FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BK/LSC/2019/0304**
Property	**:**	**Flat 2, 25-27 Old Queen Street, London SW1H 9JA**
Applicant	**:**	**Mr William Martin Kingston QC** **Mrs Jill Mary Kingston**
Representative	**:**	**Mr Kingston – as a litigant in person**
Respondent	**:**	**Queenannes Gate Ltd**
Representative **Also in attendance**	**:**	**Ms Laura McGill- Associate Director- on behalf of Town and City Management Limited- (managing agents)** **Mr Andrew Hentschel- Building Surveyor**
Type of application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	**:**	**Judge Daley** **Mr M Taylor FRICS** **Mr P Clabburn**
Date and Venue	**:**	**On 18 December 2019, 10 am at 10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**31 January 2020**

DECISION

Decisions of the tribunal

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

(2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 [so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge].

(3) The tribunal determines that the Respondent shall pay the Applicant's application and hearing fees of £300.00 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the service charge year 2019/20.

2. An oral case management hearing took place on 10 September 2019 in which directions were given and the matter was set down for a hearing.

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

The hearing

4. The First Applicant appeared in person at the hearing and the Respondent was represented by Ms McGill who is an Associate Director of the managing agent's company. She also had a witness Mr Hentschel, a building surveyor.

5. The Applicant Mr Kingston, who is a commercial QC, had prepared written submissions which he gave to the Tribunal at the beginning of the hearing. The Respondent's representative made no objection to this document.

6. Although the hearing had been listed for 2 days all of the parties agreed that the matter could be concluded on the first of the two days listed for the hearing.

The background

7. The property which is the subject of this application is a converted office building which had previously been occupied by an insurance company. It was converted into self-contained flats in the 1990's, including the creation of additional floors at roof level. The Applicants had a lease of a three bedroom flat situated on the second floor. At some point after the property had been converted the landlord had changed the basement into a service flat.

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

The issues

9. At the start of the hearing the parties identified the relevant issues for determination as follows:

   (i) The identity/name of the freeholder/landlord

   (ii) Whether the service charges were payable or alternatively whether they were invalid on the grounds that the Landlord had failed to comply with Section 48 of The Landlord and Tenant Act 1987.

   (iii) Whether the service charge had been demanded in compliance with the requirements of the lease.

   (iv) Whether the sums demanded for the reserve funds were payable under the terms of the lease.

   (v) Whether on a construction of the lease the Applicant was obliged to contribute to the costs of repairs to the roof

   (vi) Whether the Tribunal should make an order under section 20 C of the Landlord and Tenant Act 1985 for the reimbursement of the application and hearing fees.

   (vii) The reasonableness and payability of the service charges for 2019/20. Mr Kingston also raised an issue concerning the contents, of the section 20 notices, in that he stated that the subject matter of the notices related to improvements.

10. 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 Identity of the Landlord

11. In his submissions Mr Kingston stated that the Respondents have confirmed the identity of the Freeholder is Queenannes Gate Limited. However Mr Kingston referred the Tribunal to a number of documents, in particular the survey report prepared by Hallas & Co dated 24 January 2019, which referred to Rossmoregate (Old Queen Street) Ltd as the party who had commissioned the report, and the fact that the accounts referred to the service charge money being held in trust under titles which included Rossmoregate PLC. The Tribunal

was also referred to the section 20 notice dated 1 November 2010 which referred the leaseholders to Rossmoregate for the purpose of consultation.

12. The Land Registry title and the lease were in the name of Queenannes Gate Limited.

13. In his submissions Mr Kingston noted that-: "This is a matter which is of some importance in the light of the propensity of the Landlord to send Service Charge notices in a variety of different names and now to be demanding very significant sums to be allocated to the Reserve Fund.

In email correspondence the Landlord has been invited to explain the position and the relationship between the Freeholder and the Grantor of the Lease. No explanation has been provided to the Tribunal."

14. Ms McGill stated that although the service charge demands were served on behalf of Queenannes Gate, this was a subsidiary company which was owned by Rossmoregate who was the actual client who instructed the managing agents to act on their behalf.

