FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case References	**:**	**LON/00BK/LDC/2020/0138** **LON/00BK/LSC/2020/0287**
Property	**:**	**2 Sussex Place, London W2 2TP**
Applicants	**:**	**John Cappuccini (Flat B)** **Tim D'Offay (Flat C)** **David Pease (Flat D)** **Sarah Koch (Flat E)**
Representative	**:**	**Mr Richard Koch**
Respondent	**:**	**Church Commissioners for England**
Representative	**:**	**Knight Frank Managing Agents**
Type of Applications	**:**	**Liability to pay service charges and dispensation from consultation**
Tribunal	**:**	**Judge Nicol** **Mr SF Mason BSc FRICS**
Date and venue of hearing	**:**	**5th July 2021 by remote video conference**
Date of Decision	**:**	**30th July 2021**

DECISION

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(1) The service charges for the years 2018-19 and 2019-20 challenged by the Applicants in these proceedings are payable save for the following reductions in the relevant costs:

(a) The internal repair cost of £2,567.08 is reduced by £300;

(b) The meter cupboard door replacement cost of £2,566.80 is disallowed in its entirety;

(c) The external façade and feature repairs cost of £20,940 is limited to a total of £1,250;

(d) The cost of the redecoration to external façade and entrance area of £6,834 is reduced to £3,000 (inclusive of VAT);

(e) The management fees are reduced by 50% to a total of £2,327 for the two years in dispute.

(2) On the Respondent's indication that they do not intend to seek their costs of these proceedings through the service charges or from the Applicants, the Tribunal makes no order as to costs, save that the Respondent shall reimburse the Applicants' Tribunal fees.

Relevant legislative provisions are set out in the Appendix to this decision.

Reasons for Decision

1. The Applicants are the lessees of four of the five flats at the subject property.

2. The Respondent is the freeholder. In 2018 they bought and merged the head lease when the head lessee, Millcroft Investments Ltd, went into liquidation, and appointed Knight Frank as managing agents. The Applicants welcomed this as Millcroft had neglected the property, leaving it with a significant number of outstanding issues. Unfortunately, the Applicants have been dissatisfied with the efforts of the Respondent and their agents, resulting in the current proceedings.

3. The parties have each made an application:

   (a) The Applicants applied for a determination under section 27A of the Landlord and Tenant Act 1985 ("the Act") as to the reasonableness and payability of service charges sought by the Respondent.

   (b) One of the matters on which the Applicants seek a determination involves major works. The Respondent has applied under section 20ZA of the Act for dispensation from the consultation for those works required under section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003.

4. The applications were heard by remote video conference on 5th July 2021. The Tribunal heard from:

   - Mr Richard Koch, the husband of the Fourth Applicant, representing the Applicants; and
   - Mr Peter Devere-Catt, a partner at Knight Frank and the Respondent's representative.

5. The Tribunal had available the following documents in electronic form:

- A merged bundle of 548 pages containing documents relied on by each party;
- A Supplementary Bundle of 40 pages, containing the applications; and
- A sample lease.

Service Charges

6. The Applicants disputed costs for a number of items, the following being those left after some had been resolved during the proceedings:

2018-19

(a) Internal repairs	£2,567.08
(b) Management fees	£1,981

2019-20

(c) Meter cupboard door replacement	£2,566.80
(d) External façade and feature repairs	£20,940
(e) Redecoration to external façade and entrance area	£6,834
(f) Fire alarm/Emergency lighting testing	£450
(g) Management fees	£2,673

7. At the commencement of the hearing, the Tribunal allowed the parties time to talk, as a result of which Mr Devere-Catt made a number of concessions:

(a) In relation to the works referred to in sub-paragraphs (d) and (e) above, both carried out by Nero Building Services, he accepted that some deficiencies had been identified in the joint report produced by the parties' respective experts, Mr Steven Way MRICS for the Applicants and Mr John Lowes MRICS for the Respondent, and reduced the amounts claimed by 30%.

(b) He further reduced the amounts claimed for those works by £500 to take account of faulty sign design. The actual cost of remedying the problem had been less but he did not have available the invoice for the sub-contractor who was responsible for the remedial work.

(c) In respect of the works in sub-paragraph (c) above, he accepted that the meter cupboard door at least needed adjustment and he suggested a reduction of £500 to cover the cost of doing so.

8. The Applicants remained dissatisfied with the Respondent's approach and maintained their objections which are considered in turn below.

Internal repairs

9. On 29th August 2018 Green Vale Contractors Ltd invoiced the Respondent for works at a cost of £2,567.08. The parties' experts agreed that this work had been done, save that safety or toughened glass had not been used in glazed doors, which was unsatisfactory. The

Applicants provided an alternative quote for the work which they submitted showed a more reasonable amount for the work.

