



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

**Case reference** : **LON/00BG/LSC/2-015/0100**

**Property** : **63 Alphabet Square, Hawgood Street, London E3 3RT**

**Applicant** : **Alphabet Square Management Company Limited**

**Representative** : **Mr Mark Tamuta, Alliance Managing Agents**

**Respondent** : **Mr Ognian Georjev Avgarski and Mrs Davrinka Jelva Avgarski**

**Representative** : **Ms Harriet Holmes, Counsel**

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

**Tribunal members** : **Judge Robert Latham  
Mr Alan Manson FRICS  
Mr Philip Webb**

**Date and venue of hearing** : **13 August 2015 at 10 Alfred Place, London WC1E 7LR**

**Date of decision** : **6 October 2015 (amended 16 November 2015)**

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**DECISION**

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- (1) The lease provides that lessees shall pay a “fair and proper proportion (to be determined by the Surveyor for the time being of the Lessor such determination to be final and binding on the parties hereto) of the Service Charge (as hereinafter defined)”. This mechanism for determining the Respondents’ proportion of the service charge is void by virtue of section 27A(6) of the Landlord and Tenant Act 1985 because it provides for the manner in which an issue capable of

determination under section 27A(1) is to be determined, namely by a binding decision of the landlord's surveyor.

- (2) The mechanism for determining the Respondents' proportion of the service charge stands to be read as follows:

"A fair and proper proportion of the Service Charge (as hereinafter defined)."

- (3) The "equal shares" formula adopted by the Applicant does not result in a "fair and proper proportion" to be paid by the Respondents.
- (4) The "fair and proper proportion" is to be determined in accordance with the "multi-schedule" formula discussed at [51] to [53] of our decision.
- (5) The following sums are payable by the Respondents' in respect of insurance, namely £140.77 (2011/2); £145.44 (2012/3); £148.88 (2013/4); and £178.37 (2014/5).
- (6) The following interim service charges are payable by the Respondents: £1,754.47 (2012/3); £1,754.47 (2013/4); £1,812.91 (2014/5).
- (7) The Applicant must re-compute the Respondents' liability for the 2015/6 service charge according to the formula specified in (4) above.
- (8) The Tribunal determines not to make an order that the Applicant pays the Respondents' costs pursuant to Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
- (9) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the Applicant's costs of the tribunal proceedings may be passed to the Respondents through any service charge.

### **The Application**

1. By an application dated 24 February 2015, Alphabet Square Management Company Ltd, (the "Management Company"), seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the Act") as to the amount of service charges payable by Mr Ognian and Mrs Davrinka Avgarski ("the Tenants") in respect of their flat at 63 Alphabet Square, Hawgood Street, London E3 3RT (the "flat") for the years 2012/13 to 2015/6 (four service charge years).
2. The subject property is a one bedroom flat within a purpose built development of 33 properties which were developed as "live/work" units known as Alphabet Square ("the estate"). The background to this dispute is

the contribution that the tenants are required to pay towards the service charge. The Management Company have apportioned this by equal shares, each lessee contributing 1/33 or 3.03%. The Tenants contend that this is manifestly unfair. Their flat is only 50 sq m and is one of the smallest units. They pay as much as the town house which are much larger, up to 120 sq m. They rather contend that it should be divided by floor area. Under this formulation, their contribution would fall to 1.53%.

3. As the hearing developed, it became apparent that the situation is more complex than this. Whilst the Tenants contend that the town houses pay too little, these lessees respond that they receive the least services. The flats all have internal common parts which must be maintained, but which are on no benefit to the town house. Further, this is not a residential development. These are live/work units. The lessees covenant not to use more than 50% of their premises for residential purposes. This covenant seems to be honoured more in the breach, than in the observance. Whilst some units are occupied for both purposes, others are now being used exclusively for work or residential purposes. Some of the town houses and flats have been divided into two separate residential units.
4. The Tribunal gave directions on 19 March and 19 May 2015. Pursuant to those Directions:
  - (i) On 15 May, the Tenants served a Statement of Case in Response. This was not included in the Bundle prepared by the Management Company, but a copy was provided to the Tribunal at the hearing.
  - (ii) On 21 May, the Management Company served annual service charges budgets for 2014/5 and 2015/6 (at WS08a of the Bundle). The Management Company had previously provided copies of the relevant service charge accounts (at WS08).
  - (iii) On 5 June, the Tenants provided a Schedule of the service charge items in dispute (at p.25) and a witness statement (at p.39-109). The dispute relates to the service charges for 2012/3 to 2015/6 (namely £1,754.47; £1,754.47; £1,812.91; and £1812.91) and the building insurance for the years 2011/12 to 2014/15 (namely £140.77; £145.44; £148.88; and £178.37).
  - (iv) On 19 June, the Management Company completed the Schedule setting out their response (at p.25). They also served a witness statement from Mark Tamuta, a director of Alliance Property Management Ltd ("Alliance") who have managed the estate on their behalf (at p.119-21). The relevant invoices are at p.26-38.
  - (v) On 9 July, the Tenants served an expert's report from Graham Pack RICS (at p.151-206). This report addresses how the service charge should be apportioned.
  - (vi) The Management Company has not served any expert evidence, but rely on reports from Chris Baker BSc dated 30 April 2004 (at WS05)

and 17 July 2012 (at WS06) and 11 August 2015 (provided at the hearing).

