



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : CHI/43UB/LIS/2013/0114

Property : 17 Broadwater Place Weybridge KT13 9JS

Applicant : Jonathan Hubbard

Representative : None

Respondent : BROADWATER PLACE MANAGEMENT
COMPANY LIMITED

Representative : Philip Sweeting, DipSP, AIRPM
Sweetings Property Management Limited

Type of Application : For the determination of the
reasonableness of and the liability to pay a
service charge

Tribunal Member(s) : Judge H Lederman (Chairman)
Mr D Lintott FRICS
Mrs J Playfair

**Date and Venue of
Hearing** : 1st April 2014 Staines Law Courts Staines
Middlesex.

Date of Decision : 19th May 2014

DECISION

Decisions of the Tribunal

1. The Tribunal determines that the sum of £59.58 (being one twenty fourth of £1430.00) was reasonably incurred as legal costs to be charged to the Applicant as part of service charges for the year ending December 2012 for 17 Broadwater Place ("the property") when duly demanded. The service charges for the year ended December 2012 have not been the subject of a demand which was accompanied by a summary of rights and obligations or which complied with sections 47-48 of the Landlord and Tenant Act 1987, and that sum is not payable.
2. The Tribunal makes no determination of the amount payable in respect of the lease of 16 Broadwater Place as sums demanded as service charges for 16 Broadwater Place are not the subject of this application.
3. The Tribunal makes an order under Section 20C of the Landlord and Tenant Act 1985 so that none of the Landlord's costs of the Tribunal proceedings may be passed to the Applicant through any service charge.
4. The Tribunal makes no order for reimbursement of the Tribunal fees paid by the Applicant.

The application

5. The Applicant seeks a determination pursuant to Section 27A of the Landlord and Tenant Act 1985 ("the Act") as to the amount of service charges payable by the Applicant in respect of legal fees in the service charge year ending 31st December 2012.
6. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

7. The Applicant appeared in person but was accompanied by Mr Len Bush at the hearing. The Respondent was represented by Philip Sweeting, DipSP, AIRPM of Sweetings Property Management Limited ("Sweetings"), the current managing agents who were appointed after the events giving rise to the disputed legal fees.
8. The Applicant submitted a bundle of documents (including a copy of the Lease of 17 Broadwater Place) with pages 1-128 inclusive and a supplemental letter of 28th February 2014 (3 pages and covering letter). The Respondent through Sweetings prepared a paginated and indexed bundle of 55 pages sent under cover of a letter dated 12th February 2014 (5 pages). Following the hearing the Applicant sent a letter of 3rd April 2014 (received by the Tribunal on 7th April 2014) making additional comments. Following the Tribunal's directions of 8th April 2014 Sweetings responded by letter of 10th April 2014 (received on 14th April 2014).

The background

9. Although the Applicant was not represented he is an articulate and intelligent man who was well able to explain his case. He was also accompanied at the hearing by Len Bush a friend of his who was described as a surveyor and by his partner Josephine Richler. Richard Roades of Apartment 4 Broadwater Place also attended the hearing an observer who did not take any part in the proceedings.
10. Broadwater Place is a comparatively modern development built in about 1997 of 24 purpose built flats in 2 adjacent blocks with surrounding grounds and gardens on Oatlands Drive in Weybridge. Each block comprises 3 storeys (ground, first and second floor). There is an additional area for basement car parking. The property which is the subject of this application (17 Broadwater Place) is a ground floor flat with doors and French windows leading out on to communal gardens and adjacent to a lake at the rear of the two blocks behind the gardens. The development appeared to be in good condition, well maintained and in an affluent part of Surrey and in a desirable location. The Flats are valuable assets.
11. The Tribunal inspected the property (and relevant parts of the surrounding grounds) before the hearing in the presence of the Applicant and Mr Phillip Sweeting. The property was unoccupied at the time of the inspection. Neither party invited the Tribunal to inspect the first or second floors or basement parking areas or any other part of the development.
12. The Applicant holds a long lease of the property which requires the Landlord to provide services and the Tenant to contribute towards their costs by way of a variable service charge. The Applicant also holds a long lease of 16 Broadwater Place in the same development where he resides and resided at the relevant time. The specific provisions of the lease of the property will be referred to below, where appropriate.
13. The Tribunal was not shown a copy of Apartment 16 Broadwater Place but it was assumed by all parties that the Lease was in broadly the same terms as the Lease of the Property.
14. The Scheme of the Lease of the property dated 5th June 1997 is that the management is carried out and service charges are demanded and collected by Broadwater Place Management Company Limited (company number 03213393) ("the Respondent") a company whose shareholders are all lessees of Broadwater Place. At the times relevant to this application Octagon Developments Limited (described by the Respondent as the original landlord) took no active role in the management of the development and was not a party to these proceedings.