10. The Applicants also protested that the cost of £49.99 for health and safety signs included in these works was not reasonable because they were "home made" and did not comply with the relevant standards.

11. The Applicants also pointed out that the Respondent had not carried out any consultation or tendering as required under section 20 of the Act and the Service Charges (Consultation Requirements) (England) Regulations 2003. The threshold triggering these requirements is where the relevant costs will result in a service charge greater than £250 per property. In the subject property, that means any works costing over £1,250. In fact, Greenvale invoiced for a sum twice that amount.

12. There is no suggestion that any consultation was undertaken. As referred to above, the Respondent sought dispensation from the statutory consultation requirements. That application makes no reference to these particular works or the Redecoration works but, by letter dated 23rd March 2021, the Tribunal granted the Respondent permission to extend the application to both of them. The Applicants objected that there was no formal amendment of the Respondent's statement of case but the Tribunal is satisfied that the Applicants have had sufficient notice of the Respondent's case.

13. Dispensation from the requirements under section 20ZA of the Act must be considered in accordance with the principles established by the Supreme Court in *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854:

    (a) Sections 19 to 20ZA of the Act are directed to ensuring that lessees of flats are not required to pay for unnecessary services or services which are provided to a defective standard or to pay more than they should for services which are necessary and provided to an acceptable standard. [42]

    (b) On that basis, the Tribunal should focus on the extent to which lessees were prejudiced by any failure of the landlord to comply with the consultation requirements. [44]

    (c) Where the extent, quality and cost of the works were unaffected by the landlord's failure to comply with the consultation requirements, an unconditional dispensation should normally be granted. [45]

    (d) Dispensation should not be refused just because a landlord has breached the consultation requirements. Adherence to the requirements is a means to an end, not an end in itself, and the dispensing jurisdiction is not a punitive or exemplary exercise. The requirements leave untouched the fact that it is the landlord who decides what works need to be done, when they are to be done, who they are to be done by and what amount is to be paid for them. [46]

(e) The financial consequences to a landlord of not granting dispensation and the nature of the landlord are not relevant. [51]

(f) Sections 20 and 20ZA were not included for the purpose of transparency or accountability. [52]

(g) Whether or not to grant dispensation is not a binary choice as dispensation may be granted on terms. [54, 58, 59]

(h) The only prejudice of which a lessee may legitimately complain is that which they would not have suffered if the requirements had been fully complied with but which they would suffer if unconditional dispensation were granted. [65]

(i) Although the legal burden of establishing that dispensation should be granted is on the landlord, there is a factual burden on the lessees to show that prejudice has been incurred. [67]

(j) Given that the landlord has failed to comply with statutory requirements, the Tribunal should be sympathetic to the lessees. If the lessees raise a credible claim of prejudice, the Tribunal should look to the landlord to rebut it. Any reasonable costs incurred by the lessees in investigating this should be paid by the landlord as a condition of dispensation. [68]

(k) The lessees' complaint will normally be that they have not had the opportunity to make representations about the works proposed by the landlord, in which case the lessees should identify what they would have said if they had had the opportunity. [69]

14. The Applicants have suffered prejudice in the sense that the experts found fault with one item. In the Tribunal's opinion, the costs are not reasonable to the extent that the glass in glazed doors must be replaced by safety or toughened glass. The Tribunal estimates that cost at around £300 and, therefore, the relevant costs should be reduced by that amount.

15. However, the prejudice referred to in *Daejan* must not simply follow a lack of consultation but must be caused by it. The lack of consultation, by itself and without more, is not regarded as relevant prejudice. The Applicants have not been able to establish any further prejudice and so the Tribunal has no basis on which to refuse dispensation.

Meter cupboard door replacement

16. In a Fire Risk Assessment carried out by BB7 on the instruction of Knight Frank on 13th July 2018, it was recommended as a medium priority that the electrical meter cupboard door should be kept locked shut.

17. On 10th August 2018 Masterfix GB Ltd quoted to remove the old iron door and fit a new bespoke fire door at a cost of £2,139.

18. On 10th December 2018 the Respondent served a Notice of Intention to carry out the works.

19. On 24th June 2019 Masterfix invoiced for completing the work at a total cost, with VAT, of £2,566.80.

20. However, by email dated 13th December 2019, Knight Frank acknowledged that the door was exceptionally difficult to open due to the damp conditions inside the room. The Applicants allege that the Respondent was aware of the damp issues so that it was foreseeable that the bespoke door, made of wood, would be adversely affected. They point to quotes obtained from two separate building contractors who suggest the wooden door is unsuitable and should be replaced by one of metal construction.

