

12045



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

Case reference : LON/00BJ/LAM/2016/0014
LON/00BJ/LSC/2016/0233

Property : Claremont 14//16 St John's Avenue
Putney

Applicant : Ms Jill Gray – Flat 10 (1)
Mr Liam Humphries and Mrs
Alexandra Humphries – Flat 1 (2)

Representative : N/A

Respondent : Claremont Residents Association
Limited

Representative : Mr Upton of Counsel

Type of applications : Reasonableness of Service Charges
(1)
Appointment of a manager (2)
Application for Dispensation from
statutory consultation
requirements (3)

Tribunal members : Judge Carr
Mr S. Mason BSc FRICS FCI Arb

**Date and venue of
hearing** : 7th and 8th November 2016
10 Alfred Place, London WC1E 7LR

Date of decision : 13th December 2016

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the costs of the major works to the lobby areas of the property are limited to £250 per lessee because of the Respondent's failure to comply with the statutory consultation procedures.
- (2) The remaining disputed service charges are payable and reasonable.
- (3) The tribunal determines not to exercise its powers to appoint a manager under section 24 of the Landlord and Tenant Act 1987.
- (4) The tribunal makes the determinations as set out under the various headings in this Decision.
- (5) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

The application

1. The Applicants, in two linked applications both dated 6th June 2016, and both relating to the property, seek (1) a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") in relation to the payability of service charges and (2) a determination pursuant to s.24 of the Landlord and Tenant Act 1987 ("the 1987 Act") appointing a manager .
2. The Respondent, in an application dated 8th September 2016 in response to the Applications by the Applicant made an application under s.20ZA of the 1985 Act for retrospective dispensation with the consultation requirements in respect of qualifying works.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. Mr Humphries and Ms Gray appeared in person at the two day hearing. Mrs Humphries attended for the first day. The Applicants were accompanied by Mr David Brangwyn, the partner of Ms Gray. Mr Michael Lee, the Applicant's proposed manager, attended the tribunal on the afternoon of the second day. Mr Michael Smith attended for the Respondent which was represented by Mr Upton of Counsel. Mr Nick Faulkner and Ms Griffith, both of the Respondent's managing agents also attended and gave evidence for the Respondent.

5. At the commencement of the hearing the Applicants asked for elements of the Respondent's case to be struck out. In particular the Applicants were concerned that the witness statements had been served on 2nd November 2016, later than required by the Directions, and that they had only received Counsel's skeleton argument on the morning of the hearing.
6. Counsel for the Respondent explained that there had been difficulty in obtaining funding for legal representation which delayed instructions. He apologised for the delay but stated that there was little that was new to the Applicants in the witness statements received.
7. The tribunal considered the application. Whilst the Applicants had suffered some inconvenience, they had not demonstrated any real prejudice from the delay in providing witness statements and the tribunal pointed out that it was standard procedure for skeleton arguments to be presented at the commencement at the hearing. The tribunal therefore determined not to strike out any evidence provided by the Respondents. However it informed the parties that if it became apparent that the Applicants had suffered any prejudice it would take steps to reduce that prejudice.

The background

8. The property, which is the subject of this application, is a purpose built five storey building which also benefits from a separate swimming pool, a single storey brick built bin store and three blocks of garages at the rear. The building comprises 20 flats, split into two blocks, each comprising 10 flats and each with its own entrance and lift.
9. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute. Some useful photographs were provided of the major works to the lobby areas.
10. Claremont Residents Association Limited (CRA) is the freehold owner of the property. CRA is owned and controlled by the lessees of the property. Decisions of CRA are taken by an elected board comprising unpaid volunteer leaseholders.
11. The current managing agents, Stiles Harold Williams were appointed in February 2015.

The issues

12. At the beginning of the hearing the Applicants identified the various issues that they required the tribunal to determine.

