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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CHI/00ML/LSC/2015/0032**
Property	:	**Channings, 215 Kingsway, Hove, East Sussex BN3 4FT**
Applicant	:	**Channings Hove Limited**
Representative	:	**Dean Wilson LLP** **Ms C Whiteman, solicitor**
Respondent	:	**97 Leaseholders**
Representative	:	**N/A**
Type of Application	:	**For a determination of the liability to pay service charges**
Tribunal Members	:	**Judge J A Talbot** **Mr R A Wilkey FRICS**
Date and venue of Hearing	:	**16 July 2015** **City Gate House, Dyke Road, Hove BN3 1TL**
Date of Decision	:	**30 July 2015**

DECISION

The application

1. The Applicant, Channings Hove Limited, seeks a determination pursuant to s27A(3) of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether service charges are payable under the terms of the lease.

2. In particular, the Applicant asks the Tribunal to determine whether the charges for proposed works in connection with the replacement of timber screens including side screens and doors in the balcony are recoverable under the terms of the lease as service charges.

3. Directions were issued by Judge Tildesley OBE on 1 May 2015 in which he directed that: "the Tribunal is not at this stage being asked to determine the reasonableness of the charges for the proposed works (including whether the works are necessary). The leaseholders will be entitled to bring an application to challenge reasonableness at a later time if the Tribunal determines that the charges are payable under the terms of the lease".

4. Accordingly the scope of the application, and the Tribunal's determination, is limited as set out in paragraph 2 above.

5. The Applicant served notice of the application and supporting documents on all the Respondent lessees, in accordance with the Directions.

6. In addition, a form was sent to each Respondent asking them to indicate whether they consented to or opposed the application, and whether they wished to make an application under 20C of the 1985 Act. There were in the papers 40 returned forms. All of those lessees supported the application and none opposed it. No Respondent wanted to make a s20C application. Ms Whiteman confirmed that no objections had been separately received. Accordingly, the Tribunal proceeded on the basis that the application was unopposed.

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

The lease

8. The Tribunal had a copy of the lease to flat 9 dated 27 September 1972, supplemented by a deed of variation dated 9 May 1992. We were told that all the leases were in the same form. The original lease term of 99 years from 25 December 1970 was extended by the deed of variation to 999 years.

9. The flat is defined at recital (3) as "ALL THAT Flat numbered 90 and being on the sixth floor of the Building and edged with pink on the annexed plan" (together with a garage which is not material to this application). The Building is simply defined as ""CHANNINGS" KINGSWAY HOVE SUSSEX", which together with the garages, parking spaces and grounds is referred to in the lease as "the Block".

10. There is in the lease no further description or definition of the demise of the Flat, or of the Building, apart from what can be inferred from the respective corresponding repairing obligations and the lessee's obligation to pay service charges.

11. Clause 6(D)(i) requires the landlord to:

"keep the main structural parts of the Block (not comprised in the Flat or any of the Flats in the Block and not the subject of the Lessee's covenant in clause 4(i) hereof or any similar lessee's covenant in any Lease or any other flat garage or parking space in the Block) including without prejudice to the generality of the foregoing the roofs main walls and timbers and external parts thereof (including fixed lights and frames of all windows) and the foundations thereunder and all cisterns tanks sewers watercourses drains pipes wires aerials gutters ducts and conduits not used solely for the purposes of the Flat or any of the other flats or garages in the Block and the entrance halls passages stairs and landings in the Block in good and substantial repair and condition throughout the term hereby granted".

12. Clause 4(i) requires the lessee to :

"Keep the interior of the Flat including the internal partition walls the glass and all the opening and moveable parts of the windows the door to the balcony the garage door the ceilings and the floors above the level of the structural slab and the interior faces of the walls thereof and all cisterns tanks sewers drains and sanitary and water apparatus and the pipes cables wires and appurtenances thereto belonging in good and substantial repair and condition and in particular (but without prejudice to the generality of the foregoing) so as to give such support shelter and protection to the parts of the Block other than the Flat as is consistent with the due performance of the Lessee's obligations herein contained".

