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HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTIONS 27A & 20C OF THE LANDLORD AND TENANT ACT 1985]

Case Reference:	LON 00AN/LSC/2012/0051
Premises:	26 AND 98 Hunt Close Edward Woods Estate London W11 4JU
Applicant(s):	Mark Damien (Flat 26) Zarif Khan(Flat 98)
Representative	Mark Damien appeared for both
Respondent(s):	C G Freeholds Limited
Representative:	Freehold Managers plc
Date of hearing:	18th 19th and 22nd June 2012
Appearance for Applicants:	Mark Damien Amanda Tatham Vice chair of the residents Association Javier Orti Leaseholder of Hunt Close
Appearance for Respondent:	Ms A Meacher of counsel instructed by Mr Richard Sandler solicitor of Freehold Managers plc Mr Jamie Hulse managing agent of Broadlands Estate Management
Leasehold Valuation Tribunal:	**Mr P L Leighton LLBHons** **Mr T Sennett** **Ms S Wilby**
Date of decision:	- 4th September 2012

Decisions of the Tribunal

(1) The Tribunal determines that the sums set out below under the various headings are payable by the Applicants

(2) The Tribunal makes the determinations as set out under the various headings in this Decision in relation to each of the issues raised.

(3) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 and further makes no order with regard to reimbursement of fees of the Applicants.

The application

1. The Applicants seek 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 Applicants in respect of 26 and 98 Hunt Close Edward Woods Estate of which the Applicants are the respective leaseholders for the service charge years ending June 2009,2010 and 2011 and the estimated charge for the year ending 2012 in the case of both Applicants and in respect of the additional years ending June 2007,2008 and 2009 in the case of the Second Applicant.

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

The hearing

3. The First Applicant appeared in person but the Second Applicant was unavailable and was represented by the First Applicant at the hearing. The Respondent appeared and was represented by Ms Alison Meacher of counsel assisted by Mr Jamie Hulse of Broadlands Estate Management, the managing agents.

4. The Tribunal received oral evidence from Mr Damien and Ms Amanda Tatham the vice Chair of the Residents Association and written witness statements

from the second Applicant Mr Khan, Mr Javier Orti of 41 Hunt Close ,and David Hallett of 28 Hunt Close on behalf of the Applicants. Mr Jamie Hulse gave evidence in accordance with his witness statement and Ms Julie Hawkes service charge accounts manager of Broadlands Estates managing agents on behalf of the Respondent.

The background

5. The Tribunal inspected the property on the morning of the first day of the hearing in the presence of the Applicant Mr Damien, Mr Hulse and Ms Meacher on behalf of the Respondents

6. The Tribunal was shown the arrangement of flats noting that the estate is a mixed development of private and social housing on land on the boundary of the London Boroughs of Kensington & Chelsea and Hammersmith & Fulham. There are 7 blocks under management (not all adjacent to one another) ranging in scale from 4 storeys in Hunt Close including the block containing Mr Damien's flat where there are a total of 7 flats, and Boundary House, in Boundary Close, which is a building on 5 floors comprising 16 flats and is the only one to have a lift and gated parking. The Second Applicant Mr Khan lives in a block containing 8 flats.

7. The blocks were constructed in about 2002 of brick or wood clad elevations under sloping roofs. Each block has a separate entrance mainly set back behind private gardens with an entrance pathway with refuse bin or bins behind fencing to the side. Each bin area has a mains water tap. There were water meters supplying the blocks and taps to the bin areas outside blocks 20-26 and 27-34 which the tribunal inspected. The blocks were managed on behalf of the freeholder by Countrywide Estates until December 2008 and thereafter by Broadlands Estate Management. During the latter period Mr Jamie Hulse has acted principally as the manager of the estate.

8. .An overgrown triangular parcel of land, which is fenced, was presented as a communal area available to all the flats under management and sited to the

south side of block 100-107. Some clearance work was noted but the land was not readily accessible to residents.

9. Mr Damien showed the Tribunal his flat which is the top flat in block 20-26 and which comprises two bedrooms, a dressing room, living room, kitchen area, bathrooms and balcony. The flat was empty and unoccupied. The flooring to this and the flat below, which we were also shown, has wooden floors laid on concrete. The area where a leak had occurred in Mr Damien's flat was also pointed out. The common ways to this block were noted to comprise carpeted flooring and painted walls and were considered by the Tribunal to be in a reasonable and clean condition. The under stairs cupboard containing the media cabling was opened for inspection. The Tribunal saw large satellite dishes fixed to the Hunt Close properties and a plethora of small satellite dishes around the estate.