13. In connection with the service charges application, the Applicants required a determination in relation to:
- (i) Charges for two reports produced by Day Associates. The Applicants consider that the first report was of poor quality and that the second report, which was concerned with improvement works, falls outside of the scope of the terms of the lease.
 - (ii) Charges for major works to the lobbies of the property. The particular arguments in connection with this demand is that,
 - (a) there was a failure to consult and
 - (b) the works fell outside the scope of the lease, in that they were works of improvement rather than repair and renewal.
 - (iii) Charges for major works to the swimming pool, in particular whether expenditure on an electronic pool cover falls within the terms of the lease and whether the costs of the works is reasonable.
 - (iv) Charges for drainage works.
 - (v) Charges to cover the legal costs of Gabbs Solicitors and the costs of professional development advice from BGW McDaniel Surveyors.
14. The Applicants raised a number of further issues with regard to proposed expenditure. However the tribunal decided, with the agreement of the parties, that as no budget, estimates or demands had been raised for these items, the tribunal was unable to determine their reasonableness or payability. In essence the claims raised in connection with these matters were premature. This would not of course preclude the Applicants from raising the issues in future applications once plans and proposed charges have been identified.
15. In connection with the application to appoint a manager, the grounds the Applicants were relying on were
- (i) The Respondent has breached its obligations under the lease because of

- (a) Failure to maintain the property
- (b) Failure to comply with lessor obligations
- (c) Failure to enforce lessee covenants and obligations
- (ii) The Respondent has made unreasonable service charge demands
 - (a) Certain service charge demands fall outside of the scope of the lease
- (iii) The Respondent is in breach of the RICS code of practice
 - (a) It has failed to put a sensible long term maintenance plan in place
 - (b) It has failed to consult appropriately with the lessees
 - (c) It has failed to provide a realistic summary of reasonable budgetary costs and projections
- (iv) Other circumstances which make it just and convenient for the order to be made
 - (a) The Respondent failed to fulfil the agreement reached between it and the Applicants in September 2014 which was the basis upon which the Applicants withdrew a previous s.24 application.
 - (b) The Respondents have mismanaged the party wall agreement

The relevant clauses of the lease

The most significant clause of the lease for the purposes of the Applications is Paragraph 1 of the Sixth Schedule to the lease which is set out below.

16. Subject to the payment by the Lessee of the rent the Service Charge and the Building Insurance Charge to maintain repair and redecorate and renew and replace as and when the Lessor may from time to time

consider necessary the Property (excluding the Demised Premises and Other Units) including:

- (i) the roofs and foundations
- (ii) all the walls whether external or internal
- (iii) the main timbers joists and beams of the floors ceilings and roof
- (iv) the doors structural walls main timbers joists roofs and foundations of the garages
- (v) the chimney stacks gutters rainwater and soil pipes
- (vi) the cleaning lighting repair and renewal of the sauna bath swimming pool and terrace appurtenant thereto situate at the rear of the Property
- (vii) the conduits in under and upon the property not exclusively serving the Demised Premises or Other Units (except those Conduits which are the Property of public utility supply authority or of a person or company supplying television aerial rediffusion service internal telephone system or door porter system)
- (viii) the boundary walls and fences of and in the curtilage of the Property (unless included in this demise or in the demise of Other Units)
- (ix) All other parts of the Property (excluding the Demised Premises and Other Units) not expressly mentioned in this clause including for the avoidance of doubt any part of the Property which extends under the pavement or under any other part of the Public Highway adjoining the Property

17. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Service charges demanded for the Day Report

18. Day Associates (Bexley) Ltd prepared two reports in relation to the property. The first report related to planned maintenance. The second report related to betterment works to the property and was particularly concerned with the potential benefits of developing the roof to the property.
19. The Applicants argue that the charge of £4333 made in 2012 for professional fees is made up of charges for both reports. They argue that the charge for the second of two reports is not payable because it related to works which fall outside of the scope of the lease.
20. The Applicants also argue that the first report was of very poor quality. That report comprised proposals for a ten year maintenance plan with a ten year budget attached. The Applicants' criticisms of the report include a complaint that the proposed maintenance plan is in deficit from the first year of the report and results in a £539,000.00 deficit by the tenth year of the maintenance period. The Applicants also point out that the plan includes minor works, although it is a major works plan, it makes provision for works to parts of the property which have been demised to the lessees and includes improvement works which fall outside of the scope of the landlord's obligations under the lease.
21. The Applicants raised a number of other issues in relation to the proposed plan. Overall they argue that it is of poor quality and not fit for purpose.
22. Having said that, the Applicants agreed to pay the charge for £1390 which was the amount demanded for the first report. The Applicants' points in connection with the quality of the first report from their perspective are relevant to the application for the appointment of a manager as they consider the plan is indicative of unreasonable proposed service charges.
23. The Respondent argues that there was no charge levied for the second report. The total of professional fees demanded was £4,333. No invoice was raised for the second report and therefore the Applicants have no basis for their complaint.
24. The tribunal raised the issue of what the balance of the charges related to. The tribunal accepts that this was not a matter raised by the applicants and therefore gave the Respondent time to see if they could provide details of the other professional fees. The Respondent explained (on the second day of the hearing) that, as far as they could tell from the cash book entries provided by the former managing agents, the balance was made up of sums paid to solicitors for chasing arrears and fees paid to Day Associates for a report into a leak from a balcony.

