



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

Case Reference : **LON/00AJ/LSC/2013/0838**

Property : **Flat 1, 168 High Street, Acton, W3
6QZ**

Applicant : **Mr B J Mullen**

Representatives : **Comptons Solicitors**

Respondent : **Ms Felipa Pillas Lee**

Representative : **12 Bridge Solicitors**

Type of Application : **Section 27A Landlord and Tenant
Act 1985 (as amended) application
for service charges**

Tribunal Members : **Miss A Seifert FCI Arb
Mr T N Johnson FRICS**

Date and venue : **Hearing 25th March 2014 at 10
Alfred Place, London WC1E 7LR**

Date of Decision : **10th May 2014**

DECISION

The application

1. The property, which is the subject of this application, is a Flat 1, 168 High Street, Acton, London W3 6QZ ("Flat 1).
2. The applicant commenced proceedings in the Northampton County Court for a money judgement in respect of arrears of service charges and other sums under a lease dated 16th November 2007 ("the Lease") made between James Taylor Construction Limited as landlord and Ms Felipa Pillas Lee as tenant. The landlord's interest under the lease became vested in Mr Mullen, who is the freehold owner of 166 to 168, High Street Acton W3 6QZ ("the Building"). The residential part of the Building comprises 6 flats. The Building also comprises 2 commercial premises. Official copies of the land registry titles in respect of the freehold interest and Ms Lee's Leasehold interest were included in the hearing bundle.
3. The Lease included provisions for payment of service charges on account with a balancing charge at the end of the service charge years. The relevant service charge years for this determination are 2011-2012 and 2012-2013. Service charge accounts for 2011-2012 were provided and the Budget for 2012-2013 was also provided. At the time of the hearing the end of year service charge account for 2012-2013 was not yet available. It was not in dispute that the service charge year was from 23rd December in each year until 24th December in the following year.
4. Proceedings were issued in the Northampton County Court in Claim Number 3YS06997. In these proceedings the claimant, Mr Mullen, claimed arrears of service charges, insurance contributions and ground rent.
5. Particulars of the sums claimed were set out in a service charge statement addressed to Ms Lee attached to the County Court claim form (page 12 of the bundle). A copy of this statement is attached to this determination marked appendix "A". The total amount of the claim in the County Court was £5,642.12. However, this included £200 in respect of ground rent. The ground rent claimed is not within the jurisdiction of the Tribunal.
6. The matter of the reasonableness and payability of the service charge element of the claim was transferred from the Northampton (CCMCC) County Court by an Order of deputy District Judge Fairclough dated 2^{ns} December 2013.
7. The sums in respect of which a determination is sought in the Tribunal total £5,442.12.

8. Directions were issued by the Tribunal on 16th January 2014, a copy of which is in the hearing bundle pages 27 to 32. A schedule was included for completion by the parties to particularise their cases at page 32. Neither party completed this schedule.
9. In accordance with the Directions the applicant, Mr Mullen, served a statement of case. The respondent served a statement of case in response and the applicant served a reply to this.
10. A witness statement dated 12th March 2014 was provided by Ms Colleen Zaninello on behalf of the applicant. Ms Zaninello is the Property Manager employed by the Managing Agents, Property Partners Management Limited who took over the management of the Building in June 2010. No witness statement was served by or on behalf of Ms Lee. However at the hearing on 25th March 2014, Ms Lee attended and gave oral evidence. No direction for expert evidence was sought by either party.
11. It was noted in the Directions that the Tribunal accepted a section 20C application (limitation of landlord's costs of proceedings) on behalf of Ms Lee.
12. The relevant legal provisions are set out in the Appendix to this decision.

The issues

13. The relevant issues for determination were whether the service charges for the service charge years 2011-12 and 2012-2013 were reasonable and reasonably incurred and whether these were payable by the respondent to the applicant.