10. The Applicants hold long leases of the property which require 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 will be referred to below, where appropriate. The First Applicant does not live at the flat in question but has let it on previous occasions. At the time of the hearing there was no letting in place. The Second Applicant lives at 98 Hunt Close.

11. Accounts for each of the blocks are drawn up separately so that the leaseholders of the other blocks are not required to contribute to the lift and security gates at Boundary House. The service charge year runs from 1st July to 30th June the following year. Service charges are payable half yearly in advance.

The issues

12. At the start of the hearing the parties identified the relevant issues for determination as follows:

(i) Whether the agreement entered into by the freeholder with MRK in 2006 was a variation of the existing agreement entered into with that contractor in 2002 or whether it was in fact a new contract and therefore, since it was specified to last for a period of 10 years up to 2016, If it was a qualifying long term agreement. It was accepted that there had been no consultation in accordance with the provisions of Section 20 of the Landlord and Tenant Act 1985.

(ii) The payability and/or reasonableness of service charges for each of the years in dispute concerning the TV aerial.

(iii) The reasonableness of cleaning costs.

(iv) Gardening costs had originally been raised but at the time of the hearing this was not in issue. The problem arose as certain cleaning work had been originally billed as gardening but it was accepted that no gardening had been carried out. When the error was pointed out this item was deleted from the accounts. It was finally accepted that it had not in fact been charged for as a gardening item.

(v) In the case of the First Applicant whether the freeholder was entitled to withhold the sum of £7,440 payable to Mr Damien in respect of an insurance claim on account of his arrears of service charges.

(vi) Whether the charge for bin hire in 2010 was reasonable.

(vii) Whether the arrears collection charges for 2010 and 2011 are reasonable.

(viii) Whether the accountancy fees of £150 per block are reasonable and whether it was reasonable to charge an equal amount in respect of each block.

(ix) Whether the reserve fund contribution is reasonable.

(x) Whether the management fees are reasonable.

(xi) Whether the estimated charges for 2012 are reasonable.

13. 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:

Issue TV Aerial Agreement

The Tribunal's decision

14. The Tribunal determines that the agreement in 2006 with MRK was a variation of the previous agreement made in 2002 and not a new agreement. Consequently it was not a "qualifying long term agreement " for the purposes of the Service Charges (Consultation Requirements)(England) Regulations 2003.

Reasons for the Tribunal's decision

15. At the time of the development the developers entered into an agreement with MRK Rentals dated the 1 October 2002 for the provision and maintenance of apparatus for TV reception for the estate. The annual charge specified under the agreement was for £4,765 plus VAT in 2002 to increase annually by sums not exceeding the increase in the government's index of hourly wage rates. The contract was transferred from the developer to the respondent on 1 July 2003. The contract price includes a six monthly inspection to check and maintain the equipment.

16. Following problems with reception from the terrestrial channels a supplemental agreement was entered into by the respondent on the 1 January 2006 for the provision and maintenance of further equipment including aerials and amplification equipment which extended the original contract but at the same cost as the consideration for the provision of the additional equipment except

that the main contract was extended for a term of 10 years until 2016 to meet the additional cost.

17. The Applicant's contended that the agreement entered into in 2006 was a new agreement and since it was for a period exceeding 12 months, it was a "qualifying long term agreement" for the purposes of the Service Charges Regulations 2003 and that by failing to consult the respondent was in breach of the regulations so that the liability of the leaseholders was limited to £100 per annum The amount which each leaseholder was required to pay under the agreement was £204.66 per annum in the case of Mr Damien (22.74% of £900) and £112. 50 per annum .in the case of Mr Khan (12.5% of £900 per annum). According to Mr Hulse's witness statement the figures for Mr Damien and Mr Khan are shown as £164.89 and £103.59 respectively. The original agreement made in 2002 occurred before the 2003 regulations were enacted so that there was no obligation to consult leaseholders in relation to that agreement.

18. The Respondent contended that the agreement was merely a variation on the existing agreement made in 2002. They contend that the agreement cannot stand alone but only by reference to the original agreement. The new agreement extends the term that maintains many of the existing terms in place.

19. Clause 1.2.6 of the agreement defines "Main Agreement" as the Maintenance agreement as amended by the transferral agreement and this Agreement. Clause 4.1 and 4.2 of the supplemental agreement referred to variations and clause 4.3. provides that the property in the equipment shall pass from the contractor(MRK) to the company (the Respondent" on the earlier of by 4.3..1 expiry of the extended term PROVIDED THAT the company has paid to the contractor all sums due under the Main Agreement or 4.3.2 "to the extent that the Extended term has not expired payment by the Company to the Contractor in advance of all sums payable to the extent they have not been paid or accrued at such date if the main agreement had continued to the Extended Term."

