13103

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AH/LSC/2017/0252** **LON/00AH/LDC/2017/0084**
Property	:	**23E Oliver Grove London SE25 6EJ**
Applicant	:	**Edgeguide Limited**
Representative	:	**Mr Galtrey of Counsel**
Respondent	:	**Mr Robert Plank**
Representative	:	**Mr Harman of Counsel**
Type of Application	:	**For the determination of the liability to pay a service charge**
Tribunal Members	:	**Judge W Hansen (chairman)** **Mr N Martindale FRICS**
Date and venue of Hearing	:	**5 November 2018 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**3 December 2018**

DECISION

Decision

(1) The Respondent is liable to pay £6,950.70 for the service charge year ended 24 December 2015 and £7,191.68 for the service charge year ended 24 December 2016.

(2) Pursuant to paragraph 13(1)(b)(ii) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 the Tribunal orders the Respondent to pay 75% of the Applicant's costs of and occasioned by these Tribunal proceedings to be subject to summary assessment on the standard basis if not agreed.

(3) On or before 14 December 2018 the Applicant is to file and serve 2 Costs Schedules to enable the Tribunal to summarily assess the costs ordered above and the costs previously ordered in its Directions made on 28 August 2018.

(4) The Respondent shall file and serve any objections to the costs claimed by 4 January 2018 and the Tribunal will then summarily assess the relevant costs.

(5) The Tribunal makes no Order under section 20C of the Landlord and Tenant Act 1985.

(6) Following the summary assessment of costs referred to above, the claim will be transferred back to the County Court so that questions of interest, costs of the County Court proceedings, and costs associated with the section 146 process can be determined.

Introduction

1. There are now two applications before the Tribunal: the first is for a determination of the Respondent's liability to pay services charges for the years ended 24 December 2015 and 24 December 2016 that comes

before the Tribunal following an order for transfer from the County Court dated 26 June 2017; the second is an application for dispensation from the consultation requirements which may arise, depending on how we determine a narrow issue of fact in relation to the disputed service of a change of address letter dated 6 January 2014 allegedly sent by the Respondent to the Applicant.

2. The relevant parts of the Landlord and Tenant Act 1985 ("LTA") are contained in the Appendix to this decision.

3. The Applicant is the freehold owner of 23 Oliver Grove, London SE25. This is a three-storey semi-detached building. In or about 1988, the precise date is unclear, the Property was converted into 5 flats. The Respondent is the leasehold owner of 23E, one of the five flats. The lease under which he holds is dated 12 May 1988 ("the Lease"). The Lease was assigned to the Respondent in or about 2000. The Lease contains a standard clause dealing with the payment of service charge at Clause 3(1)(ii) which provides as follows:

> *3(1) The Tenant covenants with the Lessor that the Tenant and all persons deriving title under him will throughout the said term hereby granted:-*
>
> *(ii) Pay to the Lessor without any deduction by way of further or additional rent a rateable proportion of the expense and outgoings incurred by the Lessor in the repair maintenance renewal and insurance of the Building and the Mansion and the provision of services therein and the other heads of expenditure as the same are set out in the Fourth Schedule hereto such further or additional rents (hereinafter called 'the Service Charge') being subject to the following terms and provisions.*

4. The "*following terms and provisions*" provide for the certification of the amount of the Service Charge by a Certificate signed by the Lessor's accountants or managing agents and stipulate that "*the Certificate shall be conclusive evidence for the purposes hereof of the matters which it purports to certify*".

5. The service charges allegedly due from the Respondent total £6,950.70 for 2015 and £7,191.68 for 2016. Both the total amount of the service charge for those two years and the amount payable by the Respondent have been duly certified in accordance with the terms of the Lease (pp.69-74). The Respondent's share is 18.69%.

