

10707



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

Case Reference : LON/00BE/LAC/2014/0022

Property : Flats 2 & 3, 103 Cobourg Road,
London SE5 0HU

Applicant : Wyndhams Court Properties Ltd

Representative : Mr S Newman (Solicitor) at D & S
Management Services Ltd
Mr Tankaria (Director of Applicant
company)

Respondents : Mr & Mrs Kennedy

Representative : Mr B Amunwa (counsel)

Type of Application : Liability to pay an administration
charge.

Tribunal Judge : Mr L Rahman (Barrister)

**Date and venue of
Hearing** : 6.2.15 at 10 Alfred Place, London
WC1E 7LR

Date of Decision : 23.3.15

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the administration charges are payable under the lease.
- (2) The tribunal determines that the total costs that are reasonable for the previous tribunal proceedings are £12,527.66.
- (3) The tribunal determines that the charge of £250.00 in relation to the drafting of each of the s.146 Notices is reasonable.
- (4) The tribunal determines that the apportionment (of the costs of the previous tribunal proceedings) on the basis that each of the four flats pay 25%, is reasonable.
- (5) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.
- (6) The tribunal determines that the respondent shall pay the applicant, within 28 days of this decision, any of the tribunal fees paid by the applicant.

The application

1. The applicant seeks a determination pursuant to Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of administration charges payable by the respondents in respect of two demands dated 1.9.14 in the sum of £4,767.06 per flat.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The applicant was represented by Mr S Newman (solicitor) of D&S Management Services Ltd and Mr Tankaria (Director of the applicant company). The respondent, Mr Kennedy, appeared and was represented by Mr B Amunwa (counsel).

The background

4. The property which is the subject of this application comprises 15 self-contained flats and internal and external common parts. Five of the flats are lessee owned and the remainder are owned by the applicant.

5. The applicant made a previous application to the tribunal to determine the amount of service charges payable by the respondents and the lessees of Flats 8 and 12. The tribunal determined, after a two day hearing, in a decision dated 23.7.14, that the total sums claimed by the applicant in respect of the service charges for the years 2012 (£19,682.46), 2013 (£19,715.28), and the estimate for 2014 (£86,150.00), were reasonable and payable by the respondents, except for the cleaning cost concerning service charge year 2012 which the tribunal reduced from £1,681.00 to £874.80. The respondents were required to pay 7% per flat towards the total service charges for each of those years.
6. The applicant subsequently served s.146 Notices on 21.8.14 in relation to the final determination of the tribunal (page 183).
7. The respondents paid part of the outstanding service charges on 26.8.14 and the remainder was paid in full by 1.9.14.
8. The applicant now seeks to recover, by way of administration charges, its costs of the previous application to the tribunal and the costs incurred in drafting the s.146 Notices. Two demands were issued on 1.9.14, one for each flats owned by the respondents. Each demand is in the sum of £4,767.06, comprised of £4,517.06 representing 25% of the costs incurred in connection to the previous application and £250.00 for the cost incurred in drafting the s.146 Notice (pages 208 and 211).
9. The respondents hold long leases of the relevant flats. The specific provisions of the relevant leases, identical in terms, will be referred to below, where appropriate.

The issues

10. The respondents had objected to the late service of a witness statement from Mr Tankaria dated 16.1.15. However, at the hearing, after discussion of the contents of the statement, the circumstances in which this statement had been served, and whether there had been any prejudice to the respondents, the respondents conceded the applicant could rely upon Mr Tankaria's evidence.
11. Mr Amunwa also conceded that the point raised in his skeleton argument, submitted at the hearing, concerning the "indemnity principle", was not relevant to the matters before the tribunal.
12. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) Whether the administration charges are payable under the lease?

- (ii) Whether the costs are reasonable in amount?
 - (iii) Whether the apportionment is reasonable?
13. Having heard evidence and submissions from the parties and considered all of the documents referred to, I have determined the various issues as follows.

Are the charges payable under the lease?

