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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/OOAT/LSC/2012/0738**
Property	:	**345, 347 and 354 Summerwood Road, Isleworth, Middlesex TW7 7QP**
Applicants	:	**Mr & Mrs Hunjan (Flat 345)** **Miss C Waaler (Flat 347)** **Mrs Nagda (Flat 354)**
Representative	:	**Mr G Coyle**
Respondent	:	**Mayor and Burgesses of the London Borough of Hounslow**
Representatives	:	**Mr W Beglan – Counsel** **Mr L Bradley, Solicitor from Brethertons** **Mr B Virdee, Solicitor with London Borough of Hounslow** **Mr R Pettifor, Senior Project Manager for the Council** **Mr K Nirmalakumaran, Principal Structural Engineer for the Council**
Type of Application	:	**Sections 19, 20 and 27A of the Landlord and Tenant Act 1985 (the Act)**
Tribunal Members	:	**Mr A A Dutton (Judge)** **Mr W R Shaw FRICS** **Mrs J Hawkins**
Date and venue of Hearing	:	**28 and 29 August 2013 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**9th December 2013**

DECISION

DECISION

The Tribunal determines the various matters as set out in the findings section of this decision.

BACKGROUND

1. On 6th November 2012 the Applicants brought a claim to the Tribunal seeking a determination as to the liability to pay and the reasonableness of service charges in respect of major works which were finally billed in 2012.

2. The final account for Mr and Mrs Hunjan which appeared in the bundle indicated that they had a contribution towards the major works of £18,419 after various discounts had been made in respect of matters contained in a notice given under Section 125 of the Housing Act 1985 when they purchased their flat under the Right to Buy scheme. We will return to that notice which applies also to Mrs Nagda in due course.

3. Miss Waaler who did not have the benefit of any discount was, according to the final account dated 23rd March 2012, expected to pay £55,195.95 in respect of the major works and Mrs Nagda the sum of £21,315.38 after allowances in respect of the Section 125 notice. The total final cost with all fees and adjustments for the works to various blocks in phases 7 and 8 was £8,326, 139. The case, therefore, involves quite substantial sums of money.

4. The Applicants had requested Mr Graham Coyle to represent them. Mr Coyle, it is understood, is the Partner of Miss Waaler and is a former member of the RAF now a small scale property developer. Although Mrs Nagda was represented at the hearing by Mrs Shah, she indicated that she was happy for Mr Coyle to represent her mother.

5. Prior to the hearing we received two substantial bundles of documents. The first and most appropriate bundle contained a number of papers separated by tabs. This was of some assistance but unfortunately the documents within those tabbed sections were not individually numbered except where they happened to bear some numbering at the bottom of the document in its original format. This therefore made it somewhat difficult on occasions to refer to particular papers without some delay.

6. The bundle contained the Applicants' statement and Scott Schedule, the Respondent's statement of case, a further reply and supplement by the Applicants, a number of documents that the parties wish to refer to, an expert's report for the Applicant by Mr David Whitehouse (DW) and statements made by Mr Nirmalakumaran (KN) and Mr Ron Pettifor (RP). In addition there were bundles of correspondence passing between the Respondent and the individual leaseholder.

7. None of the Applicants made personal statements and instead relied upon submissions prepared by Mr Coyle. In the document headed "Direction 6" following expert inspection", the issues that concerned the Applicants were set out. Briefly the issues were as follows:

a. Breach of covenant by the landlord in respect of alleged historic neglect.
b. The necessity for the replacement of the roof by way of a pitched roof construction.
c. The necessity for the replacement of the windows.
d. The replacement of the external cladding and the asbestos which lay beneath.

These were the main building issues.

8. In addition the Applicants sought to challenge certain procedural matters, firstly that Section 20 had not been complied with and secondly that Section 20B applied to the costs being claimed.

9. Further to the above in this statement of case, it was suggested that the insurance value for the property indicated that the cost of the works was excessive. It was suggested that in the case of Miss Waaler's property, the final bill in excess of £55,000 was over 62% of the total sum for which Flat 347 was insured. It was also suggested that it was unreasonable for the costs of these works to be charged in one year relying on the case of Garside and Anson vs RFYC Limited and BR Maunder Taylor [2011]UKUT367(LC).

10. It was then suggested that the method of repair was inappropriate and was driven by the Government funding in respect of Decent Homes standards. The quality of the work, albeit in respect of minor matters such as guttering and bin chute area, was challenged, as was the merit of the works insofar as it was argued that these costs were expensive, incorrectly measured and excessive. The Applicants' representative Mr Coyle had prepared a Scott Schedule dealing with some of these issues.

11. Not content with the above issues complaints were made with regard to the management of the project and the lead up thereto. In addition also there were complaints as to the administration and professional fees.

12. The Applicants also sought to argue that the provisions of the Section 125 notices had not been properly implemented and that the inflation uplift which the Council was entitled to incorporate had been wrongly calculated.

13. The Respondents filed a statement in reply, to which we will return, but this itself prompted another lengthy response by Mr Coyle where he commented in detail on the Respondents' submissions making certain assertions with regard to the implementation of the law. A supplementary reply was filed because it was said there had been late disclosure of documentation. This document was something of a forensic trawl through the contractual arrangements for the contract.

14. Returning to the Respondent's statement, this gave some detailed history as to the setting up of the contract under which these works were undertaken. This was set out at paragraph 4 onwards of the response and was not challenged by the Applicants as being an accurate reflection of the factual circumstances surrounding the creation of the contract. Briefly, it is noted that the Council placed a contract in the European Journal on 16th October 2002. This related to

a number of partnering agreements for periods of up to nine years with anticipated spend under those agreements of some £90m. In December of 2002 the Council invited selected contractors to tender for the work streams, one of which included United House Limited (UHL), the main contractor for this contract. Tenders were returned in January of 2003 and the Council required the four contractors who were successful in this process to undertake pilot projects to confirm their suitability for appointment. On 28th July 2003 the Council sent letters to all lessees explaining the proposal to enter into these partnership agreements seeking observations by 28th August 2003. This, of course, was prior to the introduction of the Service Charges (Consultation Requirements) (England) Regulations 2003 (the Regulations) which did not come into effect until 31st October of 2003.

