

12388



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

**Case reference** : **LON/00BE/LSC/2017/0107**

**Property** : **Flat 1 Listed House, 46 Peckham  
Grove, London SE15 6EW**

**Applicant** : **Miss Vera Ghaznavi**

**Representative** : **In Person**

**Respondent** : **Packamist Limited & Property  
Partners**

**Representative** : **Miss C Zaninello, managing agent  
of Property Partners Residential**

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

**Tribunal members** : **Judge E Samupfonda  
Mr M Mathews FRICS  
Mr C Simon**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of decision** : **21.8.2017**

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**DECISION**

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## **Decisions of the tribunal**

- (1) The tribunal determines that the sums claimed by the Respondent in respect of the service charges for the years 2012, 2013, 2014, 2015 and 2016 is payable by the Applicant/Respondent
- (2) The tribunal makes the determinations as set out under the various headings in this Decision
- (3) The tribunal does make an order under section 20C of the Landlord and Tenant Act 1985 so that the landlord's costs of the tribunal proceedings may not 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") as to the amount of service charges payable by the Applicant in respect of the service charge years 2012, 2013, 2014, 2015 and 2016.
2. The relevant legal provisions are set out in the Appendix to this decision.

## **The hearing**

3. The hearing took place on 1 August 2017. The Applicant; Miss Ghaznavi appeared in person. Miss Zaninello, a Property Manager of Property Partners Residential, represented the Respondent.
4. Prior to the hearing, the tribunal and the parties identified that there had been previous proceedings before this tribunal in respect of the same property involving the same parties under reference LON/00BE/LSC/2010/0661 on an application by Miss Ghaznavi pursuant to s27A Landlord and Tenant Act 1985 in respect of the service charge years 2009 and 2010. It was agreed that the issues before this tribunal had not been the subject of the earlier determination.

## **The background**

5. The property, which is the subject of this application, is a ground floor flat in a two storey converted period house on an estate of some 150 properties in four blocks of 3/5/7 stories with external landscaped areas, paved areas and an estate road

6. An oral case management hearing took place on 18 April 2017 attended by Miss Ghaznavi and Miss Zaninello. Directions for the future conduct of this case were made. Neither party requested an inspection and the tribunal did not consider that one was necessary in light of the nature of the matters in dispute.
7. The Applicant holds a long lease of 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 lease and will be referred to below, where appropriate.

### **The issues**

8. The tribunal recognised that these proceedings can be extremely challenging and stressful and the legal issues quite complex for lay litigants in person in the position of Miss Ghaznavi. Therefore, at the commencement of the hearing, the tribunal considered that it was essential to explain the procedure and was very careful to identify with the parties the matters in dispute. The tribunal also gave Miss Ghaznavi every opportunity to discuss those matters in detail. In addition the tribunal ensured that if either party wished to have a break it was granted.
9. Miss Zaninello told the tribunal that at the case management hearing, the tribunal judge explained to Miss Ghaznavi that she will be required to identify each and every item which is challenged giving full reasons and that it will not be sufficient to simply say a cost is too high, if it is said a cost is too high alternative comparable quotations must be given. Miss Zaninello said that as Miss Ghaznavi did not particularise her claim, she decided to try to assist her by completing a Scott Schedule that contained all of the heads of expenditure in the service charge years in dispute with the amounts claimed in each year so that Ms Ghaznavi could easily identify what she was being charged for. Miss Ghaznavi then completed the relevant columns. Miss Zaninello said that she had no idea what items Miss Ghaznavi challenged or the grounds for her dispute. Therefore Miss Zaninello said that she did not provide all the invoices that supported all of the expenditure but provided a few as sample invoices. Miss Ghaznavi confirmed that she completed the relevant columns in the Scott Schedule prepared by Miss Zaninello in respect of the items that she disputed and set out the grounds for challenging those items. Although the case management directions record that she confirmed at that hearing that she did not challenge the block costs but wished to challenge the estate costs because she believed that she paid over 8% of the estate costs despite there being 150 flats on the estate, at this hearing she said that she wished to challenge the reasonableness of both the estate and block costs. She was also concerned that her service charges had risen dramatically and she wanted to understand what services she was being charged for. She confirmed at the hearing that she now understood