25. The Respondent disagrees with the Applicants about the value of the first Day Report. Mr Smith gave evidence to the tribunal that the report provided the basis for the Respondent to decide on a schedule of major works. The report was simply proposals and it was for the lessees, via the Board, to decide on the appropriate steps to be taken in the future. Mr Smith also pointed out that any work done to demised premises, for instance during the course of exterior decorating, would be paid for by the lessees concerned.

The tribunal's decision

26. The tribunal determines that the full sum of £4333 is payable by the Applicants.

Reasons for the tribunal's decision

27. The Applicants agreed to pay the fee for the first report.
28. The tribunal accepts the evidence of the Respondent that no charge was made for the second report and that the balance of monies was made up of professional charges as indicated by the entries in the cash book.
29. The tribunal also notes that the first report was properly commissioned by the Board and is of sufficient quality to assist the Board in making decisions about future works.

Service charges levied for major works to the lobbies

30. The Applicants' first argument in connection with this issue is that the majority of the monies spent on major works to the lobbies of the properties is not payable because the works were works of improvement and remodelling rather than repair and renewal as required by the lease.
31. The works carried out included the removal of large planters and mirrors, re-plastering and retiling, and creating a suspended ceiling with recessed lighting.
32. The Applicants suggest that approximately £2000 of the total charge of £10,196 is payable.
33. Mr Smith for the Respondent gave the tribunal four reasons to explain the extent of the works done to the lobbies. First, no work had been done to the lobbies for 20 years and they were shabby and dated. Secondly there had been a security incident when someone had been

found sleeping on the stairs, thirdly there was a need to improve the lighting in the lobbies to enhance safety and security, and fourthly it was redesigned to accommodate the needs of older residents. Mr Smith explained that in general residents were ageing, and that residents in their eighties and nineties, perhaps using walking frames, found it difficult to negotiate the lobbies because of the planters which were large and located near the heavy entrance doors.

34. He informed the tribunal that the reason for lowering the ceiling is that the lights were permanently on and it made sense to install LED lighting which required the installation of a suspended ceiling.
35. Overall he suggested that the works were refurbishment rather than improvement, with some redesign to take account of the needs of the more elderly residents.
36. The Applicants' second argument is that the Respondent failed to carry out the statutory consultation procedure.
37. The Respondent agreed that it had failed to carry out the statutory requirements. Mr Smith explained that the Board had been given incorrect advice by its previous managing agents.

The tribunal's decision

38. The tribunal determines that the Applicants liability in respect of the works to the lobbies is limited to £250 per lessee.

Reasons for the tribunal's decision

39. The tribunal determines that the works carried out falls within the obligations of the Respondent. Any improvements to the lobbies were incidental to their maintenance.
40. As there has been a failure to follow the consultation procedures the statutory limit applies.

Charges for major works to the swimming pool

41. The Applicants object to charges of £10,000 for major works to install an electronic pool cover and pool heater to the swimming pool.
42. Their argument is that installation of an electronic pool cover is a work of improvement and not maintenance as there is currently no pool cover in place.

43. The Applicants suggest that if a pool cover is required a floating heat retention cover could be installed for an estimated sum of £1,500.
44. Mr Smith for the Respondent explained that the running costs of the pool are extremely high and without a pool cover the swimming pool loses a huge amount of heat. In order to keep the swimming pool in operation a pool cover is therefore essential. Whilst a manual pool cover would be considerably cheaper the Board took into account the needs of the users of the pool. As many are elderly an electronic pool cover would be considerably easier for them to use. Also the Board considered that in general more people would use an electronic pool cover than a manual one. Mr Smith pointed out that some users of the pool were tenants of lessees and therefore might not be sufficiently motivated to use a manual cover. The Board considered that the electronic pool cover would pay for itself in only five years.
45. Mr Smith said that the majority of lessees were in agreement with the decision.

