



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

Case reference : LON/00BE/LSC/2016/0486

Property : Flats 36, 4, 45, 15, 37, 8 Spinney Gardens, London SE19 1LL

Applicant : Mr G Willing (36), Mr D Best (4), Mr P Loggie (45), Mr A Whichelo & Ms N Avery (15), Ms Kizi Larsson (37), Mrs A Hutchings (8)

Representatives : Mr G Willing, Mrs A Hutchings, Mr P Loggie, Mr A Whichelo in person

Respondent : Covent Garden Ltd

Representative : Ms Amy Just of Counsel

Type of application : Payability of service charges

Tribunal members : Mr A Harris LLM FRICS FCI Arb
Mr P Roberts DipArch RIBA
Mr P Clabburn

Venue : 10 Alfred Place, London WC1E 7LR

Date of Hearing : 11 May 2017

Date of decision : 28 June 2017

DECISION

Decisions of the tribunal

- (1) The tribunal makes the determinations as set out under the various headings in this Decision.
- (2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") [and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act")] as to the amount of advance service charges payable by the Applicants in respect of the service charge years 2015, 2016, and 2017.
2. The relevant legal provisions are set out in the Appendix to this decision.

Directions

3. Directions for the hearing were given on 14 February 2017 in respect of the application by Mr Willing of flat 36. By an order dated 23rd February 2017 Mr Best of flat 4 and Mr P Loggie of flat 45 were added as applicants. By an order dated 28 February 2017 Mr A Whichelo and Miss N Avery of flat 15 and Ms K Larsson of flat 37 were added as applicants. By an order dated first of March 2017, Mrs A Hutchings flat 8 was added as an applicant.
4. The original timetable was varied by an order dated 6 March 2017 granting the respondent more time.
5. By an order dated 14 March 2017 the respondent was debarred from playing any further role in the proceedings.

The hearing

6. A hearing was held on 11 May 2017 at 10 Alfred Place London. Four Applicants appeared in person at the hearing, Mrs Hutchings (flat 8) and Messrs Willing (flat 36), Whichelo (flat 15) and Loggie (flat 45)) and the Respondent was represented by Mrs A Just of Counsel.
7. Immediately prior to the hearing the respondent handed in further documents, namely a skeleton argument from counsel and a copy letter

addressed to Mr Willing dated 10 May 2017. The start of the hearing was delayed while the tribunal considered these new documents.

Application to be heard

8. The respondent having been debarred from taking part in the proceedings, the hearing opened with an application on behalf of the landlord to be heard in these proceedings. The argument put forward was that the lay client had only just learned of the proceedings.
9. The application was opposed by the applicants.

Decision

10. The tribunal retired to consider the application involving the skeleton argument of counsel and the letter dated 10 May 2017 which had been handed in. From this the tribunal noted that the advance service charge for major works claimed for 2016, which were the subject of dispute, was being withdrawn and refunds made of any payments which had already been made. No advance service charge for major works for 2017 would be made.
11. The tribunal also noted that contracts have been exchanged for a sale of the property to Spinney Gardens Ltd, a company formed of 17 leaseholders at Spinney Gardens.
12. The tribunal was of the view that the balance of advantage lay with allowing the respondent to take part with the withdrawal of two years advance service charges which had been claimed for major works and that it would be in the interests of the lessees as a whole to make such progress as could be made on service charge issues in advance of the collective enfranchisement. The respondents would be allowed to make legal submissions but no new evidence or oral evidence would be admitted.

The background

13. The property which is the subject of this application is a development of 16 freehold houses and 30 small one-bedroom and studio flats built around 1984 on old railway sidings. The buildings are of modern construction having cavity brick or block walls under pitched concrete tiled roofs. The flats are built in five two-storey blocks with each block consisting of four one-bedroom flats and two studio flats. The blocks are referred to as "Mansion Blocks" in the lease. Each property has an allocated parking space.

14. Major works were carried out during 2015 which had been the subject of a section 20 consultation process. It is common ground that those works were badly carried out and badly supervised. Substantial remedial works are likely to be necessary.
15. The insurance premiums increased substantially from 2014/15 to 2016/17 allegedly following a revaluation. The increase is challenged by the applicants.
16. Photographs of the building were provided in the hearing bundle. 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.
17. The Applicants each hold a long lease of a flat in the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the leases will be referred to below, where appropriate. A specimen lease of flat 36 was included in the tribunal's bundle and it is common ground the leases are all in similar form.

The issues

18. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The payability of advance service charges for the year 2015 in respect of major works
 - (ii) the payability of advance service charges for the year 2016 in respect of major works
 - (iii) the reasonableness of insurance charges and level of cover/premium for the years 2015, 2016 and 2017.
19. Having heard evidence from the applicants and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Advance Service charge for major works for the year 2016

20. At the start of the hearing and in the application to be heard, the respondents confirmed they had abandoned any claim for advance service charge for remedial major works for the year 2016. This will not be considered further.

