10945

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AY/LSC/2015/0009**
Property	:	**10 Denmark Mansions, Coldharbour Lane, London SE5 9PX**
Applicant	:	**Mr Mark Tejada of HML Andertons ("HML")**
Representative	:	**Mr Paul Mertens (Counsel)**
Respondent	:	**Mr S Rahman**
Representative	:	**In person**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Judge: N Haria** **Professional member: S Coughlin MCIEH** **Lay member: L Packer**
Date and venue of Hearing	:	**7 May 2015 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**26 June 2015**

DECISION

Decisions of the tribunal

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

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

(3) Since the tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Wandsworth County Court.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges payable by the Respondent in respect of the following:

    (i) £5.20 account adjustment for the period 29/09/2012 to 24/03/2013,

    (ii) £105.03 for the bi annual reserve fund for the period 25/03/2013 to 28/09/2013,

    (iii) £5.20 account adjustment for the period 25/03/2013 to 28/09/2013,

    (iv) £352.69 for the bi- annual service charge for the period 29/09/2013 to 24/03/2014,

    (v) £416.00 for the bi annual reserve fund for the period 29/09/2013 to 24/03/2014,

    (vi) £331.89 for the bi- annual service charge for the period 25/03/2014 to 28/09/2014

    (vii) £480.00 for the bi annual reserve fund for the period 25/03/2013 to 28/09/2014.

2. Proceedings were originally issued in the Wandsworth County Court under claim no. A70YM014. The claim was transferred to the transferred to this tribunal, by order of Deputy District Judge Dolan on 17 December 2014.

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

The hearing

4. The Applicant was represented at the hearing by Mr Mertens of Counsel instructed by PDC Legal and the Respondent appeared in person.

5. Mr Mark Tejada an associate director of HML and Mr Mark McCann a property manager from HML were in attendance at the hearing. Ms Anne White attended as support for the Respondent.

The background

6. The property which is the subject of this application is a ground floor flat situated in a period building of shops and flats at Numbers 78 to 96 (even numbers) Coldharbour Lane, known as Denmark Mansions ("Denmark Mansions"). There is a covered communal walkway from the main road to the rear of the building where there is a communal garden and stairs to all floors. There are entrance doors at the front of the building giving access to the ground floor flats and the staircases to the upper floors. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

7. The Applicant is a manager of Denmark Mansions. The Applicant was appointed manager by order of the Tribunal on the 26 September 2012 for a period of 5 years[1]. The Respondent holds a long lease of the property which is registered under Title Number SGL459059. The Lease requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

8. The lease is dated 25 April 1986 and made between B Osborn & Co Limited (1) and Mrs S Sanderson (2) ("the Lease").[2]

9. The Respondent has paid the majority of the service charge with only £118.38 remaining outstanding.

County Court Claim

10. The County Court claim was in relation to outstanding arrears of service charge and reserve fund of £1696.01, administration fees of

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[1] LON/00AY/LVM/2012/0005

[2] [97] - [119]

£528.00 and costs of £145.50 totalling £2369.81. The service charge relates to service charges payable for the service charge years

11. By an order dated 17 December 2014 the matter was transferred to the Tribunal. The order states that the "..Matter be transferred to the First Tier Tribunal (property Chamber) for determination".

12. The jurisdiction of this Tribunal in a case transferred to it from the County Court is confined to the question transferred and all issues comprehended within that question Ground Rent (Regisport) Ltd [2011] UKUT 330 (LC) and in Staunton v Taylor LRX/87/2009.

The issues

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

    (i) The correct proportion of service charge payable by the Respondent under the Lease.

    (ii) Whether under the provisions of the Lease the Respondent is liable to make payments on account in respect of the service charge based on budgeted expenditure.

    (iii) Whether the Applicant is entitled to hold funds in the reserve fund without undertaking the works for which the monies were collected.

Matters not in dispute

14. The Directions recorded that reasonableness of the services provided or works undertaken was not disputed.

15. During the course of the hearing the parties were given several opportunities to try to reach an agreement or at least to narrow the issues. In addition the Respondent was given a chance to take free legal advice during the lunch break.

16. In the afternoon the Respondent confirmed that he now accepted that the Applicants was entitled to payments of the Service charge on account based on budgeted expenditure. In addition he accepted that they were entitled to maintain a reserve fund.