15. In January 2004 strategic partnering agreements were entered into with the contractors, one of whom was UHL, for a term of five years from the 1st April 2003. On 21st January 2004 the Council entered into a project partnering contract with UHL for general structural repairs and refurbishment to properties within the Council's area. There then followed in November of 2004 notices of intention pursuant to Schedule 3 of the Regulations and in 2005 agreements were finally entered into with an agreed maximum price of £7,706,231.14 for the works of improvement to the various blocks within the area encompassed by the contract.

16. The three flats lie within Block U and fell within phases 7 and 8 of the contract which were commenced on 10th January 2005 reaching practical completion on 21st May 2006. On 17th May 2006 a notice under Section 20B(2) was served on the Applicants informing them that the total costs incurred to date was £7,256,000. It appears that the final account with the contractor was signed off on 17th December 2007 but it was not until March of 2012 that final demands were sent out to the leaseholders.

17. The remainder of the statement of case addresses the obligations of the landlord to repair, the validity of the Section 20B notice and the reasonableness of the works and the contractual arrangements. The statement also addresses allegations of excessive cost and the impact of the notices under Section 125.

18. These documents were read by us and there is little to be gained by setting out in great detail that which is set out in these documents as they are of course available for the parties. In addition to these statements of case, we had, in the bundles, statements made by KN, PR and the report of Mr David Whitehouse (DW) the chartered building surveyor with Carter Fielding Limited.

HEARING

19. At the start of the Hearing on 28th August 2013 Mr Coyle complained at the late disclosure of documents from the Respondents and sought a barring order. Mr Beglan on behalf of the Council said the documents had been supplied to the Applicants by email in July and there could be no suggestion that there had been prejudice caused. The disclosure was late because of the requirement to respond to Mr Coyle's requests. Mr Coyle did not seek an adjournment to consider the papers and we considered that in the light that all parties were ready to proceed

and the costs that would be occasioned by an adjournment together with our view that there was no prejudice caused that the application should proceed.

20. The first issue raised by Mr Coyle related to the validity of the Section 20 procedures. He was concerned that the wrong procedures had been followed although accepted that the works were being carried out under a qualifying long term agreement (QLTA). The concern that there may have been the wrong procedure followed was to be found in a document headed "Reasons for works" which refers to Section 20 schedule 4 part 2. Mr Coyle was of the view that observations had been disregarded and that UHL had in effect been chosen to do the works before proper consultation took place with the leaseholders. The initial notice was dated 18th November 2004

21. Mr Beglan pointed out that this was not a statutory consultation as the QLTA had been entered into before the consultation requirements contained in the Regulations came into effect. However, he believed the Council had followed the spirit of the regulations and although the schedule may have been incorrectly headed, it accurately set out the works to be done. In his view, therefore, there was no evidence of any prejudice that could have been caused to the parties. Mr Coyle confirmed that if schedule 3 of the Regulations were indeed the route to be taken for consultation, this was not a matter that he would take further.

22. The next matter raised was in respect of the impact of Section 20B of the Act. The issue he raised was that the initial notice dated 18th November 2004 was from Hounslow Homes whereas he thought the notice should come from the landlord, being the Council. The real crux of this, however, lay with a letter from Hounslow Homes dated 17th May 2006 headed as follows:

"NOTIFICATION OF LEASEHOLDERS
Section 20(B) Landlord and Tenant Act 1985 (as amended)

The Council formally wrote to you on 19th November 2004 to advise you of the following works:

Block refurbishment and external works (major works reference 04/036)

In accordance with the above I write to inform you that the council has incurred costs in respect of these works. The total costs incurred to date are £7,256,000. This is based on the total value of interim demands presented to the Council by the Contractor.

However, as the contract may not yet be completed and the final cost of the works is not yet known, your final contribution cannot yet be fully calculated.

For your information your contribution towards the costs of these works will be calculated with reference to the number of properties affected by the works. It will also include a one off administration charge and a professional fee as detailed in your Section 20 consultation notice. Your contribution will take into consideration any limits on the Council's right to recover costs that may be in place by virtue of the terms of your offer notice (if applicable).

This letter is not an invoice. . Your contribution will take into consideration any limits on the Council's right to recover costs that may be in place by virtue of the terms of your offer notice (if applicable).

This letter is not an invoice. You will receive the invoice for your contribution in due course. If you have any queries regarding the contents of this letter, please contact me on the above number.

Yours sincerely

C Chukwura
Principal Major Works Officer"

Mr Coyle's assertion was that this notice made no mention of leases or service charges and did not tell the tenant the amount they might be expected to pay. Accordingly it was not a written notification in accordance with either section 20B(1) or (2). His fall back position was that the 17th May 2006 was the start date for the imposition of Section 20B(2) if it be accepted as an appropriate notice and that accordingly certain invoices, those numbered 16, 17 and 18 in the bundle before us, should be disregarded as they were outside the 18 month period.

23. Mr Beglan responded to this. Both sides sought reference to the High Court case of the *Brent London Borough Council vs Shulem B Association Limited [2011]EWHC1663(Ch).* Mr Coyle did accept, however, that if one considered the initial notice under section 20 dated 18th November 2004 and the letter given in May of 2006, that this gave sufficient information to the leaseholder to be aware that the costs had been incurred. It was said that the costs incurred in respect of the block fell well within the £7,256,000 said to have been incurred in May of 2006.