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

### **The Hearing**

6. The Applicant Management Company was represented by Mr Mark Tamatu, a director of Alliance. He gave evidence. He asked the Tribunal to have regard to the further report from Mr Chris Baker which responds to the report of Mr Pack. Mr Baker is the managing director and owner of McDowalls Surveyors Limited ("McDowalls"). He is not a surveyor, but rather has a diploma in Estate Management. He was not called to give evidence. Neither did the Management Company adduce evidence from a director. All the directors are lessees and each lessee holds an equal share in the Management Company
7. The Respondent Tenants were represented by Ms Harriet Holmes of Counsel, who appeared pro bono on behalf of the Tenants. She had also appeared at the two directions hearings. We were grateful for her assistance and her helpful submissions. She adduced evidence from Mr Pack. Mr Pack was aware of his responsibilities as an independent expert, duties which we stressed were greater given that he was the sole expert to give live evidence. The Tribunal were impressed with the impartial and objective manner in which he gave his evidence.
8. At the end of the hearing, Ms Holmes made an application for costs pursuant to Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Tribunal Rules") complaining of the unsatisfactory manner in which the Management Company had prepared their case.
9. The Tribunal was told that there are some four different lease types. However, the parties have subsequently confirmed that there are no substantive differences between the leases. Under each of these leases, the lessees are required contribute to the service charges incurred in respect of the management of the estate, such contribution being (emphasis added):

"A fair and proper proportion (to be determined by the Surveyor for the time being of the Lessor such determination to be final and binding on the parties hereto) of the Service Charge (as hereinafter defined)."
10. Ms Holmes argued that section 27A(6) of the 1985 Act renders void such an agreement that the apportionment of service charges shall be in accordance with a determination of a third party whose decision is to be final and binding. She relies upon the decision of the Upper Tribunal in *Windermere Marina Village Ltd v Wild* ("*Windermere Marina Village*") [2014] UKUT 0163 (LC); [2014] L&TR 30. Mr Martin Rodger QC, the Deputy President, held that a similar clause was void because it had the

effect of providing for the manner in which an issue capable of determination under s.27A(1) was to be determined, namely by a binding decision of the landlord's surveyor. It followed that the Tribunal was entitled to consider what was the fair proportion of the expenses payable by the tenants, because the contractual mechanism for identifying that fair proportion was rendered void by s.27A(6).

11. The decision of the Upper Tribunal is binding on this Tribunal and we indicated to the parties that we were satisfied that the clause in the Tenants' lease is void and we must therefore determine the fair proportion of the service charge expenses to be paid by the Tenants. Whilst strictly, our decision only binds those who are a party to it, the consequence of any decision that this tenant is paying too high a contribution towards the service charge expenses, would be to compel the managing company to require other lessees to pay more.
12. At the end of the hearing, we therefore invited the other lessees to make written representations. We issued further Directions which Alliance served on the lessees on 21 August 2015. We recorded that the parties had made the following proposals:

- (i) The Management Company contended that the current mechanism for apportioning the service charge whereby each lessee pays an equal 1/33<sup>rd</sup> share (3.03%) is fair and asked us to approve this (the "**equal shares**" formula). This was the approach adopted by Mr Baker in his report, dated 17 July 2012.

- (ii) The Tenants rather proposed two mechanisms for apportioning the service charge:

- (a) the proportion payable by each lessee would depend upon the respective floor area of each flat (the "**floor area**" formula). This was the approach adopted by Mr Pack at Appendix 7 of his report.

- (b) the proportion payable by each lessee would depend upon the respective floor area of each flat, but would be refined so that different percentages were paid by different sections of the development (the "**multi-schedule**" formulation). This was the approach adopted by Mr Pack at Appendix 8 of his report.

We referred the lessees to the expert reports upon which each party relied.

13. Pursuant to these Directions, the following representations have been made:

- (i) On 1 September, Ms Sabina Rahman, lessee of 15 Alphabet Square argued for the status quo, namely "equal shares". She is a tenant of one of the town houses.

- (ii) On 1 September, Mr and Mrs Legg, lessees of 11 Alphabet Square, argued for the "multi-schedule" formula. They occupy a town house

with its own private entrance. This is likely to be one of the higher value properties, but would probably pay less under this formula. It seems that these lessees would have been content for the status quo to continue, but considered that the Tribunal had deemed this to be unfair. This is not correct and equal shares is a formula which we must consider.

(iii) On 4 September, Ms Jo O'Connor on behalf of the Management Company, informed the Tribunal that they would strongly suggest that the fairest way to allocate the charges would be the "multi-schedule" formula proposed by Mr Pack. Although this would entail a small amount of additional administration, this was seen as by far the fairest as it would allocate more of the costs directly to those that receive the benefit from the services. The Management Company propose that whilst the estate expenditure should be "floor area", the block expenditure should be divided by "equal shares", each tenant benefitting equally from the services provided. We refer to this as the "**modified multi-schedule**" formula. We understand that the Board of the Management Company had met on 28 August to consider their response.

(iv) On 4 September, the Tenants confirmed their preference for the "floor area" formula, on grounds of simplicity, efficiency and lower cost. It would also provide certainty, avoid future conflict, and provide the mechanism for collecting any reserve fund.

14. On 14 September, the Tribunal afforded the parties a final opportunity to comment on the representations that we had received. By a letter dated 18 September, the Tenants objected to the "modified multi-schedule" formula proposed by the Management Company. They repeat their contention that the "floor area" formula is simpler to administer.

