application had been limited to the years ending June 2011 onwards and to consider a period prior to 2011 would not be appropriate.

19. In addition it was suggested by Mr McDermott that because there had been the grant of a new lease in June of 2017, this meant that no claim in respect of section 27A of the Landlord and Tenant Act 1985 (the Act) could be made for any time before the grant of that new lease. This is a point that was raised in the Respondent's statement.

20. Mr McDermott conceded that the insurance was based on a portfolio basis on an all risk cover and that commission was paid. The all-risk cover applied across the portfolio although it was drawn to his attention that the terms of the original lease under clause 5(f) say as follows "*that (subject to the aforesaid) the lessors will insure and keep insured the building and the full reinstatement value thereof with a reputable insurance company on a normal household risks basis.*" Mr McDermott considered that if this property was insured on its own, then there would be a greater cost although again there was no evidence to support this contention.

21. He was asked how the Respondents tested the market but again o information was available to us. His view was that because the Respondent employed a broker who was a member of the Financial Conduct Authority (Lockton) it was assumed that the market had been tested. He reiterated that this was a large commercial landlord and that it would not be cheap, quick or efficient to deal with properties on an individual basis.

22. He was asked about the Respondent's statement of case and in particular paragraph 14 thereof which sets out the works undertaken by the Regis Group to earn the commission but he could give us not confirmation as to what in practical terms what was actually done.

23. He confirmed that Pier Management did not receive commission but that appeared to be paid to Regis Group Holdings Limited (see the letter from Lockton dated 24th October 2017) of which both Regis Group, Ground Rents (Regis) Limited and we assume the new entity Long Term Reversions (Torquay) Limited are all part.

24. Another point raised in the statement from the Respondent is that section 27(4) bites because the Applicant has paid the service charges and although it accepted that section 27A(5) indicated that payment did not mean agreement, they relied on the somewhat dated case of Dejan Properties v London LVT (2001) which was a case prior to the amendments to the 1985 act. Counsel said that whilst he did not resile from the point put forward in the statement he had nothing to add.

25. Short submissions were made by both Mr McDermott and Mr Whittaker. Mr McDermott indicated that in his view it was for the Applicant to show that the premiums were not reasonable, in effect the burden therefore rested with Mr Whittaker and that the use of a portfolio was perfectly reasonable for the landlord.

26. Mr Whittaker submitted that the onerous "conditions" set out in Mr Baker's letter meant that he was unable to obtain clear comparables. These extras he said stopped him from obtaining a quote in the market but that he thought that which he had produced supported the conclusion that the insurance premiums being charged to him were too high.

27. It is recorded in his original statement that the premiums for the years to June 2012 were £556.13 (this being the first year that he mentions in his statement in support of his application). In the year June 2013 this reduced to £448.28. In the following year it is £470.28. In the year to June 2015 the premium is £499.25. In the following year £524.35. In the year ending June 2017 it was £568.27 and in the year ending 30thJune 2018 it was £609.76.

28. Mr Whittaker also sought to recover the application and hearing fee for £300. No application was made by Mr Whittaker for any costs under the Tribunal Procedures Rules and Mr McDermott confirmed that the Respondents would not be seeking to recover the costs of the proceedings as a service charge.

THE LAW

29. The law applicable to this matter is set out below.

FINDINGS

30. Before we consider the level of the insurance premium charged by the Respondent we need to deal with some extraneous issues which were discussed during the course of the hearing. These arose largely from the Respondent's submission, although were adopted by Mr McDermott. The first is whether or not the application limits the claim for the excessive insurance premiums just to 2017 because of the new lease granted on 22nd June 2017. It is said that the previous lease came to an end at that time.

31. It is helpful we think to record what appears to be the position in respect of these two leases. Matters are of course further complicated by the fact that the Respondent appears to have changed its name from Ground Rents (Regis) Limited to Long Term Reversions (Torquay) Limited. The original lease is dated 25th November 1988 and is between Regis Group PLC and a Mr Georghaides. This lease was for a term of 99 years from 1st July 1998.

