FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AW/LSC/2021/0439**
Property	**:**	**Flats 1-16 Sloane Square House, 1 Holbein Place, London SW1W 8NS**
HMCTS code (paper, video, audio)	**:**	**V: CVPREMOTE**
Applicant	**:**	**Sloane Square House Residents Company Limited**
Representative	**:**	**Ms Georgia Whiting of Counsel**
Respondent	**:**	**Dooba Investments II Limited (incorporated in Cyprus)**
Representative	**:**	**Mr Joseph Steadman of Counsel**
Type of Application	**:**	**For the determination of the liability to pay a service charge**
Tribunal Members	**:**	**Judge P Korn** **Judge H Lumby** **Mr M Taylor**
Date of hearing	**:**	**30 June 2022**
Date of Decision	**:**	**29 July 2022**

DECISION

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Description of hearing

This has been a remote video hearing which has been agreed 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 because all issues could be determined in a remote hearing. The documents to which we have been referred are in electronic bundles, the contents of which we have noted. The decisions made are set out below under the heading "Decisions of the tribunal".

Decisions of the tribunal

(1) The amounts characterised by the Respondent as VAT in respect of the insurance premiums for the years 2014 to 2017 are not payable at all.

(2) The additional management fee levied in the years 2019 to 2022 is payable in full in respect of each of those years.

(3) The Applicant's share of the £50,000 charge described in the accounts as an 'accrual' and relating to 'common rainwater drainage repairs' is not payable at all.

(4) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 in favour of the Applicant that none of the costs incurred by the Respondent in connection with these proceedings can be added to the service charge.

(3) The tribunal also makes an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 in favour of the Applicant that none of the costs incurred by the Respondent in connection with these proceedings can be charged direct to the Applicant as an administration charge under its lease.

Introduction

1. The Applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("**the 1985 Act**") as to the reasonableness and payability of certain service charges.

2. The Applicant owns an overriding lease ("**the Lease**") of Flats 1-16 Sloane Square House ("**the Flats**") and the Respondent holds the headlease of Sloane Square House ("**the Building**") in which the Flats are situated.

3. The Lease requires the Applicant to pay service charges to the Respondent. In particular, the Applicant is required to pay 56% of the costs referred to in Part I of the Fifth Schedule to the Lease and to pay towards the costs referred to in Part II of the Fifth Schedule.

4. The Respondent's managing agents for the Building are Commercial Estates Group Limited ("**CEG**"). The Applicant also has its own managing agents, Susan Metcalfe Residential Limited ("**SMRL**"), in relation to the Property itself.

5. The application relates to the following charges:

- VAT on insurance premiums for the years 2014 to 2017.
- An additional management fee that the Respondent has been levying in the years 2019 to 2022.
- A charge of £50,000 levied in 2021 described in the accounts as an 'accrual' and relating to "common rainwater drainage repairs" (of which the Applicant's share is 56%).

Applicant's written submissions

VAT

6. In the years 2014 to 2021 inclusive, VAT was added to the insurance premium payable by the Applicant. It is now accepted by the Respondent that VAT was wrongly charged, and a refund in respect of the years between 2018 and 2020 has been issued to the Applicant, following a rebate having been received from HM Revenue & Customs ("**HMRC**"). However, the Respondent has refused to issue a similar credit/refund in respect of the years 2014 to 2017. Liability to issue a credit/refund appears to be denied on the basis that the Respondent is unable to recover this money from HMRC due to HMRC's limitation period for the recovery of the same.

7. In the Applicant's submission, the ability of the Respondent to recover such sums from HMRC is simply not the concern of the Applicant. The key point is that such sums were never properly payable under the terms of the Lease and cannot be recoverable as a service charge from the Applicant in these circumstances. The Lease requires the Applicant to reimburse the Respondent for costs which *"shall include any value added tax or other tax of a similar nature payable thereon"*, but if VAT was never properly and lawfully payable on the costs in question the Applicant cannot be liable to pay it under the terms of the Lease. Alternatively, costs incurred purely due to the Respondent's negligence cannot be reasonably recoverable from the Applicant as service charge.