15. No separate service charge accounts were prepared but it was common ground that service charge expenditure and income for the service charge year ended 31st December 2012 was recorded as a profit and loss account annexed to the Respondent's statutory accounts (page 71 Applicant's bundle). The profit and loss account recorded an item of £2898.00 for professional fees in that service charge year. It was agreed by all parties that this sum comprised 2 sets of legal costs incurred by the Respondent with Paton Walsh Laundry solicitors in the service charge year ended 31st December 2012. The first was in respect of an invoice of 3rd October 2012 for £2718.00 (being £2265.00 plus £453.00 VAT, for legal services concerning an allegation of breach of covenant by the Applicant in respect of the property). The second was an invoice of £180 (£150 plus VAT) rendered by the same solicitors for legal services concerning works to Flat 14 Broadwater Place. The Applicant did not dispute the reasonableness or payability of the costs represented by that invoice concerning 14 Broadwater Place.

The issues

16. At the start of the hearing the parties identified the relevant issues for determination as follows:

- The payability and/or reasonableness of legal fees of £2718.00 included as service charges for the property in the year ended 31st December 2012;
- Whether any costs of these Tribunal proceedings should be charged to service charge;
- Whether and order should be made for reimbursement of hearing and application fees;

17. The Tribunal emphasised at the hearing that the issue is not whether the Respondent or any of its directors acted in an unfriendly, or unneighbourly manner or whether they should have acted differently. The issue is whether the legal costs incurred were reasonably incurred and were payable under the terms of the Lease of the Property. The Tribunal also emphasised that its jurisdiction did not extend to considering whether the Board or Mr Keyte acted reasonably or otherwise in relation to particular incidents.

18. 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.

The Tribunal's decision Legal costs for year ended 31st December 2012

19. The Tribunal determines that the sum of £59.58 (being one twenty fourth of £1430.00) was reasonably incurred as legal costs to be charged to the Applicant as part of service charges for the year ending December 2012 for 17 Broadwater Place ("the property").

20. £1430.00 is the total of £1250.00 (£1000.00 plus VAT) of the sum which the Tribunal assesses would have been a reasonable cost to incur in respect of the dispute about an allegation of breach of covenant by granting a tenancy permitting use of a cat at the property in the circumstances described below and £180.00 (£150 plus VAT) in respect of an invoice for legal services relating to Flat 14 not disputed by the Applicant.
21. As no demand for service charges which complies with section 21B of the Act (notice of statutory right and obligations to accompany demand) or notice under sections 47-48 of the Landlord and Tenant Act 1987 has been served, this sum is not payable.

Reasons for the Tribunal's decision

22. These reasons attempt to summarise what the Tribunal considered to be the most relevant issues. The Tribunal has carefully considered the detailed written statement of the Applicant of 23rd January 2014 which accompanied his bundle and the letter of 3rd April 2014. The omission to comment upon each and every paragraph or point made should not be taken to mean that the Tribunal has not taken it into account.
23. The Tribunal did not hear any evidence on behalf of the Respondent, no witness statements having been filed and no witnesses attended to give evidence on behalf of the Respondent. However Sweetings' letter of 12th February 2014 provides a detailed commentary and response to the various points made in the Applicant's statement of January 2014. That apart, the only evidence was the documents in the bundles filed by the parties and the evidence of the Applicant.
24. The key history is as follows. It was common ground that until late 2013/2014 the Respondent was managed directly by the Board of directors of the Respondent without the benefit of the managing agents.
25. One of the key directors of the Board of the Respondent was Mr Brian Keyte. For reasons explained in detail in the Applicant's witness statement of January 2014, the Applicant perceived that Mr Keyte in his capacity as Chairman of the Board had acted in an unfriendly and unreasonable manner towards him. The details of the 5 incidents complained of by the Applicant which preceded the allegation of breach of covenant are set out in his witness statement. The Tribunal does not need to make findings about those incidents as they do not have a direct bearing upon the issue which the Tribunal has to decide.
26. It is common ground that on 20th June 2011 the Applicant entered into a written tenancy agreement of the property. In his statement he refers to the occupants as Mr. and Mrs Sacre. They were the occupants. However the tenancy agreement itself was with Andromeda Telematics

Limited, a limited company. The tenancy agreement was for a period of one year from and including 20th June 2011. A copy of that agreement is at pages 51-61 of his bundle. The Applicant says that the agreement was prepared by his letting agents ("Roxbury").

