



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

**Case reference** : **LON/00AL/LSC/2015/0007**

**Property** : **9 Cantwell Road, SE18 3LN**

**Applicant** : **Mr T Humphreys**

**Representative** : **In person**

**Respondent** : **Mr K Sehra**

**Representative** : **Ms Turnbull of counsel**

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

**Tribunal members** : **Tribunal Judge R Percival  
Mr M Cairns MCIEH**

**Date and venue of  
hearing** : **10 Alfred Place, London WC1E 7LR  
20 April 2015**

**Date of decision** : **27 April 2015**

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**DECISION**

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## **Decisions of the tribunal**

- (1) The Tribunal strikes the application out on the basis that it has no jurisdiction in relation to the proceedings (Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, rule 9(2)(a))
- (2) The Tribunal finds that the Applicant has not acted unreasonably in bringing, defending or conducting the proceedings, and accordingly has no jurisdiction to award costs under Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, rule 13(1)(b)).

## **The application**

1. The Applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount of service charges payable by the Applicant in 2014.
2. The relevant legal provisions are set out in the Appendix to this decision.

## **The background**

3. Number 9 Cantwell Road is a Victorian house divided into two flats. The Respondent is the leaseholder of the ground floor flat. The Applicant has held the lease on the upper flat since 2005. In 2013, he acquired the freehold of both flats.

## **The issues**

4. A directions hearing was held 27 January 2015, and provision made for the exchange of case statements and the preparation of a bundle.
5. At the commencement of the hearing, it was agreed that the issues were
  - (i) Whether the application should be struck out the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 (“the Rules”), rule 9(2)(a), for want of jurisdiction;
  - (ii) Whether the application should be struck out the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, rule 9(3)(d), the Applicant’s conduct of the proceedings being an abuse of the process of the Tribunal;
  - (iii) Whether the Applicant had complied with section 20 of the 1985 Act in respect of major works to the roof of the property undertaken during 2014;

- (iv) Whether the Respondent was liable to the Applicant for the costs of window cleaning the Respondent's flat;
  - (v) Whether the Respondent was liable to pay "administration charges", by which the Applicant meant costs incurred by him in connection with disputes with the Respondent; and
  - (vi) Whether the Respondent was liable to pay interest on debts said to be owed to the Applicant
6. The Respondent's case statement included an application for an order under section 20C of the Act that the costs of the proceedings should not be recovered through the service charge, which in the event was not pursued. In addition, the Respondent made an application for legal costs under rule 13 of the Rules at the conclusion of the hearing.

### **Striking out**

7. The Tribunal considered the striking out applications as a preliminary issue. As a consequence of our ruling striking the application out, we did not consider the other substantive issues.
8. The jurisdiction issue arose as a consequence of the Respondent's submission that the lease did not make any provision for a service charge.
9. The relevant, or potentially relevant, provisions of the lease as are follows:
- (i) The demised premise is defined as extending to half the depth of the joists supporting the ceiling and floors, and the internal and external walls between those two, including the window frames in the external walls and all conduits.
  - (ii) By clause 2(iii), the Lessee covenants to "at all times keep the exterior and interior of the flat and ever part thereof in tenantable repair and condition", subject to a proviso requiring notice to be given to the Lessee of the other flat before works to ceiling joists or beams are carried out.
  - (iii) Clause 2(vi) requires the Lessee "to keep in repair and replace when necessary all cisterns pipes wires ducts and other things installed for the purpose of supplying water ... gas and electricity or for the purpose of draining away water soil ...", for which purpose access is granted to "pipes wires ducts and other things" which are in or under the upper flat.

- (iv) Clause 2(ix) requires the Lessee to paint “all external wood and iron and other parts usually painted” every three years, and to paint the interior of the flat and “grain varnish and paint such parts of the interior of the flats or exterior of the Building as are usually so treated” every seven years.
- (v) The Lessee covenants by Clause 2(x) to maintain and clean the flat, including to “... keep all conduits now laid or hereafter to be laid for the exclusive serving of the flat in good repair and condition (other than those parts for which the Lessor shall be responsible)”.
- (vi) Clause 2(xviii) requires the Lessee to “permit the Lessor and its surveyors and agents with or without workmen and others at all reasonable times after giving three days notice (except in the case of emergency) to enter in and upon the flat and/or any part thereof and examine the state of repair and condition thereof and will repair and make good all defects or wants of repair and decoration for which the Lessee may be liable hereunder and of which notice in writing shall be given by the Lessor to the Lessee within three calendar months ... after the giving of notice and if the Lessee shall at any time make default in the performance of any of the covenants hereinbefore contained for or relating to the repair and decoration of the flat it shall be lawful for the Lessor ... to enter upon the flat repair or redecorate the same as the expense of the Lessee ... ”
- (vii) Clause 2(xix) makes equivalent provision for a Lessee to have access to the flat for “the purpose of altering cleansing emptying and renewing or maintaining any conduit”.
- (viii) Clause 3 of the lease reads as follows: “The expenses of maintaining repairing redecorating and renewing the main structure and in particular the roof party walls entrance hall chimney stacks gutters and rainwater pipes and the foundations of the properties numbers 9a and 9b Cantwell Road aforesaid shall be paid for jointly between the Lessees of the upper flat and the flat in equal shares of such proportions in the case of dispute to be conclusively determined by the Surveyor for the time being of the Lessor.” This is the only appearance of the terms “9a and 9b Cantwell Road” in the lease. It was not disputed that these refer to the upper and lower flats.
- (ix) Clause 4 contains the Lessor’s covenants. These are limited to quiet enjoyment: that the “lease of the upper flat will be substantially in the form of this lease” (clause 4(ii)); and that “at the request and expense of the Lessee (for which reasonable security shall be given) to take such steps as shall reasonably be

