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**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **LON/00AJ/LSC/2013/0394**

Property : **Flats 1,3 and 11 Priory Lodge,
Castlebar Road, Ealing, London W5
2DE**

Applicants : **Cecil Patrick & Julie Antoinette
Conn (flat 1)
Dhiren Ranchod & Pushwinder
Raghvani (flat 3)
Futtocksend Limited (flat 11)**

Representative : **Mr J Picken of William Sturges LLP**

Respondent : **Giovanni & Julie Francesco Cataldo**

Representative : **Mr D Giles of counsel instructed by
VR & Shaw Solicitors**

Type of Application : **Ss.27A and 20C, Landlord and
Tenant Act 1985**

Tribunal Members : **D Banfield FRICS
M Taylor FRICS
Mrs L Hart**

**Date and venue of
hearing** : **4 November 2013
10 Alfred Place, London WC1E 7LR**

Date of Decision : **24 December 2013**

DECISION

Summary of decision

The Tribunal disallows the following sums:

<u>2006</u>	<u>£12,703.88</u>
<u>2007</u>	<u>£5,400.00</u>
<u>2008</u>	<u>£4,481.95</u>
<u>2009</u>	<u>£7,969.58</u>
<u>2010</u>	<u>£5,400.00</u>
<u>2011</u>	<u>£4,749.97</u>
<u>2012</u>	<u>£3,965.00</u>
<u>Total</u>	<u>£44,670.38</u>

Background

- 1 This is a purpose built block of 12 two-bedroomed flats arranged over 3 floors. Flat 1 is held on a lease dated 7/10/2009 for 120 years from 25 /3/2009; Flat 3 and garage 9 is held on a lease dated 14/2/1975 for 120 years from 25/3/1973 and Flat 11 and garage 12 is held on a lease dated 19/4/1974 for 120 years from 25/3/1973
- 2 A copy of the lease for Flat 11 (and garage 12) has been exhibited and it is taken that each lease is in similar form save as to the absence of a garage for Flat 1.
- 3 The applicants seek a determination under Section 27A of the Landlord and Tenant Act 1985 as to whether service charges are payable.
- 4 The Applicants also seek an order for the limitation of the landlord's costs in the proceedings under Section 20C of the Landlord and Tenant Act 1985.
- 5 An oral pre-trial review was held on 27 June 2013 and the following issues were identified as requiring determination for the years 2005 to 2012 and the estimated charges for 2013;
 - The payability and reasonableness of the management fee where the landlords manage the property themselves.
 - the reasonableness of cleaning charges when little cleaning is said to be carried out.
 - The payability and reasonableness of legal fees where there is no reference to legal fees in the lease.
 - Whether any amounts are due for 2007, 2008 and 2009 where no service charge accounts have been provided and only statements of account have been provided which it is said do not comply with the provisions of the lease.
- 6 Directions were made requiring the landlord to disclose all relevant service charge accounts and estimates for the years in dispute audited and certified where required under the lease together with all demands for

- payment and details of payments made together with all supporting invoices and receipts and any relevant maintenance contracts.
- 7 A timetable was then set for the preparation and exchange of statements and the provision of a bundle for the hearing.
 - 8 At the hearing into this matter on 4 November an additional document was produced by the Respondent which the applicant said had not previously been disclosed.
 - 9 By a letter dated 5 November the Applicants' representative wrote to the Tribunal indicating that they had been surprised by the late disclosure and requested that the Tribunal carry out an inspection to determine the disputed facts and if necessary to re-open the hearing.
 - 10 The Tribunal accepted that the Applicants had been put at a disadvantage by the late production of the document and issued further directions requiring the Applicants to identify the bins concerned and to provide a quotation for the supply of such bins by Ealing Council.
 - 11 The Respondents were then given the opportunity to respond.