The tribunal's decision and reasons for the decision

15. The tribunal determined that the service charge demands on the information before us, did not comply with section 48 of the Landlord and Tenant Act 1987. In accordance with the terms of the Act the demand was not payable. The Tribunal also noted that section 1 of the Landlord and Tenant Act 1985 also made it a summary offence not to provide the details of the landlord.

16. However, given that the landlord could reissue the demands, the Tribunal decided that it was appropriate and proportionate to deal with the other issues so that the parties would have the benefit of the Tribunal's decision on these issues in the event that the demands were reissued in compliance with Section 48 of the Landlord and Tenant Act 1987.

Service charge/ the additional rent

17. The Service Charge in the lease was provided for as "Additional Rent" In his submissions Mr Kingston stated that-: "The landlord has covenanted to "*keep the Retained Premises in good and tenantable repair*": Paragraph 1(b) of the Fifth Schedule of the lease… By virtue of the Seventh Schedule the landlord is entitled to recover by way of additional and further rent the costs of complying with the obligations in the Fifth Schedule and also, inter alia, the cost of maintaining repairing or renewing the lift: paragraphs 1 and 10 Seventh Schedule: …

Paragraph 2 of the Fourth Schedule of the Lease … makes provision for the payment of the *"additional rent"* i.e. the service charge. This is to be paid by

one instalment in advance on the 29th September in each year free of deductions in advance and is to be paid on account of the additional rent.

18. Clause 2 of the Fourth Schedule of the lease provided that "… on account of such additional rent herein mentioned such sum as shall be certified by an independent Chartered Accountant as reasonably required by the landlord or its agent and notified to the tenant… and as soon as possible following the end of each such financial year the Landlord shall provide the Tenant with a summary of such expenses certified by an independent Chartered Accountant or Surveyor…"

19. Ms McGill noted the wording of the lease. However, she stated that she had not come across this position before. It was accepted that the service charges demand was payable in advance and as such it was an estimate. The lack of certification had not been seen as an issue. She accepted that the demand had not been certified in advance.

20. In the Respondent's Statement of Case it was stated in paragraph 1-: "However, we believe that the necessity to have the demand certified by a Chartered Accountant relates to any balancing demand which is levied following the production of any end of year accounts…"

The tribunal's decision and reasons for the tribunal's decision

21. The Tribunal has noted the very clear and unambiguous wording of the lease. We find that on the admission of Ms McGill the service charge demand was not certified in advance. The Tribunal therefore accepts Mr Kingston's submission that -: "The demand is accordingly invalid not being made in accordance with the terms of the Lease."

22. We find that the service charge is not payable in accordance with the terms of the lease.

23. In accordance with our earlier decision, the Tribunal decided that it was proportionate and appropriate to consider the issue of the reasonableness of the service charges, so that the parties would have the Tribunal's determination on all of the issues in dispute.

Service charge/ Management fees

24. The total management fees for the period in issue were £4,574.00 of which the Applicant's share of the charges was 15%.

25. Mr Kingston in his submissions asserted that -: "The Lease requires [under the Fourth Schedule paragraph 2] that the expenditure should be

reasonable/reasonably and properly incurred. No evidence of the reasonableness of the demand has been produced."

26. Mr Kingston referred to the lack of market testing of the reasonableness of the management fees.

27. In their reply the Respondent stated that the management fee was calculated of £749.00 per flat per annum inclusive of VAT. This included a designated property manager as well as the work undertaken by teams such as the accounts and credit control and maintenance team. She stated that although there was a separate charge for work in connection with the section 20 consultation procedure, where this work was abortive fees had not been charged.

28. Mr Kingston was asked about whether he had any issues with the work undertaken by the managing agent. He stressed that he was not unhappy with the work undertaken.

29. In relation to the work undertaken for section 20 consultation, the Tribunal asked whether this was charged separately, and if so was there a menu of charges that was given to the freeholder/landlord under the management agreement?

30. Ms McGill referred the Tribunal to the service charge accounts where professional fees had been charged. She stated that there was a menu of charges. The normal charge was 2% of the cost of the work, she stated that whilst Townsend's? fees would be included she did not think the managing agent would make a charge in respect of the section 20ZA major work (2017). **Ms McGill was asked by the Tribunal to provide a copy of the management agreement together with the schedule of charges to Mr Kingston within 21 days of the decision.**

The tribunal's decision and reasons for the tribunal's decision

31. The Tribunal in reaching its decision noted that there was no complaint concerning the work undertaken by the managing agent. We also had no comparable evidence from Mr Kingston upon which we could reference in comparison to the management charges at the building. As one of the Applicants, Mr Kingston bears the evidence burden in relation to this issue.