6. We should also set out Clause 5(2) because it is relied on by the Respondent. It provides as follows:

> *5. The Lessor hereby covenants with the Tenant as follows:-*
>
> *(2) That the Lessor will at all times during the said term insure and keep insured the Building against loss and damage by fire and other perils as are usually included in a comprehensive house owner's insurance policy or similar policy and also such other risks (if any) as the Lessor thinks fit in some insurance office of repute in the full reinstatement value thereof and whenever required produce to the Tenant the policy or policies of such insurance and the receipt for the last premium for the same and will in the event of the Building being damaged or destroyed by fire or any other risk insured as aforesaid as soon as reasonably practicable lay out the insurance monies in the repair rebuilding or reinstatement of the Building*

7. The claim for 2016 originally related to advance service charge and was in a slightly different amount but the parties agreed that with the passage of time and the finalisation of the service charge account for 2016 it was sensible to proceed on the basis of the actual figures and we so proceed.

8. The case has an unfortunate procedural history in the Tribunal. In the Tribunal, there have been two previous adjournments, repeated failures on the part of the Respondent to comply with directions and most recently an application by the Applicant to enforce an unless order made on 28 August 2018 based on allegations of non-compliance with the terms of that order. Suffice it to say, for reasons we gave on the day of the hearing, we refused that application at the outset of the hearing on the basis that the Respondent had sufficiently complied with the

unless order to avoid the sanction. On that basis, applying the case of *Realkredit Danmark A/S v. York Montague Ltd* [1999] CPLR 272 we refused the application and proceeded to hear the case on its merits.

9. Before the case was transferred to this Tribunal, the Applicant obtained judgment in default but the Respondent succeeded in setting aside that judgment on the basis that the proceedings had not been properly served on him.

10. There has also been an unfortunate history of non-payment of service charges by the Respondent, resulting in no less than 5 previous judgments in the County Court between 2009 and 2014. In each case the sums due were eventually paid by the Respondent's mortgagee. The Respondent's evidence was that his persistent non-payment has been deliberate and designed to provide cash flow for his various businesses and obtain, in effect, an unauthorised increase in the loan secured on the property. He suggested that he had been advised that this was a tax-efficient way of proceeding as he obtained tax relief on the increased interest payable (or did at the material time). We would be surprised if any reputable accountant would have advised him to proceed in this way but we mention it primarily because it was put to him that his non-payment was just another example of him deliberately not paying sums that were properly due. The Respondent denies this and says this action is different and that he has a defence to the claim.

The Issues

11. It has proved very difficult to pin the Respondent's case down. His various statements of case have lacked clarity; defences have been apparently withdrawn and then resurrected; the precise details of defences relied on have not been properly articulated, whether as a matter of fact or law. At the hearing on 19 January 2018 his then Counsel confirmed that there were only 2 defences being relied on. The first, at that time at least, was the contention that a significant

proportion of the service charge claimed relates to works to the rear elevation and the rear-most extension which were necessary to remedy what the Respondent contended was damage caused by subsidence and should have been the subject of an insurance claim by the landlord which, if rejected, should have been pursued through litigation via a claim for breach of contract.

12. Secondly, the Respondent alleges that the consultation requirements have not been complied with. In fact they were complied with in the sense that there is evidence to demonstrate that the various stages of consultation were gone through but there is an issue of fact as to whether the relevant correspondence was sent to the right address for the Respondent. The Applicant contends that it was sent to his last known address whereas the Respondent contends that he had notified a change of address on 6 January 2014. The Applicant denies receipt of this letter.

13. The insurance defence has now been further refined and now has two alternative limbs to it.

14. As to the first limb, it is said that on a proper construction of the Lease, the Respondent is not liable to pay insured costs under the service charge. Mr Harman developed the submission as follows. Clause 5(2) of the Lease provides that the Applicant "*will in the event of the Building being damaged or destroyed by fire or any other risk insured [pursuant to Clause 5(2)] as soon as reasonably practicable lay out the insurance monies...*" Clause 5(2) expressly governs what is to happen under the Lease "*in the event of the Building being damaged by [an insured risk]*". It was so damaged, so contends the Respondent and as such, so submitted Mr Harman, Clause 5(2) overrides the more general provisions in clause 3(1)(ii) and is reasonably to be understood as removing insured costs from the service charge regime in clause 3(1)(ii) and Schedule 4.

