10297

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AW/LSC/2014/0052**
Property	:	**138 Sherborne Court, 180-186 Cromwell Road, London SW5 0SU**
Applicant	:	**Mr W Hutchinson (flat 9)** **Mrs Z Hutchinson (flats 108 & 113)** **Ms K Reijonen (flat 138)**
Representative	:	**Mr W Hutchinson (lead applicant)**
Respondent	:	**Sherborne Court Management Limited**
Representative	:	**Wedlake Bell** **Ms Crampin (counsel)**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Mr L Rahman (Barrister)** **Mr K M Cartwright JP FRICS** **Mr L G Packer**
Date and venue of Hearing	:	**7th and 8th July 2014** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**21.8.14**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the sums claimed by the respondent in respect of the service charges for the years 2013/2014 and 2014/2015 are payable by the applicants.

(2) The tribunal makes the determinations as set out under the various headings in this decision.

(3) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

The application

1. The applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable in respect of the estimated service charges for the years 2013/2014 and 2014/2015.

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

The hearing

3. The applicants appeared in person and had previously nominated Mr Hutchinson as the lead applicant. The respondent was represented by Ms Crampin (counsel). Mr N Bull (accountant), Mr N Garnett (building surveyor), and Mr Chandler (property manager) gave evidence on behalf of the respondent.

The background

4. The properties which are the subject of this application are flats within a development known as Sherborne Court, comprising 142 residential units, being a mix of studio, one bedroom, and two bedroom units, plus a penthouse. Sherborne Court is close to Cromwell Hospital, flats often being used for short term letting to family members of overseas patients. Ms Reijonen purchased her flat in 1985 and has been living there continuously. Mr and Mrs Hutchinson purchased their flats in the mid to late 1990's as investment properties and have never lived there.

5. The tribunal did not consider that an inspection was necessary nor proportionate to the issues in dispute.

6. The applicants hold long leases of their respective properties which require the landlord to provide services and the tenants to contribute

towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

7. The service charge year runs from 25 March to 24 March following. The parties acknowledged at the case management hearing on 18.2.14 that by the time of the hearing in July 2014 it would be cost effective to try and resolve any issues on the actual expenditure for 2013/2014 rather than simply on the budget for that year, to avoid the possible need for the actual expenditure for that year being determined in another application. The respondent agreed at the case management hearing to hasten the provision of the draft accounts and the certificates for 2013/2014 to be issued in sufficient time for any challenges to the actual accounts for 2013/2014 to be dealt with at the final hearing in July 2014. The respondent stated at the hearing that the final accounts had not yet been approved by the Directors.

8. Given the tribunal only had the draft accounts and the Directors were yet to approve the final accounts the tribunal determined it was not practical for the tribunal to determine the actual charges for 2013/2014 but to determine whether the estimated service charges for 2013/2014 and 2014/2015 were reasonable and payable.

9. Ms Reijonen stated at the hearing that she was happy to pay the service charges for each of the relevant years and did not object to the proposed major works being carried out by the respondent. Her only objection was to having to pay an additional amount towards the major works. She argued that the major works should be paid from the service charge accounts and not by an additional charge being made.

10. Mr and Mrs Hutchinson stated the amounts demanded by the respondent for the major works were unreasonable and unnecessary, the respondent had not properly accounted for particular items of expenditure in its service charge accounts for 2013/2014, the management fee for each of the relevant years was unreasonable, and the respondent had failed to comply with sections 47 and 48 of the Landlord and Tenant Act 1987. They did not take issue with the insurance and any commission paid for each of the relevant years.

11. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Were the major works budget of £300,000.00 for 2013/2014 and £300,000.00 for 2014/2015 reasonable?

12. The applicants agreed the respondent had, after properly consulting on the matter, already completed some internal works to the ground floor in 2012/2013, including re-carpeting the whole floor, changing and painting the skirting on the ground floor, stripping out false brick works in the lobby and replacing with tiles, and installing a new ceiling in the lobby area. None of the applicants had responded to the consultation notices and Mr Hutchinson stated none of the other lessees responded either. Both sides agreed the works to the ground floor were completed at a cost of approximately £111,000.00. Mr Hutchinson stated the estimate for the work had been about £69,000.00.