15. In our Directions, we also raised three further issues:

(i) We urged the parties to seek agreement on a fair mechanism for apportioning the service charge. We noted that a mechanism agreed by the relevant parties was like to prove more acceptable to all concerned than one imposed by the Tribunal. No such agreement has been reached.

(ii) We invited the parties to make further written representations on (a) the floor areas of the flats; and/or (b) any terms in other leases on the estate which are relevant to our determination. No such representations have been received. The Tenants have confirmed that there do not seem to be any material differences between the various forms of lease.

## **The Lease and the Development**

16. The Tenants occupy their flat under a lease dated 27 June 1997 (at p.123-146). There are three parties to the lease: (i) Crispin & Borst Ltd (the Lessor); (ii) Enterprise Works Management Ltd (the Management Company); and (iii) Mr & Mrs Avgarski (the Tenants). On 11 September 2000, Enterprise Works Management Ltd changed its name to Alphabet Square Management Company Limited. On 5 November 2004, East Homes Limited acquired the freehold interest and became landlord (see WSO7). Under their leases, all the tenants are shareholders in the Management Company.
17. Alphabet Square is now an L shaped development of 33 properties that were developed as "live/work" units. By Clause 2(7)(a), the lessees covenant not to use more than 50% of the premises for residential purposes. However, it is apparent that whilst some units are occupied for both purposes, others are now being used exclusively for work or residential purposes. The best evidence of this is the 2011 Insurance renewal Schedule (at WSO9). Some of the town houses and flats have now been divided into two residential units. Other units are used solely for commercial purposes. A number of the units have been sub-let.
18. There is a plan of the development annexed edged green on Plan A which is attached to the Tenants' lease (at p.145). This reflects what was intended when the estate was being developed, rather than the estate as it exists today. There is a Google earth map at WSO1. There is a central courtyard with parking for 50 cars. Access to the courtyard and to the majority of the properties is through an electronic gate under the Link Block with a separate side gate for pedestrians. The Tenants have the right to park one car in the car parking area.
19. There are now five distinct elements of the estate:
  - (i) Block E is on the north side. It has its own entrance and four flats (Nos. 1-4 Alphabet Square). Each of these flats at 85 sq m (see p.206). We have the lease plan for No.4 (originally described as 24 Alphabet Place). This is a two bedroom flat.
  - (ii) A row of seven 4 storey town houses to the north of the estate (Nos. 5-11 Alphabet Square). These have independent access from the courtyard and a rear access from Hawgood Street. These houses are all larger (120 sq m). We have the lease plan for No.11 (originally described as 15 Alphabet Place). Originally, the working space was on the lower and upper ground floors, whilst the living space on the first and second floors. However, there are separate entrances which make it easy to convert the lower and ground floors as a separate residential flat. Mr and Mrs Legg are tenants of No.11. It seems that Nos. 9, 10, and 11 have been divided and are now each let as two residential units (see WSO9). No.7 is occupied by electrical contractors.

(iii) A row of nine 4 storey town houses to the east of the Estate (Nos. 12-20 Alphabet Square). These have independent access from the courtyard and also rear access from behind the courtyard from a gate in the corner of Hawgood Street and the side on No.20 between the unit and the canal. These houses are slightly smaller (115 sq m). Ms Rahman is the tenant of No.15. It seems that No. 12 is now let as two residential units. Nos. 13 and 14 seem to be occupied for residential purposes (WS09).

(iv) Block A on the north east corner. This has its own entrance. These four flats are now known as 24, 26, 28 and 30 Hawgood Street. Nos. 24, 26 and 28 are 115 sq m. No. 30 is slightly smaller at 110 sq m). We have a lease plan of No.28 (which was originally described as 12 Alphabet Place). It now seems to be occupied by wine importers (WS09).

(v) Block F and the Link Block share a single entrance. There are six flats in Block F (Nos. 57-61 Alphabet Square) and 4 in the Link Block (Nos. 62-65 Alphabet Square). Vehicular access into the square is gained from Hawgood Street underneath the Link Block (see photo at p.70). These flats are of various sizes, Nos. 57, 58, and 59 being 75 sq m; Nos. 60, 61, 64 and 65 being 70 sq m and Nos. 62 and 63 being 50 sq m. The Tenants occupy 63 Alphabet Square. This is a one bedroom flat with a lounge, kitchen and bathroom. The large living room was designed as a living/workspace. The plan is at p.167 and photographs at p.169. We have also been provided with the floor plans for Nos. 60 and 61 (at p.167). These flats are on two floors, the upper level being a large gallery area. Mr Pack (at [8.12]) notes that No.58 seems to have been divided into two with separate letter boxes for Nos. 58A and 58B.

20. The estate was built between 1988 and 1997 (see WS07). All leases are granted for a term of 999 years from 25 March 1988. The Tenants' lease is dated 27 June 1997, indicating that their flat was one of the last to be completed.

21. In the Tenants' lease, the following terms are used:

(i) "The Development" at p.124): "the land which is edged green on Plan A". Plan A is at p.145. The estate now occupies only part of this land, the remaining section in the south west of the site having been sold by the developer.

(ii) "The Building": "all that land and building known as Link Block Alphabet Square Hawgood Street ... which is shown edged red on Pan A attached hereto". The link Block is marked separately from Block F, albeit that both share a common entrance.

(iii) "The Premises" – "all that third floor flat of the building shown edged red on Plan B attached hereto ... known as Unit 63". Plan B is at p.146.