13. The lessee's obligation to pay services charges is contained in Clause 4(ii):

"To pay and contribute in manner hereinafter provided the Lessee's proportion as defined in Recital 5 hereof of all moneys expended by the Lessor in complying with its covenants under Clause 6(B) and (D) hereof".

14. In addition, Clause 8 provides:

"PROVIDED ALWAYS and for the avoidance of doubt it is hereby agreed between the parties hereto that the Block has recently been constructed under the scheme and supervision of the National Housebuilders' Registration Council that it is the parties' intention that the cost of any work of any kind whatsoever which shall hereafter be done or require to be done to the Block or any part thereof or to any flat or flats therein shall be met and paid for (i) under the scheme of the National Housebuilders' Registration Council or (ii) by the Lessee under Clause 4(ii) hereof or (iii) by the Lessor under the provisions of Clause 6 hereof (with contribution from the Lessee under Clause 4(ii) hereof. It is the parties intention that the Lessor shall be under no liability whatsoever out of its own money to pay for or contribute towards the cost of any works of any kind whatsoever which may hereafter be done or require to be done to the Block or any part thereof or to any flat or flats therein except and only so far as the Lessor may be so liable under the Scheme of the National Housebuilders' Registration Council".

The Inspection

15. The members of the Tribunal inspected the property before the hearing, accompanied by Ms C Whiteman, representing the Applicant, Mr R Pocock MRICS, the Applicant's appointed chartered building surveyor, and Mr G Pickard of Jacksons, the property manager.

16. The following brief description of the property is taken from Mr Pocock's report (tab 6) and is consistent with what we saw:

"Channings is an 8 storey block of purpose built flats occupying the whole of the Kingsway frontage between Carlisle Road to Langdale Road. In plan the block is U shaped with the main elevations facing west on Langdale Road, facing east on Carlisle Road, and a large staggered south elevation on Kingsway, which is the main seafront road highly exposed to the elements of wind, salt and rain.

The property was constructed in the late 1960's with load bearing masonry internal and external walls and floors consisting of precast reinforced High Alumina Cement concrete beams with concrete block infills.

There are asphalted and tiled concrete walkways at the rear, north of the building, which appear to be an extension of the concrete floor slabs at each level. There are concrete balconies at the front of the building which are covered with asphalt, a number of which have been overlaid with different forms of tiles or floor paint.

There are timber framed full height screens at the west, south and east of the property, which comprise a range of different types of windows and single glazed blue coloured panels fixed between a hardwood framework.

The roof of the building is asphalt over an 80mm thick layer of strammit board over timber joists. The roof has recently been overlaid with a liquid plastic covering".

17. Similarly, Mr Pocock gave an overview of the timber framed screens which were central to the proposed works in this application:

"The timber framed screens at the west, south and east of the property are constructed of a hardwood timber framework comprising hardwood sole plates, head plates, mid rails and vertical hardwood posts fixed between concrete floor slabs at each level. There are timber clad, non weight bearing columns at each vertical corner of the screens.

The screens provide a front bay to each flat (mostly in the sitting rooms) giving access to private balconies. The front bays and balconies are a similar set up to the open walkways at the rear, i.e. an extension of the block and beam concrete floor slabs.

There are horizontal single glazed light blue panels over the front edge of the floor slabs at each level and vertical single glazed light blue panels over the outer edge of the party wall between flats.

There is a single glazed light blue spandrel panel to the base of the bay in each flat with a mixture of double glazed uPVC or polyester powder coated (PPC) aluminium windows above. There is a door and side panel at the side of each screen/bay which provides access to the private balconies. The majority of these are also of double glazed uPVC construction.

The original windows installed when the property was constructed were vertical sliding aluminium sash windows with glazed aluminium balcony doors and side panels".