13. The applicants agreed the respondent had completed the stage one consultation for the proposed works to complete the works to the ground floor walls, to complete the new ceiling, put in new lighting, to create an access door to the refuse room, and to refurbish the first floor, in October 2013. Mr and Mrs Hutchinson stated they did not respond to the October 2013 consultation notice because they were abroad. Mr Hutchinson stated they go abroad for 4-6 weeks, they did not have a forwarding address and asked for notices to be sent to their home address, and did receive the relevant notice but did not respond to it because they had other things on their minds. They also stated they accept that no one else had responded to the consultation notice either.

14. Mr Hutchinson accepts he is a member of the respondent company and attends AGM's. All three applicants accept they attended an AGM in December 2013 when there was discussion of the proposed major works. The minutes of the meeting are on pages 121-129. Mr Hutchinson accepts he did not seek details of the proposed works or indicate that he was not happy with the contractors at the AGM, although he states he expressed his concerns with one of the Directors on another occasion.

15. (Counsel for the respondent stated at the hearing that the lessee of flat 53 had made an application to this tribunal regarding the major works and a case management conference hearing took place on 3.6.14. The tribunal was made aware at the case management hearing of this hearing but decided not to have the cases linked).

16. The budget for the major works concerning 2013/2014 is on page 104 of the bundle. The total amount demanded was £300,000.00. Both sides agreed it was hoped the budget for 2013/2014 would be enough to complete the remaining work on the ground floor and whatever funds were left would be used to start work on the first floor. Similarly, it was hoped the budget for 2014/2015 would be enough to complete the

remaining work on the first floor and whatever funds were left would be used to start work on the second floor.

17. Mr and Mrs Hutchinson did not challenge the service charge for the year 2012/2013. However, they were concerned that similar works to the other remaining floors would in their view end up costing £750,000.00 in total. They argued that this was not economically feasible and not in keeping with the building, including the fact that many of the flats were let short-term to families in connection with the nearby hospital.

18. Of the £300,000.00 that was demanded for 2013/2014, £178,000.00 was for external refurbishment. Mr and Mrs Hutchinson agreed the cost of the external refurbishment was not excessive and they did not take issue with that.

19. Mr and Mrs Hutchinson stated they had looked at Colherne Court, which was very different from Sherborne Court, in that the flats were very large and the occupants were mainly elderly tenants, but it showed they were moving away from the style proposed by the respondent, for example, not using wall paper and keeping their dado rails as it was cheaper. They stated Riverside Court was a suitable comparator and they had achieved internal redecorations at a total cost of £165,000.00. They accepted they did not have the detailed specifications of the work that was done at Riverside Court.

20. The applicants accept the service charge is collected in advance and any excess paid is usually put into a reserve fund at the end of the accounting year. At the end of 2012 there was approximately £159,000.00 in the reserve fund. By the end of March 2013 there was approximately £51,000.00 in the reserve fund as the money from the reserve fund had been used for the works to the ground floor in 2013. Mr Hutchinson agreed the reserve fund should have been built over the years and agreed it was prudent to have a reserve fund.

21. So far as Mr and Mrs Hutchinson are concerned the issue for the tribunal to determine is whether it was reasonable for the respondent to include £300,000.00 in its budget for each of the relevant service charge years.

22. The tribunal noted that with respect to 2013/2014 the applicants accept £178,000.00 was for external refurbishment which they did not take issue with. The respondent knew its reserve fund had gone down from £159,000.00 at the end of March 2012 to £51,000.00 by the end of March 2013. The tribunal noted that Mr Hutchinson commented at the AGM in December 2010 that the reserve fund at £138,000.321.00 was relatively low (minutes of the meeting on page 325). The respondent had properly consulted on the works that were carried out to the ground floor in 2012/2013 and received no objections from any of the

lessees. The respondent had further major works to carry out as set out in its letter dated March 2013 and which accompanied the service charge demands (page 106). In view of the respondents need to replenish the reserve account and to carry out the proposed major works the tribunal finds it was reasonable for the respondent to include £300,000.00 in its budget for the year.

