FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

V: CVPREMOTE

Case Reference	:	**CAM/26UF/LSC/2020/0034**
Property	:	**The Exchange** **Queen St** **Hitchin** **SG4 9TY.**
Applicant	:	**Jo Sapsford and other leaseholders**
Represented by	:	**Ms Jo Sapsford in person**
First Respondent	:	**Firstport Property Services Ltd**
Represented by	:	**Miss Diane Doliveux of Counsel**
Second Respondent	:	**Fairmead Ltd**
Represented by:		**Mr Claudio Sarno, agent**
Type of Application	:	**Application for the determination of the reasonableness and payability of service charges**
Tribunal Members	:	**Tribunal Judge Stephen Evans** **Ms Alison Flynn**
Date and venue of Hearing	:	**26 May 2021, by video**
Date of Decision	:	**9 July 2021**

DECISION

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Covid-19 pandemic: description of hearing

This has been a remote audio hearing which was not objected to by the Parties. The form of remote hearing was V:CVPREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents we were referred to were in a bundle of 578 pages, plus supplemental bundle of 252 pages, plus a skeleton argument from the First Respondent, the contents of which we had read in full in advance of the hearing.

DECISION

(1) The Tribunal determines that, for each of the years listed below, the figure for "Schedule 1" expenses (being relevant costs of and associated with the cark parks) must be adjusted by the First Respondent to give a credit of 4/46 in each year to represent what would have been a fair and reasonable contribution from the gym lessee under Schedule 3A towards maintenance and general repairs of the car parks.

(a) 2009/2010; (b) 2010/2011; (c) 2011/2012; (d) 2012/2013; (e) 2015/2016; (f) 2016/2017; (g) 2017/2018.

(2) The Tribunal further determines that for the years 2015/2016, 2016/2017 and 2017/2018, the figure for Schedule 1 expenses must be adjusted by the First Respondent to give a credit in each year of 37% to represent BT/Schedule 3B contributions towards maintenance and general repairs of the car parks.

(3) The Respondents' costs (if any) in connection with this application should not be regarded as relevant costs to be taken into account in determining the amount of any service charge or administration charge payable by the Applicants.

(4) The Respondents shall reimburse the Applicants' costs of the application and hearing in the sum of £300.

Introduction

1. The Tribunal is asked to determine the payability and reasonableness of relevant costs incurred and to be incurred by way of service charges

pursuant to an Application made under s.27A of the Landlord and Tenant Act 1985.

Relevant law

2. The relevant statutory provisions are set out in Appendix 1 to this decision.

Parties

3. The Applicants are several long leaseholders on an estate called The Exchange in Hitchin, Hertfordshire.

4. The First Respondent is the management company under their various residential sub-leases.

5. The Second Respondent is the lessor under the various sub-leases, and is the head lessee under a superior lease granted to it by British Telecommunications Plc.

6. The Second Respondent is also the lessor of a commercial unit within the building which consists of a gym.

Background

7. In 1955 the original building was built as a telephone exchange.

8. By a lease dated 8 December 2000, BT demised the land to the Second Respondent's predecessors in title.

9. There took place a conversion of the building in or around 2001, to provide 2 Commercial Units and 24 residential apartments.

10. A Management Scheme was put into effect by the First Respondent in 2000, when it was then called Peverel OM. A revised scheme appears in our bundle dated August 2001.

11. On 17 January 2003 the Second Respondent's predecessors in title granted a lease of flat 23 to Miss Sapsford, the lead Applicant. Similar leases were granted to the other leaseholder Applicants.

12. On 23 March 2006 the Second Respondent was registered with leasehold title to The Exchange.

13. One of the Commercial Units consists of a gym. This was previously run by an entity called Parkwood Health and Fitness Ltd.

14. By September 2015, at the latest, the Applicants were complaining that the gym were using parking spaces but paying nothing for them.

15. It seems that the matter was not resolved even after several years, and there is evidence from January 2018 that there were still outstanding issues concerning the contribution from the gym owners towards maintenance of the car park area.