what she was being charge for and that she was required to pay a percentage of the estate costs (blocks A-D) at 0.5477% and a percentage for block costs (Block D at 9.348%. She said that she had experienced difficulties in preparing for this hearing because the invoices provided by Miss Zaninello were not in any particular order. Miss Zaninello referred to the paragraph 10 to the Fourth Schedule of the lease that outlines the tenant's covenants and confirmed the position was as stated by Miss Ghaznavi. She added that her understanding of Miss Ghaznavi's position was as set out in the directions; that Miss Ghaznavi only challenged the estate costs. The tribunal recognised how difficult these proceedings can be and time consuming. It considered that it could adopt a pragmatic approach as an enabling tribunal and try to assist the parties to resolve all these issues at this hearing. It therefore invited Miss Zaninello to consider agreeing to the tribunal's request to consider the block costs. In response she said she would do so only on the understanding that she would not be unduly criticised if she was not able to respond to some of the issues. The tribunal pointed out that some of the items raised in dispute in the block costs expenditure featured in the estate costs and the tribunal said that it would be mindful if she experienced any difficulties.

10. The tribunal therefore identified with the agreement of the parties that the issues to be determined were those set out in the Scott Schedule completed by the parties, that the items in dispute were the same in every service year and the grounds for disputing those items were also the same in every year. Therefore the tribunal considered the application by reference to the service charge year 2012 and invited each party to make submissions in respect of each item in dispute. The dispute regarding the bank charges was withdrawn as it was established that this was a credit. At the conclusion of the hearing Miss Ghaznavi indicated that she had other issues that wished to raise. It was explained to her that as those items were not particularised in neither the application or in the Scott Schedule, the tribunal could not consider them.
11. The tribunal first considered the estate costs and 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:

### **Cleaning Contract**

12. Essentially, Miss Ghaznavi's position was that the cleaning was not carried out on a regular basis but was very sporadic. She added that she did not use the estate and had not made complaints directly to the managing agents regarding the standard of cleaning. She referred to the statements written by other residents in support of her contention.

13. Miss Zaninello disagreed and said that the estate is cleaned regularly. The difficulty arises from the fact that residents or passing vehicular and pedestrian traffic drop litter regularly. She referred to the cleaning contract.

### **The tribunal's decision and reasons**

14. The tribunal determines that the costs incurred in respect of the cleaning was reasonable and payable in all the service charge years in dispute.
15. In determining whether service charges are reasonable under section 27A of the Act, the tribunal can only rely on the evidence produced by each party in support of their case. The tribunal observed that the applicant was notified at the case management conference that she was required to identify each and every item in dispute giving full reasons.
16. The tribunal found that the applicant did not specify the issues that she disputed in advance of the Scott Schedule being produced. Therefore Miss Zaninello could not address the application by providing specific evidence but rather she produced a generic list of all the heads of expenditure, as she did not know the case that she was to meet at the hearing, the tribunal did not criticise her for not producing all the invoices for all the expenditure for all the years in dispute. The tribunal also observed that Miss Ghaznavi was told at the case management "It will not be sufficient to simply say a cost is too high. If it is said a cost is too high alternative comparable quotations must be obtained." The tribunal was not provided with any evidence at all by Miss Ghaznavi in support of her case. Miss Ghaznavi said that she had written a letter to all residents on the estate and had received 12-15 replies by emails. She then asked for witness statements and received four, two, (one undated) of which were in the bundle. Neither the letter nor the emails were in the bundle. The tribunal did not find the witness statements helpful to the issues in point as the statements were generic and not particularised.
17. The tribunal was provided with invoices from the cleaning contractor and the certified accounts. The contract from P & H Cleaning company set out the terms and conditions from which the tribunal understood that there was an obligation to attend daily to perform various tasks and weekly to "sweep all estate external areas including rear courtyard." There was insufficient evidence provided by Miss Ghaznavi for the tribunal to conclude that the cleaning was not carried out in accordance with the terms of the contract. Miss Ghaznavi said that she did not use the estate and had not reported issues regarding the failure to clean the estate.

### **Refuse Collection**

18. Miss Ghaznavi said that the refuse outside Block D is collected by London Borough of Southwark therefore she did not understand why this item appeared in the service charge as there are no estate bins. She said that she was not aware that there were any paladins on the estate and she did not use them.
19. Miss Zaninello said that the cost incurred was for hiring paladins that are on the estate as the bins in each Block are not sufficient so residents can use the paladins for any overspill.