24. The next issue addressed by Mr Coyle was the apparent anomaly between the insurance value of the property and the costs of the works. He suggested that if the insurance reinstatement value of Miss Waaler's flat was around £88,000 and she was being asked to spend £55,000 on the works, that this was unreasonable. This went towards the question of whether the costs were reasonably incurred. We will address this issue in the findings section.

25. The next matter to be discussed was the impact of Section 125. The first point was the inflation calculations which only apply to Flats 345 and 354. The inflation calculation was to be found in The Housing (Right to Buy) (Service Charges) Order 1986 (the Order). The index to be applied is the Public Sector housing Repair and maintenance cost index. It appears that both parties accept that the starting point was an index figure of 85 obtained from a schedule included in the bundle. Mr Coyle sought to argue that the practical completion date was 21st May 2006 and accordingly the period should finish at that point which he told us showed an index figure of 104. It appears, however, that the Council had used the final invoice of 27th November 2007 as the cut-off date which gave the index figure for the last quarter of 2007 as 113. We called for a

copy of the Order and will return to this matter in the findings section. We should record that RP indicated that there had been a snagging period of 12 months which from the contractual completion date of 21st May 2006 would have taken completion to May 2007.

26. The next issue under the Section 125 notice was whether the Applicants, save Miss Waaler, had a liability to pay for works which were either not repairs or improvements. The matter was investigated further when RP gave evidence. Mr Coyle, at this point, raised concerns that the Council appeared to be calling two expert witnesses when the directions only provided for one. Mr Beglan, however, confirmed that RP was standing as a witness of fact and not an expert.

27. After the luncheon adjournment Mr Beglan confirmed that the material provisions of the leases held by the Applicants were the same. Also returning to the same Section 20B point, it was his view that the costs were incurred "when they became payable, which was at the time that the retention was released."

28. We then heard from Mr Nirmalakumaran (KN). He told us that he had given expert evidence before the Court and Tribunal and his statement which was included in the bundle behind tab 7 running to a number of pages including exhibits, was his evidence in chief. We read same. The statement included a report by BRE made in 1992 following inspection of "planked cladding at low rise housing on the Ivy Bridge Estate, Isleworth Middlesex." Under the heading "Conclusions and Recommendations" it is recorded that some of the cladding planks had become displaced and that damage to planks and their subsequent loss from the building elevation could have been prevented by "timely maintenance and remedial action." The conclusions went on to indicate that the cladding had been fixed using galvanised nails and that there was a potential for electrolytic action between dissimilar metals. The report went on to say that there was no practical way of assessing the condition of the fixing without removing large areas of cladding, but that the opportunity should be taken to examine the condition of the fixing whenever they were exposed for some reason. There was a recommendation that the cladding be cleaned regularly.

29. KN was then the subject of cross examination by Mr Coyle. He told us of the £4.7m made available to Hounslow in 1997 for improvement works. He pointed out that these monies were loans not gifts and were repayable. With regard to the windows, he told us it was not the state of repair so much as the inability to repair and the faulty working parts that had caused concern. With regard to the roof, he told us that it had been decided in 1992 that there was a need to replace it and that therefore little repair works had been carried out since that time. There were discussions as to whether the roof was a warm roof or a cold roof, a reference to the type of construction, but we learned that most of the problems had been occasioned by the parapet which surrounded the roof area. Although some temporary repairs had been carried out by 1996, KN had come to the conclusion that the roof was not capable of being saved and it would be inappropriate to spend much more money on it. He thought that the roof covering of this nature, with the problematic parapet would only last some 35-40 years and although there were the discussions about the alternative methods of covering the roof, such as an elastomeric warm roof covering, he said that this was not an option that he had considered and did not have the information as to

costings. He told us, however, that in his experience a 25 year life expectancy was appropriate for a roof of this nature, this being based on his 30 years being Hounslow's structural engineer.

30. In respect of the windows and cladding, he told us he was of the view that the windows could not be removed without the cladding being taken off which would in turn disturb the asbestos lying beneath. There had, he said, been problems between the cladding and the asbestos in any event. Insofar as the problems with the windows were concerned, he thought that the hardwood frames were in reasonable order but it was the metal fixings and in particular the hinge on the tilt window which was causing the problems. He was asked why investigation into the possible retooling of the window hinges had not taken place, but indicated that he thought it was not possible. He produced evidence that he considered showed that there had been call-outs to the block in respect of window difficulties and although he accepted that the windows could perhaps have been removed internally, it would inevitably have affected the asbestos which had butted the windows and accordingly that would have needed to have been dealt with.

31. On the next day of the Hearing on 29th August 2013, KN told us that there had been attempts in phase 1 and 2 to replace the hinges but this had been unsuccessful. He recalled that he thought one window had in fact fallen out at some time in the past but was not able to give any particular details. They had been using hinges from windows in other blocks which had been replaced but this was of a limited period. He indicated that he had not himself made any observations or notes of the windows and the decision to replace had been made by an architect. He was of the view that the windows did need to be changed but was not part of the decision making process. He did believe, however, that the tilt windows were too heavy for the hinges. He did not give any indication as to whether it had been considered that the tilt window section could have been replaced with a lighter double-glazed unit. He accepted that the replacement of the cladding only arose because the windows were replaced. There were bits of cladding missing, he said, and some could have been salvaged but in his view replacement was a better solution. He told us in his initial responses that the cladding would need replacing but not for another five to ten years as an estimate based on the BRE report and his own opinion. The replacement of the cladding when the windows were being replaced saved considerable sums in respect of scaffolding, preliminaries etc. at a later date.