16. On 29 April 2016 the Second Respondent granted the tenant of the gym, Parkwood Health and Fitness Limited, a licence to assign the demised premises to an assignee called Xchange Fitness Limited. There is no indication that any lease by way of assignment has thereafter been granted, but it would appear that Xchange Fitness Limited has been operating the gym for some time.

The Leases

17. The headlease from BT to the Second Respondent's predecessor in title is dated 8 December 2000, but is for a term of 125 years from 24 June 2000. It provides for user as a residential health club.

18. It requires, somewhat unusually, the lessor (BT) to pay a service charge to the tenant (now the Second Respondent), being a fair and reasonable proportion of service costs. This arises because clause 4 imposes tenant's covenants which include the repair of the building, save for any retained parts, and in particular by clause 4.6 the Second Respondent's predecessor covenanted to keep the Exclusive Car Park and the Joint Car Park as therein defined properly surfaced and maintained.

19. As a corollary, by clause 5.3 the landlord covenants to pay the service charge and to pay 37% of maintaining and repairing the joint car park.

20. As head lessee, the Second Respondent has then sublet the residential flats, with the First Respondent being the manager named under those subleases.

21. The sample lease provided, of flat 23, is dated 17 January 2003. In it, the Second Respondent covenants to comply with the head lease and to give quiet enjoyment etc.

22. The Second Respondent also covenants by clause 5.2 of the lease:

    (1) At the request of the First Respondent, to use all reasonable endeavours to enforce the covenants on the part of the superior landlord under the head lease;

(2) To enforce any covenant to contribute towards the matters referred to in the 6th Schedule of the lease on the part of any lessee or occupier of the Commercial Units;

(3) In the event of the Commercial Units not let being let on terms requiring such contributions, to pay to the First Respondent a fair and reasonable contribution appropriate to the Commercial Units in respect to the matters mentioned in the Sixth Schedule.

23. By Schedule 4, paragraph 3.2 of that lease, the Applicants are entitled to the right to the benefit of the covenants to contribute towards the maintenance expenses entered into with the lessor or the manager by the owners for the time being of the Commercial Units, or by the superior lessor or by the owners of any adjoining property.

24. By Schedule 6 of the flat lease, the First Respondent is obliged to incur maintenance expenses, divided into 3 parts: Part A (concerning the building), Part B (car park), and Part C (cold water). There is also a Part D, which allows the recovery of costs applicable and incidental to the costs incurred under Parts A, B and C.

25. By Schedule 7 of the flat lease, it is provided that the amount of maintenance expenses shall be adjusted to take account of the sums received by the manager as contributions towards the cost of the matters in Schedule 6 from any owners, lessees, or occupiers of the Commercial Units.

26. Under Schedule 10, the First Respondent covenants to do the matters contained within Schedule 6, and to use all reasonable endeavours to recover contributions from the lessees of any of the Properties (which is defined to include the Commercial Units).

27. Under the sample lease provided, the lessee is to pay 3.57% of the car parking costs (1/28th). The evidence shows that some leaseholders pay double, as they have two car parking spaces.

28. Finally, by an underlease dated 2 May 2006 the Second Respondent as landlord demised to Parkwood Health and Fitness Limited as tenant the health and fitness centre (i.e. gym), which is on site.

29. It is also provided by that lease that the tenant shall pay a "fair and reasonable proportion" of service costs, being the reasonable costs of the landlord in complying with the obligations under its head lease with BT.

30. Under Schedule 2 of the lease of the gym, it would appear that there is a right granted to the tenant to park just 2 motor vehicles in the service yard.

The Application

31. The Application was filed on 29 July 2020. The Applicants sought a determination in respect of unpaid contributions from the commercial unit, being the gym, for the years 2010/2011 to date. They also sought a contribution from BT towards car park maintenance costs for 2017 and 2018. The application also contends that residents have been overcharged in respect of service charge contributions, in so far as they have been subsidising the maintenance of the car park area, given the absence of contributions from the gym or from BT.

32. On 8 September 2020 directions were given by the Tribunal. The matters to be determined were, subject to the parties' statements of case:

    (1) Service charges for flat 23 for the lower car park and the building from 2009/2010 to date;

    (2) Service charges for the upper car park for 2018/2019 to date not being credited;
    (3) Whether to make a section 20C/para. 5A order;

    (4) Reimbursement of hearing fees.