Advance service charge in respect of major works costing £74,750 for the year 2015

21. It is common ground that during 2013 it was recognised that repairs to external woodwork and redecoration were required.
22. The applicants state that the previous managing agents trading as New Space or later known as Haus instructed Mr A Banyard MRICS to prepare a specification. This was priced with a wide variation in the tender prices. One of the tenderers failed a creditworthiness test as there had been problems with a previous contractor becoming insolvent during works. Once doubts were raised over the surveyor's chosen contractors he decided not to continue with the contract and a new firm of surveyors, Newsomes, were invited to take over. Newsome's carried out a site visit and would only take over if they prepared a new specification. Both surveyors appear to have been paid for their services. A section 20 consultation was carried out and the schedule put out to tender to four contractors. The lowest tender came from PJ Harte but for unspecified reasons it appeared it was decided that the tender by K Martins should be accepted. A contract was placed during September 2015. It is common ground the section 20 process was carried out correctly.
23. Mr Willing is a chartered building surveyor and in October 2015 visited his property and noted that work was being carried out on his block in a poor manner with woodwork not being prepared in accordance with the specification and paintwork applied over rotten, dirty and unrepaired joinery. He immediately took this up with Newsomes and the managing agents. Notwithstanding his concerns the supervising surveyor from Newsomes signed off the work. After production of a report in October 2015, Mr Willing's concerns were being taken seriously and the landlords commissioned a report from Mr D Holland BSc MRICS which confirmed the poor standard of work. At this point the contractors apparently withdrew from site due to non-payment of their invoices.
24. Mr Holland's report was in evidence and the criticisms in that report were accepted by the respondent's representatives.
25. Arising out of this report remedial works were planned for 2016 at a further cost to the leaseholders. The advance service charge in respect of these further remedial works has been withdrawn by the respondents.
26. The respondent stated that the letter dated 10 May 2017 tabled at the start of the hearing confirms that the landlord's agents have been involved in protracted discussions with lawyers for the builders in an attempt to recover money already paid and those discussions are ongoing. When a final figure is produced the 2015 accounts will be prepared. It is expected there will be a surplus which will be repaid.

The tribunal's decision

27. The tribunal determines that the total amount of advance service charge payable in respect of major works for the year 2015 is £74,750.

Reasons for the tribunal's decision

28. The tribunal recognises the frustration felt by the residents of Spinney Gardens arising out of the defective works. Nevertheless, the service charge which has been paid is an on account service charge payable before the relevant costs were incurred and is therefore subject to challenge under section 19 (2) of the Landlord and Tenant Act 1985. The section states:

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.

29. There is no dispute that the section 20 consultation process was properly carried out and it therefore follows that the estimated cost of carrying out the works was reasonable and that service charge demands based on those estimates are reasonable so as to place the landlord in funds to commission the works.
30. The tribunal notes that discussions are ongoing with the responsible contractors and that until the outcome of those discussions is known and the contractual dispute is settled, the final amount of service charge due for 2015 will not be known. At that point the service charge will be susceptible to scrutiny and challenge under section 19 (1) of the 1985 Act.

Insurance

31. The applicants challenge the insurance premiums for 2015, 2016 and 2017.
32. The tribunal had provided to it confirmation of cover placement dated 17th of November 2014 for the period 31 December 2014 to 30 December 2015 with a total premium of £6899.61 based on a sum insured of £3,556,998.
33. Cover for the year 31 December 2015 to 30 December 2016 is in the sum of £7842.90 with the certificate dated 9th of November 2015 using a sum insured of £3,750,000.