20. The Tribunal is satisfied that the supplemental agreement cannot stand alone but is wholly dependent upon and inextricably linked with the main agreement entered into in 2002. Whilst it could be argued that a variation of a pre regulation agreement which imposes a term of 10 years should be subject to the service charge regulations it does not appear to the tribunal that it is and consequently there is no breach.

Issue TV Aerial Charges

The Tribunal's decision

21. The Tribunal determines that the amount payable in respect of the TV aerial is excessive as the apparatus does not work and the leaseholders are unable to receive HD and digital 3D or Sky plus

Reasons for the Tribunal's decision

22. The leaseholders have serious problems with their TV reception which is caused by ghosting and direct pickup as a result of the poor quality and protection provided to the cables which were installed between the subscriber feeds in the communal parts of the blocks and the outlet sockets to each property. It relates to the quality of the cable which was installed at the time of the original development. The cables were not iinstalled by MRK but by the original developers in 2002.

23. The freeholders have given consideration to terminating the agreement entered into in 2006 and installing a new system, but have concluded that they would be unable to do so without paying the full contractual instalments under the supplemental agreement.

24. The Respondent argues that MRK are not in breach of the terms of their agreement and that when problems have arisen they have arranged to contact the leaseholders to inspect and correct any faults with the service in the

individual properties. According to Mr Hulse MRK have received requests from five leaseholders in the blocks and have attended to those complaints.

25. Other options which have been considered will involve the installation of external cabling which would be expensive and unsightly.

26. Whilst the Tribunal has some sympathy for the difficulty which the freeholder is experiencing and accepting that MRK are attempting to provide a service they do not consider it would be reasonable for the leaseholders to pay an annual service charge for a service which they are not receiving. Accordingly the Tribunal considers that the applicants should not be required to pay more than £100 per annum for the annual maintenance costs for the remainder of the contract. This would not necessarily apply in the case of other leaseholders who are satisfied with the service provided.

27. The Respondent should therefore attempt to renegotiate or terminate this agreement and seek to install a more satisfactory system serving the blocks. Whilst such a course would be expensive it might be a better solution. It would be sensible for a consultation to take place between the freeholder and interested leaseholders as to the best way forward. Leaseholders would clearly have to pay for the cost of improvements.

Issue Cleaning Costs

The Tribunal's Decision

28. The Tribunal determines that the cleaning costs for the estate are reasonable in the sum of £1440 for each of the Applicants' blocks but that it would be sensible for the Respondent to review the cleaning arrangements to see whether it is possible to obtain a more economical service.

Reasons for the Tribunal's decision

29. The contract cleaning is carried out on the estate by EPS contractors. No alternative quotations were obtained by the Applicants although the directions proposed that they should seek to find alternative estimates.

30. Mr Damien complained that when he visited the estate he found rubbish which had not been cleared away, although his visits were about every 10 days and it is not clear how often rubbish was left deposited. He said that the cleaning charges in his block were cheaper than at Hunt Close and the standard was better. He did not however produce details of the cleaning from that block or figures from the contractor.

31. The communal parts of the block were clean on inspection and Ms Tatham whom the Tribunal found to be a careful and impressive witness confirmed that the cleaning arrangements were adequate . She did however complain about the smelly state of the bins. which until recently had not been attended to.

32. Mr Hulse confirmed that the cleaning arrangements did not include the cleaning out of the bins but he had made arrangements for jet washing of the bins recently in January 2012. This will now be a regular service but is likely to add to the costs of the service charge.

33. The Tribunal concluded that there was no evidence to suggest that the cleaning costs were excessive but were of the opinion that there might be an advantage in reviewing the contractual arrangements for future years to see if a more economical service can be provided.

Issue Retention of the Insurance Claim monies on account of Mr Damien's arrears of service charges

The Tribunal's decision

34. The Tribunal determines that the Respondent was entitled to request the loss adjusters Cunningham and Lindsay to send the insurance claim monies of over £7,400 to them direct and to apply that sum towards Mr Damien's arrears of service charge by way of set off.

Reasons for the Tribunal's decision

35. On 12 August 2010 water leakage occurred to Flats 24, 25 and 26 Hunt Close and insurance claims were made on behalf of the lessees. Under the landlord's insurance policy there was an excess of £500 in respect of each claim. On the settlement of a claim the landlords charged that sum to Mr. Damien when it should have been charged to the service charge account. When this error was discovered the sum of £500 was credited to him.