33. After that date, various other leaseholders have joined the application.

34. The Applicants have provided a Scott Schedule with Statement to accompany it, and the Respondents then replied to it, with some limited details placed thereon.

35. The matter was originally listed for hearing on 5 February 2021, but on consideration of the papers the Tribunal determined that further directions needed to be given for disclosure of documents, including the head lease, and any leases or licences in respect of the Commercial Units.

36. The Tribunal also within those directions sought clarification of various comments on the Scott Schedule which the parties had partially completed.

The Hearing

37. At the hearing the issues were further narrowed. The Applicants accepted that any challenge to contributions for 2008/2009 should be withdrawn, given that this year was not included on the application form, and also because the sum apparently involved (£83.88 between 24 lessees) was minimal.

38. The Applicants also agreed not to pursue any challenge to 2013/2014 and 2014/2015, because (as stated on the Scott Schedule) no expenditure was incurred on car park costs in those years.

39. Finally, they conceded any challenge to 2018/2019, 2019/2020 and 2020/2021, given that service charge accounts have yet to be finalised for these years. Accordingly, they were unable to inform the Tribunal what amounts were being challenged for those years. This does not leave the Applicants without a future remedy. They will have the opportunity, if so advised, to challenge any sums when final demands are eventually made.

The parties' respective arguments

40. The Applicants' arguments were generally the same in respect of all 7 years in contention. They contended that the Respondents must be aware that the gym was not paying towards car parking costs, not least because the accounts from 2009/2010 onwards reveal that no such figure was being attributed under what are called "Section 3A" or "Schedule 3A" expenditure. Only Schedule "3B" costs are shown, being the contribution payable by BT alone.

41. The Applicants go on to say that from 2015 onwards it became obvious that there were anomalies in the accounts, and that they endeavoured to work with the Respondents to clarify what was going on. They produce in the bundle a selection of emails between the Finance Committee of the Residents' Association and the First Respondent dating from January 2018 to July 2019, and minutes of meetings where both Respondents, the gym owners and the Applicants were involved.

42. Ms Sapsford for the Applicants stated that they thought BT had 22 car parking spaces, although they had not physically counted them, and that the gym originally had 2, although more appear to be used by the gym staff.

43. The Applicants were unable to assist the Tribunal as to what sums should be payable by the owners or lessees of the gym, despite an adjournment during the course of the hearing to enable them to consider their position. The Applicants had proceeded on the basis that the First Respondent was

correct in asserting that the residents were accountable for 45% of the costs incurred under Schedule 1, with the gym and BT responsible for the other 55%. However, as detailed below, the First Respondent has now abandoned any suggestion that this was the appropriate percentage division.

44. The Applicants asserted that the costs payable by the Commercial Units should be based on square footage, that the gym staff were using three or four car parking spaces, but all on different shifts, which was causing more wear on the car park surface then the residents do, who have only one or 2 car parking spaces.

45. Within its statement of case, the First Respondent raised the following arguments:

- The Applicants should have acted more promptly, such that there is prejudice in addressing historic service charge years.

- The Limitation Act 1980 prevents determination in respect of any year proceeding 6 years before the filing of the application.

- There is no obligation within the leases requiring the First Respondent to force Commercial Units to pay service charges for or on behalf of the Applicants, or otherwise.

- The First Respondent is not a party to the lease with the Commercial Unit (gym).

- The Applicants are not parties to the lease with the Commercial Unit or BT, and service charge contributions by the Commercial Units is outside the jurisdiction of the Tribunal.

46. The Scott Schedule as completed by the First Respondent asserts that Schedule 3A in the accounts picks up 37% or 55% of the total car park cost in Schedule 1. However, counsel for the First Respondent withdrew reliance on this part of the Scott Schedule at the hearing, on the basis that it was admitted to be incorrect.

47. The Scott Schedule further informs the Tribunal that at some point the accounts were amended whereby Schedule 3A was removed, but the First Respondent could not assist the Tribunal as to why.