32. On 22nd June 2017 Mr Whittaker entered into a lease with Ground Rents (Regis) Limited which extended the term to 125 years from 22nd June 2017 upon payment of a premium of £7,500. The annual rent was agreed at £350 but the terms of the original lease, which is defined within this new lease, were incorporated. Under the heading Surrender and Grant, it is noted that all exceptions and reservations reserved by the original lease continue and that the

grant of this new lease is made on terms headed Incorporated Terms which refers to those matters in the original lease. Easements and matters granted by the original lease inure for the benefit of Mr Whittaker as do the obligations under the tenants and landlords covenants. The only changes to this lease from the original were set out in the schedule, which have not impact on the matter before us. The issue does not stop there. In the bundle before us were a number of demands both for insurance and ground rent which appear to have been made on behalf of Grounds Rents (Regis) Limited. In addition, the certificates of insurance produced for the periods of cover ending 30th June 2011 through to 30th June 2018 are all in the name of Grounds Rents (Regis) Limited. A letter from Lockton dated 24th October 2017 which we have referred to above and which confirmed commission, refers to Regis Group Holdings Limited.

33. It seems to us that the landlord is perfectly happy to pay to play fast and loose with the identity. It is clear that the original lease was with Regis Group PLC but the ground rent and insurance under the terms of that lease appear to be collected on behalf of Grounds Rents (Regis) Limited. There is no indication in the new lease that this company is a reincarnation of Regis Group PLC. Taking these matters into account, therefore, we reject the Respondent's assertion that Mr Whittaker can only seek to recover the insurance premiums for the year 2017 onwards.

34. It seems to us that nothing in the Landlord and Tenant Act 1985 at sections 18, 19 or 27A make reference to a lease. The relationship is between landlord and tenant. The challenge to the insurance charged covers the period when the landlord was Regis Group Limited and it would seem that it was only the premium from 1st July 2017 to 30th June 2018 that fell within Ground Rent (Regis) Limited obligations under the terms of the new lease. We are therefore satisfied that Mr Whittaker is entitled to challenge the question of insurance going back to the period which he set out on his application.

35. We should say that we were presented with copies of the lease at the hearing and no real chance to consider them. It does seem, however, that the original lease does not provide for service charges to be recoverable as rent. In those circumstances it would seem to us that any limitation period that might apply would be in respect of a speciality contract which would be 12 years. However, Mr Whittaker has in his application limited his claim to the period commencing 2011 onwards. It would therefore be inappropriate to allow him to seek to recover any payment in respect of insurance rents which goes before the period included in his application. The Respondents have dealt with a reply limited to that period and to go back to an earlier period is not something that we are prepared to accept. We should also say that we are not prepared to entertain an application to determine the insurance rent for years 2019 to 2022. There is no evidence as to what the insurance rent is and it has not been an expense incurred by the landlord which would fall within section 19 of the Act. We therefore confine our assessment of the insurance for the year ending June 2011 through to June 2018.

36. We should just mention another issued raised by the Respondents in their statement of case at paragraph 6. There is a suggestion relying on an old case of Daejan Properties that payment by Mr Whittaker is somehow taken to have been

a block on him disputing these charges. They indicate that in the submission this is something with which we will 'concur'. We do not. The case that they refer to fails to reflect the change in the law under the Commonhold and Leasehold Reform Act 2002 which introduced section 27A. Section 27A paragraph 5 says as follows: *"but the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment."*. Accordingly, the assertion put in by the Respondent is misconceived. To be fair to Mr McDermott it is not a matter that he pursued at the hearing relying only on the submission made by his client. We reject that. Mr Whittaker is clearly entitled to make a claim in respect of these insurance payments notwithstanding that he has paid them. We are satisfied that they were paid under objection and on the basis that he was concerned that he did not do so his flat might not be insured.