17. 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 Lease

18. Recital 1(b) defines "the Flats" as "... the residential flats on the first and second floors forming part of the Property and "Flat" has a corresponding meaning".

19. Recital 1(c) defines "The Shops" as " the ground floor shops and where appropriate the flats at the rear of the shop on the ground and mezzanine floors forming part of the property and situated under the Flats and "Shop" has a corresponding meaning"

20. Recital 1(f) defines "The Building" as ".... the said block of shops and flats of which the demised premises form part"

21. Recital 1(i) of the Lease defines the "Appropriate Proportion": "in relation to the costs of maintenance repair and services of the building means the aggregate cost in a twelve month period of the items or services set out in the Sixth schedule hereto divided by the total floor areas of all the individual Flats and Shops in the Building and multiplied by the floor area of the demised premises".

22. By clause 1 of the Lease the leaseholder covenants to pay the yearly rent set out in the Fifth Schedule of the Lease "...by equal half –yearly instalments in advance on the twenty-ninth day of September and the Twenty- fifth day of March in each year..."

23. By clause 2(25) of the Lease the leaseholder covenants to "..pay and keep the Landlord indemnified from and against the Appropriate Proportion of all costs charges and expenses incurred by the Landlord under the heads set out in the Sixth Schedule..."

24. Under clause 2(26) the Leaseholder covenants to "..pay the Landlord by half - yearly advances on account of the Tenants obligations under the preceding clause by way of provision for anticipated expenditure as the Landlord or his agents shall determine such half – yearly advances to be due on the Twenty- fifth day of March and the Twenty- ninth day of September each year on demand from the landlord".

25. The Lease includes a provision under clause 2(27) for the Leaseholder to pay within 21 days of a notice in writing any shortfall to the Landlord.

26. Under the provisions of clause 3(12) the Landlord may set aside such yearly sum as the Landlord or managing agent determine to provide a sinking fund for the items such as the replacement and overhaul of the electrical installations, any burglar or fire alarms, the lifts etc, the future repair redecoration etc of the Reserved Property or of the structure and exterior of the Building. This is subject to the proviso that

if once the said overhaul, repairs etc have been carried out any remaining balance in the Sinking Fund shall at the sole discretion of the Landlord be either carried forward or refunded in the proportion of the contribution made.

The proportion of Service charge payable under the Lease

27. **The Applicant's case:** The Applicant relies on figures from a measured survey of the Building in September 2005 and a revised survey undertaken in March 2010[3] as shown on a document produced by Haleys –CS Group, (which Mr Tejada stated is a respected firm of Chartered Surveyors). This shows that the percentage apportionment for Flat 10 was 3.16% but in 2010 this was reassessed to be 3.20%. The Applicant explained that this document was not provided to them in the handover information given to it by the outgoing managing agent but they came across it by chance. The Applicant admits that when they first took over the management of the Building they charged incorrect proportions in relation to the service charge, because they had charged separately for the shops and flats, however as soon as they became aware of the error they corrected the mistake.

28. Mr Tejada accepted that management service provided by Haley's of the Building was not up to the required standard, and he was aware that there were various reasons for the poor performance (as documented in the Tribunal decision appointing him the manager[4]), but he did not consider that this had any effect on their reputation as Chartered Building Surveyors. He stated that in his view they are a reputable firm of Chartered Building Surveyors of many years and he had no hesitation in relying on their survey.

29. The Applicant accepts that historically the Respondent has been charged 3.16% of the total expenditure but as a revised calculation was done in 2010 they charge 3.20% from the service charge year from 2012/13 onwards. Mr McCann wrote to the Respondent on 18 September 2013 informing him that it had been brought to their attention that some of the service charge percentages that they had been given were incorrect and that they had obtained the correct percentages and the necessary adjustments were shown in the demand dated 18/09/2013.[5]

30. Mr Tejada, in response to questions from the Respondent and the Tribunal, confirmed that there was no lease in respect of Shop No.80, which was retained by the Freeholder. He stated that a charge of 9.54% was made for Shop No. 78-80 and originally it was charged 9.42%. Mr Tejada accepted that Recital 1(i) of the Lease provided that although

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[3] [144]

[4] LON/00Ay/LVM/2012/0005, [86] -[92]

[5] [142]-[143]

the Freeholder had retained Shop No 80, its floor area should be taken into account in the calculation of the Appropriate Proportion.

