



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

Case Reference : **LON/00BK/LSC/2013/0856**

Property : **101 Randolph Avenue, Maida Vale,
London W9 1DL**

Applicant : **Mr P and Mrs V Crocker
(landlords)**

Representative : **Mr P Maxwell, counsel**

Respondent : **Mr P Stockwell and Ms H
McLennan (tenants/leaseholders)**

Representative : **In person**

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

Tribunal Members : **Ruth Wayte
Alan Manson
Ms S Wilby**

**Date and venue of
Hearing** : **8 May 2014
10 Alfred Place, London WC1E 7LR**

Date of Decision : **6 June 2014**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £ 4,383.48 is payable by the Respondent in respect of the major works in 2012.
- (2) The tribunal allows the Respondent's counterclaim to the extent that it extinguishes the Respondent's liability for the major works and any interest charged on that sum under the lease.
- (3) 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.
- (4) Since the tribunal has no jurisdiction over county court costs and fees and the remainder of the counterclaim, this matter should now be referred back to the Central London County Court.

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 service charges and (where applicable) administration charges payable by the Applicant in respect of the cost of major works in 2012.
2. The Respondent has a counterclaim in relation to the cost of works to a garden wall carried out in 2013 at the Applicant's request and also seeks an order for the limitation of the Applicant's costs in the proceedings. The value of the counterclaim exceeds the sum claimed by the Applicant for the major works.
3. Proceedings were originally issued in the Northampton County Court under claim no. 3YM19430. The claim was transferred to the Central London County Court and then in turn transferred to this tribunal, by order of District Judge Jackson on 15 October 2013.
4. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

5. The Applicant was represented by Mr P Maxwell of counsel at the hearing and two witnesses: Mr S Booth, a surveyor and Mr P Cove, of the managing agents Parkgate Aspen ("the Managing Agents"). The

Respondent leaseholders, Mr P Stockwell and Ms H McLennan appeared in person.

6. In addition to the hearing bundle, prior to the hearing both parties submitted a skeleton argument and the Respondent provided an updated schedule summarising his objections to the major works.

The background

7. The property which is the subject of this application is a two bedroom basement flat with a separate entrance and sole use of the garden in a four storey house which has been converted into three flats in total.
8. Although the Respondent requested an inspection the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
9. The Respondent 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 will be referred to below, where appropriate.

The issues

10. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The reasonableness of the cost of the major works in 2012;
 - (ii) Whether the Applicant has complied with the statutory consultation requirements under section 20 of 1985 Act;
 - (iii) Whether some or all of the Respondent's liability for the cost of the major works should be extinguished by reason of the counterclaim;
 - (iv) Whether an order under section 20C of the 1985 Act should be made.
11. 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. The tribunal provides only a summary of the evidence it heard, the majority being in any event contained in the hearing bundle.

The major works

12. Mr Booth, surveyor instructed by the Managing Agents, gave evidence to the tribunal that he was instructed by the Applicant to carry out a street inspection of the property in order to draw up a specification for external redecorations and repairs carried out under the Applicant's obligations under the lease to keep the property in tenable repair and condition.
13. Following his inspection Mr Booth drew up a schedule of works and obtained three quotes from builders he had previously worked with, including the successful firm, Complete Homes (Maintenance) Ltd ("CHM"). Mr Booth stated that CHM's quote was the cheapest and he had every confidence in their ability to carry out the works satisfactorily, having worked with them on other properties within the Managing Agents' portfolio.
14. The Respondent's objections to the works as itemised in the quote from CHM were set out in the updated schedule dated 5 May 2014. The Respondent had helpfully indicated three main types of objection: items which were priced excessively by CHM compared to the other two quotes; items where further evidence was required and items where a deduction was sought due to defective works or no works done. At the hearing the tribunal considered each item in the order of the schedule, whereas in this decision the items are considered in terms of the type of objection, for ease of reference.
15. The largest number of objections by the Respondent were in relation to the first type, namely items which were priced higher by CHM than the other two quotes. These included the alarm to the scaffold and many of the items under the heading of "prepare all previously painted surfaces for redecoration". Mr Booth gave evidence that his practice was to consider quotes in the round, rather than on an item by item basis, unless the item in question was particularly substantial. In this case he did not consider that any price differential required investigation, was satisfied that the specification was clear and that the price sought by CHM was reasonable and of course the lowest of the three quotes obtained.
16. The Respondent had asked for further evidence in relation to a number of items, namely the cost of the scaffolding, the use of Dulux paint, evidence of anti-fungal treatment to the painted surfaces and a fully costed schedule in relation to the works to the guttering, down pipe and underground drainage. In relation to the scaffolding, Mr Booth confirmed that as this was a quote, rather than an estimate, all items were at the contractor's risk. In these circumstances he had no interest in any confirmation of expense by the builder, as opposed to the reasonableness of the cost of the works as a whole. In relation to the paint and anti-fungal treatment, Mr Booth gave evidence that he had visited the site during the works and that, having checked with the contractor, was satisfied that both products were indeed used as

specified. In terms of the works to the guttering and drainage, Mr Booth confirmed that no additional written schedule was prepared as the contractor absorbed the cost within the original provisional amounts allowed for repairs to joinery and/or masonry.