### **The tribunal's decision and reasons**

20. The tribunal determines that the amount claimed in respect of each service charge year is reasonable and payable.
21. Although the tribunal was not provided with any invoices for the hire of the paladins for the reasons set out above, it was however, satisfied that the explanation for having paladins given by Miss Zaninello was plausible and reasonable. Further, there are audited accounts that make reference to Refuse collections and the tribunal was not given any evidence to doubt the veracity of the accounts or the accountants.

### **General Maintenance**

22. Miss Ghaznavi said that the Building maintenance was poor; the building adjacent to Block D has cracks. Miss Ghaznavi said that the vehicle gates are often broken and left unrepaired. There are two gates and one has been broken 20 times and one for three years. The gates are old and should be renewed. She added that she has seen children playing on the gates or using them as goal posts, which could explain the frequent damage. She asked why the respondent could not put signs up prohibiting this behaviour. Miss Ghaznavi challenged why she should contribute towards the maintenance cost of the lift in Block A.
23. Miss Zaninello said that there are signs stating no ball games around the estate. She has on occasions written to residents asking them not to allow their children to play on the gates when she has observed this on CCTV. She accepted that the gates were an issue because as soon as they are fixed they get broken again. They are electronic fob operated. Some residents do not have the fobs. She attributed the frequent breakdown of the gates to residents or visitors gaining access into the car park illegally and then being unable to vacate without breaking the gates. She said that she had obtained a quote for alternative gates in the sum of £40,000. She was concerned that if the gates were renewed the respondent would not be able to recover the cost through the service charge as there is a high level issue of non payment. Miss Zaninello said that Miss Ghaznavi does not contribute towards the cost of the lift

maintenance. The schedule of accounts as set out demonstrates that Miss Ghaznavi only contributes to the estate, block and insurance costs

### **The tribunal's decision and reasons**

24. The tribunal determined that the cost incurred in respect of each service charge year in respect of General Maintenance is reasonable and payable by the applicant.
25. The tribunal was presented with a high number of invoices for gate repair that supported the parties' accounts of frequent breakdown. It was common ground that the gates were aged and broke down frequently. The tribunal found that the cause of the break down was attributed primarily to residents' and passing traffic behaviour. The tribunal was not provided with any evidence to support any assertions that the cost incurred was too high and in the circumstances the tribunal concluded that the cost was incurred in repairing the gates had been reasonably incurred. With regards to the lifts, the evidence from the accounts indicate that Miss Ghaznavi does not contribute towards the cost of Block A's lift maintenance. There are lifts on the estate but they are not charged as part of the estate costs.

### **Out of Hours**

26. Miss Ghaznavi said that she has never used this service and was not aware until recently that it was available. She added that there are no invoices for this service.
27. Miss Zaninello stated that any emergency calls made outside of office hours go to this call centre number for action. She explained that there are no invoices because the cost is invoiced within the management fee. She added that it is common to provide such a service in property management and there is an annual contract for the properties in their portfolio. She added that residents are made aware of this number as it is written on the correspondence and on their website.

### **Tribunal's decision and reasons**

28. The tribunal determines that the amount claimed is reasonable and payable in the absence of any evidence to the contrary regardless of whether the applicant uses the service. The tribunal accepted that it was reasonable for the managing agent to provide an emergency out of hour's service. The costs are recoverable under clause 7 and 9 (h) to the

Sixth Schedule of the lease, which states the Landlord covenants “to provide such facilities for the benefit of the Block [Estate] as the Landlord may from time to time determine.”

### **Landscaping**

29. Miss Ghaznavi produced two statements written by residents on the estate that she relied upon to assert that there is no landscaping work carried on the estate. She produced photographs taken in May 2017 of the front lawn at Block D and said that the grass has not been cut for 3 to 4 years and that the first time she had personally witnessed the grass being cut was on 20 June 2017. She also pointed out that the photos depicted young saplings growing out of the brickwork. Miss Zaninello said that the landscaping contractor was changed last year in response to complaints from residents. The previous contractors JPF charged £210 per month including VAT and they attended once a month. The new contractor, Oaks Development charge £210 per month but are not VAT registered and they attend twice a month. Miss Zaninello said that this is one of the most difficult properties that she has ever managed because a large proportion of the occupiers are assured shorthold tenants and there is also Block C that is owned by a housing association. As a consequence she has found that residents do not take care and when new plants are provided they get stolen. She produced invoices from both contractors in support of her assertion that landscaping has been carried out. Whilst acknowledging that prior to 2016 landscaping was not always to an excellent standard, she refuted that it was non-existent as she said that the photographs would depict grass that was much longer than that shown.