31. The Applicants instructed debt collectors who wrote to the Respondent on the 22 May 2014.[6]

32. The Respondents case: The Respondent contends that the correct percentage of apportionment is 3.16% since he has been a leaseholder from 1998 and the percentage service charge demanded from him has been 3.16%. He referred to a copy of an extract from the service charge account for the year 2000/2001 which had been certified in support of his case[7]. The Respondent contends that as the service charge account for 2000/2001 is certified it is accurate.

33. The Respondent referred to the correspondence he had with the Applicant, and stated that he had continued to demand explanations from the Applicants but he failed to get any response or he failed to get an adequate response. In particular he referred to his emails of the 24 May 2013[8] and that of 5 July 2014[9]. He admitted he did not respond to the letter of the 18/09/2013 from the Applicant but he stated that by this time he was frustrated with the whole matter as he did not get any answers to his queries and the Applicants had already started adding charges to his account. He stated that he did not respond to the Applicants but he continued to pay the service charge on the basis of a contribution of 3.16%.

34. The Respondent stated that initially when the Applicants took over the management they started charging 3.38%. Although this was corrected once the error had been pointed out to them.

The Tribunal's decision

35. The Tribunal determines that as matters currently stand 3.20 % is a more accurate proportion in relation to the service charge than 3.16%, however the Tribunal finds that it is not the Appropriate Proportion as defined under the Lease as the floor area of shop 80 is currently not included in the calculation of the % and the Lease requires that it is included.

Reasons for the Tribunal's decision

36. The jurisdiction of the Tribunal is statutory. It has no inherent power to determine any question. In this case the Tribunal's jurisdiction is

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[6] [126]

[7] [27]

[8] [74]

[9] [75]

conferred as a result of proceedings from the County Court under paragraph 3 of Schedule 12 of the 2002 Act. Where in any proceedings before a court there is a question for determination that falls within the jurisdiction of the Tribunal, the court is empowered by paragraph 3 to transfer to the appropriate tribunal so much of the proceedings as relate to the determination of that question. The Upper Tribunal in the case of Cain v London Borough of Islington [2015] UKUT 0117(LC)[10] gave guidance on the jurisdiction of the Tribunal in a case transferred from the County Court.

37. The Deputy President in Cain also commented that "When trying to identify which subsidiary issues ought properly to be treated as being included within the scope of the questions transferred it is not appropriate to be too pedantic, especially where an order transferring proceedings is couched in general terms and where there is no suggestion that the court intended to reserve for itself any particular question. It is not uncommon for orders for transfer to be expressed rather generally, and in practice the tribunals of the Property Chamber sensibly recognise that it would be a disservice to the parties (and to the transferring court) for them to adopt an over-scrupulous approach to their jurisdiction."

38. In this case the County Court has not reserved any matter for itself and has transferred the whole case to the Tribunal. It is therefore appropriate before determining the statutory question under section 19 of the Landlord and Tenant Act 1985 concerning, the reasonableness of the service charge, it was necessary for the Tribunal to consider the prior contractual question of how much the Respondent is obliged to pay under the terms of his lease. Until that sum was quantified, it would not be possible to determine whether it was reasonable, except in rather abstract terms. As stated by Deputy President in Cain, "Construing the order for transfer with appropriate generosity, it can therefore be seen that subsumed within the jurisdiction which it conferred was the power to rule on any question of interpretation of the lease on which the quantification of the service charge depended."

39. The Tribunal considered the provisions of the Lease, the relevant provision being Recital 1(i), which defines the "Appropriate Proportion" as meaning "in relation to the costs of maintenance repair and services of the building means the aggregate cost in a twelve month period of the items or services set out in the Sixth schedule hereto divided by the total floor areas of all the individual Flats and Shops in the Building and multiplied by the floor area of the demised premises".