Hearing

- 12 Mr Picken confirmed that he acted for all of the Applicants but had submitted witness statements in respect of Flats 3 and 11 only.
- 13 It was agreed that service charge year 2005 was not part of the application.
- 14 In opening Mr Picken said that the Applicants had been attempting to get information relating to the service charge accounts for some time without success and it was for this reason that the application to the Tribunal had been made.
- 15 Mr Picken called Mr Horne, a director of Futtocksend Ltd who amplified his witness statement (p.52).
- 16 Mr Giles objected to the raising of a number of expenditure headings and said that the only matter challenged for 2006 had been accountancy. Mr Picken pointed out the impossibility of providing a detailed challenge in the absence of the service charge accounts which should have been submitted in accordance with the Directions. After being referred to the Applicant's supplementary reply of 11 October 2013(p425) Mr Giles agreed that we should proceed to hear evidence on all the matters raised.
- 17 Mr Giles called Mr Cataldo who gave evidence which will be referred to below.

Evidence and decision

2006

18 Repairs and Maintenance - General -£9,831.88

Mr Picken said that no invoices had been made available and it had not been possible to determine to what these charges relate. Mr Cataldo says that the accounts have been examined by an accountant which should provide sufficient proof. In the bundle he referred to "further supporting invoices and receipts" (pgs.94-114) but on examination they proved to be duplicates of those already supplied none of which related to either repairs or maintenance.

Decision

We have seen no explanation as how this sum has been arrived at and in the absence of any receipts we disallow it in its entirety.

19 Cleaning and refuse - £1,776

Mr Picken said that the invoices did not indicate the amount of hours charged under this heading and said the cleaning was not always up to standard. Debris had been left in the hallway for some time on one occasion . No alternative quotations were ever sought. Mr Giles said that there was no evidence that the charge was unreasonable and no alternative quotations had been obtained by the Applicants.

Decision

We do not consider that the lack of detail as to hours worked is a bar to the recovery of these sums and in the absence of any alternative quotations for this item with one exception determine the charge is reasonable. The exception however is the invoice from Courage Cleaning Services at page 84 dated 28/3/06. This is clearly a copy of the invoice at page 86 with the invoice number, date and cheque number altered. In the absence of a valid invoice we disallow the sum claimed of £72.

20 Gardening - £1,223.56

Mr Picken acknowledged that the garden was well maintained but repeated his complaint that the hours worked should be made available. Mr Giles again said that no evidence had been provided of alternative quotations.

Decision

In the absence of alternative quotations and with the acknowledgement that the garden is well maintained we allow the sum in full.

21 Miscellaneous - £25 - Not challenged

22 Electricity - £525.47

Mr Picken says that in the absence of invoices this should be disallowed.

Decision

Clearly electricity has been consumed at the premises and the charge seems broadly in line with charges in later years where invoices are available. We therefore allow this sum in full.

23 Management Fees - £2,800

Mr Picken says that the lease does not provide for the recovery of a fee for "self management". In the alternative he says the fee of approximately 20% of expenditure is excessive.

Mr Giles says that as the freehold is held jointly by Mr and Mrs Cataldo in effect Mrs Cataldo had appointed Mr Cataldo as her Managing Agent and as such his charges are properly payable under the lease. He said that this arrangement would have been made known

when the applicants purchased their leases and it was up to them to accept the position or not.

Mr Cataldo said that when he bought the freehold of the property he and his wife also owned 7 of the flats. At that time his wife appointed him Managing Agent and this was confirmed by a meeting of the then lessees. He continues to manage the property on his wife's behalf.

Decision

The lessee's obligations to pay service charges are contained within Clause 2 of the lease. Amongst the list of matters to which a contribution is required is, at (2)(xii) *"the fees of the Lessor's Managing Agents for the collection of the rents of the flats in the building and for the general management thereof and the fees of any accountant incurred in connection with the provisions of the Housing Finance Act 1972 or any Statutory amendment thereof"*.

Mr and Mrs Cataldo are joint owners of the freehold and we do not accept Mr Giles arguments as to Mr Cataldo acting as agent for Mrs Cataldo. We do not say this cannot occur but we do not consider that Mr Cataldo can be classified as a "Managing Agent" as envisaged by the lease. There is of course nothing to prevent Mr Cataldo managing the building but if he continues to do so he may not claim a fee. we therefore disallow this amount in its entirety.

24 Insurance - £2,109.40

Mr Picken says no invoice is available and therefore they cannot be certain that cover was in place.

Decision

It seems unlikely that Mr Cataldo would allow insurance cover to lapse in a building where he owned not only the freehold but also one or more flats. We are satisfied therefore that cover was obtained and as the sum claimed is broadly in line with later premiums where documentation is available we allow the sum in full.