14. Under clause 3(1)(f) the lessee is required to *"Pay all costs charges expenses (including Solicitors costs and Surveyors fees) incurred by the Lessors incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925 whether or not any right of re-entry or forfeiture has been waived by the Lessors or the Lessee has been relieved under the provisions of the said Act in respect of the demised premises and to keep the Lessor fully and effectually indemnified against all costs expenses claims and demands whatsoever in respect of the said proceedings"*.
15. Both parties stated the relevant issue I had to determine was whether the applicant had in its mind, at the time it made its previous application to the tribunal, that it would issue s.146 Notices. The respondents also submitted that I must not only consider whether the applicant had contemplated service of such a Notice, but to also consider whether such notices were served in a genuine attempt to forfeit the lease and not simply to use the service of the s.146 Notices to recover costs.
16. The applicant states the respondents were due to pay the service charges for the service charge year ending 2012 and the on account payments for the service charge year ending 2013 by 6.12.13 (pages 283-306). As payments were not made, Mr Newman sent an email to Mr Tankaria on 9.1.14, suggesting three options (page 433). Option one was to issue County Court proceedings for the monies. Option two was to make an application to the tribunal with respect to the 2012 monies followed by a s.146 Notice. Option three was to hold off the application to the tribunal until the final accounts for 2013 and then make an application to the tribunal for both years. Mr Newman stated in his email that he did not mind either option two or three.
17. Mr Newman stated at the hearing that after sending the email to Mr Tankaria, they had a telephone discussion and decided to proceed with option three. After waiting for the final accounts for 2013, a demand was sent on 17.1.14 (page 81). The payment was due by 31.1.14.
18. Mr Newman stated in his witness statement that as the respondents had failed to pay the monies demanded by the due date the applicant

decided that the only way to resolve the issue would be to serve s.146 Notices. Mr Newman stated at the hearing that under the terms of the lease the applicant had to wait 21 days before proceeding to forfeit the leases. This he calculated meant having to wait until 21.2.14, which was a Friday. Therefore, the application to the tribunal, as the first step towards forfeiture of the respondents' leases and service of the s.146 Notice, was made on Monday 24.2.14, for this tribunal to determine whether the monies demanded were due from the respondents. Mr Newman stated during the hearing that it was not a mere coincidence that the service charge demand was served on 17.1.14, payment was due by 31.1.14, and the actual application was made to the tribunal on 24.2.14. The reason that he had adhered to those dates was because the applicant contemplated serving s.146 Notices and then proceeding to forfeit the respondents' leases.

19. Mr Newman stated in his witness statement that after the tribunal had determined the matter in its decision dated 23.7.14, the respondents refused to pay the outstanding service charges despite assurances from them that the outstanding service charges would be paid. Therefore, the applicant had decided that the only way to secure payment was to actually serve the s.146 Notices, which it did on 21.8.14 (pages 183-206), after waiting to see whether the respondents wished to appeal the tribunals decision. The accompanying cover letter stated "*service of the enclosed Notice is the initial step with regard to forfeiture of the lease...If you seek to remedy the breaches complained of in the Notice...the monies stated in the said Notice are required without further delay*". The actual Notices stated that the monies had to be paid within a period of one month from the deemed date of service of the Notices.
20. Mr Newman stated at the hearing that after service of the s.146 Notices the respondents paid part of the outstanding service charges on 26.8.14 and the remainder was paid in full by 1.9.14. Therefore, the applicant did not proceed with forfeiture of the respondents' leases.
21. Mr Newman and Mr Tankaria both stated in their written statements and in oral evidence that the applicant had in its mind, at the time it made its previous application to the tribunal, that it would issue s.146 Notices with a genuine view to forfeiting the leases if payment was not made.
22. The respondents argued that the key issue was, and the applicant had to show, that it genuinely intended to bring forfeiture proceedings and not just service s.146 Notices to claim back costs. They argued that it was becoming "routine" whereby landlords were serving s.146 Notices but did not genuinely intend to proceed with forfeiture.
23. The respondents stated that they challenged the applicants true intentions. The respondents stated that whilst they accepted that the

applicant may have contemplated serving s.146 Notices, they did not believe that the applicant genuinely intended to proceed with forfeiture proceedings but had simply served the s.146 Notices as a way to recover their costs concerning the previous tribunal proceedings.