40. The most important principle when interpreting a lease is to read the lease as a whole and to give wording its ordinary common sense meaning, so far as possible. Lord Hoffman in Investors Compensation

[10] paras 17 to 18

Scheme v West Bromwich Building Society [1989] 1 All ER 98 identified five broad principles for interpretation of contracts:

1. What would a reasonable person, having all the relevant background knowledge reasonably available to the parties to the lease, have understood the clause to mean?
2. Does the 'matrix of fact' affect the language's meaning? The 'matrix of fact' essentially involves ascertaining what the parties intended their rights and obligations to be, considering the background of the case.
3. Prior negotiations between the parties should be excluded.
4. Regard must be had to the context in which words are used, not just given their literal meaning.
5. Words should be given their natural and ordinary meaning, however if it can be concluded from the background that something must have gone wrong with the language, i.e. a spelling mistake, then a common sense approach should be taken.

41. The Lease in this case is quite clear as to how the Appropriate Proportion is to be calculated. It is clear that the proportion is to be calculated by working out the total floor area of all the flats and shops in the Building and calculating the proportion attributable to the floor area of the flat compared to the total floor area.

42. The Respondent submitted that the correct proportion is 3.16% as this was historically the proportion charged. The Respondent submitted that as the extract of the service charge account produced[11] had been certified and so it must be accurate. However there was no evidence as to the basis on which the 3.16% was calculated.

43. The Applicants relied on a document that had been produced by Haleys Chartered Building Surveyors[12]. This document on the face of it appears to show all the properties in the Building. It records the results of a "Measured Survey" conducted in September 2005 and shows that of the 16 Flats only 5 were measured and an assumption was made as to the floor areas of the remaining flats. In relation to the shops, 6 out of the 8 shops are recorded as surveyed. It also records that although Flat 10 was not measured the original proportion for Flat 10 was 3.16%.

44. The document also records that in March 2010 nearly all the properties were surveyed and the percentages recalculated. The document records that a reduced floor area was allocated to Flat 7 and the floor areas for unit 86/88 was estimated.

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[11] [27]

[12] [144]

45. The Respondent did not produce any evidence to challenge the floor areas shown on the Haley's document, At the very least the Respondent could have had his own flat surveyed and measured.

46. The Tribunal was persuaded by the detailed information in the Haley's document and accepted that this recorded the floor areas of the various units as well as the total floor area more accurately. Therefore the Tribunal was concluded, on the balance of probability that the more accurate of the two options of 3.16% and 3.20% for the Appropriate Proportion for Flat 10 is 3.20%.

47. Mr Tejada admitted that strictly the provisions of the Lease requires that the floor area of Shop 80 should also be included in the calculation. He stated that he had to give business efficacy to the provisions of the Lease and ensure that he recovers 100% of the service charge expenditure.

48. In Embassy Court Residents' Association v Lipman [1984] 2 EGL Cumming Bruce LJ stated that "No doubt in the case of leases entered into between a landlord and a tenant it is necessary for the landlord to spell out specifically in the terms of the lease, and in some detail, a sufficient description of every financial obligation imposed upon the tenant in addition to the tenant's obligation for rent ...." . However having stated the basic principles of lease construction Cumming Bruce LJ accepted that under certain circumstances a term may be implied into a lease enabling a landlord to recover costs. The landlord in that case was a resident's association with no funds of its own and in order to give business efficacy to the transaction it was held that a term should be implied into the leases to the effect that the resident's association could incur expenditure to carry out the functions imposed on it and could recover the costs (including the cost of employing a managing agent) and to recover these from service charge. The case also supports the view that for a proper understanding and construction of a lease account should be taken of the background and factual matrix surrounding the grant of a lease. The Tribunal appreciates that the Embassy Court case is not on all fours with the facts before the Tribunal but nevertheless it provides useful guidance as to the approach to be taken in the interpretation of leases.

49. The Tribunal accepts that the managing agent should seek to recover 100% of the service charge expenditure. In this case the managing agent is one appointed by order of the Tribunal. Mr Tejada explained that the freeholder had retained Shop 80 and there was no lease granted of this shop and so he could not demand payment from the Landlord in relation to the retained part of the building.

50. However the Lease clearly intends that each part of the building, both dwellings and shops, should contribute to upkeep, and the Tribunal concludes that the floor area of Shop No 80 should be measured and

the calculation of the Appropriate Proportion revised to take into account its floor area.

51. It is open to the Applicant to apply to the Tribunal for a variation of lease, and/or variation of his terms of appointment.