2007

25 Repairs and Maintenance - General -£8,266

Mr Picken challenges the replacement of flat doors at a cost of £2,000 on the grounds that no such replacement has occurred and that in any event the doors are part of the demise of the flat and cannot be a service charge item. He challenges the boiler maintenance charge and cleaning charge as relating to flat 1 and not a matter for the service charge. He also says that not every flat has a garage and that electricity supplied should not therefore be a service charge item. Finally he says that the invoices provided only support £6,314 rather than the sum claimed.

Mr Cataldo says that the invoices provided support the charge made, that the doors have been replaced and that the repairs to flat 1 are covered by Clause 2 (2)(a)(ii) of the lease. He says that work to the garages' electrical supply relates to upgrading the main supply cable from the main block.

Decision

Part 1 of the First Schedule defines the extent of the lessee's demise. Included within the demise are the "*walls bounding the flat and the doors and door frames and window frames fitted in such walls (other than the external surfaces of such doors frames and window frames)*" It is clear therefore that whilst the lessor may have a decorating obligation for the external surfaces of such doors the doors themselves are the responsibility of the lessee and are not properly charged to the service charge. We therefore disallow the following sums; (page 160) supply tenant door replacement £2,000; (page 127) works to the boiler in Flat 1 £120; (page 133) moving furniture from flat to garage and cleaning garage, £200; 3 trips to garbage dump £150 and Hovering (sic) flat £30. We accept that the expenditure on the garage electrics relates to the main supply and as such we allow it in full. We accept that Flat 1 does not have a garage but in the absence of any argument from the lessee of Flat 1 as to how this might affect their liability we are not prepared to find that any part of the service charge is unreasonable on these grounds alone. We are satisfied that the sum demanded is not in excess of the invoices presented.

26 Cleaning and refuse - £1,702

Decision

For the reasons set out in paragraph 19 we allow the amount in full.

27 Gardening - £1,298

Decision

For the reasons set out in paragraph 20 we allow the amount in full.

28 Miscellaneous - £380 - Not challenged

29 Electricity - £599 - Not challenged

30 Management Fees - £2,900

Decision

For the reasons set out in paragraph 23 we disallow the amount in full.

31 Insurance - £2,027 - Not challenged

2008

32 Repairs and Maintenance - General -£7,696

Mr Picken challenges the replacement of carpets for £580 (page180) and says that common part carpets have not been replaced as evidenced by his complaints of their condition; the invoice for works to the shower at flat 5 (page 177) for £249; the works to the satellite installation (page 208) for £560.; rubbish removal (page 189) £350, Furniture removal (pages 174 & 191) for £205; keys, and works to toilet flush totalling £85.95.

Mr Cataldo said that the works to the satellite were to his own installation and followed damage he discovered when he returned from abroad which he believed to have been caused by contractors working for a lessee. He didn't consider he should bear the cost. He said that the carpets related to an area between the ground and first floor. On being shown the invoice that referred to "supply and fit carpets throughout" and which was addressed to Flat 4 he said that the contractor must have made an error in the invoice and that the invoice was probably for the fitting of nosings to the stairs between ground and first floors. He said that the works to the shower were necessary as the lessee was abroad at the time.

Decision

We are not satisfied by Mr Cataldo's explanations as to the carpets and consider it more likely that the charges are as set out in the invoice. We therefore disallow the sum in full. The work to Mr Cataldo's satellite system is clearly not a service charge item, howsoever any damage may have been caused and is disallowed in full. Works to the toilet flush costing £17.95 can only relate to an individual flat and again is disallowed. We are not satisfied that the hand written note from Mr Cataldo at page 191 indicating a cash payment of £175 for "furniture to be removed from premises and disposed" sufficiently identifies that this is rubbish removal from the common parts and is disallowed. The work to the shower in flat 5 should be charged to the lessee of that flat and not to the service charge account and is therefore disallowed.

33 Cleaning and refuse - £1,671

Decision

For the reasons set out in paragraph 19 we allow the amount in full

34 Gardening - £1,367

Decision

For the reasons set out in paragraph 20 we allow the amount in full.

35 Miscellaneous - £405 - Not challenged

36 Electricity - £736 - Not challenged

37 Management Fees - £2,900

Decision

For the reasons set out in paragraph 23 we disallow the amount in full.