24. Mr Kennedy stated in his statement that after a hearing on 15.10.14, concerning the same parties and including the other lessees also in relation to a separate application by the applicant to vary the terms of the leases, Mr Newman had confirmed outside the hearing room, in front of Mr Kennedy and the other lessees, that the applicant did not intend to forfeit the leases. The respondents stated that they did not have any witness statements from the other lessees to support what was stated in Mr Kennedy's statement. The respondents also accept that there is nothing in any of the correspondence from the applicant expressly stating that it committed itself to not forfeiting the leases.
25. The respondents state that the applicant had decided to proceed with option three, as per the email dated 9.1.14, which did not refer to s.146 Notices, unlike option two which referred to an application to the tribunal "*with regard to the 2012 monies to be followed by a s.146 Notice*".
26. The respondents stated at the hearing that if the applicant intended to forfeit the leases then at the very least it would have "dropped a hint about it" rather than simply waiting for the first opportunity to serve a s.146 Notice. In an email between Mr Newman and Mr Kennedy, dated 8.1.14 (page 440), Mr Newman informed Mr Kennedy "*I am instructed to commence proceedings with regard to outstanding service charges...*". No mention was made of any s.146 Notices. In an email from Mr Newman to Mr Kennedy, dated 15.1.14 (page 441), Mr Newman threatened potential forfeiture proceedings for other breaches (concerning the issue of water leaks from Mr Kennedy's flat into the property below) but not for the unpaid service charges. The respondents state that the very first time any mention was made of forfeiture proceedings concerning any unpaid service charges was in the Notice dated 21.8.14.
27. In reply Mr Tankaria stated that the language used between himself and Mr Newman was such that the use of the words "s.146 Notice" meant forfeiture. They have known each other for a while hence the informal nature of the email. He went on to state that where a lessee refused to pay the service charge, if the applicant had no intention to forfeit the lease, why would it waste time and money. As the respondents refused to pay the service charges demanded, the applicant intended to forfeit the leases unless the service charges were paid. He stated that if the applicant had threatened service of a s.146 Notice due to a failure to pay service charges, the applicant would be criticised for being heavy handed.

28. Mr Newman stated in reply that he did not speak to Mr Kennedy outside the hearing on 15.10.14. He spoke to the representative for Flat 12, who had stated outside the hearing room that the applicants primary motivation for bringing its application to vary the lease was because the applicant wanted to take the flats from the tenants. Mr Newman stated that his reply was that the applicant did not make that application (to vary the leases) because it wanted to forfeit the leases but rather for the better management of the building. However, if the applicant had to forfeit, then it would. But if the lessees comply with the covenants, then the applicant would not be looking to forfeit the leases.
29. With respect to the email on page 440, Mr Newman stated that he had sent that email in response to Mr Kennedy's email dated 3.1.14 (bottom of page 440), in which Mr Kennedy had stated that the unpaid service charges had been paid that day and the applicant should receive the payment in the next two days. Mr Newman stated that it was hoped that they were "on a better footing", he was hopeful that Mr Kennedy would pay the money, and he was told that the money had actually left Mr Kennedy's account. Mr Newman stated that in the circumstances, why would he threaten forfeiture of the lease? The email was just to remind Mr Kennedy that the payment had not been received and he [Mr Newman] wanted confirmation as to which account and the exact date on which the monies had been transferred, so that Mr Kennedy was not included in the proceedings with regards to the unpaid service charges against the other leaseholders.
30. Mr Newman stated, in relation to the email from him to Mr Tankaria, that option three flowed from option two in that it simply meant that the s.146 Notice would be served in relation to both years as opposed to one year.
31. On the balance of probabilities, I am satisfied that the applicant had in its mind, at the time it made its previous application to the tribunal, that it would issue s.146 Notices. I am also satisfied that it intended to serve such Notices in a genuine attempt to forfeit the leases if the outstanding service charges were not paid and not simply to use the service of the s.146 Notices to recover costs.
32. The email from Mr Newman to Mr Tankaria, dated 9.1.14, clearly sets out the options available. Option two clearly refers to an application to the tribunal with regards to the 2012 monies to be followed by a s.146 Notice. Option three states the application could be held off until the final accounts for 2013 are available and then for an application to the tribunal for both the years 2012 and 2013. Whilst I note that option three does not go on to state "to be followed by a s.146 Notice", I accept that option three clearly follows on from option two. Reading the email as a whole, it means a s.146 Notice would also follow option three, the only difference being that for option two it would only be in relation to the monies owed for 2012 and for option three it would be in relation to