34. By a certificate dated 5th July 2016 a revised premium for the year was demanded in the sum of £9,775.47 based on an increase in the buildings sum insured from £3,750,000 to £5,568,750.
35. By a certificate dated 4th November 2016 the premium for the year 31 December 2016 to 30 December 2017 was demanded in the sum of £12,034.21 based on the sum insured of £5,730,244.
36. The applicant states he queried the increased premium in November 2016 and was advised that there had been a reassessment of the buildings reinstatement cost. He also questioned whether there was a high claims history causing the increase and whether competitive quotes had been obtained. These questions were not answered.
37. Mr Willing then carried out a reassessment for himself of the building costs. He calculated the gross external floor area of the block in which his flat is located at 349 m² plus connecting balconies to each mansion block. He converted this to a gross internal floor area of 314 m² which are used to calculate an average flat size of 52.5 m² per unit rounded up to 53 m². He then used the Building Cost Information Service (BCIS) calculator to calculate rebuilding costs for a flat of average standard at £108,000. At a higher rate, it returned £132,000 and as a basic standard £92,000. The figures include some allowance for site features. On the basis of an average flat having a rebuild cost of £108,000 multiplying this by 30 gives a rebuild cost for the flats of £3,240,000 to which he adds nine balconies at £5,000 each giving a total sum insured of £3,285,000. As the landlords have insured for £4,584,195 this appears to represent a significant over insurance of 39.5%.
38. Mr Willing then requested a copy of the calculations undertaken for the landlord and this has not been provided. Mr Willing accepts that the landlords are not obliged to obtain the cheapest insurance figures but they do have a duty to ensure the service charges are reasonable. In his view, these are not reasonable.
39. The landlords have not provided any justification of the increased sum insured.
40. Counsel for the landlord argued that a landlord is not obliged to find the lowest premium payable, it is sufficient to agree a premium at market rate or negotiate the insurance contract at arms length and in the marketplace. Our attention was drawn to *Williams v Southwark Borough Council (2001) 33 HLR 22* and to *Avon Estates (London) Ltd v Sinclair Gardens Investments (Kensington) Ltd [2013] UKUT 0264 (LC)*. It was further argued that the procurement of insurance by way of an arms length transaction between the respondent and a broker full squarely within the broad discretion of the respondent and should not be interfered with by the tribunal.

41. As the two authorities had not been provided to the applicant prior to the hearing, the applicants were given the opportunity to consider those cases and provide a further written comment. In that comment the applicants accept the landlords are not under an obligation to obtain the cheapest insurance and this is not challenged. The question of an arms length transaction is more interesting and the applicants question whether there is in fact a commission arrangement between the insurers and the respondents which calls into question the arm's-length nature of the transaction.

42. Mr Willing quoted a further authority, cited in *Avon Estates, Havenridge limited v Boston Dyers Ltd [1994] 2 EGLR 73* which states

“the landlord must approve either that the rate is representative of the market rate, or that the contract was negotiated at arm's length and in the marketplace; he will then have acted “properly”.”

43. It continues:

*“if he approaches only one insurer, being one insurer of repute and a premium is negotiated and paid in the normal course of business as between them, **reflecting the insurers usual rate for business of that kind** then in my judgement the landlord is entitled to succeed. **The safeguard for the tenant is that, if the rate appears to be high in comparison with other rates** that are available in the insurance market at the time then the landlord can be called to prove that there was no special feature of the transaction which took it outside the normal course of business”*

44. The applicants put forward an alternative quotation, dated February 2017 for insurance from Allianz using a declared value of £3,285,000 and sum insured of £4,434,750 and other information taken from the respondents insurance certificates, which comes to a total of £4386.91 including insurance premium tax as compared with the landlords £12,034.21. It is submitted that the variation is so large that the charge is not at market rates. It is further submitted the tribunal has reasonable grounds to consider the insurance premium element.

The tribunal's decision

45. The tribunal determines that the total amount payable for insurance for each of the years in question is

2015	£6,889.61
2016	£7,842.90
2017	£3,706.93

Reasons for the tribunal's decision

46. The Tribunal finds that the decision of the Upper Tribunal in Avon Estates is of particular assistance.

47. At paragraph 9 the Tribunal said

“both the authorities and the wording of the Lease provide that the lessor has a very wide discretion with respect to the insurance and that, while cheaper insurance, may have been obtained, the respondent’s approach (the applicant before the LVT) was not unreasonable”

48. At paragraph 39, quoting the decision of Mr P Francis in the Lands Tribunal in Forcelux v Sweetman:

“39. In determining the issues regarding the insurance premiums and the costs of major works and their related consultancy and management charges, I consider, first [counsel’s] submissions as to the interpretation of s.19(2A) of the 1985 Act, and specifically his argument that the section is not concerned with whether costs are “reasonable” but whether they are “reasonably incurred”. In my judgment, his interpretation is correct, and is supported by the authorities quoted. The question I have to answer is not whether the expenditure for any particular service charge item was necessarily the cheapest available, but whether the charge that was made was reasonably incurred.

40. But to answer that question, there are, in my judgment, two distinctly separate matters I have to consider. First, the evidence, and from that whether the landlord’s actions were appropriate, and properly effected in accordance with the lease, the RICS Code and the 1985 Act. Second, whether the amount charged was reasonable in the light of that evidence. This second point is particularly important, as

if that did not have to be considered, it would be open to any landlord to plead justification for any particular figure, on the grounds that the steps it took justified the expense without properly testing the market."

49. At Paragraph 18 quoting from *Havenridge v Boston Dyers Ltd*:

"The landlord must prove either that the rate is representative of the market rate, or that the contract was negotiated at arm's length and in the market-place; he will then have acted "properly"...