38 Insurance - £1,993 - Not challenged

2009

39 Repairs and Maintenance - General -£8,959

Mr Picken challenges the authenticity of the hand written invoice for rubbish removal (page 253 for £117.67 and says that if it is genuine it probably relates to rubbish from a flat and should be recharged to the owner; a charge of £220 described as repairs to roof of flat 12 and for which there is no receipt; the invoice for £300 (page263) for fitting 4 vents; carpets for £2,700(page252) evidenced only by a hand written note; a replacement window for £946.91 (page 254) which appears to relate to Flat 8; an EPC assessment for £85 (page 255) and electrical works for £220 (page264) both relating to Flat 12; the invoice for £750 described as "labour" which appears it may be for £50(page 231).

Mr Cataldo explained that the £750 invoice for labour related to the replacement of glass in the front door following vandalism; that the replacement window followed damage by a falling branch and that the handwritten reference to Flat 8 was not his; that the carpet replacement relates to the ground floor and followed vandalism; that the vents related to various flats; that the invoice for an EPC certificate was in error and that the invoice for electrical works to Flat 12 did not exist.

Decision

We have carefully examined the invoice said to be for £750 in respect of replacing glass in the front door. The invoice is clearly for £50 and at some stage has been altered to read £750. We make no comment as to how this may have occurred but disallow the additional £700. We likewise disallow the invoices relating to individual flats as not being service charge items; £300 (page263),£946.91 (page 254), £85 (page 255)and £220 (page 264) Although there is no invoice for the works to the roof over flat 12 there was no suggestion that the work was not done and as roofs are common parts we allow the sum. We have conflicting evidence as to whether carpeting costs of£2,700 have been incurred and, in the absence of anything other than a hand written note we prefer the evidence of the Applicant and disallow the sum entirely.

The handwritten note relating to a cash payment of £117.67 for rubbish removal gives insufficient information to determine that it is chargeable to the service charge and is therefore disallowed.

40 Cleaning and Refuse - £1,872

Decision

For the reasons set out in paragraph 19 we allow the amount in full.

41 Gardening - £1,379

Decision

For the reasons set out in paragraph 20 we allow the amount in full.

42 Miscellaneous - £133 - Not challenged

43 Electricity - £1,144 - Not challenged

44 Management Fees - £2,900

Decision

For the reasons set out in paragraph 23 we disallow the amount in full.

45 Insurance - £2,236 - Not challenged

2010

46 Repairs and Maintenance - General -£7,838

Mr Picken says that when preparing the Scott's schedule invoices for only £36 were supplied. and that on the schedule Mr Cataldo had advised that the remainder had been lost. By the time of the hearing however, some had appeared the veracity of two of which (pages 309 & 310) he challenged on the grounds that no work had been carried out to the roof above flats 9 & 10 or the garages. In support of this he referred to recent photographs of the garage roofs (439-441) showing extensive moss growth which he said could not have formed in the time since the works were claimed to have been carried out. He further challenged the charge for £60 included in the invoice at page 297 for "disposing of items from garage" and says this should be charged to the garage owner.

Mr Cataldo said that the invoice regarding disposal of items from the garage should have referred to the "garage area" where he said items were sometimes dumped. He agreed that the photographs of the garage roofs were accurate but said that as they were under trees the moss formed very quickly and did not provide sufficient proof that the work was not carried out.

Decision

Mr Picken challenges whether the invoices relating to roof works are genuine and supplies convincing photographic evidence regarding the replacement of the garage roofs and for this reason we disallow the invoice for £2,500 at page 310. No convincing evidence has been provided with regard to the other invoice and we allow them. We are satisfied that on a development such as this it is reasonable for the landlord to dispose of dumped rubbish and we therefore allow the properly invoiced sum of £60 at page 297.

47 Cleaning and refuse - £2,107

Decision

For the reasons set out in paragraph 19 we allow the amount in full.

48 Gardening - £1,502

Decision

For the reasons set out in paragraph 20 we allow the amount in full.

49 Miscellaneous - £343 -

Mr Picken challenged these on the basis of insufficient receipts which were subsequently supplied. No further challenge was made at the hearing.