8. The Applicant notes from the Respondent's statement of case that the Respondent appears to suggest that the Applicant is somehow culpable for failing to notify the Respondent earlier of its error. However, no estoppel is pleaded and, in any event, the Applicant's position is that

the fact that VAT was not payable was raised as early as 2012 and on further occasions from 2020 onwards.

Management fee

9. The Applicant accepts that a management fee is payable, but the reasonableness of the total sum charged from 2019 onwards is disputed. The charges in dispute are the additional charges described as 'A11 site management' in the accounts. The total cost per year was £3,000 in 2019 and £4,000 each year thereafter. Effectively, in the Applicant's submission, the 'A11' charges amount to an additional management fee on top of that described as 'A1'.

10. The Respondent states that *"following an internal audit in 2019, CEG determined that it was undercharging for such services [i.e. management services] and increased its fees"*. However, it appears to the Applicant that these charges do not relate to CEG but instead to a third-party company called 'Property Serve'. The Respondent has failed to provide any explanation as to what services Property Serve undertake for such charges, nor has it provided any detailed invoices, nor any details as to the status of that company. The Respondent has failed to establish that it is reasonable to make any further charge above and beyond the original management fees which in the Applicant's submission are substantial and have not been reduced since the addition of the third-party sum. The Applicant also states that the increase for 2021 and 2022 represents an increase of 147%.

£50,000 charge relating to rainwater drainage repairs

11. In the service charge certificate for the year ending March 2021 there appears an entry under the heading 'D13- internal repairs & maint' as follows:

'24 Mar 21- 582388 accrual-common rainwater drainage repairs £50,000.'

12. The Applicant submits that the reference to an 'accrual' is highly misleading in the circumstances, such repairs not having been carried out at the point of the entry having been made. The Respondent appears now to be seeking to argue that such a sum was charged as an amount towards a reserve fund. Whilst the Lease does contain provision for a reserve fund the Applicant denies that the amount sought can possibly be considered reasonable in the circumstances.

13. The Applicant notes the Respondent's assertion that repairs have now been undertaken, utilising a significant proportion of this sum. However, an invoice has not been provided, and only an estimate in the sum of £33,417 plus VAT has been produced which the Respondent claims is the sum which has been expended. Such works were not the

subject of any consultation pursuant to section 20 of the 1985 Act and there is no real detail provided as to the extent or scope of the works at this stage. In view of the total lack of clarity, there is insufficient evidence to suggest that the £50,000 sought by the Respondent on account of the reserve fund is reasonable and it should be disallowed in its entirety.

14. As to whether it is even the responsibility of the Applicant to contribute towards the cost of such works pursuant to the terms of the Lease, the Applicant states that it is only required to contribute to drainage repairs 'other than those serving the offices or part of the offices only and other than those serving the building or part of the building only.' The Applicant states that it is apparent that the repairs were in the basement and argues that therefore it is not required to contribute to the cost as the repairs relate to 'the building or part of the building only.'

Respondent's written submissions

VAT

15. The Respondent states that as a matter of construction, the tenant's liability under the Fifth Schedule to the Lease to pay "the cost of insuring" the building and the "expenses (if any) incurred" by the landlord falls to be calculated by reference to the actual cost incurred by the landlord in relation to the relevant insurance. This is because: (a) the natural meaning of a cost or expense being "incurred" by the landlord is that it is an amount which is or will be paid by the landlord to a third party, (b) there are no express limitations on the recovery of such costs from the tenant, and (c) the purpose of service charge provisions is to enable the landlord to recover the costs or expenses it in fact incurs, and it would be contrary to that purpose for a limitation to be read-in where none exists.