48. The Scott Schedule further asserts there is no legal mechanism to collect the service charges, and that the Second Respondent is aware of this, such that the First Respondent looks to the freeholder (sic) to cover these costs.

49. The First Respondent also accepts in the Scott Schedule in relation to the service charge year 2015/ 2016 and 2016/2017 that no contribution was made by BT towards Schedule 1, which appears to have been an oversight.

50. In its responses to directions from the Tribunal dated 22 March 2021, the First Respondent asserted that Schedule 3A was an historic service charge Schedule for service charge contributions from the gym solely towards insurance, which was removed after 2006. However, during the course of the hearing, counsel for the First Respondent accepted that this must be incorrect, and the assertion was withdrawn.

51. The responses also alleged that the First Respondent had chased the Second Respondent from January 2020 onwards, for details of what percentage proportion the gym lessee/ licensee should pay of Schedule 1 costs, and why. There had been no response, however.

52. This response further contends that BT is only liable for 37% of joint car park costs as defined under the head lease, but not all car park costs.

53. At the hearing, Counsel for the First Respondent sought to introduce an argument concerning the extent of the 2 car parks, and that there was a "clash" between the head lease and the flat lease in terms of definition. This was not a matter advanced with any clarity within the First Respondent's Statement of Case nor in its skeleton argument, which was filed in any event only just before the hearing on 26 May 2021. Counsel's argument relied to a large degree on the various lease plans, none of which were provided in colour before the hearing. Even the pdf copies then provided during the course of the hearing were difficult to interpret.

54. Mr. Williams gave evidence for the First Respondent and was tendered for cross examination. The Applicants asked Mr. Williams why the First Respondent had not resolved issues which had been first raised in 2015. Mr. Williams said he could only talk to his personal involvement from 2019 onwards, and could not say why matters had not been resolved before then. He stated he was equally perplexed, and frustrated. He said he could only apologise. He said that he had been working off breadcrumbs himself, and that he sympathised with the Applicants over the time which had elapsed. Moreover, he had not seen a clear or reasonable solution which would suit all unit holders. When asked to venture what would be a

suitable proportion for the commercial unit to contribute, he suggested 2/46 or 2/33 if the BT car park was excluded.

55. As regards the Second Respondent, in a letter to the Tribunal dated 21 December 2020, its Statement of Case amounted to no more than stating the First Respondent is responsible for the management of all service charges and all related administrative matters. The Second Respondent's response to the Scott Schedule was similarly to refer the Tribunal to the First Respondent for explanation. In a further letter dated 17 March 2021 to the Tribunal, the Second Respondent conceded that it had not taken any steps to enforce the obligations on the part of the lessee of the Commercial Unit to contribute to the service charges.

56. At the hearing, Mr Sarno made representations for the Second Respondent, explaining that he was a personal agent for them in the UK. He wished to emphasise that the gym was pretty much autonomous, with its own entrance and its own fire escapes, and it was nothing to do with the BT space or the residential space. He represented that the Second Respondent had not heard that there was any problem in this matter until the early part of 2020. He said that the Second Respondent thought that the services were being delivered by the First Respondent. He stated that the current gym occupier had told him that he had not been presented with a demand. He conceded that it would appear that they had not been paying a fair proportion of any charges to do with the car park.

57. He considered that the matter was being dealt with under the management contract with the First Respondent. He asserted that, under the terms of the Second Respondent's agreement with the First Respondent, the latter has to collect service charges from the residential and Commercial Units. No copy of such a management agreement had been disclosed in these proceedings, and when asked to assist the Tribunal with any particular clause in the agreement which might so provide, the part which Mr Sarno read out at the hearing (being clause 5.2 of an agreement unsigned by the First Respondent) only provided for the Second Respondent to join in at the request of the First Respondent in any action taken against any lessee of the apartments, or any other unit, in respect of any non-payment of money due to the manager, or breach of any covenant the manager had the benefit of under the terms and conditions of any lease.

58. Mr Sarno had to concede therefore what he had quoted did not impose an obligation on the First Respondent to collect any service charges.