21. The Respondent did not complete the requisite consultation process under section 20 of the Act and the aforementioned Consultation Requirements Regulations or tender for the works. The Applicants allege that, if they had, the damp problem would have been pointed out and addressed.

22. The Respondent claims that the works were too urgent to go through the full consultation process but this is not supported by the Fire Risk Assessment or the actual amount of time it took them to get the work done.

23. The Applicants' expert, Mr Way, noted in his report that the door does not close due to swollen timber and so does not work. He pointed out that a fire door that is left ajar is not a fire door and represents a greater risk than if the original door had been retained. He stated that he cannot understand how the contractor can have been paid with the door left in this inoperable condition.

24. In their joint schedule the parties' respective experts agreed that the door is not currently functioning correctly but that no remedial work had been carried out nor the cost of such allowed against the cost of the work so far done.

25. In the circumstances, the Tribunal is satisfied that Mr Way's observations are correct. The work done is worse than useless and the cost has not been reasonably incurred. Therefore, the whole of the cost should be disallowed. On that basis, dispensation from the consultation requirements is irrelevant.

External façade and feature repairs

26. The Fire Risk Assessment carried out by BB7 on 13th July 2018 also recommended a number of other works. On 10th December 2018 the Respondent served a Notice of Intention to carry out such works. However, despite their expert, Mr Lowes, framing the following events as such, they did not proceed with a proper tendering process. Instead, they obtained two quotes from PJ Harte, dated 29th April and 10th June 2019 respectively.

27. The Respondent did not employ anyone to draw up a specification of the works or to supervise their execution. They used the works listed by PJ Harte in lieu of a specification and obtained another (undated) quote for £17,450 (excluding VAT) from Nero Building Services, to whom the contract was awarded.

28. The Applicants also pointed to paragraph 9.13 of the RICS Service Charge Residential Management Code (3rd Edition), arguing that Knight Frank did not even try to undertake as much of the consultation process as they thought possible:

> In extremely urgent situations your client may wish to undertake works prior to obtaining dispensation from the FTT, which can be granted retrospectively. Such situations have resulted in a number of challenges in the FTT, but one common theme from resulting determinations is that landlords should undertake as much of the consultation process as possible. They should attempt to ensure that leaseholders are not prejudiced and that demonstrable value for money has been obtained.

29. The Applicants claimed that Nero did not carry out some of the specified work and some of what they did was defective. The parties' experts' joint schedule agreed on the following:

(a) Scaffolding to the rear elevation was included as part of the specification but not used.
(b) They could not identify whether reinforcement Helibars had been installed to the balcony slab as specified.
(c) Railings had not been installed to the rear first floor terrace as specified. The Respondent suggested the area was instead secured by locking the access but this does not address the fact that the Applicants were charged for the specified work.
(d) One railing head to the front of the building had been replaced but otherwise, the work to those railings had not been done satisfactorily or as specified.
(e) They could not identify whether specified welding repairs had been done.
(f) The rear elevation terrace at second floor level had been re-asphalted but without a solar finish.
(g) Other works to the rear elevation terrace, including amendments to the fall, a new roof outlet and re-routing a downpipe, were not carried out.

30. There can be no doubt that the full amount charged by Nero is not reasonable or payable because they simply did not do all the work they charged for. The Applicants tried to find Nero but no such company was registered at the given address and the website on their letterhead was not operative. The Applicants obtained alternative quotes for £15,270 (Calsan Builders) and £14,445.08 (Lucas Building Services Ltd) but, with the missing works, submitted the value of what had actually been done was worth no more than £8,925.26.

31. Alternatively, they pointed to the Respondent's failure to comply with the statutory consultation requirements. Arguments before the Tribunal following *Daejan* (see above) are normally about what the lessees could have said or done if they had been consulted properly and what prejudice resulted from their inability to say or do those things. However, the statutory requirements are not just about consultation. They concentrate the landlord's mind on the procedure which needs to be followed and incorporate good practice.

32. In this case, the Respondent cut corners and, as is often the case when corners are cut, it was counter-productive. If the full statutory requirements had been followed, it is likely that the works would have been specified properly and supervised. The requirements do not include supervision as such but the need for a full tendering process and to justify the works to the lessees would likely involve the appointment of someone in that role or at least a degree of control and supervision. It is the lack of proper specification or supervision which allowed Nero to quote for an amount which their actual work did not justify. This is the prejudice to the Applicants which has been clearly identified.

33. In the circumstances, the Tribunal has decided to refuse dispensation from the consultation requirements because it would not be reasonable to grant it. Therefore, the cost of these works is limited to a total of £1,250.