32. As a Tribunal our experience was that the charge itself was somewhat higher than those that we might have seen for other properties, however we had no evidence that any alternative managing agent working in this area would be prepared to undertake management for less.

33. There is in general no obligation on the landlord that it has to procure services from the cheapest contractor this is not what is required for the cost to be considered "reasonably and properly incurred". Accordingly we find that the sum of £749.00 per flat per annum inclusive of VAT is reasonable and payable.

34. The Tribunal finds that the cost of management fees associated with section 20 notices upon which no work is undertaken is not reasonable or payable.

Service charge/ Professional fees

35. The professional fees for the 2019/20 period were £5,000.00, Mr Kingston referred to the demand. He stated that this was an entirely new item in the budget and that it was included in the service charge demand with no additional explanation.

36. However in his submissions he now accepted that -: "The explanation now given is in paragraph 4 of the Respondent's Statement of Case …. The explanation is that the lift equipment has reached the end of its serviceable life, "*the system is obsolete*". The fees relate to a *"specialist engineer to oversee the lift refurbishment"*. He did not accept that the lift was obsolete. He cited the fact that the director of the respondent company had been attempting to upgrade the lift for many years as it provided access to the director of the company's penthouse.

37. Mr Kingston referred the Tribunal to correspondence between the leaseholders and the managing agents concerning this issue, some of which had been included in the bundle. He further placed reliance upon paragraph 2 of the Fourth Schedule of the lease which stated that service charge expenses should be reasonably and properly incurred.

38. There had been a section 20 notice served in respect of a lift replacement (on 3 July 2012) by the previous managing agents Rendall & Rittner. One of the leaseholders had asked to see "*the last Report of thorough Examination of Lifting Equipment*". The report from Bureau Veritas issued on 24/02/2012 had recommended some work be undertaken which had not amounted to a full replacement of the lift. No information had been provided at that time that lift replacement was less costly than the recommended repairs.

39. The Veritas report had indicated that Ambassador Lifts had not been inspecting and maintaining the lift in accordance with the maintenance contract. The cost of the lift maintenance contract was £1,500.00.

40. In reply Ms McGill accepted that it had proved very difficult to establish the extent of the condition of the lift. She referred to her discussions with *Ambassador Lifts* which was set out in her letter dated 9 July 2018. In the letter she stated-: "Please note that following discussions with Ambassador Lifts who service the lift on a regular basis, we have been advised that the current lift installation has reached an age where it is now obsolete." Mr Kingston had written an email objecting to this proposal and had suggested refurbishment.

41. Ms McGill had then commissioned a safety evaluation which was carried out by Chris Dello of Independent Safety Evaluation on 11 November 2018; his report

had included a 12 point refurbishment plan which could be undertaken which was short of Ambassador's suggested replacement.

42. There was an invoice for £1,500 plus VAT incurred for his report.

43. Ms McGill stated that provision had been made for an asbestos report which was why the charge was £5,000.00.

The tribunal's decision and reasons for the tribunal's decision

44. The Tribunal was provided with no evidence upon which it could be satisfied that £5,000.00 costs were to be incurred. The Tribunal noted that there was a considerable dispute concerning the need for replacement of the lift. In respect of the professional fees the Tribunal was satisfied that the sum of £1,500 plus VAT had been incurred for the professional fees of Mr Dello. Accordingly the Tribunal finds the sum of £1,800.00 inclusive of VAT is reasonable and payable.

Service charge/ General Maintenance

45. The Tribunal was informed by Ms McGill that the sum of £2,000.00 was included in the budget as an estimate of the likely charges for maintenance during the course of the year. She referred to 2018 when the Respondent had undertaken work on the coping stones. Mr Kingston stated that he would prefer this matter to be dealt with as a balancing charge given the circumstances of this case.