59. Mr Sarno also asserted that there were 51 car parking spaces in total, and that a reasonable and fair proportion for the Commercial Unit to pay would therefore be 2/51.

60. In answers to questions posed by the Applicants, Mr Sarno conceded that he was at a meeting dated 31 July 2019, the incomplete minutes of which suggested that the First Respondent had been trying to obtain their copy of the lease for the gym for some time. The minutes also state that, before leaving, Mr. Williams of the First Respondent had requested Mr Sarno to obtain a copy of the lease from his files to provide to the First Respondent. It was therefore suggested to Mr Sarno that he was aware of this issue before 2020. Mr Sarno contended that, as far as he understood the problem, it was trying to sort out the appropriate proportion of water charges in relation to a particular water meter, and not an issue to do with the car parking maintenance costs.

61. In response to questions from the First Respondent, Mr Sarno appeared to accept that no copy of the gym lease was provided to the First Respondent until 2020. He thought that, before that date, the gym owner was sorting the matter out. It was also suggested to him that there were 46 parking spaces, not 51. He disagreed.

Determination

62. Dealing first with the First Respondent's arguments about the historic nature of the service charges being challenged, this was not a point which was forcefully put by counsel for the First Respondent at the hearing, and in any event there is no evidence of any actual prejudice to the First Respondent in dealing with the issues between 2010 and 2015. Indeed, the issues in relation to those years substantially mirror the issues in the later years. There can be no question of an estoppel rising, since it is clear that, from 2015 onwards, the Applicants have been seeking a determination and explanation of the accounts, which has not been forthcoming.

63. As regards limitation, it is generally accepted that no limitation period applies to an application under section 27A of the Landlord and Tenant Act 1985, and there is no settled Upper Tribunal authority on the point. Again, this is not a matter which is dealt with in any detail in the First Respondent's skeleton argument.

64. The Tribunal disagrees that there is no obligation in the leases requiring the First Respondent to compel the Commercial Units to pay service charges for or on behalf of the Applicants, or otherwise. The Applicants' leases clearly require both an adjustment to the maintenance expenses to

take account of contributions receivable by the First Respondent from the lessees or occupiers of the Commercial Units, and more importantly, for the First Respondent to use reasonable endeavours to recover contributions from the lessees of the Commercial Units. This obligation is not tempered by Schedule 6, Part D, paragraph 7.1 as the First Respondent suggested in closing arguments.

65. It matters not that such sums were actually received, if indeed they were receivable. Given the covenant on the part of the Commercial Units to pay a fair and reasonable proportion of the service costs which the First Respondent must incur under the headlease (which includes the repair etc of both car parks), it necessarily follows that the Applicants are entitled to have that adjustment made, and have their contributions reduced accordingly. Indeed, their leases grant them that benefit as a matter of right: see flat lease, 4th Schedule, para. 3.2.

66. We disagree that this necessarily amounts to a determination of the payability and reasonableness of any costs under the leases of the Commercial Units. But even if it does, we disagree that this would amount to an exercise outside of the Tribunal's jurisdiction. This Tribunal has jurisdiction to determine whether the Applicants as residential long leaseholders can challenge the amount which is said to be payable: see s.27A(1)(c) of the 1985 Act. The amount which the lessees should be paying is an amount which must be adjusted to take account of contributions from the owners lessees or occupiers of the Commercial Units. The Tribunal also has the jurisdiction to determine the person by whom the service charge is payable: see s.27A(1)(b).

67. We also disagree that clause 5.2 in the Applicants' leases is key in this dispute. The matter of enforceability is a matter between the Respondents. The clause is not determinative of the sum the applicant should pay. Moreover, it is only the in the event of the Commercial Units not being let on terms requiring contributions to the matters in the 6th Schedule of the Applicant's leases that the Second Respondent is required to pay to the First Respondent a fair and reasonable contribution appropriate to the Commercial Units. Given that the Commercial Units are indeed let on terms requiring contributions by the lessees of the Commercial Units, this eventuality does not arise. For the avoidance of doubt, this Tribunal can only proceed on the basis that there has been no valid assignment of the gym lease, such that the underlease dated 2 May 2006 continues to have full contractual effect.