16. The actual cost incurred includes VAT (where overpaid VAT has not been refunded) because the Respondent charged VAT to the Applicant and accounted for that VAT to HM Revenue & Customs. The overpaid VAT an amount which was reasonably – albeit erroneously – incurred. It is relevant, the Respondent submits, that the Applicant is the only residential tenant in a portfolio of approximately 850 tenants managed by the Respondent's managing agents; the rest being commercial tenants. The Respondent also had no reason to investigate the minutiae of the VAT treatment of insurance premiums, not least given that the Applicant had paid without objection between 2014 and 2020.

Management fee

17. This concerns Item A11 “Site Management Resources” in the service charge years ending 2019 to 2021 inclusive (totalling £15,000). That item was charged in addition to Item A1 “Management Fees” which had been charged in previous years and which is not disputed by the Applicant.

18. The Respondent as landlord is entitled to charge either (a) the fees actually paid to a managing agent (with no express cap) or (b) a sum representing the landlord’s administration expenses (with a 20% cap). The amounts charged under Item A11 are invoiced by and paid to CEG in respect of facilities management services. This is because, following an internal audit in 2019, CEG determined that it was undercharging for such services and increased its fees. The Item A11 charges therefore fall within (a) above as they are “fees and disbursements paid to any managing agents appointed by the [landlord] in respect of the building and in connection with the collection of rent therefrom”.

19. Although there is no express cap in relation to fees actually paid to a managing agent, the aggregate amount charged by the landlord under Items A1 and A11 has at all material times been well below the 20% cap which the landlord would be entitled to charge for in-house management. The amount charged is therefore prima facie reasonable, being well below the amount contemplated under the Lease. The Applicant has not put forward any evidence that the aggregate charge is unreasonable, for example by providing evidence that management services could be provided more cheaply. In any event, the amount charged (a) has been comparatively less than the amount charged by the Applicant’s own managing agent Susan Metcalfe Residential Management; and (b) is significantly lower than the market rate for such fees.

£50,000 charge relating to rainwater drainage repairs

20. This concerns Item D13 “Internal repairs and Maintenance” in the service charge year ending 2021 and in particular whether a provision of £50,000 for proposed common drainage repairs was reasonable. This sum was intended to provide a reserve towards the cost of the proposed common drainage repairs. This is permitted by both Part I and Part II of the Fifth Schedule to the Lease.

21. The reserve was applied towards the cost of the common drainage repairs, which have now been completed. The Respondent intends to seek dispensation under section 20ZA of the 1985 Act from the consultation requirements and to make a separate application in that regard. The Applicant will then have the opportunity to comment upon the repairs themselves and the cost thereof. For now, the Respondent submits, the question is therefore whether £50,000 was a reasonable

sum in the circumstances at the time of the demand. In its submission, the amount of £50,000 was a reasonable sum in light of the anticipated cost of the proposed common drainage repairs.

22. The common drainage repairs were within the scope of the landlord's obligations under the Lease, being *"water pipes [and] drains […] in under and upon the Mansion"* and are within the scope of the service charge provisions in the Fifth Schedule to the Lease which include: *"The expenses of maintaining repairing redecorating servicing and renewing […] the gas and water pipes drains and electric cables and wires in under and upon the Mansion other than those serving the offices or part of the offices only and other than those serving the building or part of the building only".*

23. The fact that the actual cost was less than anticipated cannot convert a reasonable demand into an unreasonable demand. In addition, the Respondent's non-compliance with the consultation requirements prior to undertaking the repairs cannot convert a reasonable demand into an unreasonable demand as the consultation requirements were not engaged at the time the demand was made. In any event, the Respondent intends to credit the surplus of £16,583 against future service charge demands. The Applicant is therefore not disadvantaged by having to pay the advance service charge.