### **Tribunal’s decision and reasons**

30. The tribunal determined that the amount claimed in respect of landscaping is reasonable in all the service charge years in dispute and therefore payable by the applicant. The tribunal has considered the invoices provided and heard the parties’ evidence. Miss Zaninello admitted that previously, landscaping was not of an excellent standard and that the contractor was changed following residents’ complaints. The tribunal considered the photographs produced by Miss Ghaznavi and found that whilst the lawn was unkempt it was not so overly long as to be consistent with an assertion that the grass had not been cut for 3 to 4 years. The photos depicted a small area of the estate from which the tribunal did not find sufficiently supported an assertion that landscaping on the estate was non-existent. The invoices of JPF Limited indicated that a very basic level of service was to be provided. There was no evidence put before the tribunal to demonstrate that the cost was too high for the level of service provided. No alternative quotes were provided.

### **Professional fees**



31. Miss Ghaznavi said that there were no invoices for 2015. She said that she was concerned by the fact that in 2015 the cost rose to £7,919, which was much higher than previous and subsequent years, but she has no idea what was done and what led to the increase. She produced no evidence to support any challenge that the cost was unreasonable. Miss Zaninello said that the professional fees were attributed to the cost of auditing accounts as can be seen by the accountant's report produced.

### **Tribunal's decision and reasons**

32. The tribunal found that the amount claimed in each service charge year in dispute in respect of professional fees was reasonable and therefore payable in the absence of any evidence to doubt the veracity of the accounts and in the absence of any evidence to support an assertion that the cost incurred though higher in 2015, was not reasonable for auditing the accounts. Although a breakdown of the fees was not provided, the tribunal found that the professional fees went up as described by the applicant in 2015, the year for which there was no invoice provided. The tribunal accepted Miss Zaninello's explanation to the tribunal that this was because she had not been given the particulars of the specific costs being challenged by the applicant.
33. The tribunal then went on to consider the costs incurred in respect of Block D

### **Cleaning Contract**

34. The parties made the same submissions in relation to the cleaning of the Block as they did in relation to cleaning of the Estate.
35. Miss Ghaznavi said that the windows and front door had not been cleaned although the front door was cleaned two weeks ago. Miss Zaninello referred the tribunal to the lease and said that the windows are the leaseholder's responsibility. She denied that the front door had only been cleaned recently and said that unless Miss Ghaznavi was there 24 hours a day, she could not know or say that the door has never been cleaned. She referred the tribunal to some of the invoices and to the cleaning contract and said that she had not had any complaints. For that reason the tribunal makes the same findings as set out in paragraphs above

### **The tribunal's decision and reasons.**

36. The Fifth Schedule of the lease sets out the tenant's covenants with the landlord. Clause 6 provides the tenant covenants "to clean the windows

of the Flat (inside and outside) whenever necessary.” The Applicant has not been charged for window cleaning.

### **Electricity Charges**

37. Miss Ghaznavi said she considered the cost of electricity was too high in some years but could not remember which. She added that the light in the hallway is on 24/7 and the exterior light and door entry system do not work but she has never reported this. Miss Zaninello explained that there are estimated electricity bills and the reason why the costs fluctuate is because of the balancing arising from actual readings. She was not aware that there were any issues regarding faulty door entry or non-working exterior light.

### **The tribunal’s decision and reasons**

38. The tribunal considered the electricity bill provided that excluded the years 2012 and 2014. There were some estimated bills and the cost fluctuated following reconciliation. Although Miss Ghaznavi argued that the cost in her view was unreasonably high in some years she did not specify in which years. In the absence of any evidence to support an assertion that the cost incurred was unreasonably high the tribunal was bound to conclude that the costs incurred in each service charge year in dispute were reasonable and therefore payable.

### **Security Entry Phones**

39. Miss Ghaznavi said that the door entry system is faulty and the door entry phones in Block D were not working.
40. Miss Zaninello said that complaints had not been made to her about this issue.