The Hearing

14. A hearing was held on 25th March 2014. Mr Mullen was represented by Ms Moate of Counsel. Ms Lee was represented by Mr Rogers of Counsel.
15. Ms Zaninello confirmed the contents of her witness statement and gave additional oral evidence. Ms Lee gave oral evidence.
16. During the hearing additional photographs and invoices were produced.

The Tribunal's decision

17. Having considered all the evidence and documents provided, the Tribunal finds that:

The following sums were reasonable and reasonably incurred by the applicants and are payable by Ms Lee to Mr Mullen.

2011-12 service charges -

- a. £322.81 Service charge for period 29.09.2011 to 24.12.2011
- b. £334.58 Service charge for period 25.12.2011 to 24.03.2012
- c. £334.58 Service charge for period 25.03.2012 to 23.06.2012
- d. £334.58 Service charge for period 24.06.2012 to 28.09.2012
- e. £334.58 Service charge for period 29.09.2012 to 24.12.2012
- f. £277.39 Service charge for period 25.12.2012 to 24.03.2013
- g. £277.39 Service charge for period 24.03.2013 to 23.06.2013
- h. £277.39 Service charge for period 24.06.2013 to 28.09.2013

Insurance contributions-

- i. £126.36 Insurance for period 02.05.2012 to 18.02.2013
- j. £180.70 Insurance for period 18.01.2013 to 17.01.2014

Balancing charge-

- k. (£6.71) Credit for 2010- 2011 service charge year
- l. £143.99 Service charge for 2011-2012 service charge year

Major works

- m. £2,504.48 major works charge demanded 14.06.2013

Total: £5,442.12

Reasons for the Tribunal's decision

The service charge scheme

- 18. The lessee pays an estimated service charge by quarterly payments with a balancing charge or refund at the end of the service charge year when service charge accounts are prepared. In this case there was also a charge for major works following service of the appropriate section 20 notice following the statutory procedure under the Landlord and Tenant Act 1985 (as amended).
- 19. The service charge account for 2011-2011 was included in the hearing bundle (page 117). This set out the various costs of the landlord carrying out his obligations during the service charge year to 24th December 2012. The costs were divided into charges under schedule 1 (residential schedule) and schedule 2 (residential and commercial schedule).

20. A copy of the 2013 Budget was included in the hearing bundle (page 104). This showed the cost of services under schedule 1 and 2 and the amounts due from each of the residential and commercial lessees charged on the basis of their proportions under the leases. In the case of Ms Lee, Flat 1, the percentage payable in respect of schedule 1 charges was 17.35% and 9.91% for schedule 2 charges. It was not in dispute that the percentages were correct.

Insurance contributions

21. At the hearing Ms Lee did not dispute her liability to pay the sums claimed for insurance contributions. The Tribunal is satisfied that these sums as set out under paragraph 17 above are due and payable to Mr Mullen by Ms Lee.

Cleaning charges

22. Ms Lee contended that no cleaning service had been carried out in the common parts of the Building. She said that she had never seen a cleaner in the the Building. Ms Lee had resided in Flat 1 from the time the Lease was granted in November 2007 until she moved out of Flat 1 in March or April 2012. She said that following this her relatives resided at Flat 1 and that she had visited them there once a week, but not on a particular day of the week or at a particular time. Despite this she claimed not to have seen cleaners working at the Building. She also referred to photographs of the common parts of the Building taken at various times. She said that cigarette butts were left on floors and that letters and pamphlets were put through the letter box and were left on the hall floor. She had picked these up and put them on the side. She said that she had vacuumed the floor and shampooed the carpet.
23. Ms Lee said that she had complained to the managing agents in respect of the dirty condition of the common parts. She also referred to letters from other leaseholders in 2011 concerning the managing agent's services, which also requested the appointment of alternative managing agents who were more local to the Building. Copies of letters to previous managing agents and to the landlord were included in the hearing bundle for example pages 159 to 171.
24. Ms Zaninello said that the managing agents and landlord had had regard to the concerns regarding the cleaning. A new cleaning firm, Britannia, was appointed in 2012. This firm attended at the Building once a week. The charges were along the lines of other cleaning charges in similar buildings managed by the same agents. At the hearing invoices for cleaning were produced. These showed the service provided was general cleaning to common areas one day per week at the charge of £87 including VAT. Ms Zaninello inspects the Building once every one or two months and said that she checked, amongst other matters, that the cleaning had been effectively carried out for instance

by checking the cleanliness of the skirting boards and staircase handrail.