36. Mr Damien attempted to resolve the claim himself with the insurance company and obtained a quote for repairs from company called Spanners and Manners in the sum of £2200 but they eventually declined to undertake the work for that figure. Mr. Damien then obtained a further quotation from Skyline in the sum of £ 6200 plus VAT amounting to over £7400.

37. The insurers were reluctant to pay this amount and indicated that they could not pay the sum and offered a cash settlement based on the original quotation which was rejected. The insurers finally agreed to authorise the works by Skyline but the loss adjuster stated that they could not pay the VAT element without a VAT invoice.

38. In the end, in August 2011 the loss adjusters changed their minds and authorised payment of the full amount. However Ms Tracy Cook of Broadlands in the course of correspondence invited the insurer to pay the full amount to them and from the insurance monies they deducted the amount by which Mr Damien was alleged to be in arrears at the time. He was not originally informed that the payment had been made direct to Broadlands. Broadlands then deducted the sum of £2022.10 being the amount of the alleged arrears and sent Mr Damien a cheque for £5,417.90 being the balance.

39. This resulted in protracted correspondence between Mr Damien and Broadlands and in December 2011. there was then a further issue regarding the repair of the floor as the freeholder would not consent to the repair of the floor which it alleged had been changed without their consent in breach of the terms of the lease. Mr Damien finally agreed to the deduction but has raised it as an issue in these proceedings.

40. The Tribunal is satisfied that at the time when the claim was settled, Mr Damien was over £2000 in arrears with the service charge payments. He agreed that he had paid the sum of £600 having made a deduction on the basis that he considered this reflected the value of the services received and since other residents had informed him that the service charges were excessive and should be reduced. Mr Damien acknowledged that there was no reasonable basis for this figure of £600 and indeed the service charge payable on the property where he lived was £2640 per annum.

41. Ms Meacher contended. that the respondent was entitled to appropriate the money it received from the insurers in satisfaction of Mr Damien's arrears of service charge. She relied upon the decision of' The Court of Appeal in **Hanak –v- Green (1958) 2 QB 9** and of Forbes J in **British Anzani (Felixstowe) Limited –v- International Marine Management (UK) Limited 1978 1QB 137.**

42. It is clear from the authorities that set off is applicable to mutual debts as well as to equitable set offs provided that the respective claims are sufficiently connected. The Tribunal is satisfied that although the Respondent held the monies on account of the Applicant Mr Damien it was entitled to deduct the monies which it was owed by Mr Damien because the matters were sufficiently closed linked to justify a set off.

Issue Bin Hire

The Tribunal's decision

43. The Tribunal determines that the amount payable in respect of service charge for bin hire in 2010 and 2011 is reasonable.

Reasons for the Tribunal's decision

44. The Tribunal was informed that the freeholder charged the leaseholders the amount which it had to pay the local authority for bin hire. This figure was £1.69 per unit for 2010-2011, £1.79 from 1st April 2011 and for the current year the weekly cost is £1.99. The Tribunal is satisfied that the landlord is not making any profit from the provision of this service and the charges from the local authority appear reasonable. On hearing from the managing agent in this matter Mr Damien accepted the bin hire charges.

45. There is a separate issue relating to the cleaning of bins which is dealt with above.

Issue Accountancy fees

The Tribunal's decision

46. The Tribunal determines that the amount payable in respect of service charge for accountancy fees in the sum of £150 per block 2010 and 2011 is reasonable.

Reasons for the Tribunal's decision

47. The Tribunal was informed by Ms Julie Hawkes the accounts manager of Broadlands Estates that the accounts were prepared each year by an accountant who was not a chartered accountant and that the accounts were not audited. The criticism which was made was that the cost for the larger block Boundary House was the same as that for the smaller blocks and that

this was unfair as the larger block would involve a greater number of invoices and items such as the lift maintenance and the service gates.

48. Ms Hawkes indicated that the volume of work involved in Boundary House was approximately the same as for the other blocks and that the accountancy costs of £150 per block were relatively modest and there was no necessity to charge Boundary House a larger fee for the work involved. It would not be possible for the accounts of the other blocks to be prepared for less than £150 and that if the accounts were audited by a chartered accountant or formally audited the costs would be much greater.

49. This evidence corresponded with the Tribunal's general experiences of accountancy costs and in the circumstances the tribunal had no criticism of the cost of £150 per block

Issue Arrears Collection Fees

The Tribunal's decision

50. The Tribunal determines that the amount charged by way of arrears collection charges in 2010 and 2011 in the sum of £1934 is reasonable

Reasons for the Tribunal's decision

51. The Tribunal was informed that this charge related solely to the Second Applicant who was over £12,000 in arrears with his service charge payments and the arrears were cleared by the mortgagee. The charge amounted to legal and professional costs in the sum of £1,934 and the tribunal considered that this sum was reasonable. The figure of £956.38 in 2011 was not apportioned to the block as a service charge but was collected directly from the leaseholder in question.