Decision

Allow in full

50 Electricity - £847 - Not challenged

51 Management Fees - £2,900

Decision

For the reasons set out in paragraph 23 we disallow the amount in full.

52 Insurance - £2,140

This was challenged on the grounds of lack of invoice or any supporting documents which Mr Certaldo said had been lost.

Decision

For the reasons set out in paragraph 24 we allow this sum in full.

53 Reserve - £1,200

Mr Picken accepts that a reserve could be a service charge item but says that no explanation has been given as to the need for such a sum.

Decision

We are satisfied that the clause 2 (xi) of the lease permits the collection of a reserve to meet the future liability of carrying out major works. We therefore allow the amount claimed as reasonable but confirm that expenditure from this fund must be properly accounted for in the service charge accounts at which time it may be the subject of future challenge.

2011

54 Repairs and Maintenance - General -£7,406

Mr Picken challenges invoices at Page 362 (£2,600) and 363 (£3,000) on the grounds that the invoices are suspect in not having either an address or vat number. He said that the exterior had not been redecorated in 2011 as claimed for which scaffolding would have been required and for which there was no evidence. He also says the cupboards referred to do not exist. He also challenges the following invoices on the grounds that they all referred to private flats; £100 (page 366) for connection of a hob; the invoice for £85 (page 361) for an EPC certificate ; the provision of a DVD player for £363.96 (page

359) and Sky satellite receiver for £393.45 (page 360) and the supply of a shelf for £6.63 (page 357)

Mr Cataldo says that the internal decoration was limited to the second floor walls, loft housing cupboards under the stairs and in the roof. He said that he had no further information as to the contractors address and in any event the contractor had now moved abroad. He said the invoice for the hob connection was charged in error and that the charges for Sky receiver and DVD were the result of someone interfering with the wiring in the tank room while he was abroad. He thought that the shelf must have been required by the gardener.

Decision

The evidence before us regarding the decorating costs is insufficient for us to determine that they are unreasonable. Many small contractors are somewhat inadequate in their invoicing and are not VAT registered. We are not therefore prepared to determine that the invoices are suspect. In the absence of evidence as to the standard of work carried out or an alternative quotation we must confirm the sums demanded as reasonable and therefore payable.

We are satisfied that the costs relating to the provision of a DVD player and Sky satellite receiver are personal to Mr Cataldo and should not be a charge on the service charge. These sums are therefore disallowed. We also disallow the hob connection and EPC costs on the same grounds. We accept that the shelf may have been required by the gardener and the expenditure is therefore allowed.

55 Cleaning and refuse - £2,183

Decision

For the reasons set out in paragraph 19 we allow the amount in full.

56 Gardening - £1,591

Decision

For the reasons set out in paragraph 20 we allow the amount in full.

57 Miscellaneous - £3 - Not challenged

58 Audit Fee - £360 - Not challenged

59 Electricity - £774 - Not challenged

60 Management Fees - £2,900

Decision

For the reasons set out in paragraph 23 we disallow the amount in full.

61 Insurance - £2,204 - No longer challenged

This was challenged on the grounds of lack of invoice or any supporting documents which have now been provided.

62 Reserve - £1,579

Mr Picken says that there has been no account for the £1,200 paid to reserve in 2010.

Mr Cataldo said that the whole of the reserves had been spent on two new refuse containers and presented an invoice from Callisto C & Son dated 24 May 2011 for that amount.

In the further submissions referred to in paragraph 10 above the Applicants provided photographs of the containers clearly indicating that they were provided by Ealing Council together with an emailed quotation from the Commercial Waste Manager at Ealing Council confirming that the cost of supplying two new bins and the disposal of the old bins would be £292.44.

In written representations Mr Cataldo said that he had been abroad at the time of the transaction and that Callisto may have bought the containers from Ealing Council but was unaware of the circumstances.

Decision

There has been no challenge to the reserve payment for 2011 subject to proper accounting for expenditure. As such we confirm that £1,579 is reasonable.

With regard to the claimed expenditure from the 2010 reserve we determine that only £292.44 of the expenditure was reasonable and that the balance of £907.56 should be credited to the Reserve account from the lessor's own funds.