(iv) "Initial Interim Payment" – "£300 per annum".



22. The Management Company manages the block on behalf of the lessor. By Clause 4(4), the Management Company covenants to insure the Development, including the Building.
23. The service charge provisions are set out at Clause 5. The service charge is the actual cost of providing the services. The lessee covenants to pay their fair and proper proportion to be determined by the Lessor's Surveyor. Details of the service charge are to be found in the Second Schedule. The service charge relates to the costs of carrying out any works or providing any other services or amenities which the Management Company may consider desirable for "the better enjoyment and use for the purpose of maintain or improving the Development and the services or amenities in the interest of the lessees tenants and occupiers of the buildings in the Development". It extends to employing managing agents and professional advisers.
24. Clause 5(a) defines the accounting period as "each year ending on 31<sup>st</sup> December in each year or for such other shorter or longer period as the Management Company may from time to time determine as the period for maintain Service Charge accounts".
25. A lessee is required to pay an interim service charge on 25 March and 29 September. Initially, this is to be £300 pa until such time as the Management Company shall determine otherwise. Thereafter, it is to be such sum as the Management Company shall in its reasonable discretion specify having regard to the anticipated expenditure for the year in question (Clause 5(c)). If the actual costs exceed the interim payments, the Management Company is entitled to serve an additional payment (Clause 5(e)). Any surplus is to be credited to the account of the lessee (Clause 5(f)).
26. Clause 5(h) of the lease (at p.139) requires the Management Company as soon as reasonably practicable after the expiry of each accounting period to serve on the lessee a certificate signed by the Management Company or its managing agents containing the following information: (i) the costs incurred during the accounting period; (ii) the amount of the interim payment or any further interim payment together with any surplus to be carried forward; and (iii) the amount of the service charge payable for the accounting period and the excess or deficit over the interim charges that have been paid.

### **The Background**

27. The Management Company have determined that the "fair and proper proportion" for each lessee to pay is 1/33, namely that each lessee should pay the same, regardless of the size of their flat or the services from which they benefit. There is an element of equity to this. The largest and most valuable properties are the 16 town house. Whilst it could be argued that they should pay more, it could equally be argued that they benefit least

from the services provided as they have their own entrances and do not share the internal common parts in the three/four blocks.

28. For over 15 years, the Tenants have considered this to be unfair. Mr Avgarski first complained on 18 October 2000 (see p.44). He states that he had just been notified that the budgeted service charge for the subsequent year was to be £1,350 an increase of over £1,000 on interim service charge that he had paid.
29. In 2001, the Management Company issued proceedings against Tenants in the Bow County Court for arrears of service charges. These proceedings were transferred to the Leasehold Valuation Tribunal who determined in June 2003 that they had no jurisdiction to deal with the matter, apparently because of the mixed commercial/residential use. The matter was returned to the County Court. Mr Avgarski describes how neither party took any action to pursue the matter further. The issue as to what constituted a fair service charge was therefore unresolved.
30. On 31 August 2001, East Thames Housing, the then lessor, appointed Mr Douglas Stratford of McDowells as the lessor's surveyor (at WSo2). On 3 September 2001, the Management Company affirmed the 1/33 split of the service charge.
31. In November 2001, the Tenants obtained a report from Mr Francis Hunter FRICS (at p.46-59). He considered that the fair way to apportion the service charge was a two (or more) tier system whereby certain estate expenditure was apportioned between all lessees, and other block expenditure was apportioned to those lessees who benefited from it. He recognised the practical difficulties of re-assessing past expenditure. He noted (at [5.4]) that whilst the costs of insurance were to be included within the service charge, it was in practice charged separately, the Tenants paying 1.53%.
32. On 30 April 2004, the Management Company obtained a report from Mr Baker of McDowells (at WSo5). He concluded that there was no reason why the equal split of the service charge should be changed.
33. At this stage, the Tenants resumed their payment of the service charges. However on 18 February 2012, Mr Avgarski wrote a detailed letter, drafted with the assistance of a retired solicitor, asking the Management Company to revisit the apportionment of the service charge. Since that date, the Tenants have been withholding their service charge and have paid it into a separate account. On 5 December 2012, Mr Christopher Gibb MRICS wrote to the Management Company on behalf of the Tenants (p.75-77).
34. On 17 July 2012, Alliance obtained a further report from Mr Baker (at WSo6). His advice seems to be premised on the understanding that "all the parties have formal lease documents that say that the apportionment per property is 1/33<sup>rd</sup> of the total cost". He concluded that there was no merit in re-drafting the contract that had been agreed. During 2013, there was

correspondence between Mr Gibb and Radcliffes Le Brasseur, solicitors acting for the Management Company (at p.80-100).

35. On 15 January 2015, Mr Avgarski wrote a detailed letter to the Management Company alerting them to the decision of the Deputy President in *Winderemere Marina Village* (at p.102-107). On 24 February (at p.109), Alliance responded to this letter. Mr Tamuta noted that the issue had been outstanding for a considerable period of time. This was far from straight forward and unlikely to be resolved. The Management Company had therefore decided to make an application to this tribunal. The purpose of taking this route was “to have an outcome that is fair, reasonable and binding on all the parties”. The Management Company did not respond to the detailed case that the Tenants had raised. They only issued an application against these Tenants. Strictly, our determination will only bind these parties.

### **The Issues in Dispute**

36. We have identified the following issues which we are required to determine:

(i) Is the clause relating to the apportionment of the service charge expenditure void? If so, what is the fair and proportionate way of apportioning the service charge expenditure between the lessees? If this differs from the current means of apportionment, what are the consequences of this?