the monies owed for 2012 and 2013. Otherwise it would lead to the bizarre scenario whereby under option two an application would be made to the tribunal concerning monies for 2012 followed by a s.146 Notice but under option three, an application would be made to the tribunal concerning monies owed for 2012 also but no s.146 Notice would follow. I accept the email was between two people who knew each other quite well and therefore it was not drafted in a more formal and detailed manner.

33. I find that the information contained in the email is also consistent with the evidence from both Mr Newman and Mr Tankaria, that the intention was to make an application to the tribunal and to serve s.146 Notices and then start forfeiture proceedings in the event that the outstanding service charges were not paid.
34. I find that this is also consistent with the actual sequence of events. The payments were due by 31.1.14. Mr Newman stated that under the terms of the lease the applicant had to wait 21 days before proceeding to forfeit the leases (and I note there was no evidence to the contrary from the respondents on this point). This he calculated meant having to wait until 21.2.14, which was a Friday, therefore, the application to the tribunal was made on Monday 24.2.14. After receiving the tribunals decision dated 23.7.14 and the respondents still refusing to pay the outstanding service charges or appealing the tribunals decision, the applicant served the s.146 Notices on 21.8.14. The Notices stated that the monies had to be paid within a period of one month from the deemed date of service of the Notices. The respondents paid part of the outstanding service charges on 26.8.14 and the remainder by 1.9.14. Therefore, the applicant did not proceed with forfeiture of the respondents' leases.
35. I accept that Mr Newman did not state outside the tribunal room on 15.10.14 that the applicant did not intend to forfeit the leases in connection with the outstanding service charges. I find that Mr Newman had been quoted out of context. Mr Newman stated that he was responding to a specific allegation made by the representative for Flat 12 in relation to a separate matter and to which he had replied that the applicant did not make that application (to vary the leases) because it wanted to forfeit the leases but rather for the better management of the building. I note that Mr Newman would not have had to discuss any matters concerning forfeiting the lease in connection with unpaid service charges given that Mr and Mrs Kennedy had paid all the outstanding service charges by 1.9.14. I note that the respondents have not provided any witness statement from any of the other lessees or the representative for Flat 12 to confirm Mr Kennedy's version. This I find very surprising given the significance of what Mr Kennedy asserts, which goes to the core of his argument, the relative ease with which such a statement could have been obtained, and because Mr Kennedy must have known the significance of such evidence given that he is a

retired Solicitor himself and also being represented by Counsel in these proceedings.

36. There is no requirement for the applicant to have given a warning that it intended to forfeit the leases in the event of non payment of the service charges. The mere absence of a warning from the applicant, that it intended to forfeit the lease, does not mean that the applicant did not contemplate this and there is no evidence to the contrary.
37. The respondents accept that there is nothing in any of the correspondence from the applicant expressly stating that it committed itself to not forfeiting the leases.