25. As previously stated it was part of Ms Lee's case that she had never seen a cleaner at the Building. However during her evidence she said that she travels to the Philippines 3 or 4 times a year and stays there for between 2 and 6 weeks on each occasion. She accepted that the cleaning may have taken place when she was not at the Building.

Decision – cleaning charges

26. Having considered the evidence as a whole, the Tribunal was satisfied that cleaning had been carried out at the Building as evidenced by the invoices. The Tribunal considers the charge of £87 per week to be reasonable and reasonably incurred. Although Ms Lee considered the standard of cleaning not to be of a reasonable standard, the photographs provided did not demonstrate that this was the case, taking into account that the common parts service 6 residential flats.
27. The service charge account for 2011-2012 showed the cost of the cleaning contract as £1,532 under schedule 1. The Budget for 2013 showed the estimated cost of the cleaning contract to be £1,200 per annum in schedule 1. There were no charges under schedule 2 in either the 2011-12 accounts or the 2013 Budget.
28. The Tribunal finds that the charge for cleaning for 2011-2012 is reasonable and reasonably incurred, and the estimated charge for 2013 to be reasonable.

Fire precautions charges

29. Ms Lee challenged the charges for fire precautions. According to the evidence of Ms Zaninello this included weekly testing of the alarms.
30. Ms Lee in her evidence at the hearing, accepted that the testing may have been carried out when she was not at the Building.

Decision – Fire precautions

31. The service charge account for 2011-2012 included under schedule 1 the figure of £1,674 for fire precautions and under schedule 2, £505 for fire precautions.
32. The Budget for 2013 included the estimated charge of £1,800 under schedule 1 and £500 under schedule 2 (Fire risk and safety).

33. Having considered the evidence, the Tribunal finds that the charges for fire precautions were provided by the landlord. The Tribunal considers that the charges for 2011-12 are reasonable and reasonably incurred and the estimate charge for 2013 was reasonable.

Internal and external maintenance and repairs (excluding major works)

34. Ms Lee initially contended that no works had been carried out by the landlord in the relevant period.
35. Ms Zaninello and Ms Lee referred to photographs produced in the hearing bundle and further photographs at the hearing. Ms Zaninello stated that it was incorrect that no works had been carried out at the building.
36. Ms Zaninello referred to her letter to Ms Lee dated 30th May 2012. In this she noted that the majority of leaseholders do not reside in the Building and therefore had not noticed the recent works undertaken. Following concerns highlighted by leaseholders and as a result of a recent inspection it had been noted that the internal common parts of the Building were looking tired and required attention. The internal common parts were redecorated and the carpets were steam cleaned in March 2012. It was stated that the costs of these works were borne by the landlord. Photographs of the common parts were included with that letter (page 179). These photographs showed that the common parts were in a reasonable state of decoration at that time.
37. During the hearing Ms Lee accepted that some works had been carried out by the landlord such as painting the hallway and installing a letter cage to the front door. However she had complained about the entry phone which was still not working and complained about holes near her window caused by erection of signage. She accepted that the landlord had replaced the numbers on the front door of the Building.