68. It is in the Tribunal's view too much, too late for the First Respondent to argue different definitions of car park under the various leases. The

Applicants were not given advance notice of this argument, even by way of skeleton argument. It is a concerning feature of this case that the Respondents' cases have been advanced on shifting sands.

69. Moreover, it does not appear from the accounts that the Schedule 1 costs have ever been limited to one particular car park, whether the "joint car park" or the "exclusive cark park". Instead, BT has paid 37% of whatever the total spend was in each year.

70. Given all the above, the Tribunal is in a position to determine for itself what the amount of the adjustment to the maintenance expenses should be for the years remaining in dispute. We accept that this determination will not be binding on the gym lessee/occupier, either in relation to the years in question, or for the future.

71. In our determination, expenses incurred on the maintenance etc. of the car parks have been reasonably incurred, but the amount the Applicants have been required to pay is not reasonable in amount.

72. The Tribunal must do the best it can on the evidence before it. This is necessarily the application of a broad brush. We do not have sufficient information, for example, to determine any contribution based on square footage. It is even in dispute as to the total number of car parking spaces on site.

73. We reject any suggestion that there is more wear on the hard surfacing of the car park by the gym staff than the long leaseholders. The latter can make extensive wear according to their comings and goings.

74. We are also not satisfied that there are 51 parking spaces as the Second Respondent suggests, but prefer to adopt the figure of 46, as this number is more readily visible on the plans, such as we have.

75. We take into account the gym lessees right to use only 2 car parking spaces, but balance this against the evidence of actual user of the spaces by gym staff, in addition to the scheme of the leases as a whole.

76. In the Tribunal's determination, for the years in dispute the Applicants should still pay their due proportion (3.57% or 7.14% as the case may be), but the figure for Schedule 1 expenses must be adjusted by the First Respondent to give a credit of 4/46 in each year to represent what would have been a fair and reasonable contribution from the gym lessee under Schedule 3A towards maintenance and general repairs of the car parks.

77. Furthermore, the First Respondent accepting (within its comments on the Scott Schedule) that BT/Schedule 3B contributions have been omitted from the accounts for the years 2015/2016, 2016/2017 and 2017/2018, the Tribunal determines that the figure for Schedule 1 expenses must be adjusted by the First Respondent to give a credit in each year of 37% towards maintenance and general repairs of the car parks.

78. In the Tribunal's consideration, there should be an order under section 20C of the Landlord and Tenant act 1985 and paragraph 5A of Schedule 11 to the Commonhold Leasehold Reform Act 2002 in favour of the Applicants. It is patently clear to the Tribunal but there has been a long history of lack of transparency in the accounts, and of lack of engagement by the Respondents with the Applicants in order to resolve this dispute. This is a matter which is candidly accepted in general terms by Mr. Williams on behalf of the First Respondent. The Applicants have had to bring these proceedings in order to obtain a resolution to their understandable enquiries and concerns. We have been troubled by the fact that the First Respondent's case has frequently chopped and changed, with matters being asserted and then (when subject to scrutiny) being abandoned in favour of a different argument. As regards the Second Respondent, we do not accept that it should be exonerated from any blame in this regard, on the grounds that it was unaware of the matters in dispute. Whilst we have been assisted by representations from Mr Sarno, the Second Respondent's approach to these proceedings up to the date of the hearing has been simply to refer the Tribunal to the First Respondent for all the answers.

79. Accordingly, when asking the ultimate question whether it is just and equitable to make an order that the Respondents' costs (if any) in connection with this application should not be regarded as relevant costs to be taken into account in determining the amount of any service charge or administration charge payable by the Applicants, there can only be one answer. It is just and equitable, we decide.

80. For similar reasons, we make an order that the Respondents reimburse the Applicants the application and hearing fees in the sum of £300.

Judge: ________________________

S J Evans

Date:
9/7/21

ANNEX – RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written Application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. The Application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the Application.
3. If the Application is not made within the 28-day time limit, such Application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the Application for permission to appeal to proceed despite not being within the time limit.
4. The Application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the Application is seeking.

Appendix 1

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 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.