15. In the alternative, the Respondent invites the Tribunal to imply into Clause 5(2) on the basis of common sense and/or business efficacy a term stating that costs relating to insured damage are not recoverable under the service charge.

16. Finally, in what Mr Harman described as another way to express the same point, he submitted that a cost has not been reasonably incurred (for the purposes of section 19 of the 1985 Act) if it could have been funded by the insurer through the service charge.

17. The second limb of the Respondent's insurance defence is that the landlord should have taken out a wider policy of insurance to cover the risk of damage by settlement.

18. The other, original defence related to a narrow issue of fact as to whether the various notices required under s.20 of the 1985 Act were sent to the correct address and in fact received by the Respondent and if not, whether we should grant dispensation ("the s.20 defence").

19. Finally, Mr Harman raised a number of miscellaneous points going to the burden of proof and whether the Applicant has satisfactorily proved its case. We are not persuaded that the Respondent should be allowed to resile from the very clear concession made by his previous Counsel at an earlier hearing (see paragraph 10 above) but in any event we consider that there is no merit in any of them in view of the clear conclusions we have reached on the primary facts (see below). The outcome of this case does not turn on issues around the burden of proof as we have reached very clear conclusions on the primary facts and are not in any doubt as to the legal conclusions that flow from our findings of fact.

The Hearing

20. We heard live evidence from Mr Brown, an expert structural engineer called by the Applicant. We also heard live evidence from the Respondent. We have also had regard to the written evidence of Ms Wallis, a director of the Applicant's managing agents, and the written evidence of Ms De Vos, the Respondent's expert. We were initially told that Ms De Vos would be coming to the Tribunal to give evidence at some point during the course of the hearing. However, in the event, she did not attend. No good or proper reason was given for her non-attendance. Given the importance of the expert evidence to the resolution of the issues, it is unfortunate for the Respondent that she did not give evidence and have her evidence tested. By contrast, Mr Brown's evidence was tested and we found him to be an entirely honest and reliable expert witness. In the circumstances, we place little or no reliance on Ms De Vos's untested evidence which was, in any event, ultimately inconclusive (see para 6.19 of her original Report dated 14 January 2018 & 6.7 of her Report dated 5 October 2018). We prefer and accept the evidence of Mr Brown.

21. We did not find the Respondent a reliable witness and we prefer the evidence of Ms Wallis on the s.20 issue.

22. For the sake of completeness, we should also say that the parties delivered their closing submissions in writing after the hearing and we have had careful regard to those submissions in coming to our decision.

Discussion and Conclusions

23. We are satisfied that the Applicant sent the required notices under s.20 both to the Property and to 1 Bromley Road, as set out in the evidence of Ms Wallis.

As noted by the Applicant in its closing submissions, the Respondent, in cross examination, accepted that "*more often than not*" he received post sent to him at the Property. He also agreed that throughout the whole of the relevant period he had paid £300 per year to receive post at 1 Bromley Road. He also accepted that he had received all other service charge demands that were sent to those two addresses. We find on the balance of probabilities that he did receive the section 20 notices. As to his suggestion that he had sent a change of address letter dated 6 January 2014, we find that he did not. The Respondent stated in cross examination that at the start of 2014 he was preoccupied with his father's illness and was understandably not focussed on his service charges. In those circumstances, and having considered the Respondent's evidence in the round, we find that it is more likely than not that he is mistaken about having sent the unsigned letter dated 6 January 2018.

24. In any event, even if there was a technical defect in the section 20 procedure, the Respondent accepted in cross examination that he had no complaint with the extent, quality, or cost of the works, and in such circumstances, we would have granted dispensation unconditionally, if required, but it is not required: see *Daejan Investments v Benson* [2013] UKSC 14 at [45].