32. His evidence was the followed by Mr Whitehouse (DW), the expert retained by the Applicants. His is the only "evidence" that we received on behalf of the Applicants. The submissions were made by Mr Coyle based on his views of various matters but none of the Applicants themselves made witness statements. The report of DW was behind tab 6 and contained an acceptance of his responsibilities to the Tribunal. We were told that he had inspected the property on 23rd April 2013 and that the report had been completed towards the beginning of June. Under the heading "Documents Provided" it seemed that he had only had a copy of the Scott Schedule, which had been prepared by Mr Coyle, and the BRE report that we have referred to previously. Accordingly any history relating to the building had to be taken from the Applicants or Mr Coyle. The report set out the works that had been done and confirmed his inspection in

April. He told us he gained access to the roof space but of course by then the roof had been replaced. He then turned his attention to the Scott Schedule and undertook a re-assessment of the areas that had been the subject of works. Unfortunately there had been no meeting with the "experts" for the Council and accordingly the re-measuring did not provide great assistance to us in dealing with that element of the dispute. He was asked to comment on the historic neglect associated with the works being carried out in 2005 and 2006. He recounted the notes of his inspection of the roof space and that he could find no evidence of thermal insulation below the roof coverings. He thought that when the new pitched roof had been constructed the flat roof beneath would have been some 35 years old and that given normal conditions of adequate maintenance could have been expected to last between 50 and 60 years in accordance with documentation he recited. At paragraph 7.10 he suggested that the roof could have been patch repaired until it had reached the end of its life span in 50-60 years with a suggested sum of £2,000 per annum for patch repairs and a further sum of £2,500 each year for painting the asphalt. His assessment for stripping and recovering the roof with new asphalt including painting with solar reflective paint was in the region of £46,240, based on Laxton's Building price book, and thought that over a 60 year life span ignoring effects of inflation, a replacement roof would cost £73,704 including repainting but did not appear to include potential annual patch repairs nor the costs for temporary roofing.

33. Insofar as the windows are concerned, he appeared to be of the opinion that these were softwood windows with a life span of between 30 and 50 years. In regard to the external walls, the report confirmed the review of the BRE report and we noted what was said. He had no specific comments to make on the tendering process although did accept that a figure of 13% for overheads and profit was reasonable for a project of that scale.

34. He told us that a couple of matters had been agreed with the Council, namely that rainwater goods include underground drainage and the measurement of the roof area at 600m². He accepted that although the Scott Schedule highlighted some wrong measurements, he was not widely apart from the Council except on the roof measurement which had now been agreed. The extent of the works, he told us, had been taken from the Scott Schedule which was the only document he had seen. Insofar as the windows were concerned, now that he was aware they had hardwood frame he thought the life span would be 35 – 65 years but with an average of 50 years. He also felt that the flat roof would need to have been replaced after about 50 years. He did accept that the report when comparing the figures did not include patch roof repairs and that in a 60 year period patch repairs were likely to arise. He was of the view it would have been perfectly possible to replace the existing flat roof with another but accepted that he had not seen the roof before the pitched roof was erected. He had no idea what the cost would be to reduce the upstands and relay the roof but that it may have been an appropriate way of dealing with the matter. However, when asked the specific question as to whether it was unreasonable for the Council to proceed, he said as follows: "The replacement of the flat roof by a pitched roof is a reasonable step to take including all factors including costs. This is not necessarily a decision I would have taken."

35. Insofar as the windows were concerned, he confirmed that he had not seen the originals but thought that it might have been possible to have obtained hinges from another source which could have been upgraded. He had not himself investigated the option of replacing the hinges by way of retooling. He thought, however, the hinges could be obtained at a price of £20 although he had no specific evidence of this rate was produced. He thought also it possible to change the hinges from inside but he accepted that there could be health and safety issues. He had never come across the method of providing double-thickness glass before and thought that perhaps it was more particularly a sound insulation given the property's close proximity to Heathrow Airport.

36. When cross-examined by Mr Beglan, he confirmed that he had not seen the hearing bundle, had not seen the agreed maximum price report and had not asked for it, had not had access to the final accounts or statements of case, nor the documents disclosed after the December pre-trial review including the priced specification under the commencement agreement and consolidated service charge demands. He had not requested access to the specification. He thought that the lack of documentation had seriously hampered him in dealing with the transfer of costs that had been charged to Block N to those to Block U. He did say there appeared to be a considerable error in the re-measuring of the windows but asked if he had seen the final accounts where the re-measuring had been carried out, he said he had not. Asked whether in his report he had indicated that the steps taken by the Council to resolve the window problems were unreasonable for the windows, he confirmed that there was nothing in his report that said those steps were unreasonable. He told us that there was no issue between himself and the Council on the partnership arrangements and that the Scott Schedule contained Mr Coyle's entries which he had considered. He accepted also, when asked about the extent of the works done, that where performance requirements require works to be done, probably those exceeded that which was apparent from the Scott Schedule.

37. On the morning of 29th August we were provided with an agreement reached between Mr Whitehouse and Mr Pettifor. That agreement says as follows:

1. *"Agreed that if we amended measures in the AMP it would alter the basis of calculation. As a result we agree that it would be necessary to recalculate the AMP using a new agreed method.*
2. *Agreed that the majority of AMP items included a number of items of work eg Stramit board, cladding, would include fixing cladding, cutting around openings, cover fillets around windows, cover trim at top, trim at the bottom.*
3. *We agreed that it was allowable for Apollo to add 15% for OH and P to their sub-contractors prime costs before UHL added their own 13% for OH and P.*
4. *Agreed that asbestos, soffits and AMP were those to the balconies of individual flats.*
5. *Agreed that the new roof would require new underground drainage as the existing roof was drained via central roof gullies.*
6. *Agreed that the charge for preliminaries included in the calculations for charges for leaseholders is correct and item 9-9.01 of Mr Whitehouse's expert report can be withdrawn."*

38. In the afternoon of the second day we heard from Mr Pettifor (RP). As with KN, RP's report was to be found in the bundle but behind tab 8. Although it is headed "Expert Report" it seems to us, as with KN, that they could hardly be described as independent as both were employed by the Respondent. We noted the report by RP and he was tendered for cross-examination by Mr Beglan. On the question of the Scott Schedule and Mr Coyle's attempt to introduce a complete re-measuring of the works he said it was agreed that could not be done for the purposes of this hearing, if at all. He told us, however, that as far as the final account was concerned the roof re-measuring had been taken into account, which was the major concern of DW and that he was satisfied that the final account figures were correct. They had also been certified as correct by the consultant.