The tribunal's decision

46. The tribunal determines that the charges for major works to the swimming pool are payable and reasonable.

Reasons for the tribunal's decision

47. The tribunal considered the issue very carefully. Although it could see some initial attraction in the argument that the installation of an electronic pool cover was an improvement and therefore outside the scope of the lease, having considered the particular circumstances of the proposed installation it was persuaded that installing an electronic pool cover falls within the terms of the lease. A pool cover is required in order to maintain the swimming pool. Without it it is likely the swimming pool would have to close. The Applicants appeared largely to agree that a pool cover of some sort was a necessity. Once a decision is made to install a pool cover then the Board can decide, within reason, the type of pool cover that is required. The decision to install an electronic pool cover is within the scope of reasonable decision making by the Board.
48. The tribunal also noted the extensive support for the installation of an electronic pool cover.

Charges for drainage works

49. The Applicants argue that the Respondent failed to comply with the statutory requirements for consultation with regards to expenditure to repair drains. The repair works were carried out in 2015.
50. The Applicants argue that the description of the works in the notice of intention was insufficient. They argue that it should have included a specification of the works to be carried out. All the notice stated was 'repairs to surface water and foul drainage system. Ms Gray wrote to the managing agents to point out her concerns with the limited description of the proposed works. This observation was not referred to in the second notice. The Applicants argue that it should have been.
51. The Respondents argue that the consultation processes were followed but also made an application for dispensation under s.20ZA of the Landlord and Tenant Act 1985. Relying on *Daejan v Benson* the Respondent asked what real prejudice flowed from the alleged breach. The Respondent considered that there was no evidence of any prejudice.
52. The Applicants argued that if they had seen the specification for the works they would have suggested more comprehensive works because the work carried out was very likely to fail.

The tribunal's decision

53. The tribunal determines that the charges for drainage works are payable and reasonable.

Reasons for the tribunal's decision

54. The tribunal determines that the statutory consultation process was properly followed. There is no requirement in the statute for a specification to be attached to the first notice and therefore there can be no requirement for an observation which points out that no specification has been provided to be included in the second notice.
55. Even if the tribunal is wrong on this point, the tribunal would have determined to dispense with the requirements as the Applicants have produced no evidence of prejudice. The Applicants concerns relate to what might happen in the future because more thorough works have not been carried out. If further works are required in future it will be open to the Applicants at that stage to argue that the charges are not reasonable because the original work should have been more comprehensive. At this stage however the Applicants are not able to demonstrate any prejudice arising from the alleged breach.

Charges paid to Gabbs Solicitors for legal costs and costs of professional development advice from BGW McDaniel Surveyors

56. The Applicants argue that these charges relate to the potential development of the roof to the property and accompanying legal costs. Such works fall outside of the scope of the lease.
57. The Respondent argues that both items of expenditure are recoverable under the lease further to paragraph 11(a) of the Eighth Schedule to the lease, which enables the lessor to recover 'all legal and proper costs incurred by the lessor in the running and management of the Property'. The Respondent argues that it was reasonable to explore development opportunities which may save the leaseholders considerable costs in maintaining the building and the roof and it was reasonable to take legal advice in relation to the legal dispute with BGW McDaniel Surveyors.

The tribunal's decision

58. The tribunal determines that the charges for legal costs and costs of professional development advice are reasonable and payable.

Reasons for the tribunal's decision

59. The tribunal accepts the arguments of the Respondent in the particular circumstances of this property.
60. Even if the tribunal is wrong on this matter the charges are payable by the Applicants in their role as members of CRA. It is therefore disproportionate for the Applicants to object to these charges as they are in any event payable by them.

The Application to appoint a manager.

Has the Respondent breached its obligations under the lease?

61. The Applicants argue that the Respondent has breached its obligations under the lease because of (i) failure to maintain the property (ii) failure to comply with lessor obligations and (iii) failure to enforce lessee covenants and obligations.
62. The Applicants raised a lot of overlapping concerns but in particular they were concerned with the failure to replace the gear box for the lifts, the closure of the swimming pool from January to April 2016, and the need to carry out repairs to the roof.