37. We turn then to the consideration of the insurance premiums.

38. In reaching our decision we have considered the definitions of service charge contained in section 18 and also the ability to recover the costs by the landlord under section 19. It seems to us that the matter we need to consider is whether or not these premiums have been reasonably incurred. The provisions of the original lease continued in the new one it would seem state insofar as insurance that "paragraph 5(f) *that (subject to the aforesaid) the lessor will insure and keep insured the building in the full reinstatement value thereof with a reputable insurance company on a normal household risk basis."* In return for this the tenant agrees to pay, as a service charge, the insurance premium. In the submission made by the Respondent they refer to a number of cases although fail to provide a full transcript. The first is Universities Superannuation Scheme Limited v Marks and Spencers which on the face of it clearly related to commercial properties at the Telford Shopping Centre for which the Landlord and Tenant Act 1985 would have no resonance. We were also referred to the authority of Berrycroft Management Company v Sinclair Garden Investments, Vorslux Limited v Sweetman and Havenridge Limited v Boston Dyers. In this latter case, as we understand it, again without the benefit of the authority, the Court of Appeal was required to construe two leases of commercial properties to which the 1985 Act would have no application. We do, however, note what was said concerning the landlord's requirements, which is to an extent included in the Berrycroft decision. Mr Whittaker in his submission to us referred to, we believe the case of Williams v Southwark Borough Council a 2001 case which dealt with the impact of commission and in particular what was undertaken by the Council to justify that sum being paid.

39. In considering section 19 we have to decide whether the costs were reasonably incurred. It is not for us to decide whether the charge was the cheapest available but whether it had been reasonably incurred. In that regard we need to consider the evidence of the landlord's actions and whether in the light of that evidence the charge was reasonable.

40. We have to say that the evidence of the Respondents is sadly lacking. Nobody from the Respondent's managing agents attended and indeed it was necessary for Mr McDermott to telephone them during the course of the hearing to get further information, which in truth did not really help us. What the Respondents did say, through their brokers was that the insurance was based on a portfolio, that

the certificates and a booklet were annexed and were comprehensive but there was nothing further that they could comment upon. They said that they were "not specialised in insurance and rely on our broker who is FCA regulated to arrange insurance and negotiate terms." There was no evidence from that broker who we believe to be Lockton as to what steps they did take to test the market and to negotiate terms. The best that Mr McDermott could say was that because they were FCA regulated they must have done all that was necessary. With respect to the Respondents, that is not good enough. The challenge to the insurance premiums has been raised by Mr Whittaker. He has in our view done the best he could to obtain some comparable quotes. Those are as we will come onto in a minute, in some ways defective. However, we can see the difficulties from which he suffered given the extensive portfolio that the Respondent rely upon to justify the premiums that they are seeking to recover.

41. The landlord confirms that Regis Group Holdings Limited, whose position is unclear in the tree of the Regis family, does receive commission and in the interest of "transparency" this has been disclosed. We are not wholly convinced that the use of the word transparency assist us in this regard because as we have indicated above, there appear to be a number of companies who have been involved in the property.

42. It is also clear to us that the insurance is designed, and we are told this, to be a comprehensive all risk policy. In support of that, Mr Whittaker produced the letter sent to him by Callum Baker of Pier Management which sets out the levels of cover available. The extensions which this property has "the benefit of" under the portfolio are trace and access, illegal cultivation of drugs, tree felling and lopping, alterations and additions, fly tipping, the loss of metered services and the replacement of keys and locks. We did inspect the subject property. The cover for illegal cultivation of drugs would not we would have thought fallen within the definition of normal household risks upon which the insurance should have been based. The same could be said for tree felling and lopping as there were no trees on the property. It is difficult to know what alterations and additions that could be made to a terraced house comprising two flats and the same with fly tipping as there is no access to the rear garden. The loss of metered services to a sum of £250,000 is inappropriate and the same applies to the replacement keys and locks as there is are only two tenants and presumably a loss of a key or damage to the locks would result in that tenant repairing same. In our view, therefore, the insurance in respect the Applicant's property is excessive.

43. We are satisfied that the burden is on the landlord to provide sufficient evidence to us that on the balance of probabilities the costs in question have been reasonably incurred. We find that in this case they have failed to do so. We remind ourselves that this is a lease which empowers one party, the Respondents, to make discretionary decisions imposing financial liability on another. Whilst we accept it is not necessary for the landlord to show the insurance premiums sought is the lowest that can be obtained, we need to be satisfied that the charge is reasonably incurred. We have considered the terms of the lease, the liabilities to be insured and the lack of evidence that has been provided to us by the landlord on the question of review and to justify what appeared to be premiums considerably in excess of those which have been found by Mr Whittaker.