39. Insofar as the delay in producing the final account was concerned, he told us that the consultant had gone into liquidation and that they had been trying to get the information from the contractor since 2010. The matter had been allocated to the home ownership unit who prepared invoices and there was a delay considering how best the leaseholders could be helped to make the repayment arrangements.

40. There then followed discussions as to the inflation liability in respect of the Section 125 notice. He told us that although he could not formally approve, he did not disagree with the assessment that May 2007 was the appropriate date for the cut-off for inflation calculations under the Section 125 notice. On window replacement he told us that it had not been possible to source replacement hinges, a trial had been carried out just replacing them but had not worked well and he understood that the residents had agreed that they were not suitable and that changes should take place.

41. A number of questions were asked in cross-examination by Mr Coyle. RP confirmed that the project had not been extended by dealing with the kitchen and bathroom replacements in the tenanted flats and that there had been an error in the roof measurements but that this had been corrected. Furthermore, he reminded us that the contract was under an agreed maximum price arrangement for the works and that that could not be exceeded unless additional works were done, which it seemed was the case. He confirmed that he was not aware of any structural problems with the premises prior to the Right to Buy taking place and in his view under the Section 125 certificate, decorations included external walls, outside screens, door entry doors and therefore was correct to include them in the consultation. He did, however, think that the cost of the replacement windows was a high price. UPVC would have been a cheaper basis but the aluminium frames that had been used would avoid future problems and had a double life expectancy of UPVC windows.

42. Asked whether there had been consultation with regard to the door entry system, he told us that there had been and that the figure of £3,336.80 included the audio entry phone system and front and rear control panels. There were also discussions concerning the cost of the wooden frame to the bin store that had been changed to add additional ventilation. Finally, he told us that if the grant money had not been available it would have been necessary to have undertaken

phases 7 and 8 separately which would have incurred significant additional costs.

43. At the conclusion of the case, we invited the parties to submit representations to us which they subsequently did. For the Counsel Mr Beglan concentrated on the matters that we had raised with him as being of particular issue, namely the replacement of the windows and cladding. As a response he sought to provide a further report from KN and a new one from Mr J Matthews. We noted all that was said in the submissions and have taken those into consideration when reaching our decision.

44. On the question of costs, Mr Beglan considered that the lease was sufficiently broad in terms to enable the costs to be recoverable and that the Respondent had a strong case on a number of items none of which were effectively or substantively contested by the evidence called by the Applicants. He said that the Applicants had pursued a number of unmeritorious contentions and had failed to provide Mr Whitehouse with sufficient information for his report to be of assistance.

45. We read the report by Mr Matthews also headed "Experts Report" which we did not consider it was and the further report by KN. Mr Matthews was employed as a carpenter, although may now have risen to higher levels in the local authority, and has been with them since 1998. He did give us more information as to the problems associated with the windows. He told us that replacement hinges had been sourced from Sweden at a cost of £140 per pair, not the £20 suggested by Mr Whitehouse. However, this it seems did not solve the problem as those hinges became unobtainable and other options proved unsuccessful. KN's additional report sought to resile from the evidence he gave as to the life expectancy of the cladding, which he now seemed to be suggesting was 5 – 10 years from 1992. The only additional evidence he could find with regard to the replacement of the windows was a letter from Mr Taylor, the Assistant Chief Executive Property Services, in January of 1997 referring to a telephone conversation, we suspect erroneously recorded as 14th January 1996, where it is suggested the window replacement should be carried out instead of repairs.

46. Mr Coyle, as with much his presentations to us, had adopted a "kitchen sink" approach to the submissions. Not only did we have the Applicants' closing rebuttal which we noted, but also the Applicants' closing submissions running to some 17 pages. This in essence repeated much which was set out in the statements of case. It did, however, make certain concessions with regard to historic neglect of the windows for example, but set out in further detail the perceived damages being claimed by the Applicants arising from the alleged historic neglect. We do not propose to go into detail with regard to that which is set out in these lengthy documents suffice to say, however, that we have taken them into account in reaching our decision.

THE LAW

47. The law applicable to this application is set out in the schedule attached.

FINDINGS

48. We think that perhaps the best way of dealing with the numerous issues raised by Mr Coyle on behalf of the Applicants is to make use of his closing submission where he appears to list each item that he believes needs to be considered with the reasons.

49. Liability to Pay
The issue appears to centre around the provisions for which demands for service charges can be made under the terms of the lease. The sixth schedule is the appropriate section as suggested by Mr Coyle. The Council's position is set out at paragraphs 61 – 65 of the statement of case. The wording in Schedule 6 part 1 is as follows, insofar as is relevant: *"The service charge attributable to the flat for the financial year shall be a proportionate part of the costs or estimated costs (including overheads) incurred or to be incurred in that year by or on behalf of the Council in connection with the provision of services, repairs, maintenance or the Council's costs of management and including:-*
(a)...
(b)...,
(c)... and
(d), the latter including the cost of reserve fund. Part 2 of the sixth schedule requires the Council to annually serve on the lessee before the first date for payment thereof or any part thereof a written demand signed by the Borough Treasurer for a sum representing the Council's estimate of the service charge attributable to the flat in that financial year. The paragraph then goes on to deal with matters and at paragraph 3 says as follows: *"Time shall not be of the essence of the provisions of this schedule and if on any date for payment of the service charge attributable to the flat no written demand has been served hereunder, the lessee shall be bound to make a payment at the rate applicable under the last estimated demand and upon the demand being subsequently served any deficiency or surplus shall be payable or repayable immediately."*

50. What appears to have happened in this case is that the Council have never sought to seek payments on account in respect of these major works. Instead the costs have been funded by the Council and to a degree by the inflation elements incorporated into the Section 125 notice. We are not enamoured with the argument that there may have been some estoppel by convention, but it seems to us that there is nothing in the lease that prevents the Council from issuing a demand in respect of costs that have been incurred some years before. The phrase *"time shall not be of the essence"* is supportive of this view and there is no prejudice caused to the leaseholders by the delay, rather to the Council in not recovering the funds on a timely basis. This delay in dealing with the accounting process is unacceptable but not prejudicial. Accordingly we dismiss this element of the claim.