63. Ms Griffiths for the managing agents explained to the tribunal how she intended to plan future works to the property. In connection with lift repairs she has prioritised works required for health and safety reasons. Although she was aware of the age of the gear box, she pointed out that it is important not to carry out works prematurely and that the lifts have not broken down. She said that she knew further works would be required and would issue consultation notices shortly. She was also aware of the need to repair parts of the roof.
64. Mr Smith gave evidence in connection with the closure of the swimming pool. Basically a developer of a neighbouring property had caused damage to the swimming pool during the course of development. It had taken some time to investigate the damage for the purposes of a party wall agreement. This matter is now resolved.
65. The issue of non-enforcement of lessee obligations was quickly disposed of, as the Applicants agreed that they had not operated the procedures required by the lease to bring breaches to the attention of the Respondent.

Has the Respondent made unreasonable service charge demands?

66. The points that the Applicants sought to argue have been largely dealt with under the service charge decisions. To summarise the Applicants were concerned that service charges were demanded or proposed in relation to improvement works which fall outside of the scope of the lease, or relate to parts of the property that have been demised to the lessees.
67. The Respondent repeats its arguments in relation to these points.

Is the Respondent in breach of the RICS code of practice?

68. The Applicants make three arguments in connection with breaches of the Code, (i) the Respondent has failed to put a sensible long term maintenance plan in place (ii) the Respondent has failed to consult appropriately with the lessees (iii) the Respondent has failed to provide a realistic summary of reasonable budgetary costs and projections.
69. The Respondent argues that it has done its best to comply with the requirements of the Code. In commissioning the Day report it has put a sensible maintenance plan in place with gives an indication of projected budgetary costs. The Respondent is aware that the Applicants do not agree with the proposed maintenance plan, but the Board and lessees in general are in agreement. In general the Respondent makes great efforts to consult with lessees and achieve consensus in the works it carries out. The Respondent accepts it can be difficult to fully consult, particularly as many lessees travel frequently,

or are buy-to-let landlords. The Respondent regrets its failure to consult on the lobby works. It asks the tribunal to accept that this was a 'one-off' mistake made in reliance on advice from the previous managing agent.

Are there other circumstances which make it just and convenient for the order to be made?

70. The Applicants argue that the Respondent failed to fulfil the agreement reached between it and the Applicants in September 2014 which was the basis upon which the Applicants withdrew a previous s.24 application. They also argue that the Respondents have mismanaged the party wall agreement.
71. The Respondent points out that the focus of the agreement was the appointment of new managing agents. This has been done. Indeed Mr Smith gave evidence to the tribunal of the rigorous nature of the appointment process. Mr Humphries of the Applicants took a lead role in ensuring that all proposed managing agents demonstrated their competence and expertise.
72. Mr Humphries was on the Board of CRA following the agreement. In the Respondent's opinion he must take a shared responsibility for any failure to fulfil the terms of the agreement.
73. In connection with the party wall agreement the Respondent explained that it followed the correct procedures which included relying on expert surveyors to assess the level of damages to be awarded. The Respondent is not sure what else it could have done.

The tribunal's decision

74. The tribunal determines that the Applicants have not made out the grounds for the appointment of a manager.

Reasons for the tribunal's decision

75. The tribunal accepts the arguments of the Respondent. There has been no serious failure on the part of the Respondent in connection with its responsibilities under the lease and it has done its best to carry out its responsibilities to all of its lessees.
76. The failure to consult in respect of works to the lobbies is regrettable. However the tribunal notes that the decision not to consult followed advice from the previous managing agents who have since been replaced. The tribunal considers it would be disproportionate to appoint a new manager because of this incident.