(ii) Are the insurance premiums payable and reasonable?

(iii) Has the Management Company failed to comply with clause 5(h) of the lease in that no certificate as required has been issued since 1 August 2001. If so, what are the consequences of this?

(iv) Ms Holmes has made an application for costs under Rule 13 of the Tribunal Rules. She claims costs in the sum of £3,500 + VAT, namely the costs of calling Mr Pack.

(v) Whether we should make an order under Section 20C of the Act.

### **Issue 1: The Apportionment of the Service Charge**

37. We set out the terms of Section 27A of the Act in the Appendix. We have already indicated that in the light of the decision of the Deputy President in *Winderemere Marina Village*, we are obliged to find that the apportionment specified in the lease is void.

38. The Clause reads:

“A fair and proper proportion (to be determined by the Surveyor for the time being of the Lessor such determination to be final and binding on the parties hereto) of the Service Charge (as hereinafter defined).”

39. It is not the whole clause that is void. The effect of s.27A(6) is to strike out so much of an agreement as provides for the manner in which a question capable of consideration under s.27A(1) is to be determined. The manner of determination of a fair apportionment in this case is by the determination of the lessor's surveyor (see [46] of the decision). The clause therefore stands to be read in these terms:

“A fair and proper proportion of the Service Charge (as hereinafter defined).”

40. The second issue determined by the Deputy President in *Windermere Marina Village* was whether the tribunal's decision was restricted to deciding whether the determination of landlord's surveyor produced a fair apportionment. The Deputy President concluded that Section 27A deprives the landlord's surveyor of his role in determining the apportionment. The lease was to be read as if the method of ascertaining a fair apportionment was omitted altogether. The conclusions of the landlord's surveyor could not have any contractual effect. That being the case, it was for the Tribunal to decide what was a fair proportion of the expense of services payable by the tenants. It was not suggested in the appeal that the method preferred by the tribunal was unfair. The fact that the alternative method, which the tribunal had rejected, may also have been fair did not undermine its conclusion (see [48]).

41. The Deputy President gave this cautionary warning (at [45]):

“The apportionment of service charges can be a complex matter in a building with a variety of modes of occupation (business, leisure, residential) or as between different buildings on a large estate. Different contributions may be appropriate to different users and there may be more than one fair or reasonable method which may be adopted. This case is a good example of that. If the first-tier tribunal is asked to substitute its own view of a proper apportionment because it is said that a contractual provision has been rendered void by s.27A(6) of the 1985 Act, it should bear in mind both the possibility of competing interests amongst different occupiers, and the fact that a determination under s.27A(1) binds only those who are party to it. The tribunal may therefore need to consider, at the case management stage, whether it is appropriate for notice of the proceedings to be given to any third party who may wish to make representations”

42. We had this guidance in mind when we gave our further directions on 13 August. We are also mindful of the fact that we are not only being asked to determine how service charges should be apportioned for the future, but to backdate this to 2012/3. If we determine that these Tenants have paid too large a proportion, it means that others have paid too little. It may also mean that other lessees are able to argue that they have paid too much. Whilst refunds would be straightforward, the recovery of additional sums

from lessee for past years is likely to prove much more problematic, particularly if there has been a change of lessee.

43. Each lessee has a share in the Management Company and appoints the directors who are also lessees. It would not assist any of the lessees, including these Tenants, were we to reach a decision, the effect of which would be to force the Management Company into insolvency. We have regard to the decision of the Deputy President in *Conway and Others v Jam Factory Freehold Limited* [2013] UKUT 0592 (LC). Albeit on a separate issue (costs under Section 20C), any tribunal must be mindful of the practical consequences of any decision that they reach.
44. Mr Pack impressed us as an independent expert. He stated that the RICS “Service Charge Management Code” (2<sup>nd</sup> Ed) does not set out how service charges should be apportioned. He rather referred us to the following passages from “Service Charges in Commercial Property”, RICS Code of Practice (3<sup>rd</sup> Ed):

“Core Principles – Allocation and Apportionment

Costs should be allocated to the relevant expenditure category. Where reasonable and appropriate, costs should be allocated to separate schedules and the costs apportioned to those who benefit from those services.

The basis and method of apportionment should be demonstrably fair and reasonable to ensure that individual occupiers bear an appropriate proportion of the total service charge expenditure that clearly reflects the availability, benefit and use of services.

Managers are expected to make available to all occupiers a full apportionment matrix that clearly shows the basis of calculation and the total apportionment per schedule for each unit within the property/complex.

1.5 Allocation and Apportionment

1.5.1 – Schedules: “The rationale for the apportionment between occupiers should be set down in writing, and subsequently re-examined periodically to see whether there is a need for a new apportionment matrix or new apportionment method to be applied. Where reasonable and appropriate, costs can be allocated to separate schedules and the costs apportioned to those who benefit from those services. In many cases, particularly regarding buildings with a variety of users, not all of the occupiers will benefit from the services to the same extent. In such circumstances, it may be necessary to divide the service charges into separate parts (schedules) to reflect the availability, benefit and use of services, with each part being individually apportioned between occupiers according to the core principles. The allocation of costs to separate schedules is essential in achieving a fair and proper apportionment of costs between those occupiers that benefit from specific services. Occupiers will therefore often pay different percentage apportionments under different schedules.”