51. The next issue raised by Mr Coyle in his submissions and consistent with the statement of case was the validity of the Section 20 notice. A somewhat spurious argument is put that because the period allowed for consultation was 33 days this exceeded the 30 day period provided for in the regulations and accordingly was in error. This cannot be right and is not a matter we would propose to take further. Furthermore, it is quite clear that this consultation

related to a qualifying long term agreement entered into before the consultation process. In any event, the Council has followed the consultation process under schedule 3 and, as Mr Coyle accepted in the Hearing, if that was the appropriate method of dealing with consultation he had no complaints. The observation point is without merit; there is no obligation on the landlord to do anything other than to take note of the observations and to record and respond, which it did. The tendering issues pre-date the Section 20 procedures and it is wholly inappropriate in our view for us to attempt to investigate the tendering that took place in 2002. No appeal has been made in connection with the QLTA and accordingly it is not a matter that we are prepared to entertain at this stage. Neither does the alleged error in the notice dated 18th November 2004 where the agreement is incorrectly dated, it is said by Mr Coyle, have any impact.

52. We then turn to the Section 20B point. The notice of intention was dated 18th November 2004 and estimated the total cost of work to be payable by the individual leaseholders. The notice under Section 20B is dated 17th May 2006 and confirms that the total costs incurred to date were £7,256,000. It is noted that the notice of intention in November of 2004 referred to the total costs of over £8m and this is close to the final cost. We have considered the judgment of Morgan J in the Brent vs Shulem B case and a number of other authorities which have addressed the issue of Section 20B. We bear in mind the policy behind Section 20B which was set out by Etherton J in Gilge vs Charlegrove Securities Limited [2003]1ALLER91 where he said as follows: *"So far as discernable, the policy behind Section 20B of the Act, is that the tenant should not be faced with a bill for expenditure of which he or she was not sufficiently warned to set aside provision. It is not directed at preventing the lessor from recovering any expenditure on matters and to the extent to which there was adequate prior notice."* There has been, of course, a number of cases as to when were costs incurred but for the purposes of this case it seems to us that those costs were incurred when the certificates for payment were received. In this case, of course, the council relied upon the provisions contained at Section 20B(2) which provides that the provisions of Section 20B(1) do not apply if within the period of 18 months the tenant was notified in writing that those costs had been incurred and he would be subsequently required to contribute to them by way of a service charge. Our findings are that the letter sent on 17th May 2006 does constitute a valid notice under the provisions of Section 20B(2). Although a global figure is given, when read in conjunction with the initial notice served in November of 2004, it seems to us that a leaseholder would be aware that the costs which were expected to be paid in November 2004 had now by and large been incurred and that they therefore had a liability to make payment and, of course, as this was not demanded until 2012, had some six years in which to put funds aside. However, it does seem to us that not all the costs are in fact saved by that letter in May of 2006. We were provided with copies of the payment certificates. The subsequent demand for payment was not of course made until the letter dated 23rd March 2012 was sent to the Applicants. Accordingly in our findings Section 20B applies to those certificates dated 31st May 2006 in the sum of £194,907.37, the certificate dated 7th November 2007 in the sum of £242,983.42, the final statement of account dated 17th December 2007 showing a payment of £207,567.14 and finally the last invoice dated 8th October 2008 showing a figure of £907.97, a total of £646,365.90. These sums, therefore, need to be taken into account and the final demand amended accordingly. It is

not wholly clear to us, as was not advanced by either side, how this impacts on the sums that are due from the Applicants. It seems to us, however, that the relatively substantial sums involved in the region of £640,000 must have some effect on the final account payable. Accordingly, doing the best we can to bring finality to the matter we conclude that the total contract price is £8,326,139. The sums which we say fall into the provisions of section 20B are £646,365.90, being some 7.7% of the total. Accordingly we find that the costs of the Applicants should each be reduced by that percentage to reflect the findings on the section 20B we have made.

53. We then turn to the question of the breach of covenant, essentially historic neglect. Although Mr Coyle has gone to some lengths to set out what he considers to be the damages suffered, unfortunately much of the figures are based on the report prepared by Mr Whitehouse which was, of course, lacking considerable information and was a report prepared several years after the works had been carried out. Mr Whitehouse conceded that the Council had not acted unreasonably in respect of the roof replacement and the window works and indeed Mr Coyle in his submission concedes there is no claim for historic neglect insofar as the windows are concerned. We do not accept that the council has created a case where historic neglect applies. We heard of the difficulties with regard to the roof and the patch repairs and the fact that this block, which had been built in the late 60s, would have been getting to the point, on both sides' assertions, that the flat roof required changing. We have no doubt having seen the photographs that the erection of the tiled pitched roof has not only added to the aesthetic look of the property but also created a roof that will not require the annual expenditure associated with a flat roof. Insofar as the external walls are concerned, in 1992 an issue is raised. Concerns were expressed in the report of the potential need to remove cladding, which in itself could have caused problems and we accept that if the windows were to be replaced then the asbestos and cladding also needed to be done. There is no evidence that any form of historic neglect has had an impact on the cladding. The replacement of the cladding rests it seems to us fairly and squarely with the need to do so once the Council had decided that the windows required changing. In those circumstances we do not find that there are any damages payable in respect of the claim for breach of covenant as sought by Mr Coyle.