25. We now turn to the Respondent's insurance defence. We note at the outset that the Respondent's defence has focused entirely on the recoverability of sums spent on repairs to the Building which the Respondent says should have been covered by insurance. However, as is apparent from the relevant service charge accounts (p.69 & p.72), there were other components to the overall charge for each year. Insofar as there are any purported challenges to these items for other reasons (i.e. for a reason different from the contention that the item relates to works occasioned by settlement and/or subsidence), we reject any such challenges. They are inconsistent with the concession made by previous Counsel referred to above and in any event the purported

defences are obviously without any merit. Firstly, the Respondent contends (paragraph 6, Further Statement of Case) that the insurance premiums are not payable because the Applicant has not observed its obligations under Clause 5(2) of the Lease. For the reasons set out below, we find there has been no breach by the landlord of its obligations under Clause 5(2). Secondly, the Respondent contends that the audit fees are not recoverable because they "*sanctioned service charge accounts that included insurable risks*" (paragraph 10, Further Statement of Case). We are entirely satisfied that the service charge accounts were properly prepared and correctly reflected the fact that no monies had been recovered under the insurance policy, the claim having been made but rejected. Thirdly, the Respondent contends that the managing agents did not comply with the section 20 processes and that this disentitles them to their fees. We find that they did comply with the section 20 processes and reject this defence too.

26. We turn then to the works and the insurance defence(s). Again, we should observe that not all of the works undertaken are attributable to the works to the rear elevation and rear extension made necessary as a result of settlement or subsidence (as to which it was, see below). No attempt was made by either Counsel to identify any unrelated works. However, it appears from Mr Brown's Report (p.331) that only about half (£26,855) of the total cost of the works (£57,405) was attributable to the cost of repairing the cracking which is said to have been caused by either subsidence (according to the Respondent) or settlement (according to the Applicant). Accordingly, even if there were any merit in the Respondent's insurance defence(s), it would reduce his liability for the sums claimed by 47% (26,855/57405), not extinguish it. However, for the reasons hereinafter set out there is no merit in his insurance defence(s).

27. The positon in relation to the works was as follows (as explained by Ms Wallis in her witness statement). An initial Specification and Schedule of Works dated 20 July 2014 was prepared by Messrs Fifield Glyn

surveyors. That followed an inspection by Mr Brown who visited the Property on 5 February 2014. He observed cracking to the left hand side, right hand side and rear wall of the single storey extension. He also observed numerous cracks to the main rear elevation. He said at that time that without removing parts of the render he was unable to confirm the cause but he suspected it was due to differential thermal movement of the brick or block walls forming the rear extension. He recommended hacking off the render to the single storey extension to expose the brick/block walls. The work was put out to competitive tender and the offer of Taylors Building Services was accepted. Once the work had started and the defective rendered surfaces removed, the need for further work was identified and explained to the lessees. The further necessary repairs had not been specified in the original specification and a Second Notice of Intention was therefore served. Mr Brown was asked to re-inspect and did so on 6 October 2015. He prepared a report dated 22 October 2015 in which he expressed the opinion that the cracking in the render and brickwork observed beneath the main rear wall had been caused by differential movement. He said that the cause of such differential movement may be subsidence and/or heave and/or settlement. In his further Report prepared for these proceedings he said that *"Settlement due to the loading conditions of the rear walls is almost certainly the cause of the cracking"*. As to his previous reports, he said this:

> *"My expert opinion was that the most likely cause of the cracks was settlement due to the change in loading conditions on the Building by alterations to the rear wall probably carried out when the building was converted into flats which is not subsidence. I also had regard to the fact that I could find no visible evidence of subsidence. However, at that time I kept an open mind lest the insurers surprisingly agreed to pay for expensive trial and bore holes which evidenced subsidence".*

28. A claim was notified to insurers by the Applicant's managing agents on 26 October 2015. The insurers appointed loss adjusters, Messrs Courtney Smith, to investigate. They attended at the property and inspected. On 9 November 2015 they wrote to Ms Wallis rejecting the

claim on the basis that *"the damage revealed on the rear elevation is considered not to fall within the terms of the subsidence peril wording on the policy"*. The Respondent was notified of that conclusion by letter dated 19 November 2015. In a further response from the loss adjusters dated 14 September 2017 they explained in more detail their reasons for concluding that *"the damage revealed was considered to be as a result of the nature of construction rather than ground movement problems"*.