18. At the inspection we were given access to the interior of 5 flats with the permission of the lessees and occupiers: nos. 58, 80 & 97 on the east side, and nos.1 8 & 44 on the west side. They varied in size, internal condition and window construction. It was apparent that over the years several lessees had replaced the original aluminium windows, as described above by Mr Pocock.

19. Internally we saw evidence in several flats of water ingress from the timber framed screens with dampness, staining and damage to internal wall and ceiling surfaces. No.18 was severely affected. We noted that

the timber clad columns were generally in poor condition. We also noted the varying heights of the balcony surfaces, which have been covered since the original construction with materials varying from flat to flat, such as tiles and paint. We saw varying balcony door upstand thresholds, depending on the height of the balcony surface and the design of differing replacement balcony doors.

The hearing

20. The hearing took place in Brighton on 16 July 2015. It was attended by Ms Whiteman, Mr Pickard, and Mr Pocock, for the Applicant. Also in attendance were the following Respondent lessees: Anne Baki (flat 5), Graeme Davis (flat 72), Celia Elliott (flat 64), Mr French (flat 58, tenant), Vanda Jones (flat 65), Anthony Morris (flat 5), Ruth Smith (flat 35), Hazel Vane (flat 59), and Mark Whatley (flat 96).

The issues

21. As indicated above, the issue before the Tribunal was whether the future costs of the proposed works would be payable under the terms of the lease as service charges.

22. As the lessees under the terms of the lease are required to pay service charges for all expenditure incurred by the lessor in complying with its repairing covenant, the Tribunal had to consider whether the proposed works fell within the scope of that obligation to keep the main structural parts of the block in good and substantial repair.

23. The lease does not allow the landlord to carry out improvements or require the lessees to contribute towards the cost of improvements. Given the nature and scope of the proposed works, the Tribunal also had to consider whether all or part of the works amounted to an improvement, and also whether the works were needed to remedy an inherent design defect.

The background

24. Channings Hove Limited is a tenant-owned freehold management company. All but 4 of the lessees are shareholders. All bar 6 lessees have extended their leases. The block was previously managed by Austin Gray. Jacksons took over management from 1 April 2014.

25. The previous management files, as submitted by Mr Pocock in his written and oral evidence, showed that there had been problems with water ingress at the block since the early 1980's, with various attempts to investigate and carry out repairs.

26. Under Austin Gray, cyclical works of external repair and redecoration from 1991 to 2010 had been carried out every 3-4 years, including inserting lead trays to the corner posts of the bays, replacing timber corner panels, re-sealing the glass infill panels, removing and re-bedding the panels in synthetic putty, and extensive joinery repairs.

27. Despite these measures, the front elevation (about 44 flats) suffered severe water ingress during storms in December 2013. Most of the water penetration was through the timber screens. A storm damage insurance claim was settled at value of £98.061.77. As a result, the insurance premium for the block has increased by 154% with an excess for each flat of £1,500.

28. In Mr Pickard's view, this had led to reduced market value for the flats and problems with saleability, due to the requirement to disclose the insurance position to prospective purchasers.

29. It was evident that the historic cyclical repairs and maintenance had failed adequately to address the ongoing and long term problem of water ingress, to which the block was particularly vulnerable given its exposed position, especially during severe weather.

30. Mr Pocock in his report (tab 6) identified various problems under 5 headings, summarised as follows:

(1) defects to the timber faces, covers to the vertical columns and posts at the corner of the front bays, timber working loose with gaps between the faces;

(2) flexing of the single glazed glass panels resulting in an accelerated break of the seals, plus a lack of weather checks or drips to reduce water ingress;

(3) thermal movement of differing building materials including hardwood framework, softwood battens, single glazed panels, uPVC and aluminium windows, reacting differently to environmental conditions and causing stress to sealant joints;

(4) variety of window materials and quality, having been replaced at different times, some without weep holes, allowing water penetration, some windows being in better condition than others;

(5) balcony door thresholds of different heights above the asphalt surface, below best building practice recommendations, vulnerable to rainwater ingress.