1.5.2 – Flexibility: “It is worth considering that the availability, benefit and use of the services within a building, and the demand for those services by individual users, could vary over time, therefore, leases would benefit from being drafted to include flexibility and variation. For example, additional units may be created or the use of a property may change, thus causing different demands for services and necessitating a change to the costs/payments structure.”

1.5.5 – Floor-area apportionment: “Apportionment based on floor area is the most common, and often the simplest, method of apportionment. The standard floor-area apportionment is the ratio the premises bear to the total lettable parts of the building.

1.5.6 - Rateable Values: Rateable values are no longer recommended as an appropriate method for calculating service charge apportionments.”

### The Submissions of the Parties

45. There are four means of apportionment which the parties have asked us to consider: (i) “Equal Shares”; (ii) “Floor Area”; (iii) “Multi-Schedule”; and (iv) “Modified Multi-Schedule”. We have described these in [12] and [13] above.
46. The Tenants have consistently argued for the “floor area” formula. This is the formula which would minimise the service charge that they are obliged to pay. They emphasise the advantages of simplicity, efficiency and lower cost of lower cost of administration. It would also provide certainty, avoid future conflict, and provide the mechanism for collecting any reserve fund. On the other hand, the town houses who would pay most under this formula, argue that it is manifestly unfair. Why should they contribute to the cost of servicing the common parts inside the blocks, services from which they derive no benefit?
47. Mr Pack, the expert called by the Tenants, considered two options: (i) “floor area” considered at Appendix 7; and “multi-schedule” considered at Appendix 8. Mr Pack gave his evidence with care. He was cognisant of his obligations as an independent expert. We can summarise his conclusions in these terms: (i) “multi-schedule” is the fairest, but may be complex and expensive to administer; (ii) “floor area” is easier to administer, but not as equitable. He considered that “equal shares” was manifestly unfair given the characteristics of the estate.
48. The Management Company initially sought to justify “equal shares”. Whilst Mr Tamuta recognised that it would be ideal to calculate the respective benefit from the service charge of each lessee, he suggested in his evidence that this would be difficult and uneconomical.
49. Mr Baker, of McDowalls, had sought to justify “equal shares” in his reports dated 30 April 2004 (at WSO5) and 17 July 2012 (at WSO6). We have already noted that Mr Baker had misconstrued the terms of the lease in his

2012 report. At the hearing, the Management Company asked us to have regard to a further report from Mr Baker, dated 11 August 2015. He was not called to give evidence and therefore had no opportunity to justify his conclusions. He argued that equal shares provided transparency as it had been in place for over 10 years. This was the apportionment which was in place when the Tenants had acquired their flat. If they were unhappy with this arrangement, they should not have proceeded with their purchase. Mr Baker did not consider the RICS guidance. We found his reports to be of little assistance.

50. The Management Company have taken a much more realistic approach in their further representations, dated 4 September. They now argue for the “modified multi-schedule”. We note that Management Company’s Board considered what would be a “fair and proper” proportion, prior to making these representations. All lessees hold shares in the Management Company and the Board are elected by the shareholders. We are therefore satisfied that we should have particular regard the formula proposed by the Board. We highlight the following statement: “although they (the board) accept there will be a small amount of additional administration, the multi-schedule format is by far the fairest as it allocates more of the costs directly to those that receive the benefit from the services”.

Our Determination on “fair and proper proportion”

51. The Tribunal have concluded that the “multi-schedule” formula is the appropriate one to use to determine what is “a fair and proper proportion” to be paid by these Tenants. We are not persuaded to adopt the “modified multi-schedule”. We are satisfied that both the estate and the block expenditure should be apportioned according to “floor area”. We reach this decision for the following reasons:

(i) We are satisfied that this is the fairest way of allocating costs directly to those that receive the benefit from the services. This reflects the RICS’s guidance. This approach is endorsed by Mr Pack. It is now endorsed by the Management Company.

(ii) The Management Company accept that the additional administration involved is modest. This addresses Mr Pack’s concern that it might be expensive to administer.

(iii) We are satisfied that “equal shares” is not appropriate given that the flats and houses are of different sizes. The larger the property, the more people are likely to benefit from the services. The larger the property, the higher the costs of keeping in repair the structure and exterior of that property. Further the larger the property, the higher the value; it is therefore equitable that the lessee should pay a larger share. However, we do not accept that “equal shares” is as unfair as the Tenants sought to suggest. Given the characteristics of this estate, the larger town houses do not benefit from the internal communal services provided to the smaller flats.

(iv) Equally, we are satisfied that “floor area” is not the appropriate formula. It would be unfair to require the town houses to pay a disproportionate contribution towards the internal communal areas from which they derive no benefit.

(v) However, we are satisfied that “floor area” is the appropriate formula to compute the respective contributions of lessees within the different sections of the development. We give due regard to the views expressed by the Management Company that this should be by “equal shares”. We disagree with their approach as within each block, there are flats of different sizes. The larger the flat, the more people are likely to benefit from the services.

52. We note that strictly this finding only binds the parties to this application. However, we have afforded all lessees the opportunity to make representations and have had regard to the representations made by Ms Rahman and Mr and Mrs Legg. We expect the Management Company to determine the Tenants’ final liability for the 2015/6 service charge year and future service charge years in accordance with the formula which we have determined.