Redecoration to external façade and entrance area

34. Nero were also instructed to carry out some redecoration works which they invoiced on 30th August 2019 for £6,834. There was no tendering process or other compliance with the statutory consultation requirements. The Applicants were concerned that, as a result, the cost of the works had been inflated, including by artificially separating out these works from the other works carried out by Nero.

35. The Applicants obtained an alternative quote for the work from Mr Nick Leevers. The quote, for £2,895, was supported by photos showing the relevant areas of the building.

36. Mr Devere-Catt conceded that there should be a reduction of 30% due to issues with the standard of work and compliance with the specification.

37. As with the internal repairs considered above, there was prejudice in the sense that the works were not of a reasonable standard and the cost was not reasonable in amount but, unlike with the larger external façade works, the Applicants have not been able to show that this was the result of the failure to comply with the consultation requirements.

38. In the circumstances, and doing its best with the evidence available, the Tribunal has determined that a reasonable amount for the redecoration works would be no more than £2,500 plus VAT.

Fire alarm/Emergency lighting testing

39. The Applicants complained that the contract for emergency lighting testing provided for reports to be uploaded directly to RiskWise but that this had not been done.

40. In fact, the contractors tested weekly in accordance with a contract the Respondent had for such matters across its property portfolio. This was an unusually good service for a property this size whereas the failure to upload reports was a minor issue with little impact. The charge of £450 was good value for the actual service delivered. Therefore, it is reasonable and payable.

Management fees

41. Knight Frank charged £1,981 for their management services in 2018-19 and £2,673 in 2019-20, a total of £4,654. That is £465.40 per flat per year.

42. The Applicants don't dispute that Knight Frank did some work but complain of continuous failures to communicate or deal with complaints in a timely or transparent manner, to tender, supervise or inspect for commissioned works, to account for previous charges following the Applicants' acquisition of the right to manage in April 2020 and to bill them for their charges accurately.

43. The Respondent points out that they took over a building which clearly needed significant work to bring it back up to standard after the neglect of their predecessors. Their efforts which are subject to criticism in these proceedings were aimed at carrying out the minimum essential works before more comprehensive works could be carried out later.

44. In the Tribunal's opinion, the Respondent's aims were laudable but, as referred to above, their approach was to cut corners. They tried to rush without achieving any great speed, instead only delivering a lower standard of service than would have been the case if they had just proceeded in a standard manner, complying with all of their legal obligations.

45. In the circumstances, the Tribunal agrees with the Applicants that Knight Frank's fees should be cut by 50%.

Costs

46. The Tribunal granted the Respondent dispensation from the statutory consultation requirements in respect of two matters. As the Supreme Court stated in *Daejan*, dispensation may be granted subject to conditions. The Respondent's inexcusable failure on a number of occasions to comply with the requirements means that the Applicants' employment of Mr Way to advise them on whether they had suffered any prejudice was entirely reasonable. Therefore, it is a condition of the grant of dispensation that the Respondent pay Mr Way's reasonable

fees of £2,531.16 for his work in these proceedings (the Respondent had no objection to the amount claimed).

47. The Applicants sought orders under section 20C of the Act and paragraph 5A of the Commonhold and Leasehold Reform Act 2002 that the Respondents may not add their costs of these proceedings to the service charges. They also sought reimbursement of their Tribunal fees.

48. Mr Devere-Catt told the Tribunal that the Respondent would not, in fact, be seeking any of their costs arising from the proceedings. On that basis, there is no need for a section 20C or paragraph 5A order – the Respondent is bound by the assurance given to the Tribunal.

49. However, the Tribunal is satisfied that it would be appropriate to order reimbursement of the Applicants' fees and does so.

Name: Judge Nicol **Date:** 30th July 2021

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 20 Limitation of service charges: consultation requirements

(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 20ZA Consultation requirements: supplementary

(1) Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

(2) In section 20 and this section—

"qualifying works" means works on a building or any other premises, and

"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

(a) if it is an agreement of a description prescribed by the regulations, or

(b) in any circumstances so prescribed.

(4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord—

(a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,

(b) to obtain estimates for proposed works or agreements,

(c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,

(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and

(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6) Regulations under section 20 or this section—

(a) may make provision generally or only in relation to specific cases, and

(b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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.

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.

Service Charges (Consultation Requirements) (England) Regulations 2003

4.— Application of section 20 to qualifying long term agreements

(1) Section 20 shall apply to a qualifying long term agreement if relevant costs incurred under the agreement in any accounting period exceed an amount which results in the relevant contribution of any tenant, in respect of that period, being more than £100.