31. Mr Pocock concluded that it is very difficult to keep the existing front bays weather-tight. Even with a strict programme of regular repairs, there was a risk that water penetration would continue, as had happened in past years. Over time further deterioration was likely to the timber framework, sealant, windows, decoration and glass panels, requiring increased frequency of repairs to the screens. Because of the layout and relatively small size of the hardwood timber framework forming the bays, it would be difficult to provide a cost-effective weather-proof repair.

32. Mr Pocock put forward four possible options for the repair/replacement of the screens, as follows:

(a) maintaining the existing arrangement of cyclical repair and re-decoration. Further deterioration would be likely to result in more frequent ad-hoc repairs, higher costs and disruption to the lessees. He estimated the cost over 12 years at £1.34m with the proviso that this option might improve the situation but not resolve the problems;

(b) removing and replacing the screens in a similar manner to the existing arrangement. In order to comply with current building regulations, quite a complicated design with sizeable timber framework and uPVC or aluminium windows would be required, which would still be susceptible to stresses on sealant joints and would require regular redecoration. His estimated cost was £2.4m plus ongoing maintenance.

(c) replacing the screens with a uPVC system. This would involve either a reinforced uPVC unit fitted between the floor slabs, or cladding the elevation with uPVC framed windows and panels with steel supports. A structural engineer, Mr Potterton, took the view that either system would be suitable for the exposed location and wind pressures. The estimated cost was £2.2m plus ongoing maintenance.

(d) replacing the screens with a polyester powder coated (PPC) aluminium curtain wall system. This was an integrated, co-ordinated structure with PPC framed windows and panels, fully sealed, drained and ventilated to meet building regulations. The estimated cost was £2.92m with minimal ongoing maintenance.

33. Mr Pocock recommended the fourth option of complete replacement of the existing screens with the curtain wall system in order to resolve the extensive water ingress problem. These are the Applicant's proposed works. In his opinion this was the most effective long-term solution despite the higher cost. He was supported in this view by previous surveyors' reports from Austin Rees, Hemsley Orrell Partnership and Philip Hall Associates.

34. Mr Pocock had prepared detailed tender documentation and schedule of work dated March 2015. A preliminary planning application was made in January 2015 to Brighton & Hove City Council. A Notice of intention to carry out works under s20 of the Landlord and Tenant Act 1985 was served in April 2015. Further progress cannot be made until the outcome of this application is known.

35. Meetings took place in July and November 2014 between Mr Jackson, Mr Pocock, the directors of the freehold company and the residents. A presentation was given outlining the problems and the possible options. In answer to a question from a lessee as to the likely cost of the works, this would be about £30,000 per flat.

36. An informal ballot of the lessees was undertaken on 28 November 2014. The ballot paper gave option 1 as the repair and maintenance of existing screens, and 5 further choices under option 2. This included the PPC curtain wall replacement to either the front and side elevations (2.4) or the front elevation only (2.5 & 6).

37. Of the 63 returns, 50 lessees voted for option 2.4 with 7 voting for option 1. The other 6 voted either for option 2.3 (uPVC replacement) or option 2.5 & 6 (PPC replacement curtain wall system to the front elevation only). Expressed as a percentage, the analysis given to the Tribunal was 79.36% of votes cast for option 2.4, indicating a high majority support for Mr Pocock's recommended option.

Submissions

38. Ms Whiteman made both written and oral legal submissions in support of her contention that the proposed works amounted to repairs and therefore fell within the lessor's repairing covenant so that the future cost would be recoverable from the lessees as service charges.

39. Ms Whiteman first pointed out that there must be disrepair before a landlord is liable to repair. Disrepair occurs when there has been a deterioration, i.e. when part of a building is in a worse condition than it was at some earlier time (*Post Office v Aquarius Properties* [1987] 1 All ER 1955, CA).