2012

63 Repairs and Maintenance - General -£4,545

Mr Picken challenges the invoice for £1,750 for works to the tanks (page 417) on the grounds that the work was not carried out; the provision of window boxes for £1,000 (page 420) as none have been replaced as evidenced by the photographs at pages 431, 434 and 435; the provision of LED lamps for £67.44 (page 409) on the grounds that there are no such fittings in the common parts. He also challenged the painting of the front door (page 408) for £750 saying that the photograph at page 437 showed extensive damage to the finish.

Mr Cataldo said that the window boxes had been installed in flats 8,9 and 10 and included the provision of an access tower. The work to the tank room had been necessary although now that he is building on the roof this area has been cleared. The invoice for painting the front door (page 408) actually related to varnishing and that it was easily

damaged. He also said that the new lights outside the front door had LED lamps installed.

Decision

Whilst it seems a waste of funds to carry out works to the tank room when it was to be removed not long after we accept that if works were required at the time then the lessor was obliged to carry them out. We therefore allow this sum in full. We accept that Mr Cataldo has installed new window boxes to the flat he occupies and whilst it may be somewhat insensitive not to provide them to other flats we accept that they are properly chargeable to the service charge. No alternative quotations were provided as to cost and the amount claimed is therefore allowed in full. We do not have evidence that the new light does not require LED lamps or an alternative quotation for the varnishing of the doors. We therefore allow these sums in full.

64 Cleaning and refuse - £1,967

Decision

For the reasons set out in paragraph 19 we allow the amount in full.

65 Gardening - £1,512

Decision

For the reasons set out in paragraph 20 we allow the amount in full.

66 Audit - £360 - Not challenged

67 Printing, postage and stationary - £76

Mr Picken challenges invoices for £16 (page 413) marked "printing" and £15 (414) which he did not consider to relate to service charge matters.

Decision

The invoice at page 414 included family birthday cards and other stationery of a domestic nature and this sum is therefore disallowed. We have no evidence to show the invoice at page 413 is not a service charge item and therefore allow it in full.

68 Legal and Professional fees - £1,050

Mr Picken says these are personal legal expenses of the respondent.

Mr Cataldo says they relate to a lease extension for Flat 3.

Decision

We agree with the applicant that these are the personal legal expenses of the respondent in extending the lease of flat 3 and as such they are his responsibility and are not a service charge item. We disallow them in full.

69 Miscellaneous - £26

This sum is challenged for lack of receipts or details as to what the expenditure is for.

Decision

In view of the small sum involved and the lack of evidence either way we allow in full.

70 Electricity - £655

Mr Picken says this is excessive for lighting.

Mr Cataldo says the sum is supported by an invoice.

Decision

We accept the invoice and allow the sum in full.

71 Management Fees - £2,900

Decision

For the reasons set out in paragraph 23 we disallow the amount in full.

72 Insurance - £2,233 -no longer challenged

This was challenged on the grounds of lack of invoice or any supporting documents which have now been provided.

Decision

For the reasons set out in paragraph 24 we allow this sum in full.

73 Reserve - £3,102

Mr Picken says it is accepted that a reserve could be a service charge item but says that no explanation has been given as to the need for such a sum.

Decision

The amount claimed has not been challenged and we allow it in full.

Summary

- 74 We are concerned at the manner in which this property is being managed by Mr Cataldo. He needs to remember that he is operating the service charge in order to recover his costs as permitted by the lease and not as a means of defraying his personal expenses. Proper receipts must be kept and made available to the lessees for inspection. The purpose of the reserves are set out in the lease and may be used for "major expenditure" and properly accounted for. It seems clear that the property would benefit from being managed by independent professionals and it is hoped that such an appointment could be made without delay.

Costs

- 75 The applicant has made an application for an order under section 20C of the Landlord and Tenant Act 1985 on the grounds that this was the only way in which information could be obtained and that they had

genuine cause for concern. Mr. Giles said that he would wish to make representations when our decision was promulgated.

76 In view of Mr Giles request we direct that the Respondent send to the Tribunal submissions on the matter of costs only within 14 days of the date of this decision with a copy to the Applicant. The Applicant may make comments on those submissions to be received within 14 days of the receipt of the Respondent's submissions after which the tribunal will make its decision on the papers before us.

D Banfield FRICS

24 December 2013

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.

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) a leasehold valuation 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 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.