27. By clause 2(ah) of the tenancy agreement the tenants were given express permission to occupy the property with one cat but requiring them to be "responsible for all or any damage caused by the said cat". The Applicant's evidence is that this clause was not referred to him at the time but if it had been he would have agreed the clause as he believed others had pets at Broadwater Place: see paragraph 55 of his statement.
28. The Applicant did not dispute that Mr. and Mrs. Sacre occupied the property with a cat.
29. The Applicant's evidence is that sadly Mrs Scare was diagnosed with cancer in February 2012 and was due to undergo treatment after June 2012: see paragraph 55 of his statement. This was not disputed by the Respondent.
30. On 22nd May 2012 Karin Brass one of the lessees at Broadwater Place wrote and complained to the Board of the Respondent about the cat as it had run into her kitchen and had been seen running around the communal gardens: see page 5 Respondent's Bundle. The Board of the Respondent wrote a letter to Mr and Mrs Sacre on 25th May 2012 mentioning that consent was required for the keeping of a cat at the property under the terms of paragraph 5 of the Fourth Schedule to the Lease of the property: see pages 19-20 of the Respondent's bundle. A Licence to keep the cat was offered in the same letter upon conditions which included that the cat was kept in the property at all times and that the licence was to continue only for the period of that tenancy agreement. The final sentence of that letter indicated that if the occupants were unwilling to comply with those conditions the Respondent required them to arrange for the cat to be rehoused within 30 days.
31. Reference was also made to paragraph 18 of the Fourth Schedule of the Lease which required the Lessee (the Applicant) "not to permit any dog or any other animal under the control of the tenant to foul the communal landscape areas".
32. The Tribunal finds that Mr Keyte was a very experienced director of the Board and familiar with the terms of the Lease. He had been on the board since 2001 if not before. He was able to prepare a sophisticated letter complaining of breach of the Lease 25th May 2012 offering a licence upon terms without (so it seems) seeking or obtaining legal advice or other professional advice. The Tribunal did not have the benefit of hearing evidence from Mr Keyte or reading a statement prepared by him.

33. At the hearing the Applicant did not dispute that paragraph 5 of the Fourth Schedule to the Lease of the property permitted the Board to impose reasonable conditions upon the keeping of a cat. His case is that at the time of entering into the tenancy agreement he was unaware that the Board's permission was required for keeping a cat as he had kept cats previously, Mr Keyte had a cat and another resident had a dog: see paragraph 54 of his witness statement.
34. The Applicant agreed that the tenancy agreement entered into did not impose a restriction upon the tenant or the occupants Mr and Mrs Sacre in relation to the keeping of a cat at the property or its behaviour.
35. The Applicant's evidence was that the tenancy agreement was renewed on 14th May 2012 before he had notice of the complaint: see paragraph 55 of his statement. The Tribunal does not need to determine the precise date the agreement was renewed. It was common ground that the tenancy agreement was renewed or extended for a further year from 12th June 2013. A copy of the renewed agreement is at pages 6 – 17 of the Respondent's bundle.
36. The Applicant's evidence is that he was shocked and Mr and Mrs Scare were "most upset" to receive the letter complaining about the cat: see paragraphs 58- 59 of his witness statement.
37. The Applicant's evidence was that he did not approach Mr Keyte (or any other Board member of the Respondent) but contacted the Community Police and they advised him not to contact Mr Keyte. The reason for his lack of response at this stage is not an issue which the Tribunal needs to determine.
38. Whatever the reason for the lack of response, the Applicant agreed he did not communicate directly with the Board or Mr Keyte at that stage. There is a file note dated 29th May 2012 to the effect that Mr Keyte received a visit from a person whom he describes as a police officer. In that same note (page 21 Respondent's bundle) it is mentioned that Grant Needham the Respondent's solicitor was consulted. On 8th June 2012 Mr Keyte wrote on behalf of the Board of the Respondent seeking legal advice from Mr Needham of Paton Walsh Laundry seeking legal advice.
39. Mr Needham responded by letter of 12th June 2012 giving brief advice: page 23 of the Respondent's bundle. This enabled Mr Keyte on behalf of the Board to write a further letter of 17th June 2012. The Applicant and Mr and Mrs Sacre then responded by letter of 19th June 2012: pages 24-25 of the Respondent's bundle. The Mediation Service of North Surrey then wrote to all parties on 20th June 2012.
40. Mr Needham was then instructed to write a letter in response of 26th June 2012 to the Applicant threatening proceedings for a declaration of breach of his Lease in respect of the keeping of the cat. Although it is not said so explicitly, this was a reference to a declaration of breach of

covenant prior to enabling a landlord to serve a notice before commencing forfeiture proceedings under section 168 of the Commonhold and Leasehold Reform Act 2002.