Decision – internal and external maintenance and repair

38. The figure charged for internal maintenance in schedule 1 of the 2012 service charge accounts was £888. The figure charged for external maintenance under schedule 1 was £111. Under schedule 2 the figure charged for maintenance and external repairs was 1,819.
39. The 2013 Budget included the figure of £250 for maintenance internal repair, and £500 for maintenance external repair under schedule 1. Under schedule 2 there was a figure of £1,000 for maintenance external repairs.
40. Having considered the evidence, the Tribunal is satisfied that it has been shown that internal and external maintenance and repairs have

been carried out on behalf of the landlord at the Building. The Tribunal finds that the charges for 2011-12 for this item are reasonable and reasonably incurred and that the estimated charges for 2013 were reasonable.

Management charges

41. Ms Lee challenged the standard of management. In her statement of claim in response she contended that Mr Mullen and the managing agents had been 'accumulating service charges over the years but they have not been providing the services they claim they have paid for using the money accumulated'.
42. Ms Lee had produced a schedule (page 137) attached to her statement of claim in response in which she set out charges for service charge years from 2007. The item under schedule 2 charges entitled maintenance internal repairs ought to have read maintenance external repairs. She submitted that there was a trend that each year the managing agent spends more money.
43. Ms Lee referred to complaints made by her and other leaseholders to the managing agents. She submitted that despite the complaints the managing agents had not addressed the causes for concern.
44. Ms Zaninello referred to the service charge account for 2011-2012. All of the services set out in the account had been provided. The Budget was set in each year before the year end accounts were produced. The Budget was set having regard to the previous year's Budget. It was open to Ms Lee to inspect the relevant invoices but she had not done so. It was not unreasonable for lessees to expect service charges to increase having regard to inflation.
45. In respect of complaints, Ms Zaninello said that it was incorrect that no action was taken in respect of Ms Lee's concerns. She referred to her letter dated 30th May 2012 referred to above. Following concerns highlighted by leaseholders and as a result of her routine visits, works of decoration to the common parts and steam cleaning the carpets had been carried out in 2012. This letter also referred to the cleaning contractor having been replaced and that from her recent visit the cleaning appeared to be undertaken at a much higher standard than previously. The letter suggested that should Ms Lee have any comments she should contact Ms Zaninello.
46. Ms Zaninello stated that she had telephoned Ms Lee on 16th March 2012 in order to discuss the management of the Building and the service charges accumulating on her account. She said that Ms Lee had refused to discuss her service charge arrears and asked her to never call

again. Ms Lee denied that this call had taken place and said that she was the person who made calls to the agents to raise her concerns.

47. In respect of the schedule of charges provided by Ms Lee, this included service charge years commencing 2007 onwards. In respect of service charge years 2007 to 2009, Ms Zaninello said that the landlord had issued proceedings against Ms Lee in the Brentford County Court in October 2011 and was wholly successful in recovering the service charges for that period. These service charge years were not relevant in the current proceedings.
48. It was also contended that the service charge demands did not comply with the provisions of section 47 and 48 of the Landlord and Tenant Act 1987 or contain the summary of rights and obligations. Ms Zaninello stated that service charge demands had been served. Copies were included in the hearing bundle. The relevant information to comply with section 47 and 48 was included for instance on the demand at page 90. Further, an example of the summary of tenant's rights and obligations served with the demands was included at pages 128 to 129.

Decision – management charges

49. The figure charged for management fees in schedule 1 of the 2012 service charge accounts was £2,000. Under schedule 2 the figure charged for management commission was £557.
50. The 2013 Budget included the figure of £800 for management commission under schedule 1, and £1,200 for management commission under schedule 2.
51. Having considered the evidence, the Tribunal is satisfied that the standard of management provided is of a reasonable standard and that it has been shown that the charges for 2011-12 for this item are reasonable and reasonably incurred and that the estimated charges for 2013 were reasonable.