<u>The hearing</u>

24. In relation to the VAT, Mr Steadman for the Respondent argued that the Applicant is obliged to pay the actual cost incurred by the Respondent and that the Respondent incurred the disputed sums reasonably because it made a reasonable mistake in charging those sums. He also referred to the relevant clauses in the Lease and submitted that the Respondent was entitled to pass on the cost of insuring the Property and this included the VAT. He also argued that the Respondent was only properly on notice that VAT was not chargeable from 6 July 2021. In response, Ms Whiting for the Applicant submitted that a charge levied erroneously was not rendered reasonable simply because the amount mistakenly charged could be recovered from HM Revenue & Customs.

25. In relation to the increased management fees, Mr Steadman said that the increased amount was reasonable and that the reason why the fees had been increased was that the managing agents had previously been undercharging. He also argued that there was no express cap on the management fee in the Lease and said that the fact that the Lease acknowledged the possibility of the management fee being 20% of the total service charge meant that a charge of much less than 20% (which the new aggregate charge was) should be considered reasonable. Ms Whiting countered that the management fee had doubled since 2019,

that the Applicant had not received a better service for the increased fee and that there was no evidence of a previous undercharge.

26. In relation to the £50,000 charge, Mr Steadman said that the amount demanded was reasonable at the time the demand was made, even though it turned out that less was needed in practice. Ms Whiting countered that there was no evidence that £50,000 was a reasonable sum when it was demanded.

Mr Escott's evidence

27. Mr Escott is an asset manager at CEG, the Respondent's managing agents in respect of the Building. In relation to the VAT issue, he states that CEG specialises in commercial property and that the Applicant is its only residential tenant. CEG proceeded on the basis that VAT should be charged because that was what it believed to be the case in relation to commercial tenants. In relation to the increased aggregate management fee, he states that this is significantly lower than the market rate and is also significantly lower than the amount charged by SMRL to manage the Property on the Applicant's behalf.

28. In relation to the drainage repair costs, he states that the contribution to the reserve fund was necessary and reasonable in order to ensure that the cost of the proposed common drainage repairs could be met.

29. In cross-examination, Mr Escott was asked why the £50,000 charge was referred to as an 'accrual' and he replied that he did not know as he was not an accountant. He accepted that the hearing bundle did not contain any quote for the drainage repair works that was nearly as high as £50,000.

Ms Mullock's evidence

30. Ms Mullock is a property manager employed by SMRL, the Applicant's own managing agents of the Property. In relation to the management fee categorised in the service charge accounts as 'A11', she states that there is no justification for levying what is effectively an additional management charge.

31. In relation to the sum of £50,000, she states that no particulars have been provided and that the cost has not yet actually been incurred. Effectively, therefore, it is a demand for payment towards the reserve fund and, given the total lack of explanation, it was not reasonable to include it in the 2021 service charge.

32. In cross-examination, Ms Mullock accepted that SMLR's management fees were higher than the aggregate management fee being charged by the Respondent which was being challenged by the Applicant.

Tribunal's analysis

VAT

33. Under paragraph 2 of Part I of the Fifth Schedule to the Lease the tenant is required to pay 56% of *"The cost of insuring … the Mansion …"*, and under paragraph 8 of Part I of the Fifth Schedule the tenant is required to pay 56% of *"Any value added or other tax payable in respect of any costs expenses outgoings or matters falling within any paragraph of this part of this Schedule"*. Then under paragraph 11 of Part II of the Fifth Schedule to the Lease the tenant is required to contribute towards *"The cost of insuring the building against three years' loss of rent and loss of the costs expenses outgoings and matters referred to in this Schedule"*, and under paragraph 16 of Part II of the Fifth Schedule the tenant is required to contribute towards *"Any value added or other tax payable in respect of any costs expenses outgoings or matters falling within any paragraph of this Part of this Schedule"*.

34. The extent of the Applicant's obligation to pay VAT on insurance premiums is therefore to pay it to the extent that it is payable. It is common ground between the parties that VAT is not currently – and was not at the relevant time – payable on the insurance premiums. As a result, once the Respondent knew this it made a claim for a rebate from HMRC for all of the years in respect of which it had erroneously purported to charge VAT. The fact that in respect of the years 2014 to 2017 the Respondent was unable to obtain a rebate due to the claim having been made outside HMRC's limitation period does not render the sums in question payable by the Applicant.