53. We note the RICS’s guidance that the rationale for the apportionment between occupiers should be set down in writing, and subsequently re-examined periodically to see whether there is a need for a new apportionment matrix or new apportionment method to be applied. In our determination, we set out the approach that should be adopted. It is for the Management Company to determine how expenditure should be allocated to the different sections of the development. The formula that we have determined is not set in stone. Provided that the Management Company have due regard to our determination, it is open to them to review the formula in the light of changing circumstances within the estate. Alternatively, it would be open to the Management Company to apply to vary the leases to specify the formula by which the service charge is to be apportioned.

#### The Implications of Our Determination

54. We have determined the manner in which the tenants’ liability for their service charge should be determined for the current and future years. The issue arises as to whether we should require the Management Company to recompute the Tenant’s proportion for the service charge years 2012/3 to 2014/5. We decline to do so for the following reasons:

(i) Had we determined that the Management Company should apportion the Tenants’ liability according to “floor area”, rather than “equal shares”, the calculation would have been straight forward. The Tenants’ contribution would have been reduced from 3.03% to 1.53%. It is impossible for the Tribunal to determine what the Tenants’ contribution would have been under our “multi-schedule” formula.



(ii) Even had it been possible to compute what the Tenants' contribution would have been, to back date it would have caused an administrative nightmare for the Management Company. All the other lessees could have argued that their shares should be recomputed. There would be winners and losers. Leases have been assigned. It might prove impossible to recover additional contributions from those who had paid too little.

(iii) We would have been much more sympathetic had the Tenants taken the initiative to bring an application promptly to the Tribunal. They have not done so. They have rather withheld their service charges and permitted the arrears to accrue. They have consistently argued that the service charge should be apportioned by "floor area". We have determined that this is no fairer than the "equal shares" adopted by the Management Company.

(iv) We are satisfied that the just approach is to require the Management Company to recompute the final service charge that the Tenants will be required to pay for 2015/6 according to the "multi-schedule" formula that we have determined. It is not the role of this Tribunal to create an administrative nightmare for the Management Company and the other lessees. We are required to determine cases fairly and justly having regard to the interests of all the parties affected by our decision.

## **Issue 2 – The Insurance Premiums Payable**

55. The Tenants dispute the service charges which have been demanded in respect of insurance, namely £140.77 (2011/2); £145.44 (2012/3); £148.88 (2013/4); and £178.37 (2014/5). The demands are at p.35-38. The Tenants complain that their contribution towards the insurance has increased from 1.53% in 2000 to 1.88% in 2004 to 2.59% in 2013. They also complain that the lessees of Nos. 7 and 8 Alphabet Square have been allowed to opt out of the building assurance. The Tenants remind us that these lessees are respectively a director and company secretary of the Management Company.
56. The Management Company refer us to Clause 4(4) of the lease (at p.135). The Management Company is required to insure the development and the building save in so far as the obligation is placed on the lessee. The Management Company have provided a Schedule of Insurance which is at WSo9. Mr Tamuta explained that each lessee is charged that element of the premium that is attributed to each flat. The insurance is renewed annually. Every year, the broker tests the market. Quotes were obtained from three insurers. Mr Tamuta was unable to give the name of the insurers.
57. The Tenants have not provided any alternative quotes, albeit that this was indicated in the Directions. On the basis of the evidence adduced before us and applying our knowledge as an expert tribunal, we are satisfied that the insurance premiums are reasonable and payable.

### Issue 3 – The Certification of the Accounts

58. The Tenants complain that the Management Company has failed to serve a certificate of accounts as required by Clause 5(h) of the lease (see [26] above). This certificate should be signed by the Management Company or its managing agents and containing the following information: (i) the costs incurred during the accounting period; (ii) the amount of the interim payment or any further interim payment together with any surplus to be carried forward; and (iii) the amount of the service charge payable for the accounting period and the excess or deficit over the interim charges that has been paid. The Tenants state that the last certificate was served on 1 August 2001 (at p.147). Ms Holmes asserts that the consequence of this is that the service charges are not payable and relies upon [4.012] of “Services Charges and Management” (3<sup>rd</sup> Edition).
59. The Management Account has provided the Tribunal with the Companies accounts for the years 2010/11; 2011/2; 2012/3; and 2013/4 (at WSo8). These are all signed by a director of the Management Company. These all seem to be in order and record the service charge expenditure for the relevant years. The Tenants are shareholders of the Management Company. We also have the service charge demands at p.26-34.
60. The service charge demand for 2012/3 is at p.26. £1,027.20 is demanded as a service charge in advance as an interim service charge. Attached is a budget for the year. There is no challenge to the sums included in the budget. All the demands are based on the budgeted expenditure. The Management Company have failed to serve the certificate required by the lease reconciling the actual expenditure as against the budgeted expenditure. On the facts of this case, this is a technical breach.
61. The issue for this Tribunal to determine is whether compliance with the certification provisions is a condition precedent to the payment of the service charge or whether the provision is “mere machinery” which did not have to be followed. We have regard to the following passage from the judgment of the Deputy President, Martin Rodger QC, in *Pendra Loweth Management Limited v North* [2015] UKUT 0091 (LC) (at [50]):
- “50. Nonetheless, a failure on the part of the Management Company to provide annual certified accounts does not seem to me to suspend the lessee’s obligation under clause 10 to pay the Estimated Service Charge on demand. There is simply no connection between the performance by each of the parties of their respective obligations. The obligation to pay the Estimated Charge is not expressed as being subject to the production of the audited accounts, and the Management Company is in a position to make an estimate each year whether or not the accounts are available. There is therefore no practical reason to treat the production of the accounts as a condition of payment.”
62. We are satisfied that we are considering a similar situation. The Management Company has been in a position to make an estimate each year of the appropriate interim service charge having regard to the anticipated expenditure for the year. This has been informed by the service

charge accounts that have been maintained. We are therefore satisfied that the service of the appropriate certificate is not a condition precedent to the payment of the interim service charge. However, in future years, the Tribunal would expect the Management Company to comply with the machinery that is specified in the lease. This is intended to provide transparency and to reassure the lessees that service charge account is being properly managed.