17. The third type of objection as marked on the Respondent's schedule focused on two items where no work was done, namely a written sequencing schedule and a contingency sum and defective works in terms of the windows being painted shut by the contractors, requiring remedial works at the Respondent's expense. Mr Booth confirmed that despite there being an item in the schedule requiring written details of the sequencing of the works for liaising with the residents, he attended to the item by way of site meetings and therefore considered the contractor had provided the information required, albeit in a different form. The contingency of £500 was not expended and was in fact deducted from the invoice for the works. In relation to the windows, Mr Booth gave evidence that he had checked the windows before the works commenced and any windows that could be opened from the exterior were eased after painting to ensure they remained capable of being opened. On the other hand, if the windows could not be opened before the works, no additional works were carried out to ensure they could be opened afterwards. His evidence was that if the Respondent's windows could not be opened after the works, they could not be opened beforehand and therefore any defect in that regard was not to do with the work itself.
18. In addition to the three types of objection detailed above, the Respondent raised additional concerns, namely: items that were either duplicated or not attended to in the major works, despite having been flagged up to the managing agents; concerns about the tendering process and in particular a preference for CHM given their connection with the managing agents and general concerns about the quality of the works.
19. In terms of the works which were either duplicated or not attended to, the Respondent referred to his email to Mr P Cove, of the Managing Agents, dated 12 September 2011. This email set out his concerns in relation to the gutters and drains, damp under the front stairs, the bin stores and masonry. Mr Cove gave evidence that he had attended the property to discuss the email with the Respondent and that some works were done shortly after that meeting. Mr Booth said that he was unaware of the email when he prepared his specification for the works but had clear instructions from his client to focus on external decorations. The Respondent submitted that this evidence supported his claim that there was duplication in relation to some of the works, although on further discussion the main element appeared to concern repainting the bin stores. Works to the guttering and drains were carried out as part of the major works as detailed above.

20. The Respondent's concerns about the tendering process stemmed mainly from the fact that CHM and the Managing Agents both have a Director in common, namely Mr Solomon Unsdorfer. He stated that he felt this must have given CHM an advantage, particularly given the generalised nature of the specification of works prepared by Mr Booth. In terms of quality, he invited the tribunal to inspect the property to see for themselves but asserted the works were of general poor quality, with windows having been painted shut, moss growth to some of the surfaces and some chipping away of the painted surfaces. A number of photographs were provided but they were of poor quality, with only some cracking to the coping stone to the front stair balustrade and what appeared to be dirt on the stairs and area to the bin store clearly visible. The Respondent also pointed to a lack of a snagging list as evidence of poor quality.
21. Mr Booth had already explained the tendering process as set out above but denied there was any advantage to CHM due to any connection with the managing agents. In terms of quality, he stated that he inspected the property at regular intervals during the works and at no times had he been dissatisfied with the standard of work by CHM. The inspection regime had intensified towards the end of the works and he felt that direct contact with the site foreman was preferable to any written snagging list, particularly for a contract of this size.

The tribunal's decision

22. The tribunal allowed the cost of the works in full. Despite the connection between CHM and the managing agents, the tribunal accepted Mr Booth's evidence that a competitive tender process had been properly carried out and that CHM's quote was the lowest. Any differential in relation to particular items in the quote was minor and the tribunal agreed with Mr Booth that it would be inappropriate to reduce particular items solely on that basis as some variation on individual items was to be expected in a truly competitive process. The tribunal also accepted Mr Booth's evidence as to the use of the correct materials by the contractor and that given the nature of a quote, evidence of expenditure by the contractor was not required. In terms of work which the Respondent claimed was not carried out, the only item charged for was in relation to the sequencing schedule. The tribunal accepted Mr Booth's evidence that the work was carried out by discussions with Mr Booth in place of a written schedule and therefore it was appropriate to keep the cost in the final account.
23. In terms of the duplication alleged by the Respondent, as detailed above the tribunal found that this really only related to the painting of the bin stores, which is a trivial expense. In any event, the tribunal accepted the evidence of Mr Booth that even if some areas had been painted in the recent past, it made sense for any external decorations programme of this size to repaint them with the other works, to avoid

items going out of sync. The biggest item charged for in the major works was for the guttering and drainage, which was covered by the contingency for joinery and masonry. The tribunal found that this was not duplication and that the cost was reasonable, accepting Mr Booth's evidence that the contractor was in fact bargained down to the contingency sum, having originally sought an increase over the quote given that these works were not on the specification.