Are the costs reasonable in amount

38. Mr Newman stated that his charge was at £225 per hour, which was below what he would have been entitled to charge as a Grade A solicitor based in London (£317 per hour). He explained that the schedule of works were at page 176 of the bundle and clarified that he charged all emails, regardless of their length, at one unit each (6 minutes). Everything else was charged on a strict time basis.
39. Mr Amunwa stated that a fee based upon a Grade C solicitor (£196 per hour) would be more appropriate and that all letters and emails received should not be included in computing the costs as a separate charge was not allowed for incoming letters and emails when dealing with costs at the County Court.
40. In response, Mr Newman stated that it was a borderline Grade B-C case due to the volume of documents. Mr Newman stated that the County Court Costs Rules do not apply as the costs were being recovered under a contract. However, he accepted that the costs rules used by the County Courts were relevant when considering whether the costs were reasonable in amount.
41. Both parties agreed that the previous proceeding before the tribunal was not factually or legally complex but involved a lot of uncomplicated points that had to be considered.
42. Mr Amunwa, on behalf of the respondents, took issue with the following items of expenditure; "22.4.14 Statements etc £1,462.50" and "11.5.14 Case, witness statements etc £607.50" as it was not clear what those specifically related to. He also argued it was unclear why the letter dated 17.9.14, which was sent to the lessee of flat 8, referred to a charge of £4,517.06, which represents 25% of £18,068.24, yet the applicant was now seeking costs in the sum of £19,688.14. He stated that the respondents did not receive the trial bundle therefore they should not pay the cost of £38.94. He finally stated that the applicant

had behaved unfairly and therefore should not get its costs. He clarified that it was not being suggested that the applicant behaved vexatiously but that the service of a s.146 Notice, when the respondents were in the process of paying the service charges, was unreasonable.

43. Mr Newman stated in reply that the sum of £1,462.50 related to the preparation of the Scott Schedule, drafting the statement of case, the supplemental statement of case, and drafting his own witness statement as well as the witness statements of Mr Tankaria and the further witness statement from another individual to confirm that the relevant documents had been served, including all the exhibits, all of which took 6.5 hours. He stated that the sum of £607.50 related to reviewing and amending the statement of case and the witness statements in light of the surveyors report that was received, which took 2 hours and 42 minutes. He stated that these documents appeared at pages 351-713 of the original trial bundle, covering more than 350 pages of evidence.
44. Mr Newman clarified that the letter that was sent to the lessee of Flat 8, dated 17.9.14, did not include the disbursements. This may have been an error on the applicants part therefore that lessee had not paid for the disbursements.
45. Mr Newman stated that the trial bundle was sent to the address provided by the respondents. The applicant cannot be blamed for sending it to the address provided by the respondents, who had provided the wrong postcode.
46. Mr Newman stated that the applicant had not behaved unreasonably and had no option but to serve the s.146 Notices. The respondents had on more than one occasion stated that they had paid the service charges when in fact they had not. For example, in an email dated 17.12.13 (page 269) the respondents had stated "*...I have now sent a payment of £5,636.86 to your account..Please acknowledge receipt of these sums in due course...*" However, that payment had never arrived. In an email dated 3.1.14 (page 273) the respondents had stated "*Unfortunately there was some technical problem with the previous electronic bank transfer. The payment has today definitely been debited from my account and sent to your account...You should receive the payment of £5,636.86 in your account in the next 2 days. Please confirm receipt in due course. My apologies for the delay...*" However, that was not in fact paid until after the previous tribunal hearing.
47. Mr Newman stated that there were other misleading correspondence. For example, in an email dated 21.8.14, sent at 14:49, the respondents had stated that they had sent by first class post a cheque for £8,773.84 on 21.8.14 (page 282). However, on the same date (21.8.14) at 15:12, the respondents sent another email stating that the cheque had been sent on 19.8.14 (page 392). Mr Newman stated that the second email was

sent as the respondents must have realised that 21st August was after the s.146 Notices had been served.