44. Mr Whittaker had obtained insurance quotes from three companies Barclays, Churchill and Privilege. There were concerns. It is not clear, although he said he did, that he had told these insurers that he was sub-letting the property under an AST. It is also clear that certainly in one of the policies, the Privilege cover, that the home has to be the main residence and permanently occupied by Mr Whittaker and be self-contained with its own front door. Technically it is not because there are common parts and clearly it is not his main residence. In addition he has not indicated any additional premium for terrorism. In those circumstances, therefore, we find that the premium from Privilege which is the highest might be the closest to the cover available but it lacks evidence as to what impact the sub-letting would have, the common parts and the lack of terrorism.

45. In his early discussions with us he indicated that he thought a premium of around £150 was appropriate but to compromise would have settled at £300 for each of the years in dispute.

46. Given the paucity of compelling evidence from both parties, we need to do the best we can with what is before us. We are satisfied that the portfolio insurance arranged by the landlord whilst something that is reasonable to do has resulted in a substantially higher premium being payable by Mr Whittaker. Our own knowledge and experience would suggest that premiums considerably in excess of £500 per annum for a one bedroom first floor flat in Windsor are on the face of it excessive. In the absence of any justification for such a payment other than that it is under a portfolio basis and has a number of unnecessary insurance provisions, no indication was given why that is a reasonably incurred cost. For example, we do not know why the landlord does not have more than one portfolio. Whilst we can understand that the premiums might be relative to a large block which has all the associated difficulties to include in that portfolio a two storey terrace property which has only two flats seems to us to be unreasonable.

47. Accordingly, doing the best we can we propose to reduce the insurance premium payable for each year in dispute from the amount claimed to the sum of £300. We have set out on the attached schedule the figures involved and the sum shown thereon is the amount we find should be reimbursed to Mr Whittaker within 28 days. Who makes that reimbursement is not wholly clear. The successor to Ground Rents (Regis) Limited is now Long Term Reversions (Torquay) Limited. The landlord at the time of the bulk of these premiums was Regis Group PLC, which we assume still exists. We have named all three identities of the landlord at the commencement of this decision and in our view they have a joint and several liability to discharge the monies which we have found are repayable to Mr Whittaker.

48. We consider that it is reasonable for the Respondents to reimburse to Mr Whittaker the application and hearing fee which is £300, such reimbursement to take place within 28 days as well. We propose to make an order under section 20C of the Act, Mr McDermott confirming on behalf of the Respondents they would not be seeking to recover the costs of these proceedings. We think it is just and equitable to make an order under section 20C and we do so. No claim is made by either party under Rule 13 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 which we consider is appropriate.

Andrew Dutton

Judge:

A A Dutton

Date: 26th March 2018

SCHEDULE OF PREMIUMS CLAIMED AND AMOUNTS DUE TO BE REFUNDED

Year ending June 2011	£525.11 less £300	Amount due to Applicant	£225.11
Year ending June 2012	£556.13 less £300	Amount due to Applicant	£256.13
Year ending June 2013	£448.27 less £300	Amount due to Applicant	£148.27
Year ending June 2014	£470.28 less £300	Amount due to Applicant	£170.28
Year ending June 2015	£499.25 less £300	Amount due to Applicant	£199.25
Year ending June 2016	£524.35 less £300	Amount due to Applicant	£224.35
Year ending June 2017	£568.27 less £300	Amount due to Applicant	£268.27
Year ending June 2018	£609.76 less £300	Amount due to Applicant	£306.76
		Total due to Applicant	**£1,798.42**

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 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 to 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 (ie 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.

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

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

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

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

Section 19

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

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

Section 27A

(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
   (a) the person by whom it is payable,
   (b) the person to whom it is payable,
   (c) the amount which is payable,
   (d) the date at or by which it is payable, and
   (e) the manner in which it is payable.

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

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

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

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

<u>Section 20C</u>

(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.