40. Ms Whiteman submitted that the wording of the landlord's repairing covenant in the lease: "*to keep the main structural parts of the Block ... in good and substantial repair and condition*" included an obligation to put into repair, which may result in making the property better than it was when the lease was originally granted.

41. An obligation to keep in good condition, Ms Whiteman argued, is more onerous than simply to keep in repair. Therefore any necessary works could go beyond mere repair, having regard to the age, character and

location of the building (*Credit Suisse v Beegas Nominees* [1994] 4 All ER 803).

42. As to whether there was an inherent design defect at the property, Ms Whiteman submitted that the relevant inherent defect was the use of hollow timber columns and panels which had caused the existing damage to the building. The proposed works, which were necessary to rectify the cause of the damage, would also rectify the inherent defect but this did not prevent the works being works of repair, especially where, as here, the aim was "to do the job properly once and for all". (*Ravenseft Properties v Davestone holdings* [1980] QB 12; *Quick v Taff-Ely Borough Council* [1986] QB 809, CA).

43. Finally Ms Whiteman dealt with whether the proposed works went beyond repair, and may amount to an improvement. She submitted that test to be applied was whether the effect of the repairs would be to return to the landlord a wholly different thing from that which he demised (*Ravenseft; Stent v Monmouth DC* [1987] 1 EGLR 59, CA). This was not the case here, because the proposed works were confined to the timber screens. In addition, the landlord was a tenant owned freehold company and the leases were for 999 years, so given the age of the building and its expected lifespan there was no realistic prospect of returning the property to the landlord.

44. On questioning from the Tribunal, Ms Whiteman addressed the further legal tests in *McDougall v Easington* [1989] 1 EGLR 93, CA]. These were : (i) whether the alterations went to the whole or substantially the whole of the structure or only to a subsidiary part; (ii) whether the effect of the alterations was to produce a building of a wholly different character from that which has been let: and (iii) what was the cost of the works in relation to the previous value of the building, and what was their effect on the value and lifespan of the building?

45. On the first two points, Ms Whiteman argued that the proposed works to replace the timber screens with an integrated system went to a subsidiary part of the whole structure, and would not produce a building of wholly different character. On the third point, she argued that although the estimated costs of the proposed works were high, at £2.92m, or approximately £30,000 per lessee, they were not so high as to be disproportionally expensive. Overall, the proposed works were the most cost-effective way to achieve the necessary repairs, and the costs were not significantly in excess of the other options which would not provide a satisfactory long-term solution or prevent ongoing water ingress in the future.

46. Ms Whiteman further submitted that the lessees had been kept fully informed and consulted, and that the clear majority of those who returned the ballot forms supported the proposed works option.

Despite the £30,000 cost per lessee, the lessees would derive a long-term benefit from the repairs proportionate to the expenditure.

47. Turning again to the lease, under which the lessor is responsible for the repair of the window frames and the lessee for the glass and all the opening and moveable parts of the windows, Ms Whiteman accepted that not all the existing windows were in disrepair, but submitted that in order for the lessor to comply with its obligation to put the building in repair, the integrated curtain wall system by definition included the windows and therefore had to be included.

The Tribunal's decision

48. 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.

49. The Tribunal broadly accepted the evidence of Mr Pocock and Mr Pickard in respect of the history of attempted repairs to the building and its current condition.

50. In particular, the Tribunal accepted that the previous cyclical repairs and maintenance had failed to solve the ongoing problems of water ingress to the flats, which has plainly resulted in damage to the interiors of a significant number of flats on the front elevation.

51. The Tribunal found that the cause of the water ingress problem was the deterioration to the timber screens, as identified and described by Mr Pocock. The timber faces, columns and corner posts were in poor condition, with gaps between the faces, and there were broken sealants to the glass panels. These items amounted to disrepair.