The tribunal's decision and Reasons for the tribunal's decision

46. The Tribunal in reaching its decision has borne in mind that the actual charges for General Repairs and Maintenance in 2018 was £3,019.00 accordingly the budgeted sum is in line with previous expenses at the premises.

47. Accordingly the Tribunal finds the sum of£2,000.00 which was the budge estimate for the repairs was reasonable and payable.

Service charge/ Communal Electricity

48. The communal electricity was £1,450.00. The Respondents in their statement of case set out that an inspection report by an electrician prepared in 2019 revealed that for some time there had been an abstraction of electricity from the communal supply for the benefit of Mr Danous the director of the landlord company. His flat was on the sixth, seventh and eighth floors and the basement. This was accepted by Mr Danous, and a repayment is due to the landlord, which will then be credited to the leaseholders. However the issue in dispute was the sum to be reimbursed.

49. In his submissions, Mr Kingston stated-: "…the response is not credible and the proposals for reimbursement rely on the Respondent reaching a view as to what should be reimbursed. The Respondents now offer a different approach …. The problem is that it needs to be independently verified and at the Respondent's expense. In the circumstances here it is not satisfactory to have the Respondent decide how much electricity has been used by the basement apartment and what sum will then be transmitted to the service charge fund in order to recompense for the years of abstraction of electricity."

The tribunal's decision and reasons for the tribunal's decision

50. The Tribunal noted that the Respondent's position was that as the abstraction of electricity had now been remedied the bills which were not produced could be used to calculate the rebate by establishing the difference. However although this would produce some information, the Tribunal considers that given the history of this matter, and the relationship that Mr Danous has with the freehold company, the correct way of establishing the charge would be to commission an independent electrician to undertake an assessment, the cost of this should be payable by the landlord.

51. As this exercise is yet to be undertaken, the Tribunal cannot be satisfied that the cost of £1,450.00 is reasonable. Accordingly the Tribunal is not satisfied that the total sum of £1450.00 is a reasonable estimate of the budgeted sum for communal electricity.

Service charge/ Roof and Gutter clearance

52. Mr Kingston pointed the Tribunal to the deed of variation which made Mr Danous responsible for repairs and maintenance of the roof.

53. In his submission, Mr Kingston set out that-: "The Applicants are only liable for services charges in respect of the *"retained premises"*: see the Second Schedule of the Lease …and the Seventh Schedule paragraph 1 …(Bp.42) and the Fifth Schedule paragraph 1(c) …"

54. Ms McGill set out that the planned work was undertaken on the landlord's retained property. The work involved the clearance of the gutters which were blocked. It was considered by the managing agents that this work was largely preventive in that the carrying out of the work stopped the blocked gutters causing leaking and causing damage to the flat below.

The tribunal's decision and reasons for the tribunal's decision

55. The sum claimed for this item is £2,200. The Tribunal understands this to be the budgeted sum for this work which means that if the sums are not committed they will be reimbursed. The Tribunal is satisfied in the absence of any contrary estimates that the sum of £2,200 is reasonable and payable in respect of work of repair and clearing the gutters, should it be necessary to undertake work then

the managing agent will provide details of the expenditure in the accounts, supported if necessary by invoices.

Service charge/ The Reserve fund

56. In his submissions Mr Kingston stated in paragraphs 18- 21 that -: "…The Lease makes provision for a Reserve Fund in Clause 4(ii)… and in paragraph 3 of the Fifth Schedule … The purpose of the Reserve Fund is to ensure that the additional rent (the Service Charge) does not *"fluctuate unduly from year to year"*. The Fifth Schedule paragraph 3 is the covenant by the Landlord to provide a *"reasonable"* Reserve Fund in accordance with Clause 4(ii) if *"reasonably"* required in accordance with advice tendered by the Landlord's managing agents or surveyors. No such advice has been disclosed and no evidence of the reasonableness of the sum claimed has been provided. The approach being taken by the Landlord produces exactly the opposite outcome to that intended by Clause 4(ii) of the Lease. The claim for £60,000 produces an undue fluctuation in the Service Charge as described above. "

57. Mr Kingston submitted that although the lease provided discretion for the landlord to levy a service charge for future works by use of a reserve fund; this was not an unfettered discretion. He noted in his written submissions that the Respondent had not addressed the requirement for the sums of money claimed as a reserve in their statement of case.