41. Mr Needham then reported to Mr Keyte on behalf of the Board by letter of 28th June 2012 (page 29 Respondent's bundle). At that stage he noted that his fees relating to the Applicant had come to £735.00 plus VAT. It was unclear from that letter whether that sum included or excluded the £180.00 in respect of alterations to Flat 14 or the cost of legal work in respect of proposal for alterations at Flat 16 Broadwater Place also mentioned in that letter.
42. There was no oral evidence from Mr Needham or anyone else at his firm to clarify this.
43. The Applicant and Mrs and Mrs Sacre offered a meeting in their letter of 30th June 2012.
44. By letter of 4th July 2012 the Board offered a licence to enable Mrs and Mrs Sacre to keep the cat upon terms including that the cat was not allowed outside the property.
45. A meeting took place on 23rd July 2012 between the Applicant Mrs and Mrs Sacre and some member of the Board. No agreement was reached.
46. The Board sought further advice from Mr Needham in their letter of 25th July 2012 as Mr and Mrs Sacre were reported to be unwilling to accept the condition that the cat be kept in the property. Mr Needham provide further legal advice and in particular advice suggesting that forfeiture of the lease of the property was being considered and recovery of legal costs from the Applicant.
47. Mr Needham wrote a letter on behalf of the Board of the Respondent on 10th August 2012 in which proceedings seeking a declaration of breach of the Lease were threatened if the cat was not removed after 23rd October 2012.
48. The Applicant then wrote a detailed letter of 20th August 2012 explaining that Mrs Sacre was undergoing treatment with a further operation due in the next 5-10 weeks.
49. Mr Keyte on behalf of the Respondent replied on 24th August 2012 essentially repeating the Respondent's position.
50. A newssheet was issued by the Respondent to all lessees on 25th August 2012 (pages 45 Respondent's bundle). It appears from Mr Needham's letter of 6th December 2013 that he was asked to advise about this.
51. A further letter was written by Mr Needham to the Applicant on 7th September 2012 complaining (among other things) of verbal

unpleasantness. Further correspondence from Mr Needham took place on 11th September 2012 with Mr Sacre.

52. A further newssheet was issued on 21 September 2012 (pages 51 -52) Respondent's bundle). It appears from Mr Needham's letter of 6th December 2013 that he was asked to advise about this.
53. On 2nd October 2012 apparently on behalf of the Respondent or its directors Mr Needham responded to a letter from Mrs Roads another lessee threatening libel proceedings against her.
54. Another letter was written by Mr Needham to the Applicant on 10th October 2012 (or 5th October 2012) after Mr and Mrs Sacre had moved out referring to allegations of earlier unneighbourly behaviour by the Applicant and seeking payment of costs by the Applicant. Copies of both versions of this letter are found at pages 53 Respondent's bundle and page 87 Applicant's bundle).
55. The Respondent's solicitor Mr Needham then conducted correspondence with Guillaumes, a firm of solicitors instructed by the Applicant in October and November 2012.
56. On behalf of the Respondent Mr Needham prepared a letter dated 6th December 2013 (pages 3-4 Respondent's bundle) which provided some explanation of his fees "relating to the Applicant" showing a total bill of £2265.00. Unfortunately it is clear that some of the fees referred to included work concerning the Applicant's application for consent to alter his flat. It also appears that some of the work related to "complaints from Mrs Roads over a period of six months". There was no evidence what such complaints related to. It appears the letter dated 6th December 2013 (pages 3-4 Respondent's bundle) referred to the 2 invoices at pages 1-2 Respondent's bundle).
57. Mr Needham's letter dated 6th December 2013 indicated that he was solicitor of more than 30 years' experience and had a charging rate of £300 per hour. No copy of the original letter of retainer was available but it was indicated that the firm acted for the Respondent since its incorporation and provided advice "as and when required".