54. Under the heading "Reasonableness" there are a number of issues raised, the first being the time taken to re-charge leaseholders. It does seem to us that it is unreasonable for the landlord to take the length of time that it did to finally produce the invoice. However, it is difficult to see where the Applicants have been prejudiced by this. They have had, it seems to us, ample time to have put money aside to meet the expenditure, although we appreciate the amounts required to be paid are not insignificant. We have no reason to doubt the evidence submitted by Mr Pettifor and his view that the final certificate is an accurate reflection of the costs spent.

55. In respect of the claims in the single service charge year we are aware of the case cited Garside vs RFYC but, of course, having accepted that the provisions of Section 20B did not apply, it is clear the Applicants were aware from 2004 that this expenditure had to be met. Furthermore, it does not seem to us that this is a contract which would have benefited from being split. The cost of scaffolding

is not insignificant and to have dealt with the roof as one contract and then, for example, subsequently dealt with the windows separately would only have resulted in an increase in the scaffolding costs and other preliminaries that went with it. Accordingly we see no merit in that argument.

56. The next point raised is the excessiveness of the costs when compared to the insurance value. With respect, this and the points raised with regard to demolition, seems to us to be without merit. The insurance value is not the capital value of the flats. We are sure, for example that Miss Waaler would not be selling her flat at the insurance value of £88,000 but a sum considerable in excess of that. Accordingly reference to the extent and cost of the works by reference to the insurance value of the property seems to us to be a misconceived argument. We are not wholly clear what Mr Coyle is attempting to achieve when he revisits the question of demolition. This seems to pre-date the ownership by the Applicants of the flats and he has no evidence to rebut the decision by the then occupiers that they did not wish to seek demolition. Accordingly we do not accede to his request that we disregard the Council's claims in this regard. The evidence we have before us was that the residents did not wish the property to be demolished and the Council dealt with the same accordingly.

57. The next heading under Reasonableness is the Reasonableness of the Costs. Insofar as the roof is concerned we think we can take this quite shortly. Much was made as to whether or not the roof was a cold or warm roof and the problems that had been had in the past. KN accepted that there had been little in the way of repair works for some time because the decision had been made in the 1990s to replace the roof. The Applicants' own expert accepted that the replacement of the roof with a pitched roof was not unreasonable both in the actuality of the works and the costs. It seems to us, therefore, that if the Applicants' own expert accepts that the replacement of the flat roof with a pitched roof was a reasonable step to be taken by the Council and has no particular complaint as to the costs of the pitched roof, that this is not an argument that can be taken any further by the Applicants. We, therefore, find that the replacement of the roof with a pitched roof was perfectly reasonable and that the costs associated therewith were also reasonable.

58. We then turn to the question of the windows which caused us far more concern. It appears that the windows had an inherent design problem. Two substantial panes of glass were installed in the tilt section of the window which seems to have placed an unreasonable strain on the hinges. We accept the evidence of the Council that there had been hinge failure over the years and although they had tried to use the hinges taken from other windows in the development, these were no longer available and it was not possible to obtain replacement hinges from the source in Sweden. This appeared to be something that had been tried in earlier phases but it had not solved the problems with the hinges. We considered what steps the Council could take in the circumstances where it appears common ground that the hinges were an issue. Mr Matthews in his statement said the existing hinges were £140 per pair. Those, if they were the same as the original hinges, would in due course suffer the same problems unless works were done to the windows to lighten the weight. Accordingly to do so there would be the cost of removing the windows and replacing them, which

would not in our view be a simple job, and of course there would be the associated scaffolding costs which may require to be in situ longer than just the straight replacement of the whole unit. These are clearly issues that needed to be considered. Added to that, of course, is that the replacement of the windows also resulted in the replacement of the asbestos and the cladding. The costs of the windows are not unsubstantial. We were told, however, that the aluminium window units will have a life span of twice that of the UPVC ones which might have been used at a lower cost. The question we have to determine is whether the Council's course of action was reasonable, whether the standard of works was reasonable and whether the costs were acceptable. Doing the best that we can on the information that is available to us, which we have to say from the Council's point of view was not as good as it should have been, we have come to the conclusion, albeit with some reluctance, that the Council were reasonable in seeking to replace the windows as a fresh unit and that the cost of replacing the cladding was an inevitable consequence. There is no doubt from photographs of the development that the replacement of the windows and the cladding has again added to the aesthetic appeal of the block. We bear in mind also that the costs of the windows will also fall to be met by the Council. We were told that there were approximately 1,000 properties of which 140 were leaseholders. We accept, therefore, that the upgrading of the windows has incurred substantial costs to the Council and although these may in part have been met by grant monies, the information we have been given is that that grant is repayable. It will also of course avoid the recurrence of problems that have affected the windows with the sheer weight and the hinges and should, therefore, ensure that the future costs are considerably reduced. Having accepted that the windows were to be replaced, the costs that flow with regard to the cladding and asbestos seem to us to be wholly reasonable and were not in truth challenged.

59. We then turn to the question of the Scott Schedule which we think we can deal with reasonably quickly. This schedule appears to have been prepared by Mr Coyle who does not, it seems, have any training as a surveyor. Mr Whitehouse had used the Scott Schedule but in his evidence to us said that there was little difference between his and the Council measurements other than with regard to the roof, which has now been put right. It is impossible for us to make any headway with the Scott Schedule. The obligation rests with the Applicants, they having raised the issue of measuring. Their own expert does not provide sufficient evidence to us to show that there has been a wholesale incorrect measuring of the works and in those circumstances therefore, we do not find that we can pursue any issue with regard to alleged wrongful measurement of the works as no reliable evidence was provided to us. There are a couple of standalone matters that are referred to in Mr Coyle's submission which were not in truth ventilated to any great degree in the Hearing before us. That is the installation of an aerial system and the door entry phone system. We were told that the Council had remitted the costs for Flats 345 and 354 in respect of the aerial system, which it is said by Mr Coyle, to have occurred outside this contract. It is not clear to us whether these costs were remitted because of the impact of the Section 125 notice. If they were remitted for other reasons it seems to us that they should also be remitted in respect of Flat 347. However, if, as appears to be the case, a new system has been installed whether it be in 2010 or before, it needs to be paid for and provided Ms Waller has not been charged twice we find the cost is recoverable.