23. With respect to the budget for the 2014/2015 service charge year the tribunal finds it was also reasonable for the respondent to include £300,000.00 in its budget for the year. The tribunal noted the respondent sent out the consultation notice in October 2013 (a copy of which is on page 232) setting out clearly the proposed works and inviting observations from the lessees in relation to the proposed works and any contractors that they may wish to nominate. The notice clearly explained what work had already been completed and what further work was being proposed. The respondent did not receive any response from Mr and Mrs Hutchinson or any of the other lessees. There was an AGM in December 2013 when all three of the applicants attended and there was substantial discussion concerning the major works. In particular, C. A. Daw & Son explained at the meeting that the contractor who had refurbished the lobby gave a ball park figure of £100,000.00 to refurbish each floor, which was the basis of the budget, until such time as tenders are received. They also explained that in addition to the internal redecorations, provision also had to be made in the reserve fund for future work on the roof, lifts, boilers, and other plant because all were aging (page 123.)Mr Hutchinson stated in oral evidence the minutes of the meeting are correct and accepted that he may not have raised any objections concerning the major works during that AGM. Ms Reijonen made an application to the tribunal on 29.1.14 stating the cost of the major works should be paid from the service charge account and not by way of an additional charge. Ms Reijonen did not raise any other questions about the proposed works. It was only at the case management hearing on 18.2.14 that Mr and Mrs Hutchinson, the leaseholders of 3 flats out of 141 flats in total, raised questions about the reasonableness of the budget for 2014/2015. The letter sent with the service charge demand, dated 25.3.2014 (page 135), clearly sets out the rationale for the budget set for the year.

24. Mr and Mrs Hutchinson also question whether the major works were reasonable and necessary. Given that nobody had raised any objections in response to the consultation notices in 2012, in October 2013, and at the AGM in December 2013, the tribunal finds on balance the evidence suggests the works were reasonable and necessary. This is consistent with the evidence from the respondent, which the tribunal accepts, that the respondent is trying to reduce the maintenance costs and replace outdated features. For example, the replacement of the 20 year old mineral fibre suspended ceiling with a substantially powder coated steel ceiling. The estimated costs were realistic given they were based on works already done and paid for. Riverside Court, which Mr Hutchinson stated had achieved internal redecorations at a total cost of

£165,000.00, is not a suitable comparator. Both sides disagreed on the size and structural aspects of Riverside Court. But crucially, Mr Hutchinson did not have the detailed specifications of the works that were done at Riverside Court, therefore, a fair comparison cannot be made between the two.

25. Mr and Mrs Hutchinson strongly and sincerely believe that the property could and should be maintained more economically and in a more modest style than now being adopted by the respondent. They are entitled to take that view. But ownership of property in a block of flats frequently involves compromise with a landlord and other leaseholders who take a different view of how the block should be conducted, within the bounds of reasonableness. The refurbishment now being carried through at Sherborne Court cannot be said to be an unreasonable course for the respondent to choose, notwithstanding the short-term renting of some of the flats in it in connection with the hospital. Further, the proposals have been submitted to statutory consultation, with no adverse representations submitted by Mr and Mrs Hutchinson, or other leaseholders.

26. So far as Ms Reijonen's argument is concerned, her only objection being that the major works should be paid from the service charge accounts and not by an additional charge, Clause 4(vi) of the Lease states *"In addition to the items of costs and expenditure mentioned or referred to in sub-clause (v) of this clause 4 there shall be included in the Annual Maintenance Costs such sums as the Company's Managing Agents or Surveyors shall in their absolute discretion consider desirable to be retained by the Company by way of a Reserve Fund as reasonable provision for future expenditure"*. This clearly allows for a separate contribution for major works and a reserve fund.

Do the accounts require adjustments?

27. Mr Hutchinson stated that service charge accounts for properties reflect expenditure which is incurred under maintenance contracts or expenditure paid periodically. Such payments often represent periods which are partially beyond the year under review. Such payments, which are "pre-paid", require to be adjusted at the year end so that elements of the charge will be correctly booked in the following year. Mr Hutchinson states, having examined the respondents accounts, that this principle has only been applied with two payments. The accounts therefore require adjustment and the cumulative effect of such adjustments is to reduce the service charge expenditure in the year and increase the reserve fund by a total of £17,365.00.