24. That left the Respondent's issue in relation to the quality. No evidence was provided of any additional cost of remedial works to the windows, which was the complaint which had featured most prominently in the schedule and the photographic evidence did not indicate any other major quality concerns. The tribunal therefore makes no reduction under this heading.

Consultation

25. It was accepted by both parties that the relevant consultation requirements are at Part 2 of Schedule 4 to the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the Regulations"). It was also common ground that both notices required by the Regulations were received by the Respondent and no observations were made at any stage in the consultation process. Mr Maxwell for the Applicant conceded that there was a discrepancy between the cost of the works in the consultation notice and the final cost, due to the addition by Mr Booth of a provisional sum of £6,500 for repairs to the rear garden wall to each quote. As the repairs were not carried out as part of the major works, the final cost was considerably lower. He submitted that this discrepancy was not a breach of the Regulations, or if it was he made an application for dispensation relying on the recent decision of the Supreme Court in *Daejan Investments Ltd v Benson and others* [2013] UKSC 14 and the lack of any prejudice to the Respondent.
26. The Respondent had 8 points about the consultation process listed in his skeleton argument, although at the hearing he stated that his main objection was that the tendering process had taken place before the first notice was sent, which he claimed was in breach of the sequence of events required by the Regulations. This had caused prejudice to the Respondent due to the failure to take the additional works he requested in 2011 into account. He also repeated his concerns about the relationship between CHM and the managing agents and made the point that none of the quotes were dated or signed.
27. Mr Cove of the managing agent gave evidence that he hadn't felt it necessary to include any of the items raised by the Respondent in 2011 in the major works contract. The Applicant had asked him to include a provisional sum for the wall after the quotes had come in but subsequently decided not to carry out that work. In terms of the

sequence of events, Mr Booth confirmed that whereas the quotes had come in before the notices, the contract hadn't been entered into until shortly before the works began, in or about August 2012.

The tribunal's decision

28. The tribunal held that the Applicant had complied with the Regulations in terms of the consultation process. Although the inclusion of a large provisional sum after the tendering process had concluded was irregular, it was applied to all three quotes and there is nothing in the Regulations which requires a precise match between the estimated cost of works at the date of the notice and the final cost, particularly where the final cost is a lower sum. Likewise, the actual sequence in terms of tendering is not laid down in the Regulations, provided the landlord has regard to the tenant's observations. This could of course mean that the landlord would have to undertake the tendering process again but in this case, no observations were made. The tribunal accepts Mr Booth's evidence that the actual contract was entered into after the consultation process had concluded and notes that no additional notice was due of that fact, as CHM's quote was the lowest.
29. In the event that the inclusion of the provisional sum for the garden wall was a breach of the Regulations, the tribunal grants dispensation, following *Daejan* above. The Respondent has not demonstrated any prejudice as a result of the addition of £6,500 and has not claimed any, which is not surprising given the fact that the works carried out in August 2012 did not include this item.

The counterclaim

30. This issue relates to the cost of works to the rear garden wall, amounting to £9,132. The work was carried out and paid for by the Respondent, at the Applicant's request, without prejudice to the Respondent's claim that the wall was the Applicant's responsibility and therefore the cost of the works should fall within the service charge. In those circumstances, the counterclaim would exceed the cost of the major works, although the parties are aware that the tribunal's jurisdiction to apply a set off is limited by the amount of the claim in respect of the major works (*Continental Property Ventures Inc v White* [2006]1 EGLR 85).
31. Both parties agreed that no express provision was made in the lease for the garden, other than its identification on the plan. The tribunal identified three relevant definitions: namely the Building, demised premises and Reserved Property as follows:

"The Lessors are the Registered Proprietors at Her Majesty's Land Registry with Title Absolute under Title Number NGL589917 of (inter

alia) the Building known as 101 Randolph Avenue London W9 (hereinafter called "the Building")

All that flat (hereinafter called "the demised premises") as the same is delineated and edged red on the plan annexed hereto situated in the Building including the non-structural finishings floorboards screeds plaster and covering to the ceiling floors and walls thereof the internal non-structural walls dividing the rooms comprising the demised premises and all doors door frames windows window frames cistern tanks drains pipes wires ducts and conduits used or intended to be used solely for the purposes of the demised premises but excluding the Reserved Property as hereinafter defined...