Issue Management Fees

The Tribunal's decision

52. The Tribunal determines that the amount payable in respect of management fees in the sum of £250 per unit in 2009 2010 and 2011 is reasonable during the period of Broadlands management of the estate. The tribunal considers that for the earlier years 2007 and 2008 when the block was managed by Countrywide Estates the management fees should be capped at £100 per unit.

Reasons for the Tribunal's decision

53. There was considerable criticism of Countrywide Properties the previous managers of the block. Witnesses said they were unresponsive, rarely visited the estate and did not deal with any of the problems. Witnesses agreed that the situation had improved since Mr Hulse had taken over responsibility for managing the estate.

54. A particular complaint related to the security of the front doors which often arises through vandalism or tampering with the locks. Arrangements are in place to call out engineers when complaints are made although on occasions as Mr Orti explained there have been considerable delays making his block vulnerable. Mr Hulse explained that there is a system in place to immediately instruct the contractor and that they rely upon the contractor to attend and undertake necessary repairs. The problem is associated with magnetic door locks according to Mr Hulse and a temporary solution involving giving keys to leaseholders to override the fire emergency button which demagnetises the locks when pressed has occurred. Whilst the present system is not entirely satisfactory the answer appears to change and standardise the locking system which is likely to be expensive and will have to be paid for out of the service charge account.

55. It was also alleged that when leaseholders rang the office they were told that certain things could not be done and that the agents were acting for the freeholder. Mr Hulse stated that he was unaware that such remarks were made but if they were he would treat it as a serious disciplinary matter as he recognised that although the agents were employed by the freeholder they

The reserve fund is stated to be for major items which occur less frequently than once in each service charge year and which relate to such matters as the repair and decoration of the building.

60. The Tribunal does not consider that the sum of £3,000 per annum per block to be excessive having regard to the size of the estate and the costs likely to be incurred in its cyclical repair decoration and maintenance. Taking into account the number of flats in each block the figures do not form an excessive proportion of the service charge.

Issue The 2012 estimates

The Tribunal's decision

61. The Tribunal determines that the estimated amounts for the year 2012 in the sum of £2663 in respect of 26 Hunt Close and £1575in respect of Flat 98 are reasonable save for the deductions which the Tribunal has made in respect of previous years

Reasons for the Tribunal's decision

62. The estimates for the year 2012 are in similar form to those for previous years. There are no significant increases , so that save for the deductions which the tribunal has made for the earlier years the current estimates for future expenditure appear to be reasonable.

Application under s.20C and refund of fees

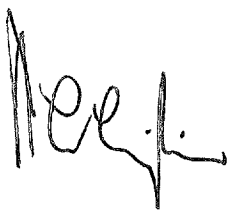
63. At the end of the hearing, the Applicant made an application under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for a refund of the fees that he had paid in respect of the application and hearing. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal does not order the Respondent to refund any fees paid by the Applicant.

64. In the application form, the Applicant applied for an order under section 20C of the 1985. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines that it is just and equitable in the circumstances for an order not to be made under section 20C of the 1985 Act.

65. The Tribunal makes no finding as to whether legal costs are recoverable under the terms of the lease but does not exercise its discretion under Section 20C on the grounds that first the landlord has been successful in resisting many of the claims made by the Applicants and in the case of Mr Damien he chose arbitrarily to reduce his payments of service charge without receiving any notice from the landlord or any other party that he should do so and further he commenced proceedings in the Tribunal after having made one request for the accounts to be provided. Whether he received a copy or not he was aware that accounts had been received by some leaseholders and in the view of the Tribunal commenced this action prematurely without attempting to discuss his grievances with Mr Hulse.

66. Mr Damien in his original correspondence did not specify the nature of his complaints regarding the services and in the schedule when he received the Respondent's answers to the specific complaints did not concede any of them although in fact a number of them had little or no substance and were conceded at the hearing.

Chairman: Peter Leighton



Date: 4th September 2012

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 a Leasehold valuation 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 a Leasehold valuation 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 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 leasehold valuation 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 a leasehold valuation tribunal;
  (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation 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.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

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 a leasehold valuation 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 a leasehold valuation 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).

Schedule 12, paragraph 10

(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where—
(a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
(b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
(a) £500, or
(b) such other amount as may be specified in procedure regulations.

(4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.