"If this is the correct test, as in my judgment it is, then the fact that the landlord might have obtained a lower premium elsewhere does not prevent him from recovering the premium which he has paid. Nor does it permit the tenant to defend the claim by showing what other insurers might have charged. Nor is it necessary for the landlord to approach more than one insurer, or to "shop around". If he approaches only one insurer, being one insurer of "repute", and a premium is negotiated and paid in the normal course of business as between them, reflecting the insurer's usual rate for business of that kind then, in my judgment, the landlord is entitled to succeed. The safeguard for the tenant is that, if that rate appears to be high in comparison with other rates that are available in the insurance markets at the time, then the landlord can be called upon to prove that there was no special feature of the transaction which took it outside the normal course of business...in my view, [that] if the plaintiff proves either that the rate is representative of the market rate, or that the contract was negotiated at arm length and in the market-place, whether literal or metaphorical, he establishes that it was a genuine contract, that he has acted "properly" and that the sum was "properly paid"."

At paragraph 20 quoting from Williams v Southwark Borough Council:

In Williams v Southwark Borough Council (2001) 33 HLR 22, Lightman J found that the landlord was not obliged to find the lowest premium payable, but it was sufficient to agree a premium at the market rate or negotiate the insurance contract at arm's length and in the market place.

50. The Tribunal agrees with those decisions. The tribunal notes that the alternative quotations provided by the applicants are dated May 2017 and there are no comparative quotes for the first two years in dispute. The tribunal also notes that these premiums were not disputed at the date they were raised but only subsequently and following the reassessment of the sum insured.

51. The tribunal notes that the sum insured was increased substantially in mid-2016 with apparently no warning to the lessees that this exercise was being undertaken or any information being provided to the lessees after the event. The tribunal regards this as poor management practice and that landlords should be willing and able to provide full explanations of their actions involving other people's money.
52. The additional information supplied by the applicants in their written submission of 27 May is accepted by the tribunal as showing that the increase in the insurance premium from mid 2016 appears high in comparison with other rates in the market and it is appropriate for the tribunal to look into the level of insurance premium demanded.
53. In contrast to the respondent's failure to provide any explanation of the increase in the sum insured, the tribunal places considerable weight on the evidence of Mr Willing who is a chartered building surveyor and able to provide a professional opinion on the appropriate level of sum insured. The tribunal notes the use of an appropriate methodology and figures based on BCIS tables which are in widespread use for this purpose. The tribunal therefore accepts the opinion of the sum insured put forward by Mr Willing as at November 2016. The tribunal notes that the sum insured from Mr Willing is broadly consistent with the previous sum insured used by the landlord. This further casts doubt on the increased sum insured used for the later years' insurance.
54. The tribunal also places considerable weight on the quotation from Allianz dated 15 May 2017 based on the landlord's declared value of £4,584,195 and a sum insured of £5,959,454. This shows a total premium for similar cover to the landlord's quotation of £3706.93. A calculation can be made dividing the premium by the declared value to get a premium per pound declared value which comes to £0.00080863. Applying that sum to the declared value provided by Mr Willing gives an indicative premium of £2,656.36. This suggests the insurance premiums provided by the landlord are high by any standard.
55. However, the test is not whether the costs are reasonable but whether they are reasonably incurred. The alternative quotations provided by the applicants show a range of premiums on an identical basis. Having considered this matter, the tribunal finds that while the premiums for 2015 and the initial premium for 2016 are on the high side they are not unreasonably incurred.
56. In contrast, there is no explanation provided of why a reassessment of the declared value was made or of the basis on which it was made. When called upon by the applicants to justify the increase the landlord did not respond. Applying the decision of Mr Francis in Forcelux the tribunal considers that the landlords actions were not appropriate and it is open to the tribunal to look into whether the increased premiums in 2016 and 2017 were reasonably incurred.

57. The calculation set out above in paragraph 54 suggests that the premium quoted in the latter part of 2016 and for 2017 is excessive at £12,034.21 for a full year and is over double the highest quote obtained by the applicants for similar cover. The tribunal accepts that the landlord is not obliged to accept the lowest quote but has asked itself what is reasonable. The tribunal is wary of using a relatively unscientific basis discussed in paragraph 54 above to set the premium in view of other component parts of setting a premium and therefore adopts the quote in full at £3,706.93 as being one which a landlord acting reasonably would accept.
58. The insurance premiums found to be reasonable or reasonably incurred for the three years are therefore:

2015	£6,889.61
2016	£7,842.90
2017	£3,706.93

Application under s.20C and refund of fees

59. At the end of the hearing, the Applicant made an application for costs. The applicant recognises that the tribunal does not normally award costs but the tribunal does have a discretion to order a refund of the fees that the applicant had paid in respect of the application and hearing¹. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the Respondent to refund any fees paid by the Applicant.
60. In the application form, the Applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Name: Mr A Harris LLM FRICS FCIArb

Date: 28 June 2017

Valuer Chair

¹ The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

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).