### **General maintenance**

41. The invoices from Cooltech Environmental Engineering Ltd concerned Miss Ghaznavi as she did not know what services they provided. She said there is no heating, ventilation or air condition. At the request of the tribunal Miss Zaninello provided information via email at the conclusion of the hearing explaining that the services provided by Cooltech are Emergency Lighting- monthly test and 6 monthly burn, Electrical dist system including small power/lighting-annual, Landlord’s lighting check-every 2 weeks and operational test on manual smoke vent/roof light.
42. Miss Ghaznavi said that she was also concerned about the condition of the Building because in her view it was poorly maintained. Also she

said that as no work had been carried out to the Block, she was concerned that future costs will be higher. Miss Zaninello said that they had instructed a condition survey report with a view to having maintenance work carried out but she was concerned that the landlord would not be able to recover the cost due to poor service charge payers.

### **The tribunal's decision and reasons**

43. The tribunal explained to Miss Ghaznavi that as no cost has been incurred or demands made in respect of Building maintenance, the tribunal could not determine any issues as to reasonableness.
44. With regards to the Cooltech invoices, there was no challenge as to whether the cost incurred was reasonable as the query related to a request for information as to what services were provided.
45. There was no evidence provided in support of any challenges to the costs incurred in respect of repairing the door entry system. Miss Ghaznavi had written a letter to the residents in South City Court asking them for their views. She provided a number of responses that detailed residents' concerns about the block some of which referred to the door entry phone not working. However, these statements were generic in nature and not specific in details such as the period referred to and whether the complaints had been made to the respondent.

### **Management Commission**

46. Miss Ghaznavi said that she had originally been told that the service charge would be £65 per month but this had increased over the years and she did not know what services were provided as the final service charge costs in each year were the same as the budgeted cost and that this showed bad management. Miss Zaninello said that there was a management agreement between the landlord and the agent. At the request of the tribunal a copy of this was provided to the tribunal and to Miss Ghaznavi at the conclusion of the hearing.

### **Tribunal's decision and reasons**

47. The tribunal explained to Miss Ghaznavi that it could not comment on what she had been previously led to believe the service charge would be as its function was to determine whether the amount claimed in the service charges in dispute were reasonable. The tribunal also went through the accounts with Miss Ghaznavi and tried to explain that the final costs varied according to the expenditure incurred. The tribunal assessed that the management fee was between £380 -395 depending on the percentage allocation per unit per annum, which in the tribunal's view was reasonable in the absence of any evidence to the contrary.

## **Insurance**

48. Miss Ghaznavi queried why the cost of repairing the leaking gutter on the roof of Listed House could not be borne by the Building insurance. She also queried whether the insurance would cover the cost of internal damage to her flat. Miss Zaninello said that the Building insurance did not cover roof repairs or maintenance costs. She said that she would discuss the cover in relation to Miss Ghaznavi's flat outside of this hearing.
49. The tribunal asked Miss Zaninello to explain why the insurance appeared twice in the Scott Schedule under Schedule 6 and 7 Block D costs in the year 2012. She provided information at the conclusion of the hearing explaining that the insurance under Schedule 6 for the amount of £5,863 is incorrectly labelled. It should be labelled as Security Entry phones. Miss Zaninello also agreed to provide Miss Ghaznavi with a copy of the insurance policy.

## **The tribunal's decision and reasons**

50. The tribunal found the explanation satisfactory, as Building insurance does not ordinarily provide cover that includes maintenance costs. There was no challenge as to whether the cost incurred had been reasonably incurred.

## **Application under s20C**

51. At the end of the hearing, Miss Ghaznavi applied for an order under section 20C of the 1985 Act. Miss Zaninello did not make any submissions. Having heard the submissions from Miss Ghaznavi 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. The tribunal recognised that Miss Ghaznavi was entitled to challenge the reasonableness of the costs incurred in respect of the service charges for the years in dispute before the tribunal, she was however, advised at the case management conference that she was required to identify each and every item which is challenged giving full reasons why. She failed to do so before Miss Zaninello produced the generic Scott Schedule. Furthermore, Miss Ghaznavi was also advised that it would not be sufficient to simply say a cost is too high, alternative quotations had to be obtained but she failed

to produce any such quotations or evidence or the tribunal's consideration.

**Name:** Evis Samupfonda

**Date:** 21.8.2017

### **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.

## **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).