77. Other than in connection with the failure to consult, the tribunal does not consider that service charge demands have been made which fall outside the scope of the lease, or that unreasonable service charges have been demanded. Nor does it consider that there have been breaches of the RICS code. Indeed the tribunal considers that the Board has taken useful steps to ensure that a sensible plan is in place for the future maintenance of the property.
78. The tribunal gives weight to the fact that the freeholder is a lessee-owned management company and that it is only a small minority of lessees who have brought this application. It notes Mr Upton's comment that to appoint a new manager against the wishes of the majority would be in subversion of the democratic thrust of recent leasehold legislation.
79. The tribunal is not prepared to accept that failure to comply with the agreement of 2014 provides a reason for the appointment of a manager. The failures were very limited and anyway one of the Applicants was on the Board at the time and therefore has responsibility for decisions taken in relation to the agreement.
80. The tribunal notes that the current managing agents have not been long in post, and that they appear to be progressing works on a sensible and planned basis.
81. The tribunal heard from the Applicants' proposed manager, and it is appropriate to note that his evidence was very impressive. He clearly is an experienced and competent manager. His answers to the tribunal's questions were considered and practical. The decision of the tribunal should in no way be taken as a reflection upon him.
82. However there is no doubt that were a new manager to be appointed now there would be a rise in management fees, there would be further delay in carrying out necessary repair and in addition there may be tensions arising from the appointment.
83. The tribunal therefore determines that the Applicants have failed to establish any grounds for a determination that a manager be appointed. For that reason, there is no requirement for the tribunal to consider the requirement that an appointment would be just and convenient or for it to consider the suitability of the proposed manager.
84. The tribunal is aware that the Applicants will be disappointed by this decision. However, the Applicants should note that a decision to appoint a manager is a serious matter as it is an infringement of the rights of a freeholder to appoint the manager it considers to be most suitable. It is for this reason that the statutory requirements for the

appointment of managers are substantial and any application to the tribunal must fully comply with those requirements.

85. In the opinion of the tribunal the major concern of the Applicants was the inefficiency and slow pace of the Board. This is an understandable concern. However the tribunal asks the Applicants to understand the complexity of the tasks facing the Board and the numerous constraints it works within, including absentee lessees, tenanted flats, ageing lessees and a disparity of resources between lessees. The tribunal notes that the current managing agents appear to be offering a competent and supportive service to the Board and anticipates that many of the current concerns of the Applicants will dissipate over time. If not, it will of course be open to the Applicants to make fresh applications to this tribunal.

Name: Judge Carr

Date: 13th December 2016

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and

- (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are

not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

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

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

Schedule 11, paragraph 2

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

Schedule 11, paragraph 5

- (1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—
- (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) may be made in respect of a matter which—
- (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or

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

Landlord and Tenant Act 1987

PART II

APPOINTMENT OF MANAGERS BY THE COURT

S21 Tenant's right to apply to court for appointment of manager.

- (1) The tenant of a flat contained in any premises to which this Part applies may, subject to the following provisions of this Part, apply to a leasehold valuation tribunal for an order under section 24 appointing a manager to act in relation to those premises.
- (2) Subject to subsection (3), this Part applies to premises consisting of the whole or part of a building if the building or part contains two or more flats.
- (3) This Part does not apply to any such premises at a time when—
- (a) the interest of the landlord in the premises is held by an exempt landlord or a resident landlord, or
- (b) the premises are included within the functional land of any charity.
- [(3A) But this Part is not prevented from applying to any premises because the interest of the landlord in the premises is held by a resident landlord if at least one-half of the flats contained in the premises are held on long leases which are not tenancies to which Part 2 of the Landlord and Tenant Act 1954 (c. 56) applies.] [FN1]
- (4) An application for an order under section 24 may be made—
- (a) jointly by tenants of two or more flats if they are each entitled to make such an application by virtue of this section, and
- (b) in respect of two or more premises to which this Part applies; and, in relation to any such joint application as is mentioned in paragraph (a), references in this Part to a single tenant shall be construed accordingly.
- (5) Where the tenancy of a flat contained in any such premises is held by joint tenants, an application for an order under section 24 in respect of those premises may be made by any one or more of those tenants.
- (6) An application to the court for it to exercise in relation to any premises any jurisdiction to appoint a receiver or manager shall not be made by a tenant (in his capacity as such) in any circumstances in which an application could be made by him for an order under section 24 appointing a manager to act in relation to those premises.

(7) References in this Part to a tenant do not include references to a tenant under a tenancy to which Part II of the Landlord and Tenant Act 1954 applies.[...] [FN2]

[FN1] added by Commonhold and Leasehold Reform Act (2002 c.15), Pt 2 c 5 s 161

[FN2] added by Commonhold and Leasehold Reform Act (2002 c.15), Pt 2 c 5 s 161

S22 Preliminary notice by tenant.