60. Insofar as the door entry phone system is concerned, we do have some sympathy with Mr Coyle's submissions in this regard. Block N, we were told, has 20 flats the system being installed at a price of £700 per unit, but appears to have a higher specification than Block U. The face of it, therefore, comparing Block U with Block N would lead us to the finding that the charges to the Applicants are too high and should be reduced to the sum being claimed in respect of Block N. Accordingly we support Mr Coyle's submissions made at page 14 of his document, that the relevant amount chargeable for the leaseholder of Flat 347 Miss Waaler should be £869.96. The other leaseholders have of course had their figures already reduced but should it seems to us be further reduced to reflect the cost of £700 per flat as charged to Block N.

61. We then turned to the impact of Section 125 notice. Dealing firstly with the interest it seems to us the interest period is the quarter for which the notice started and has been agreed at a figure of 85 and should in our view end at the expiration of the 12 month snagging period which would be May 2007. The index figure for May 2007 in the Public Sector Housing Repair and Maintenance Cost Index was 109 and it is that figure that we believe should be applied to the calculation of inflation. This correlates to the second quarter of 2007 for the avoidance of doubt.

62. The other issue raised in connection with the Section 125 notice was the question as to whether or not the flats suffered from structural defects at the time the notices were issued. The notices were issued in 2002. By that time the council would have been aware that there were deficiencies with regard to the windows and the roof and in the notice under "Improvement Works" an allowance of £3,200 is the capping for works to the windows and under the heading "Repairs" the sum of £500 for the roof. If it is thought that there was any form of misrepresentation in respect of the Section 125 notice, that is a matter beyond our jurisdiction and it is now questionable of course as to whether or not any course of action could be undertaken. Mr Coyle asks us to consider whether the works were repairs or improvements and if they were repairs, as he says is claimed by the Council, then there should be no liability for improvement works which would include the windows, communal services, plumbing, electrics, entry phone and external decorations. We have considered the Section 125 notice and the final accounts. It seems to us that Mr Coyle puts it too high when he says the Respondents have claimed all the works were repairs. At paragraph 48 of the Council's submission the following wording is used: *"In the alternative and in any event the Council acted reasonably in replacing the windows which it was permitted to do under the lease. Costs of improvement are recoverable on the same basis as for service charges. The new windows benefit all tenants and lessees of the block."*

63. It seems to us to be our responsibility to decide whether works are improvements or repairs. Insofar as the windows are concerned the evidence we have had KN was that they were not in disrepair. The problem arose as a potential safety issue and a failure of the hinge which did not assist in the operation of the windows. The replacement of the windows is both a repair and an improvement, but in any event it seems to us the Council has, where Section 125 certificates apply, properly followed the allowances to be made for those

Applicants who have the benefit of such a certificate, in the final accounts. Indeed it is appropriate to record at this stage that by reference to paragraph 57 of the Respondent's statement of case, the sums now owed by Flat 345 are £15,816.51 and for Flat 354 £17,108.81 which are reductions on the final account issued in 2012. This is, of course, subject to our findings.

64. We now turn to the professional fees. We have little evidence on this. The expert for the Applicants, Mr Whitehouse, found that the sub-contractor and contractor uplifts were perfectly reasonable and in those circumstances we cannot see that there is any reason to alter the fees that have been charged. The consultant fees of 5% seem to us to be perfectly reasonable given a contract of this nature and although the consultants may no longer exist they certainly were present during the works.

65. Insofar as the administration fees are concerned, the figure of £222.67 is apparently sought by Counsel. It does seem to us that given the manner by which the Council has delayed the final accounts and the changes in those final account figures, even as the case was progressing, causes us to believe that there should be some reflection of the lack of efficiency on the part of the Council in finalising the contract. In those circumstances, therefore, as a gesture it seems to us perfectly reasonable to us to order, and we do, that the administration fee of £222.67 should be omitted from the final account to reflect the actions or rather inactions of the Council in bringing this matter to a speedier conclusion.

66. At the end of the submission Mr Coyle seeks an order under Section 20C of the Act, an order that the Applicants should be entitled to recover their costs, although no figure is given, and an application that the decision should be available for the remaining leaseholders. Insofar as the latter point is concerned, this is of course going to be a matter of public record and it is for the leaseholders who were not a party to these proceedings to make what they wish of same. Insofar as any costs payable to the Applicants are concerned, the application was made before 1st July 2013 and accordingly the provisions of Schedule 12 paragraph 10 of the Commonhold Leasehold Reform Act 2002 apply. We cannot see that there is any action on the part of the Council, within the circumstances anticipated in that schedule, which would cause any cost implications to be visited upon them. Accordingly this request is denied.

67. Insofar as the claim under Section 20C is concerned, our findings have by and large been in favour of the local authority. Mr Coyle adopted, as we have indicated above, a somewhat 'kitchen sink' approach to this piece of litigation. He appears to have gone through the Act and thrown every possible section and sub-section that he could into the mix in the hope that some of it may produce a successful outcome. That is not to say that some of the issues have not been properly raised by him but the poorness of his instructions to his expert did not assist the Applicants in their case. We take the view, therefore, that it would be inappropriate for us to make an order under Section 20C. It is, of course, still open to the Applicants to challenge any costs that may appear as a service charge.

Judge: *Andrew Dutton*

A A Dutton

Date: 9th December 2013

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.