Analysis

58. The Tribunal finds that the issue of the cat in the property was one which could easily have been dealt with by a legal adviser of less seniority and lower charging rate.
59. According to the invoice for the period August to October 2012 prepared by Paton Walsh Laundry dated 3rd October 2012, the sums charged for the dispute were "nearly 8 hours" at £300.00 per hour – £2265.00. An arithmetical breakdown of this charge out comes to 7.55

hours and includes 1 hr 49 minutes of telephone calls. No timesheets or other contemporaneous evidence of time spent is produced.

60. The correspondence between Paton Walsh Laundry and the Applicant and his solicitors continued after October 2012 into 2013. The Tribunal infers the total legal costs incurred for the dispute were in excess of the costs claimed for 2012.
61. The Tribunal finds that no estimate of fees was sought by the Respondent from Paton Walsh Laundry solicitors before that firm was instructed or after the initial instruction. None appears to have been offered or provided.
62. The Tribunal found it surprising that no attempt had been made to seek at the outset or subsequently a fee quotation or estimate of fees, or investigate cheaper ways of resolving the dispute with the same or other legal advisers.
63. In the Tribunal's view this was a relatively straightforward and minor dispute where it was not reasonable to engage a senior solicitor charging £300 per hour without any limit upon his fees. It is hard to envisage any circumstances when it would be reasonable to incur costs for any service on such an unlimited or unquantified basis.
64. It was not reasonable to incur the costs of the Respondent's legal adviser corresponding with Mrs Roads another lessee concerning her complaints in the way in which Mr and Mrs Sacre had been spoken to. It follows that it was disproportionate and to incur costs to instruct Paton Walsh Laundry to threaten libel proceedings against her by letter of 2nd October 2012 (Applicant's bundle page 104).
65. Nor was it reasonable in the circumstances of a dispute of this kind to incur the cost of a senior solicitor to review the two newsletters dated August and September 2012 at an hourly rate of £300 per hour.
66. The underlying approach of the Respondent was that an issue of this kind would lead to the Lease of the property being the subject of an order for forfeiture. The Tribunal does not accept that this was a reasonable basis upon which to incur legal costs at a rate of £300 per hour, given the absence of any realistic advice that there were good prospects of obtaining such an order in the circumstances of this kind of dispute.
67. Doing the best it can on the limited materials available the Tribunal's view is that a reasonable cost to incur for advice and correspondence in this dispute in the period between August and October 2012 would be measured by reference to an hourly rate of £200 per hour plus VAT in 2012 with a maximum of 5 hours' work. This produces a figure of £1200.00 (including VAT).

Validity of demand for legal costs

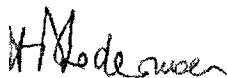
68. The only service charge demand of the Applicant for the sums in the documents is a letter dated 16th December 2012 at page 64 (Applicant's bundle) which appears to be an interim demand for service charge year January to 31st December 2013. There does not appear to have been a balancing demand under the terms of paragraph 1.5 of the Fifth Schedule to the Lease for the deficit for the year ended 31st December 2012. Mr Sweeting was unable to point to such a demand or a notice which complied with sections 47-48 of the Landlord and Tenant Act 1987 or a summary of statutory rights and obligations complying with section 21B of the Act. Until those issues have been addressed no sums are payable by the Applicant in respect of legal costs incurred for year ended December 2012.
69. The Respondent or its agents should consider taking prompt professional advice about whether a valid demand for the legal costs found to have been reasonably incurred, can now be served.

Section 20C Landlord and Tenant Act 1985

70. In the application form the Applicant applied for an order under Section 20C of the 1985 Act. Mr Sweeting indicated that he did not intend to charge any of the costs of the hearing to service charge.
71. Notwithstanding the concession in view of the terms of the Lease and the Respondent's interpretation of terms of the Lease for the avoidance of doubt, the Tribunal nonetheless determines that it is just and equitable in the circumstances for an order to be made under Section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal to the Applicant through the service charge.

Reimbursement of fees

72. At the end of the hearing, the Applicant made an application for a refund of fees that he had paid in respect of the application and hearing. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal does not order the Respondent to reimburse any fees paid by the Applicant. The Tribunal does not believe that a further order in shifting the burden of costs on to the Respondent would reflect the fact that neither party is blameless in the unfortunate circumstances which gave rise to the legal costs being incurred in the first place.



Name: HD Lederman

Date: 19th May 2014

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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
 - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
 - (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) 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.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
 - (a) in a particular manner, or

(b) on particular evidence,
of any question which may be the subject matter of an application
under sub-paragraph (1).