(1) Before an application for an order under section 24 is made in respect of any premises to which this Part applies by a tenant of a flat contained in those premises, a notice under this section must (subject to subsection (3)) be served [by the tenant on--] [FN1]

[(i) the landlord, and

(ii) any person (other than the landlord) by whom obligations relating to the management of the premises or any part of them are owed to the tenant under his tenancy.] [FN2]

(2) A notice under this section must—

(a) specify the tenant's name, the address of his flat and an address in England and Wales (which may be the address of his flat) at which [any person on whom the notice is served] [FN3] may serve notices, including notices in proceedings, on him in connection with this Part;

(b) state that the tenant intends to make an application for an order under section 24 to be made by a leasehold valuation tribunal in respect of such premises to which this Part applies as are specified in the notice, but (if paragraph (d) is applicable) that he will not do so if the [requirement specified in pursuance of that paragraph is complied with] [FN4];

(c) specify the grounds on which the court would be asked to make such an order and the matters that would be relied on by the tenant for the purpose of establishing those grounds;

(d) where those matters are capable of being remedied by [any person on whom the notice is served, require him] [FN5], within such reasonable period as is specified in the notice, to take such steps for the purpose of remedying them as are so specified; and

(e) contain such information (if any) as the Secretary of State may by regulations prescribe.

(3) a leasehold valuation tribunal may (whether on the hearing of an application for an order under section 24 or not) by order dispense with the requirement to serve a notice under this section[on a person] [FN6] in a case where it is satisfied that it would not be reasonably practicable to serve such a notice on the [person] [FN7], but a leasehold valuation tribunal may, when doing so, direct that such other notices are served, or such other steps are taken, as it thinks fit.

(4) In a case where—

(a) a notice under this section has been served on the landlord, and

(b) his interest in the premises specified in pursuance of subsection (2)(b) is subject to a mortgage, the landlord shall, as soon as is reasonably practicable after receiving the notice, serve on the mortgagee a copy of the notice.[...][FN8]

[FN1] modified by Commonhold and Leasehold Reform Act (2002 c.15), Pt 2 c 5 s 160 (2)

[FN2] modified by Commonhold and Leasehold Reform Act (2002 c.15), Pt 2 c 5 s 160 (2)

[FN3] modified by Commonhold and Leasehold Reform Act (2002 c.15), Pt 2 c 5 s 160 (2)

[FN4] modified by Commonhold and Leasehold Reform Act (2002 c.15), Pt 2 c 5 s 160 (2)

[FN5] modified by Commonhold and Leasehold Reform Act (2002 c.15), Pt 2 c 5 s 160 (2)

[FN6] modified by Commonhold and Leasehold Reform Act (2002 c.15), Pt 2 c 5 s 160 (2)

[FN7] modified by Commonhold and Leasehold Reform Act (2002 c.15), Pt 2 c 5 s 160 (2)

[FN8] modified by Commonhold and Leasehold Reform Act (2002 c.15), Pt 2 c 5 s 160 (2)

S23 Application to court for appointment of manager.

(1) No application for an order under section 24 shall be made to a leasehold valuation tribunal unless—

(a) in a case where a notice has been served under section 22, either—

(i) the period specified in pursuance of paragraph (d) of subsection (2) of that section has expired without the person required to take steps in pursuance of that paragraph having taken them, or

(ii) that paragraph was not applicable in the circumstances of the case; or

(b) in a case where the requirement to serve such a notice has been dispensed with by an order under subsection (3) of that section, either—

(i) any notices required to be served, and any other steps required to be taken, by virtue of the order have been served or (as the case may be) taken, or

(ii) no direction was given by the court when making the order.

[...][FN1]

[FN1] repealed by Commonhold and Leasehold Reform Act (2002 c.15), Sch 14 Para 1

S24 Appointment of manager by the court.

(1) A leasehold valuation tribunal may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part applies—

(a) such functions in connection with the management of the premises, or

(b) such functions of a receiver, or both, as the court thinks fit.

(2) A leasehold valuation tribunal may only make an order under this section in the following circumstances, namely—

(a) where the court is satisfied—

(i) that any relevant person either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and

(iii) that it is just and convenient to make the order in all the circumstances of the case; or

(ab) where the court is satisfied—

(i) that unreasonable service charges have been made, or are proposed or likely to be made, and

(ii) that it is just and convenient to make the order in all the circumstances of the case;

(aba) where the tribunal is satisfied—

(i) that unreasonable variable administration charges have been made, or are proposed or likely to be made, and

(ii) that it is just and convenient to make the order in all the circumstances of the case;

(ac) where the court is satisfied—

(i) that any relevant person has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice); and

(ii) that it is just and convenient to make the order in all the circumstances of the case;

(b) where the court is satisfied that other circumstances exist which make it just and convenient for the order to be made.