Major works charges

52. In her statement of case Ms Lee submitted that the major works were excessive and unreasonable. At the hearing Mr Rogers clarified Ms Lee's case. Ms Lee did not challenge that the major works needed to be carried out. However, it was submitted that the landlord had failed to maintain the Building and that had the landlord carried out works to the exterior of the Building earlier, that the major works proposed would not be necessary.
53. In her witness statement Ms Zaninello described the major works as comprising replacement of the rain water pipe work and joinery repairs

to the ground floor entrance door, including light alterations, remedial work to the lead flashing above the shop frontage and redecoration. She submitted that the works were required as a result of fair wear and tear and not as a result of the landlord's alleged neglect of the Building.

54. Ms Zaninello said that following a routine inspection of the Building in about March 2010, damp was identified in the internal common parts. He had asked contractors to inspect but no leak was found. Therefore a detailed inspection was carried out in order to review the condition of the front elevation surrounding the area of deterioration at the lower level. A copy of the condition report ('the report') was contained in the hearing bundle at pages 183 to 194. This had been carried out on been carried out by Building Logic (UK) Limited and was dated October 2012.
55. Mr Rogers submitted that in paragraph 2.2 of the report in which it was stated that the report was based on a visual inspection of the Building and had been undertaken from ground and from roof level. No opening up or investigatory work had been carried out during the survey. In the description and condition section at section 3.1 of the report, it was stated that the condition of the elevations above the retail shop fronts 'is generally good'. Ms Zaninello commented in her evidence that this supported the applicant's case that the major works were not caused by the landlord's neglect. The report continued by stating that the render appeared sound although hairline cracks were noted above the 1st floor windows and adjacent to the second floor windows. Due to the minimal width of the cracks it was not recommended that remedial works were carried out to the render at that stage as this would require redecoration of the whole façade. It was recommended that the cracks are periodically monitored.
56. In the introduction, section 1 of the report, it was stated that 'Works are required at the property to repair leaks from downpipes and improve waterproofing to the property at the head of the ground floor storey. The main entrance to the communal residential entrance is clad in timber and has deteriorated due to its age and exposure to the elements....' Ms Zaninello considered that this illustrated that the major works were required as a result of fair war and tear and not due to neglect by the landlord.
57. Ms Zaninello said that the majority of the cost of the works is for access scaffold. It would therefore not have been cost effective for the works to be phased. She considered that it was not practical to carry out the work piecemeal and had this occurred the work would have been more expensive.

58. In section 3.1 of the report it was stated that the timber cladding forming the fascia for the retail signage of a former shop appeared to be rotting due to water ingress. The timber cladding forms the reveals and head of the entrance door which was in poor condition and required total replacement. It was recommended that softwood detailing should also be replaced. It was recommended that the existing signage panel should be removed to allow for replacement of any deteriorating timber and completion the signage panel could be re-fixed. In respect of this, Mr Rogers queried whether total replacement would have been needed had this been maintained at an earlier stage. The report continued by stating that from inspection inside the communal entrance prior to recent redecoration, it was noted that water ingress was occurring at ceiling level adjacent to the glazed light above the entrance door. This area of damp was also consistent with the most deteriorated areas of cladding. Mr Rogers submitted that this seemed to have developed over a period of time.
59. In the report it was considered that the water ingress and deterioration of the timber cladding was being caused by two issues: Leaks from the joints of the cast iron rainwater pipe, and lead flashing to the head of the first floor. In respect of second item, it was stated in the report that the lead flashing was not currently installed in a manner which restricts the water ingress between the flashing and the external wall. It was proposed that the existing flashing was retained but a new lead cover flashing chased into the external wall and dressed down to prevent further water ingress. In respect of this Mr Rogers submitted that probably the lead flashing was not installed correctly in the first place, although no evidence was produced by Ms Lee to support this. He submitted that there was nothing in the condition report to support the applicant's position that condition was just due to wear and tear.
60. A Report of Tenders for external remedial works to the front elevation dated 27th March 2013 was included in the hearing bundle at pages 195 to 203.
61. Mr Rogers said that Ms Lee did not dispute that the appropriate consultation procedure had been followed in respect of the major works. Property Partners on behalf of Mr Mullen, served the requisite consultation notices on Ms Lee and the other lessees of the Building. A copy of the notice of intention to carry out works dated 22nd October 2012 was at pages 120-122 of the bundle. Additional time was allowed for Ms Lee to nominate a contractor, but she did not do so. The tender process therefore proceeded as stated in a letter from Property Partners to Ms Lee dated 5th February 2013 (page 123). The second stage section 20 procedure notice was dated 9th May 2013 and was served on Ms Lee (pages 124-125). No observations were received from Ms Lee. The sum of £2,504.48 in respect of the major works was demanded from Ms Lee in June 2013.