The "Reserved Property" shall mean:

- (i) *the approaches and all other parts of the Building which are or may be used in common by or for the benefit of the tenants and occupiers of all the flats in the Building and the house equipment or apparatus used for providing services at all of the said flats or which are used in connection with the provision of services for the benefit of the tenants and occupiers of all the said flats and*
- (ii) *all those structural walls roofs foundations and balconies and front basement vaults of the Building (including the external painted or varnished surfaces of the windows) and all sewers drains pipes wires vents ducts and conduits (excluding those parts which are included in any demise of an individual flat).*

It was agreed and accepted by the parties that if the garden wall was part of the demised premises, the Respondent was liable for the cost of the repairs but if the wall fell within the definition of Reserved Property, the Applicant was liable and could recover the cost of the work through the service charge. Both parties agreed that the wall fell within the definition of "Building".

32. Mr Maxwell submitted that the correct approach to construction of the lease was to give the wording its ordinary meaning and consider it in context. He submitted that the line of authorities relied on by the Respondent seeking to rely on the *contra proferentum* rule i.e. that the lease should be interpreted in favour of the lessee, only applied to clauses which gave rise to an obligation for a tenant to pay money to the landlord, as opposed to maintaining something which the tenant alone enjoys. Applying the rules of construction he submitted that the reference to "*internal non-structural walls dividing the rooms comprising the demised premises*" in that definition could be applied to the garden wall in the context of the Respondent's lease. By way of contrast, since the garden was for the sole use of the Respondent, the first part of the definition of Reserved Property was not satisfied and

since the wall could not properly be described as “*structural*”, neither was the second.

33. The tribunal heard conflicting evidence about the nature of the garden wall from Mr Booth for the Applicant on the one hand and the Respondent on the other. In particular, Mr Booth claimed the wall was a decorative feature, part of a terrace in the rear garden, with the true boundary a few feet behind. On the other hand, Ms McLennan of the Respondent gave evidence that the wall was the original boundary, explaining that the gardens behind the property were at a higher level. The height of the wall was also affected by the presence of an air raid shelter which had been grassed over, producing the terrace effect as described by Mr Booth. The tribunal was able to view a colour photograph on a mobile device produced by Mr Booth which clearly showed the wall and fence behind, as well as the slope to the garden produced by the air raid shelter.
34. The Respondent submitted that the definition of “*demised premises*” specifically excluded the garden wall, mainly by reference to the fact that the definition referred to “*in*” the Building and the edging on the plan was within the boundary lines. He also submitted that the wall was structural and therefore within the definition of “*Reserved Property*”.
35. There had clearly been some confusion between the parties as to liability, as indicated by the inclusion of a provisional sum for works to the wall in the consultation notice for the major works and extensive correspondence on the issue, including in relation to the nature of works required. Those works were described in a quote from TPW Building Services Ltd dated 19 February 2013 and included the removal of “*earth and old concrete behind retaining wall...new concrete foundations...*” and “*...supply and lay new ” Tarmac Topcrete Hollow concrete blocks 7.3N as retaining wall and infill with compacted concrete...*”. This new specification was produced following requests from Mr Booth who also said in evidence that the final cost of £9,132 was comparable to the provisional sum of £6,500 he had included in the consultation notice.

The tribunal’s decision

36. Giving effect to the ordinary sense of the words in the context of the lease, and on the evidence before it as to the nature of the wall, the tribunal agreed with the Respondent that the rear garden wall falls within the Applicant’s repairing obligations. The wall in question did not fall within the definition of “*demised premises*” in the lease. The tribunal rejected Mr Maxwell’s suggestion that the wall could properly be described as an “*internal non-structural wall(s) dividing the rooms comprising the demised premises*” as that clearly strained the normal meaning of the words, even in the context of a garden flat. In any event,

given that this would impose a liability on the tenant, the tribunal considered that any ambiguity in this phrase should be settled in favour of the Respondent. The tribunal further considered that the wall was structural: it accepted the Respondent's evidence that it formed part of the boundary, noted the invoice from TPW Building Services which described the wall as a "retaining wall" and took into account the stringent specification of works which was drawn up following correspondence with Mr Booth. As the wall is not within the definition of *demised premises* and is structural, it falls within the second paragraph of the definition of *Reserved Property* and therefore the Respondent's counterclaim succeeds.

37. Following *Continental Property Ventures Inc v White* above the amount of the counterclaim in this jurisdiction is limited by the amount of the service charge and interest under the lease claimed by the Applicant. As the cost of the works to the wall exceeds this amount, even taking into account the Respondent's liability as one of the three leaseholders, the remainder of the counterclaim is referred back to the county court.

Application under s.20C

38. In the statement of case the Respondent 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, particularly in relation to the counterclaim which extinguishes the Applicant's claim in its entirety, 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 Applicant may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

The next steps

39. This matter should now be returned to the Central London County Court.

Name: Ruth Wayte

Date: 6 June 2014

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).