#### **Issue 4: Rule 13 Costs**

63. At the end of the hearing, Ms Holmes made an application for costs against the Management Company under Rule 13(1)(b) of the Tribunal Rules. She seeks the costs of adducing evidence from Mr Pack in the sum of £3,500 + VAT. She complains that the Management Company failed to address the substance of the Tenants' complaints. In particular, the Management Company failed to address the detailed issues raised in their letter, dated 15 January 2015 (at p.102). She complains that the case was not properly prepared. Neither the Tenants' case nor all relevant leases were put in the Bundle. She states that the Tenants were put at a disadvantage.

64. Rule 13 of the Tribunal Procedure Rules provide (emphasis added):

“(1) The Tribunal may make an order in respect of costs only:

(b) if a person has acted unreasonably in bringing, defending or conducting proceedings in ...(ii) a leasehold case ....”

65. In considering the application for penal costs under Rule 13(1)(b), the Tribunal has regard to the guidance provided by HHJ Huckinson in *Halliard Property Co Ltd v Belmont Hall and Elm Court RTM Company Limited* LRX/130/2007; LRA/85/2008 in respect of the 2002 Act at [36]:

“So far as concerns the meaning of the words “otherwise unreasonably”, I conclude that they should be construed *ejusdem generis* with the words that have gone before. The words are “frivolously, vexatiously, abusively, disruptively or otherwise unreasonably”. The word “otherwise” confirms that for the purposes of paragraph 10 behaviour which was frivolous or vexatious or abusive or disruptive would properly be described as unreasonable behaviour. The words “or otherwise unreasonably” are intended to cover behaviour which merits criticism at a similar level albeit that the behaviour may not fit within the words frivolously, vexatiously, abusively or disruptively. I respectfully adopt the analysis of Sir Thomas Bingham MR (as he then was) in *Ridehalgh v Horsefield* [1994] 3 All ER 848 as to the meaning of “unreasonable” (see paragraph 13 above) which I consider equally applicable to the expression “otherwise unreasonably” in paragraph 10 of schedule 12 to the 2002 Act. Thus the acid test is whether the behaviour permits of a reasonable explanation.”

66. In *Ridehalgh v Horsefield*, Sir Thomas Bingham dealt with the word “unreasonable” in the context of a wasted costs order in the following terms:

“Unreasonable’ also means what it has been understood to mean in this context for at least half a century. The expression aptly describes conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simple because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as optimistic and as reflecting on a practitioner’s judgment, but it is not unreasonable.”

67. The Tribunal is satisfied that an order for costs should only be made under Rule 13(1)(b) if on an objective assessment a party has behaved so unreasonably that it is only fair and reasonable that the other party is compensated by having their legal costs paid. This tribunal remains essentially a costs-free jurisdiction where applicants should not be deterred from using the jurisdiction for fear of having to pay the other party’s costs should she or he fail in their application. Were the tribunal to adopt an unduly punitive approach to any breach, it could have a chilling effect upon access to justice. Parties with good claims could be deterred from bringing them before this tribunal.

68. The Tribunal rejects the Tenants’ claim for costs under Rule 13(1)(b). Ms Holmes has come nowhere close to establishing the high threshold that must be satisfied before a penal costs order is made. It cannot be argued that the Management Company have acted unreasonably in bringing this application. The Tenants have not paid any service charges since March 2012. We have found that substantial sums are due. This dispute would not have been avoided had the Management Company responded to the Tenants’ letter of 15 January 2015. Even had the Management Company agreed that the apportionment clause was void, it would still have been necessary for this Tribunal to determine how the service charge should be apportioned. We do not see how it can be said that the Tenants have been put at a disadvantage. The Tenants were rather in the stronger position in adducing expert evidence that was largely uncontradicted. Failure by a party to adduce expert evidence cannot be categorised as unreasonableness in the conduct of the proceedings. The fact that the Tenants must bear the costs of adducing the very helpful evidence from Mr Pack is rather the consequence of a no cost shifting jurisdiction.

69. In his letter dated 18 September, Mr Avgarski states that he would wish to make further representation on Rule 13 costs within 28 days of our decision. Ms Holmes made her application on behalf of the Tenants at the hearing. We have determined that application and we are not willing to receive further representations.

#### **Issue 5: Application under s.20C and refund of fees**

70. The tenants have applied for an order under section 20C of the 1985 Act. The Tribunal 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

Management Company may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge. The substantive issue and long standing dispute has been the apportionment of the service charge. We have found that the clause in the lease is void. We have been required to determine the manner in which the service charge should be apportioned. The Tenants have therefore been vindicated on this point.

71. The Management Company have not applied for a refund of the fees that he had paid in respect of the application/hearing pursuant to Rule 13(2) of the Tribunal Rules.

**Judge Robert Latham**

**6 October 2015**

**(Amended 16 November 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.
- (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 of an application under subsection (1) or (3).
- (7) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

## **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).