28. Mr Hutchinson also states the managing agents have booked and accrued expenditure wherever possible and necessary. Such accruals are specific and there are no general provisions. He has identified four

expenses which require further accrual totalling £1,410.00, effectively increasing expenditure and reducing the reserve fund.

29. Mr Hutchinson clarified in oral evidence that £17,365.00 should be removed from the accounting year 2013/2014 and added to the 2014/2015 accounting year and £1,410.00 should be added to the accounts for the 2013/2014 accounting year. The net effect results in the expenditure for 2013/2014 being reduced by £15,954.81. Consequently, the 10% management fee levied by the managing agents, based upon 10% of all expenditure, would be reduced. If the accounts are left as they are, in other words they are not adjusted in the way that he has suggested, he calculates he would be £47.46 worse off. Given the relatively small amount involved, he stated in oral evidence that this was not an issue for him. Mr Hutchinson also explained in oral evidence that if the accounts were adjusted in the way that he has suggested, the cash position for the respondent would not change, in other words, whilst the reserve fund would show an increase, in reality, the respondent would not have any extra money and the bank balance would remain the same.

30. Mr Bull, a Chartered Accountant, who has been preparing the service charge accounts for the respondent for the majority of the last 30 years, stated in evidence that it was important that service charge accounts were prepared on a consistent basis year on year and in accordance with the lease. He stated the lease defines the annual maintenance cost as the total of all sums actually expended. He stated that the respondent had adopted the policy that once any expenditure had been accrued, it is written off immediately, unless it relates wholly to a later period of account.

31. Mr Bull stated in oral evidence that an audited account must give a true and fair view. The respondent did not request audited accounts. The guidance given by the Institute of Chartered Accountants is that service charge accounts should be prepared in accordance with the lease.

32. Mr Bull also stated in oral evidence the £17,365.00 was included in the 2013/2014 account because he believed they had been "expended" in that year. If they were to be included in the 2014/2015 accounting year then the managing agents could not charge 10% on £17,365.00 in the 2013/2014 service charge year but could charge 10% on £17,365.00 in the following service charge year.

33. The tribunal finds the accounts do not require the adjustments as suggested by Mr Hutchinson.

34. The accounts have consistently been prepared on the same basis year on year for many years and are consistent with the lease, which states; *"The Annual Maintenance Cost shall be the total of all sums actually expended by the Company during the period to which the relevant*

Annual Maintenance Account relates in connection with the management and maintenance of the Buildings..." (Clause 4(v)). Furthermore, the adjustments do not result in any material difference. Mr Hutchinson states he would be better off by £47.46 if the adjustments were made but given the relatively small amount involved, he stated in oral evidence that this was not an issue for him. Mr Bull stated that whatever expenditure went into the following accounting year would attract a 10% management fee in the following service charge year in any event. Mr Hutchinson accepts that if the accounts were adjusted in the way that he has suggested, the cash position for the respondent would not change, in other words, whilst the reserve fund would show an increase, in reality, the respondent would not have any extra money and the bank balance would remain the same.

35. Mr Hutchinson stated in oral evidence that he was not disputing the £188 referred to at paragraph 9(c) of his statement of case.

36. Mr Hutchinson stated the allocation of £7,500 towards the rent of the porters flat (3 Sherborne Court), owned by the freeholder, was not supported by satisfactory evidence. The records showed invoices raised on the respondent by the managing agents and not by the landlord. There is no evidence that this accords with the demands of the landlord for rent or that the landlord has been paid such monies. Furthermore, in a decision dated 1.7.13 the First Tier Tribunal indicated the landlord of the flat was in receipt of £1,600 per year, the flat being a controlled fair rent. The landlord applied for an increase in rent to £6,000.00 per annum but the tribunal limited it to £2,951 per annum with effect from 1.7.13.

37. The respondent states the freeholder owns the flat but the porter lives in it. The respondent pays the freeholder the rent that is payable. The lease does not state how the rent is to be calculated so the respondent and freeholder decided to use a Rent Officer to determine the value, even though it was not a Rent Act tenancy. The tribunal determined in September 2013 that the open market rent for the flat was £9,120.00 (see page 343 of the bundle).