29. At the material time the property was insured under a policy (No. L0866361006) placed with Liberty Mutual Insurance Europe Limited. Under Section V thereof, the *"Defined Perils"* included subsidence but excluded damage resulting from structural alteration of the Property (Clause 15 c)). It is common ground that subsidence and settlement are two different things. Settlement is movement caused by the weight of the building. Subsidence is movement of the foundations related to the ground. Settlement was not one of the Defined Perils. It is also common ground that settlement is not a usual risk in a comprehensive house owner's insurance policy (see Response to RFI, Answer 5 at page 657).

30. Against that background we can now set out our conclusions on the insurance defence(s). We have set out above the two limbs of the insurance defence. We have no hesitation in rejecting both "insurance" defences. We find as a fact that the damage was caused by settlement not subsidence. The evidence clearly points to that conclusion as being more likely than any other and we find, on the balance of probabilities, that settlement was the cause of the damage. That was the ultimate conclusion of Mr Brown, the expert structural engineer who came to the Tribunal and gave evidence. He was forcefully cross-examined by Mr Harman but we found his evidence as to the causation of the cracks persuasive. That was also the conclusion of the loss adjuster appointed by the insurer. Ms de Vos, the Respondent's expert, did not ultimately reach any firm conclusions (see above). In any event, she did not attend the Tribunal to give evidence, no reason was given to explain her non-

attendance and in those circumstances we place no weight on her evidence, insofar as it went, which was not very far.

31. The Property was converted into 5 flats in or about 1988, the date of the Lease. At or about that time, a substantial part of the rear, load-bearing main wall was removed in order to order to add a rear extension and extend the kitchen at ground floor level. It seems to us that this is more likely than not to have been the cause of the subsequent problems. We therefore agree with Mr Brown that the cause of the damage was settlement due to the loading conditions of the rear walls. In any event, we are satisfied that the landlord took all reasonable steps to pursue recovery under the policy. A claim was timeously made but was properly rejected by the insurers and we can see no basis upon which the Applicant could or should have pursued the matter further whether by way of litigation or complaint to the insurance Ombudsman or otherwise. The report of its own expert did not support the taking of any further action. Whether you characterise the defence as raising an issue of construction of the Lease (Clause 5(2) thereof) or as raising an issue under s.19 of the LTA 1985, the defence fails on the facts. There were no insurance monies to lay out because the damage was not caused by a defined peril and in those circumstances the landlord was entitled to look to the lessees to recover these costs under the service charge. It is not a case like *Continental Property Ventures Inc v. White* [2007] L & TR 4 where there was an alternative source of funding or right of recourse that the landlord could and should have looked to. On the facts the landlord was under no obligation to pursue the insurer further; there was simply no proper basis for a complaint to the Ombudsman, still less litigation. Both would have been doomed to fail.

32. As to the alternative limb of the insurance defence, we reject the contention that the landlord should have insured against damage caused by settlement. It is not a usual risk. The landlord had a discretion as to what (if any) other risks to include and was under no obligation to insure on this wider basis.

33. Accordingly, the Respondent is liable to pay the service charges claimed in full.

34. The Applicant has applied under paragraph 13(1)(b)(ii) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for an order that the Respondent do pay the costs incurred by the Applicant in connection with these proceedings on the basis that the Respondent has acted unreasonably in conducting the proceedings.

35. Having read the submissions from the parties and taking into account the determination above and the Respondent's conduct of the proceedings generally, the tribunal considers that it would be appropriate to make such a cost order in this case. The tribunal agrees with the Applicant that the Respondent has acted unreasonably in conducting the proceedings. It seems to the Tribunal that the Respondent has attempted at every stage to delay and obstruct the proceedings and has shown a flagrant disregard for the Tribunal's directions. Following the Tribunal's unless order on 28 August 2018, the Respondent only narrowly avoided the striking out of his defence and the entry of judgment for the Applicant. However, his belated compliance at that very late stage does not alter the fact that hitherto his conduct of the proceedings had been wholly unreasonable.