62. Ms Zaninello said that it had been hoped that the works would be carried out last year, but this was delayed due to the funds not being collected in time. It was common ground that Ms Lee has made no payment in respect of this charge. Ms Zaninello explained that the other lessees had paid their contributions and in order to facilitate the works proceeding, the landlord had funded Ms Lee's proportion of the contribution pending recovery.
63. It was Ms Lee's case at the hearing that the charges for the major works were not payable. She alleged that landlord had failed to maintain the Building and that, had the landlord carried out works to the exterior of the Building earlier, that the major works proposed would not be necessary.
64. Ms Lee did not seek to produce evidence from a surveyor in support of this allegation. She said at the hearing that she relied on her own experience in that she had been told by an estate agent in about December 2012 that she could sell the flat at less than the price that she had purchased it in 2007 because of the state of the Building. She considered that had the landlord maintained the Building the disrepair identified would not have occurred and the works would have cost less.

Decision – major works

65. The figure charged for Ms Lee's contribution to the major works was £2,504.48.
66. The managing agents had noted damp at a routine inspection in 2010 and following this, investigations were carried out and the report commissioned in 2012. A report on tenders was obtained. It was not in dispute that the section 20 consultation procedure had been correctly followed. It had been hoped that the works would be carried out in 2013 but this was delayed due to difficulties with collection of funding. This is now in place with the landlord meeting Ms Lee's contribution as a temporary measure. All of the other lessees have paid their contributions.
67. Ms Lee did not dispute that the proposed major works needed to be carried out, although she commented in her evidence that the costs seemed expensive. Ms Zaninello explained that a major part of the costs was in connection with the scaffolding. However this was required for the high level works.
68. In respect of Ms Lee's contention that the major works would not be necessary or would have been less expensive had these been carried out sooner, although Mr Rogers sought to make submissions relying on some passages in the report, as referred to above, these were not supported by any satisfactory evidence.

69. As she said in her evidence, Ms Lee relied on her experience of having been told by an estate agent in about March 2012 who she said valued Flat 1 at a figure some £10,000 less than she had paid for the lease in 2007 because of the condition of the Building. This evidence was not supported by any documentation. Over this period the landlord was investigating the condition and commissioned the condition report in October 2012. Since then the landlord has sought to carry out the appropriate works, following the statutory consultation procedure, with no observations received and with no alternative contractors suggested.
70. Having considered the evidence, the Tribunal considers that it has not been shown that the major works proposed were caused by failure of the landlord to carry out its repairing obligations or that had the proposed works been carried out sooner, that these would have been less expensive.
71. Having considered the evidence, the Tribunal accepts that the estimated charges for 2013 were reasonable.

Section 20C Landlord and Tenant Act 1985

72. It was noted in the Directions that the Tribunal accepted an application by the respondent in respect of section 20C costs. Under section 20C the Tribunal may make an order that cost incurred or to be incurred in connection with proceedings before the tribunal 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. No submissions were made at the hearing by either party in respect of this at the hearing.
73. In view of the above findings and conclusions, the Tribunal considers that it would not be reasonable in all the circumstances to make an order, and according no order is made under section 20C.

Name: A Seifert

Date: 10th May 2014

Judge of the First-tier Tribunal (Property Chamber)

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.