58. Ms Mc Gill relied upon the evidence of Mr Hentschel in support of the provision for the reserve fund. She referred to the fire escape at the premises. She stated the managing agents used Hallas & Co as part of a group of surveyors who undertook work. She was asked about the relationship between the landlord and Hallas & Co. She stated that they were amongst a group of surveyors used on the landlord's property, and that they provided continuity in respect of the landlord.

59. Mr Hentschel stated that a specification was to be produced as the building was in poor condition. Town and City had commissioned Hallas to carry out a survey. Mr Hentschel stated that he had carried out a survey and he referred to the photographs that were in the bundle. He stated that based on his inspection the exterior of the premises was in need of repair, the fire escape was considered to be in a dangerous condition. He also referred to the windows of the property which were in poor decorative condition, with wet rot and bare timber, some of the window frames would need to be replaced.

60. He stated that there had been four tenders for the work. He referred to a specification which was prepared by Hallas & Co. There was provision for scaffolding for access, repairs and redecoration to the windows and the asphalt to the flat roof, repointing, the renewal and repair of masonry and iron work and work to the fire escape and the emergency lighting.

61. Mr Kingston referred to email correspondence from leaseholders who queried the need for work to the fire escape. He asserted that based on the inspection of the fire escape, the leaseholders contended that the fire escape did not need to be replaced as it could be painted. The tender report contained three quotations one from Stone Home Refurbishment Ltd of £73,267.00, and CLC in the sum of £123,474.00 and MNM in the sum of £143,876.00.

62. The previous managing agents Rendall & Rittner had in 2017 stated the landlord's intention to commission Stone Home Refurbishment Limited to carry out internal decoration.

63. In his submissions Mr Kingston did not dispute that some work was necessary. He stated-: " …The Applicants do **not** dispute that works of maintenance and repair are required to the building. However, they object to:

(1) the misuse of the Reserve Fund contributions provisions which produces an enormous hike in the Service Charge for one year;

(2) the process for producing the tenders/quotations for works which is not transparent and lacks specificity."

The tribunal's decision and reasons for the tribunal's decision

64. The Tribunal in its decision noted that the lease does not oblige the landlord to have a reserve fund; the purpose of the fund is to anticipate the planned maintenance needed for the building.

65. This means that even though the lease provides for a reserve (set out) in paragraphs 2 of the fourth schedule and paragraph 3 of schedule five, irrespective of the clauses which provide for the reserve the landlord is obliged under the terms of the lease to carry out the work of planned maintenance and renewal of the fabric of the building.

66. The issue is whether the fluctuation in demand means that the landlord is not entitled to collect the sums for the reserve.

67. The Tribunal noted that in previous years there had been an under collection of the sums needed for future work to the building. Given this the Tribunal places no reliance on the previous sums contributed to the reserve as they were wholly insufficient to meet the cost of the work to the building.

68. The Tribunal cannot accept Mr Kingston's interpretation that in attempting to build up the reserve fund this would cause a greater level of undue fluctuation of the service charges (which could be collected in advance and as a balancing payment) than if the Respondent abandoned the reserve fund and decided to recover the charges by making direct demands for the whole of the sums payable for the major work.

69. The Tribunal has heard that very little work has been carried out by way of maintenance on the building and that the specification for major works was prepared in 2017, this means that in the interim the condition of the building is likely to have deteriorated. The Tribunal accepts that major work will be needed and that any sums collected by way of reserve will be off set against the final demand. Accordingly the Tribunal finds the sums demanded reasonable and payable.

Application under s.20C and refund of fees

70. At the end of the hearing, the Applicant made an application for a refund of the fees that he had paid in respect of the application/ hearing[1]. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the Respondent to refund any fees paid by the Applicant [within 28 days of the date of this decision].

71. In the application form and at the hearing, 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 determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

72. Although the Tribunal has made determinations of the reasonable sums which are payable for 2019/20 we are mindful that the sums claimed are reasonable but only payable at such time as the respondent complies with statutory requirements and the terms of the lease. The Tribunal also notes that the sums claimed may alter when the accounts have been prepared for this year.

Name: Judge Daley **Date:** 31.01.2020

[1] The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

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.