36. In reaching our conclusion on this application, we have had particular regard to the case of *Willow Court Management Co (1985) Ltd v Alexander* [2016] L & TR 34. We note that the Respondent has been represented by Counsel and/or solicitors throughout the course of these proceedings and has therefore had access to and the benefit of legal advice throughout. We are entirely satisfied that no reasonable person in the position of the Respondent would have conducted this litigation in the manner that the Respondent has and can detect no reasonable explanation for the conduct complained of.

37. The Applicant's written closing submissions identify at paragraph 29 a-f the instances of unreasonable conduct that it relies on. We agree with and adopt each of those instances but it seems to us that the unreasonableness goes further. It seems to us to have been of a piece with the Respondent's prior conduct which has resulted in no less than 5 previous County Court judgments, all of which have been paid by his mortgagee. The Respondent simply refuses to honour his legal obligations and in the present case has unreasonably dragged things out for as long as possible. It appears that this manner of proceeding suits the Respondent and frees up cash flow for his other businesses but it is, in our judgment, a wholly unreasonable way of conducting legal proceedings.

38. We are therefore satisfied that the Respondent has conducted the proceedings unreasonably (Stage 1), and that, having regard to all the circumstances, it is right to make an order for costs against the Respondent (Stage 2). In considering whether to make an order (Stage 2) and what order to make (Stage 3), we have had regard to the overriding objective in r.3 of the 2013 Procedure Rules, which is to enable the tribunal to deal with cases fairly and justly. This includes dealing with the case "*in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal.*" It therefore does not follow that an order for the payment of the whole of the other party's costs assessed on the standard basis will be appropriate in every case of unreasonable conduct.

39. Mr Harman, in resisting the application for costs, accepts that the Respondent's case has not always been conducted in the manner called for by the overriding objective but he makes the point that the Respondent has already been punished in costs following the hearing in

August and submits that no further punitive order is justified. Reference is also made to the Respondent's financial difficulties but no evidence has been produced of the Respondent's financial difficulties, and we give this factor little weight in the exercise of the Tribunal's discretion.

40. It is right that at the hearing on 28 August 2018 the Tribunal ordered the Respondent to pay the Applicant's costs of its application dated 18 April 2018 and of the hearing on 28 August 2018, such costs to be summarily assessed if not agreed and paid within 14 days of assessment or agreement. We have due regard to that Order which obviously stands.

41. However, the extent of the Respondent's unreasonable conduct is such that we consider a further punitive costs order is warranted and we order that the Respondent do pay 75% of the Applicant's costs in relation to these Tribunal proceedings to be subject to summary assessment on the standard basis if not agreed. We direct the Applicant to file and serve on the Respondent's solicitors two Costs Schedules to enable us to summarily assess these costs and the costs as previously ordered. There must of course be no double counting.

42. Those Schedules shall be filed and served on or before 14 December 2018. The Respondent shall file and serve any objections to the costs claimed by 4 January 2018 and the Tribunal will then summarily assess the relevant costs.

43. The Respondent has applied for an Order under s.20C of the LTA 1985. The Tribunal has a discretion in the matter which must be exercised

having regard to what is just and equitable in all the circumstances: *Tenants of Langford Court v. Doren Ltd* (LRX/37/2000). In the circumstances, and having regard to our conclusions above, we decline to make such an order.

44. Once the Tribunal has summarily assessed the costs ordered to be paid by the Respondent, the claim will need to be transferred back to the County Court so that questions of interest, costs of the County Court proceedings, and costs associated with the section 146 process can be determined.

Name: Judge W Hansen **Date:** 3 December 2018

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

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

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

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

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

(3) For this purpose -

(a) "costs" includes overheads, and

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

Section 19

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

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

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

and the amount payable shall be limited accordingly.

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

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

(a) complied with in relation to the works or agreement, or

(b) dispensed with in relation to the works or agreement by (or on appeal from) [the appropriate tribunal].

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or

(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

Section 20ZA

Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any part of the consultation requirements in relation to any qualifying works..., the Tribunal

may make the determination if satisfied that it is reasonable to dispense with the requirements.

Section 27A

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

(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

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

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -

(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -

(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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