52. The Tribunal found that some other items identified by Mr Pocock amounted to inherent defects in the original design and construction of the timber screens. The timber framework was particularly susceptible to damage from wind and rain in the exposed location; the single glazed glass panels were subject to flexing; and the thermal movement of the different building materials caused stress to sealant joints. This design was likely to lead to problems with water ingress in the long term.

53. The next question for the Tribunal was whether the proposed works to remedy the defects fell within the scope of the lessor's repairing covenant. Again, the Tribunal broadly accepted Ms Whiteman's legal submissions. It is not necessary to set those out again in detail. In summary, the Tribunal agreed that on the facts of this case it would be practical and sensible to remedy the underlying defect to prevent it from causing the same disrepair in the future. Therefore the proposed

works would amount to repair, even though they necessarily involved rectifying an underlying defect.

54. The Tribunal accepted that the other options put forward by Mr Pocock would be less likely to achieve a long-term solution. In particular, the closest like-for-like option, as set out at para. 32(b) above, was not practicable in terms of complexity of design, difficulties meeting current building regulations. All the other options would require ongoing maintenance with the possibility of problems recurring.

55. As to whether the proposed works went beyond repair, the Tribunal accepted, as set out in the *Woodfall* extract, that it is always a question of degree whether any works can be properly be described as a repair, or whether on the contrary it would involve giving back to the landlord a wholly different thing from that which was demised. On the facts of this case, the Tribunal concluded that the provision of the integrated curtain wall system in replacement of the existing timber screens did not go beyond repair because the nature and extent of the proposed work would not result in a wholly different building.

56. This is connected with the issue of whether the proposed works amounted to an improvement. There is a considerable body of case law and no single test to determine whether particular works would be improvements or repairs. Again, it is a question of fact and degree in each case. The distinction is important in this case, because the lessor's repairing covenant does not include a power to carry out improvements so there is no corresponding duty on the lessees to pay for them.

57. The Tribunal found the *McDougall v Easington* tests to be helpful in addressing this question. Essentially the Tribunal accepted Ms Whiteman's submissions as set out at para.35 above. Arguably the most difficult aspect was whether the cost of the proposed works - £2.92m or £30,000 per leaseholder - would be disproportionately expensive. We had no specific evidence of the effect of the works on the value of the building and its expected lifespan, apart from Mr Pickard's general view that the market value of the flats was depressed and their saleability was adversely affected by the current state of the block.

58. Nonetheless, the Tribunal concluded that the proposed works were not disproportionately costly. The alternative options were also expensive because of the nature of the problems and the need to deal with the timber screens as whole units. The proposed works were approximately £500,000 more than the like-for-like option, which was less satisfactory in the long term because of the likelihood of recurrence. The fact that the proposed integrated curtain wall system was more likely to achieve a long term solution and prevent recurrence without ongoing maintenance costs made this, on balance, the most cost-effective solution.

59. The Tribunal also gave weight to the fact that the flats are let on 999 year leases, so the value of the reversion to the lessor is negligible, whilst the lessees have a considerable interest in the value of the flats. From this perspective the approximate cost per flat, although high, is not in the Tribunal's view excessive or disproportionate. In addition, the lessees' use and enjoyment of their flats would be enhanced without the risk of future water ingress problems.

60. Finally the Tribunal also gave weight to the fact that the application was not opposed and that the majority of the lessees who responded to the informal ballot were in favour of the proposed works, having been fully informed of the suggested alternatives. The Tribunal was satisfied that the views of the lessees had been taken into account by the Applicant.

61. For all the reasons given above, The Tribunal determines that the proposed works fall within the lessor's repairing covenant and the charges for those works are recoverable under the terms of the lease as service charges.

Name: J A Talbot **Date:** 30 July 2015

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

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

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

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

(3) For this purpose -

(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

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

Section 27A

(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

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

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

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

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

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.