35. Whilst the evidence indicates that the Respondent made a genuine error when purporting to charge VAT, the issue of payability is not dependent on the state of mind of the Respondent. The Respondent has sought to argue that the error was a 'reasonable' one and that therefore the charges were reasonably incurred, but this is an incorrect analysis. The sums in question are simply not payable, and the question of how reasonable or otherwise it was to levy charges which were not payable is immaterial.

36. In conclusion, these sums – which were wrongly described as VAT at the time – are not payable and therefore are not reasonably incurred.

Management fee

37. The main bases of the Applicant's challenge to the increased or extra management fee are (a) the extent of the increase and (b) the Applicant's belief that it is an extra fee representing a different category of management, the nature of which has not been properly explained or justified.

38. We accept that the information contained in the accounts is unhelpful in identifying the rationale behind what appeared to be a separate additional management fee but which now turns out simply to be an increase to the original management fee. However, the Respondent has now explained the rationale and in our view there is no proper basis for concluding that the Respondent and its managing agent are being untruthful in giving their explanation as to what it relates to. Therefore, the key point is whether the aggregate management fee being challenged has been reasonably incurred. Whilst there was some discussion about the terms of the Lease, the Applicant has not highlighted any provisions which prevent the landlord from charging amounts equal to the disputed management fees in this case.

39. We do not accept that the Respondent needs to be able to prove that it was previously undercharging; again, the issue is whether the charges in dispute are themselves reasonable. On this key point, the Applicant has brought no evidence. And as the Respondent points out, the aggregate charges are lower than those of the Applicant's own managing agents. It is possible that this is because SMLR's duties are more onerous than those of CEG, but no evidence has been brought on this point either. As to whether the aggregate charges are in fact reasonable, this tribunal is an expert tribunal and – having looked at the figures and the nature of the services provided – we are satisfied on the balance of probabilities that the aggregate charges are reasonable in the absence of any evidence to the contrary.

40. In conclusion, these sums are reasonably incurred and are payable in full.

<u>£50,000 charge relating to rainwater drainage repairs</u>

41. This charge is very misleadingly described in the accounts as an 'accrual', and the Respondent now accepts that it was not an accrual, or at least it has not sought to argue that it was. At the hearing Mr Escott was unable to explain why it had been characterised as an accrual and had very little to add by way of explanation of the charge beyond what was contained in the hearing bundles.

42. The Respondent's position now is that it was charged as a contribution towards a reserve fund. Paragraph 9 of Part I of the Fifth Schedule to the Lease allows the landlord to charge to the tenant 56% of *"such sum as shall be estimated … to provide a reserve to meet part or all of all some or any [sic] of the costs expenses outgoings and matters mentioned in the foregoing paragraphs of this Part of this Schedule which … [they] anticipate will or may arise during the remainder of the term granted by this Lease"*. Paragraph 17 of Part II of the Fifth Schedule to the Lease contains a virtually identical provision in relation to the costs listed in Part II of the Fifth Schedule.

43. The Lease does therefore contain provision for contributions towards a reserve fund. However, the contribution must be in respect of a sum which has been estimated to provide a reserve to meet part or all of certain categories of cost which are anticipated will or may arise, and any contributions demanded must not fall foul of the provisions of section 19 of the 1985 Act relating to reasonableness.

44. In relation to this large sum of £50,000, of which the Applicant was required to pay 56%, what is striking is the almost complete absence of process or proper explanation. First of all, there is the point that it was initially – and inaccurately – described as an accrual. Secondly, the amount of information provided by the Respondent to support the demand for this very large contribution towards the reserve fund at the time was simply inadequate, and it seems that no proper process was gone through. The Respondent has now provided some form of explanation during these proceedings, but this does not retrospectively render the demand reasonable at the time even if it were to be conceded that the explanation now being offered is a reasonable one. One consequence of the lack of process at the time is that the Applicant was not afforded a proper opportunity to raise questions and/or satisfy itself as to whether the amount demanded was properly payable.