(2ZA) In this section "relevant person" means a person—

(a) on whom a notice has been served under section 22, or

(b) in the case of whom the requirement to serve a notice under that section has been dispensed with by an order under subsection (3) of that section.

(2A) For the purposes of subsection (2)(ab) a service charge shall be taken to be unreasonable—

(a) if the amount is unreasonable having regard to the items for which it is payable,

(b) if the items for which it is payable are of an unnecessarily high standard, or

(c) if the items for which it is payable are of an insufficient standard with the result that additional service charges are or may be incurred.

In that provision and this subsection "service charge" means a service charge within the meaning of section 18(1) of the Landlord and Tenant Act 1985, other than one excluded

from that section by section 27 of that Act (rent of dwelling registered and not entered as variable).

- (2B) In subsection (2)(aba) "variable administration charge" has the meaning given by paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.
- (3) The premises in respect of which an order is made under this section may, if the court thinks fit, be either more or less extensive than the premises specified in the application on which the order is made.
- (4) An order under this section may make provision with respect to-
- (a) such matters relating to the exercise by the manager of his functions under the order, and
 - (b) such incidental or ancillary matters, as the court thinks fit; and, on any subsequent application made for the purpose by the manager, the court may give him directions with respect to any such matters.
- (5) Without prejudice to the generality of subsection (4), an order under this section may provide—
- (a) for rights and liabilities arising under contracts to which the manager is not a party to become rights and liabilities of the manager;
 - (b) for the manager to be entitled to prosecute claims in respect of causes of action (whether contractual or tortious) accruing before or after the date of his appointment;
 - (c) for remuneration to be paid to the manager by any relevant person, or by the tenants of the premises in respect of which the order is made or by all or any of those persons;
 - (d) for the manager's functions to be exercisable by him (subject to subsection (9)) either during a specified period or without limit of time.
- (6) Any such order may be granted subject to such conditions as the court thinks fit, and in particular its operation may be suspended on terms fixed by the court.
- (7) In a case where an application for an order under this section was preceded by the service of a notice under section 22, the court may, if it thinks fit, make such an order notwithstanding—
- (a) that any period specified in the notice in pursuance of subsection (2)(d) of that section was not a reasonable period, or
 - (b) that the notice failed in any other respect to comply with any requirement contained in subsection (2) of that section or in any regulations applying to the notice under section 54(3).
- (8) The Land Charges Act 1972 and the Land Registration Act 2002 shall apply in relation to an order made under this section as they apply in relation to an order appointing a receiver or sequestrator of land.
- (9) A leasehold valuation tribunal may, on the application of any person interested, vary or discharge (whether conditionally

or unconditionally) an order made under this section; and if the order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 2002, the court may by order direct that the entry shall be cancelled.

- (9A) The [tribunal] [FN1] shall not vary or discharge an order under subsection (9) on the application of any relevant person unless it is satisfied—
- (a) that the variation or discharge of the order will not result in a recurrence of the circumstances which led to the order being made, and
 - (b) that it is just and convenient in all the circumstances of the case to vary or discharge the order.
- (10) An order made under this section shall not be discharged by a leasehold valuation tribunal by reason only that, by virtue of section 21(3), the premises in respect of which the order was made have ceased to be premises to which this Part applies.
- (11) References in this Part to the management of any premises include references to the repair, maintenance, improvement or insurance of those premises.[...] [FN2]

[FN1] substituted by Commonhold and Leasehold Reform Act (2002 c.15), Sch 13 Para 9

[FN2] substituted by Commonhold and Leasehold Reform Act (2002 c.15), Sch 13 Para 9

S24A

[...] [FN1]

[FN1] repealed by Commonhold and Leasehold Reform Act (2002 c.15), Sch 14 Para 1

S24B

[...] [FN1]

[FN1] repealed by Commonhold and Leasehold Reform Act (2002 c.15), Sch 14 Para 1