38. In response Mr Hutchinson stated he had no knowledge whether it was a protected rent act tenant or not. He had no evidence the porter was a protected tenant. He thought the rent should be £5,000.00 as before.

39. In reply the respondent stated a rent of £5,000.00 was negotiated in 2006, therefore, by 2014 a rent of £7,500.00 was reasonable.

40. The tribunal finds a rent of £7,500.00 is reasonable. There is no evidence the porter is a protected tenant. The tribunal in 2013 determined the open market rent to be over £9,000.00. Mr Hutchinson has not provided any evidence to show that a rent of £7,500.00 is unreasonable. In view of the previous tribunal's determination of a fair

rent of over £9,000, the rent of £7,500.00 negotiated in relation to the service charge is indisputably reasonable.

Is the management fee reasonable?

41. The applicants state the management fee should be fixed and not based upon a percentage basis of the overall expenditure, as there would be no incentive to keep costs down. They suggested a fee of £30,000.00 plus vat per annum. If the fee is to be on a percentage basis, they argue it should be 6% and not 10%.

42. The applicants accepted in oral evidence that other managing agents were paid on a percentage basis. The applicants stated they did not have any evidence of what others charged on a percentage basis.

43. The respondent stated it has tested the market and the fees in Kensington are about 10% plus vat. Some charge up to 12% plus vat. On a fixed fee basis, the charge is usually £300 plus vat per flat in Kensington.

44. The tribunal finds the management fee to be reasonable and payable. Whilst the Association of Residential Managing Agents recommends that it is not appropriate to charge fees on the basis of a percentage of expenditure incurred, it is only a recommendation and the applicants accept that others in the market charge on a percentage basis. The respondent states it has tested the market and the fees in the area range between 10%-12%. The applicants have not provided any evidence to show that 10% is unreasonable.

Were sections 47 and 48 of the LTA 1987 complied with?

45. Mr Hutchinson stated at the hearing that this technical argument did not affect him or his wife. It only affected Ms Reijonen. The applicants state the service charge demand issued on 20.3.13 was invalid as it did not state the landlords address. Therefore no interest was payable on the unpaid service charge demand. It so happened that Ms Reijonen paid the entire bill on 15.4.13. However, as the service charge was not payable, any payment made was to be considered as a credit. Therefore, when the service charge demand issued on 12.9.13 was not paid by Ms Reijonen, the respondent should not have charged interest. However, the applicants were not concerned that interest had been charged, but were more concerned as Ms Reijonen had been disenfranchised at the December 2013 AGM because of her failure to pay the September 2013 service charge demand.

46. The respondent accepts the service charge demand issued on 20.3.13 did not provide the landlords address. However, it states this was cured by the service charge demand issued on 12.9.13 as it provided the

landlords address. The respondent further stated that it did not charge any interest.

47. The relevant part of section 47 states that where the name and address of the landlord is not provided on the service charge demand then any part of the amount demanded *"shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant"*. The relevant part of section 48 states that where the name and address of the landlord is not provided on the service charge demand then any part of the amount demanded *"shall be treated for all purposes as not being due from the tenant to the landlord at any time before the landlord does comply with that subsection"* . The tribunal finds the service charge demand issued on 12.9.13 provided the landlords name and address, thereby remedying the defect in the earlier service charge demand. Therefore, by 12.9.13, payment for the service charge demand issued on 20.3.13, was due.

Application under s.20C and refund of fees and costs

48. At the end of the hearing, the applicant made an application for a refund of the fees that had been paid in respect of the application/ hearing. Having heard the submissions from the parties and taking into account the determinations above, the tribunal does not order the respondent to refund any fees paid by the applicant.

49. The applicant applied for an order under section 20C of the 1985. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines the respondent acted reasonably in connection with the proceedings and was successful on all the disputed issues, therefore the tribunal decline to make an order under section 20C.

Name: Mr L Rahman **Date:** 21.8.14

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.

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 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are

not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

(aa) in the case of proceedings before a residential property tribunal, to that tribunal;

(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.