48. The respondents did not have anything to add in response other than confirming that they had provided the wrong postcode.
49. Whilst I note that the costs being sought by the applicant are recoverable under a contract, I find, and Mr Newman agreed, that the County Court Costs Rules were relevant when considering whether the costs being sought by the applicant were reasonable in amount. Both parties agreed that the previous proceeding before the tribunal was not factually or legally complex but involved a lot of uncomplicated points that had to be considered. Mr Newman stated that it was a borderline Grade B-C case due to the volume of documents. Having chaired the original tribunal hearing myself, I find that a fee based upon a Grade C solicitor (£196 per hour) would be more appropriate and therefore reasonable in this particular case. In line with the County Court Costs Rules, I also find that the applicant should not be allowed to have an additional charge for any letters and emails received.
50. Mr Newman provided an explanation for the costs in the sum of £1,462.50 and £607.50. Having heard the explanation from Mr Newman, the respondents did not have anything to say in reply. I note that the original tribunal hearing involved a lot of uncomplicated points and that these particular documents generated over 350 pages of evidence. I am therefore satisfied that the costs incurred in the sum of £1,462.50 and £607.50 were reasonable.
51. I note that the respondents, like the lessee of Flat 8, had received the administration charges demanding £4,517.06 concerning the costs of the previous tribunal proceedings (pages 208 and 211). I note the applicants explanation that it had, in error, failed to include the cost of the disbursements. Mr Newman confirmed at the hearing that the current application to the tribunal was in relation to the administration charges as set out on pages 208 and 211. In the circumstances, I find the applicant cannot recover the cost of the disbursements, as the demand that had been issued did not include those costs. It follows that the cost of £38.94, for the postage of the trial bundle, is also not recoverable as it is a disbursement.
52. I find no evidence that the applicant had acted unfairly or unreasonably in serving the s.146 Notices. Given the background to the case, the assurances given by the respondents that payments had been made when clearly that was not so, and the sequence of events leading up to the service of the s.146 Notices, I find that the applicants had acted reasonably.
53. Both parties agreed at the hearing that if the costs were to be calculated on the basis of a Grade C fee earner the total costs claimed by the

applicant would be in the sum of £15,719.20. Both parties agreed at the hearing that if the costs were re-calculated, excluding any fees for consideration of emails and letters received, the final figure would be in the sum of £14,170.80. Given my finding that the applicant is not able to recover the cost of the disbursements, which amounts to £1,643.14 (page 181), I find that the total costs that are recoverable for the previous tribunal proceedings are £12,527.66.

54. The respondents did not take issue with the £250.00 charge in relation to the drafting of each of the s.146 Notices.

Is the apportionment reasonable

55. Both parties accept that the lease does not stipulate how the costs should be apportioned.
56. The applicant took the view that the fairest way to apportion the costs of the previous application was to divide this amongst the four flats that had disputed the service charges and were responsible for the resulting costs. It therefore demanded the applicants pay 50% of the costs of the previous application, given that they were lessees of two of the four flats. The applicant argued that in reality most of the work was actually generated by Mr and Mrs Kennedy, as the lessee of Flat 8 was disbarred and the lessee of Flat 12 did not take part in the proceedings at all, therefore, Mr and Mrs Kennedy should in fact pay a higher proportion of the costs.
57. The respondents argued that they should only pay 1/3 of the total costs. Although they are lessees of two of the flats out of four, their arguments were the same for both flats and therefore the work that would have been generated would have been the same.
58. Given that the lessees of Flats 8 and 12 effectively took no part in the proceedings and Mr and Mrs Kennedy were responsible for generating most of the works which resulted in the costs now being sought by the applicant, I find the apportionment to be more than reasonable.

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

59. At the end of the hearing, the applicant made an application for a refund of the fees that had been paid in respect of the application/hearing. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the respondents to refund any fees paid by the applicant within 28 days of the date of this decision.
60. At the hearing, the respondents applied for an order under section 20C of the 1985. Having heard the submissions from the parties and taking

into account the determinations above, the tribunal determines the applicant acted reasonably in connection with the proceedings and was successful on nearly all the disputed issues, therefore the tribunal decline to make an order under section 20C.

Name: Mr L Rahman

Date: 23.3.15

Appendix of relevant legislation

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).