45. There is also the question of whether the contribution relates to matters the cost of which is recoverable through the service charge. Under the relevant part of paragraphs 1(a) and 1(b) of the Fifth Schedule to the Lease, the service charge includes the cost of repairing *"the … gutters and rainwater pipes of the Mansion" and "the … water pipes drains … in under and upon the Mansion other than those serving the offices or part of the offices only and other than those serving the building or part of the building only"*. The Lease defines the meaning of "the Mansion" and of "the building". The Applicant states that it is apparent that the repairs were in the basement and argues that therefore it is not required to contribute to the cost as the repairs relate to 'the building or part of the building only.' In response the Respondent asserts that the works in question do fall within the service charge provisions but it has offered no real evidence to support this assertion. Whilst we would not go so far as to make a determination that the drainage costs in question are not covered by the service charge provisions, given the lack of detailed factual evidence on both sides, it is at the very least not clear that those costs are covered by the service charge provisions on the basis of such evidence as is before us.

46. In conclusion, for all of the above reasons, this sum is not payable at all.

Observation on legal authorities quoted

47. We note that in its skeleton argument the Respondent has referred to various court and tribunal decisions by way of summary of certain legal principles. However, as the Respondent has not specifically sought to

apply any of these decisions to the facts of this case and as there is no indication that the Applicant interprets any of those decisions differently it is unnecessary for us to comment on the Respondent's analysis of them.

Cost applications

48. The Applicant has applied for a cost order under section 20C of the Landlord and Tenant Act 1985 ("**Section 20C**"). The relevant parts of Section 20C read as follows:-

(1) "A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before … the First-tier 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 …".

49. The Section 20C application is therefore an application for an order that the whole or part of the costs incurred by the Respondent in connection with these proceedings cannot be added to the service charge.

50. The Applicant has been wholly successful on two out of the three issues in dispute. Even in relation to the issue on which the Applicant has lost, it was entirely understandable why it made the challenge that it did. The position was unclear from the accounts, and the Respondent was only successful on this point because it belatedly provided a proper explanation and the Applicant's counterchallenge was insufficiently strong. The Applicant was therefore right to make the application and should not have to pay any of the Respondent's costs in opposing the application. We therefore make an order in favour of the Applicant that none of the costs incurred by the Respondent in connection with these proceedings can be added to the service charge.

51. The Applicant has also applied for a cost order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("**Paragraph 5A**"). The relevant parts of Paragraph 5A read as follows:-

"A tenant of a dwelling in England may apply to the relevant … tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs".

52. The Paragraph 5A application is therefore an application for an order that the whole or part of the costs incurred by the landlord in connection with these proceedings cannot be charged direct to the tenant as an administration charge under the Lease.

53. For the same reasons as stated above in relation to the Section 20C cost application, the Applicant should not have to pay any of the Respondent's costs in opposing the application. We therefore make an order in favour of of the Applicant that none of the costs incurred by the Respondent in connection with these proceedings can be charged direct to the Applicant as an administration charge under the Lease.

54. If either party wishes to make any **further** cost application they must do so by **12 August 2022**, sending their written submissions to the tribunal by email with a copy to the other party. Any such written submissions must (a) state the legal basis for such application, (b) state how much is being claimed and why and (c) include succinct relevant supporting information. If such a cost application is made then the other party may respond to it, and any such response must be sent to the tribunal by email by **26 August 2022** with a copy to the party making the cost application.

Name: Judge P Korn **Date:** 29 July 2022

<u>RIGHTS OF APPEAL</u>

A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.

B. 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.

C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

D. 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

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 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.