General issues raised by the Respondent

52. Although the Directions stated that there was no dispute as to the reasonableness of the services, it was quite clear to the tribunal on hearing from the Respondent that he did in fact consider the reasonableness of the management service to be in issue. The Applicants did not object to the Tribunal hearing evidence on these issues all of which had been raised by the Respondent in his defence to the County Court Claim. Since the County court had transferred the matter to the Tribunal without reserving any matter the Tribunal considered the issues raised by the Respondent to fall within its jurisdiction in so far as they are subsidiary to or relate to the issue of the reasonableness of the service charge.

53. **The Respondent's case:** The Respondent complained about the long - standing problem of an unauthorised flat created within the Building which interfered with his own and his tenant's quiet enjoyment of his flat. An additional access door had been created, allowing access to the unauthorised flat via the passageway which was originally for the sole use of Flats 10 and 11.

54. The Respondent complained about the incorrect proportion charged by the managing agents of the service charge, although he accepted that this was corrected once the error had ben pointed out.

55. The Respondent stated that the managing agent failed to respond to communication adequately or there was an inordinate delay in any response. He pointed to his email of the 24/5/2013[13], which was not responded to for a year.[14]

56. **The Applicant's case:** Mr Tejada stated that they had instructed solicitors to deal with the breaches of lease but the matter was taking some time to resolve. They were aware of the rear ground floor addition. He confirmed that there are a number of cases currently with their solicitors. He stated that they have regular meetings with the Chair of the Residents Committee and he is aware of the issues.

57. In relation to the error in the charge made for the service charge, Mr Tejada apologised and confirmed that as soon as they were made aware

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[13] [74]

[14] [75]

of the error, it was corrected. He explained that initially taking over the management of a Building from an outgoing managing agent is always difficult as you are reliant on the information handed over.

58. Mr Tejada could not without checking their records, respond to the point regarding the email of the 24/5/2013.

The Tribunal's decision

59. The Tribunal determines that the amount payable in respect of the outstanding service charge and reserve fund to be £1696.01.

Reasons for the Tribunal's decision

60. In making its determination the Tribunal had in mind the guidance given in the case of Yorkbrook Investments Ltd v Batten [1985] 2EGLR 100, which was followed in the Lands Tribunal case Schilling v Canary Riverside Development PTD Ltd LRX/26/2005 in support of the fact that it is for the Applicants to make a prima facie case. At paragraph 15 of the Lands Tribunal decision Judge Rich QC states:

> "... if the landlord is seeking a declaration that a service charge is payable he must show not only that the costs was incurred but also that it was reasonably incurred to provide services or works of a reasonable standard and if the tenant seeks a declaration to the opposite effect, he must show that either the cost or the standard was unreasonable. In discharging that burden the observations of Wood J in the Yorkbrook case makes clear the necessity for the LVT to ensure that the parties know the case which each has to meet and for the evidential burden to require the tenant to provide a prima facie case of unreasonable cost or standard"

61. In this case the Applicant has produced copies of the budgets for the relevant service charge years as well as the accounts and demands. The Respondent has not raised any issue with any specific item of service charge, and indeed he accepts that the amounts charged are reasonably due and payable. The specific issues raised by the Respondent relate to the reasonableness of the management service and the fee charged. The Tribunal noted that the Order appointing the Applicant as manager provides for the applicant to charge a management fee of £225plus Vat per unit per annum. The Tribunal noted that in fact in the year ending 24/03/2014 the total management fee charged was £6,240, which for Flat 10 at a proportion of 3.2% is £199.68. So the level of management fee charged is below the level agreed. The Tribunal finds the management fee agreed by the Applicant on appointment to be reasonable for a property in London. The Building being a mixed use Building is more complex than a purely residential block.

62. The Tribunal having heard from Mr Tajeda on the matters raised by the Respondent was persuaded that the service provided is of a reasonable standard. The matters the Respondent was concerned about are being dealt with and are in the hands of the Solicitors. It would seem that perhaps the information given to the Chair of the Residents Committee by the managing agent may not be filtering through to the Respondent.

Application under s.20C

63. At the end of the hearing, the Applicant made an application for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances thatan order under section 20C of the 1985 Act, is not made so that the Applicant may pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge. The Respondent on receiving the letter of the 18 September 2013 should have engaged with it and raised queries on the change in the percentage apportionment. Had he done so, these proceedings may not have been necessary.

The next steps

64. The tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the Wandsworth County Court.

Name: N Haria **Date:** 26 June 2015

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).