necessary to enforce the covenants similar to those contained herein ..." (clause 4(iii)).

- (x) Clause 5 contains a provision requiring the Lessee to refer "any dispute" with another Lessee to the Lessor's Surveyor for determination, including a dispute relating to "any repairs or contributions in respect of the expenses of such repairs as herein provided".
10. For the Respondent, Ms Turnbull submitted that there was no basis whatsoever in the lease for a claim for recovery of the expenditure set out in paragraph 5(iv) to (vi). As for the expenditure on the roof (paragraph 5(iii)), while clause 3 of the lease provided for expenditure on the repair of the roof to be shared between the lessees, it did not impose any obligation on the Lessor, and a service charge could not be derived from it. Her position was, therefore, that the Tribunal had no jurisdiction to consider the application.
11. Mr Humphreys initially suggested that clause 2(xi), a clause requiring the Lessee to reimburse the Lessor for expenditure incurred "in contemplation of any proceedings in respect of the flat under section 146 or 147 of the Law of Property Act 1925" in the normal terms covered all expenditure by the Lessor, although he did not press the point. It is worth noting, as the Respondent's solicitors pointed out in correspondence, that the lease does not in fact contain an orthodox re-entry clause in any event, although there are various apparent cross-references to a re-entry clause elsewhere in the lease.
12. Mr Humphreys then responded that he had sought to treat the recovery of his expenditure on the roof repair as a matter between the lessees, and had only attempted to put it in the form of a service charge demand as a response to correspondence from the Respondent's solicitors. He also said that he had been advised by an advice agency, which we take to be LEASE, the Leasehold Advisory Service, provided by the Department for Communities and Local Government, to proceed as he had. Unlike the solicitors, we observe that we assume that LEASE, with whom Mr Humphreys dealt with on the telephone, had not seen a copy of the lease.
13. We asked Ms Turnbull if we should not imply an obligation on the landlord to repair and maintain the roof, and a corresponding term requiring the lessees to reimburse the Lessor (that is, to qualify "expenses" in clause 3 with "Lessor's"). She responded that such an application was clearly not necessary as a matter of business efficacy. Clause 3 allowed for repairs to be done on (among other things) the roof, and for the lessees to contribute thereto. A Lessee could look to the County Court to enforce the clause.

14. Clause 2(xvii) was, she said, a backstop to allow the Lessor to undertake necessary work on the failure of the Lessee to do so. It could not be read as establishing any obligation on the Lessor.
15. We accept Ms Turnbull submission.
16. A service charge is “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.” Relevant costs are “the costs or estimated costs incurred or to be incurred by or on behalf of the landlord ... in connection with the matters for which the service charge is payable.” (Landlord and Tenant Act 1985, section 18). It is fundamental to a service charge that it relates to costs incurred by a landlord.
17. The lease imposes no obligations on the Lessor to repair or maintain any part of the property, or indeed to incur expenditure in any other way (apart from in connection with consents, as noted below). There is, it is true, a reference to the Lessor being responsible for certain conduits in clause 2(x), but we cannot discern any obligation on the landlord on the basis of that.
18. If one looks at the lease as a whole, it is clear that the intent was to withdraw the Lessor from as much active involvement in the maintenance or management of the property as possible. Even the insurance clause is a covenant on the Lessee to maintain insurance against fire “in the joint names of the Lessor and the Lessee”. The overall strategy is thus to impose wider obligations than is normal on the lessees, subject only to the requirement on the Lessor to enforce the other lease in like terms, and the default power in clause 2(xvii).
19. Certain provisions require the consent of the Lessor, and in respect of these there is provision for an administration charge to be paid by the Lessee (clause 2(xvii)).
20. The lease is unusual in its terms, and not well-drafted. However, it falls to be read as a whole and in context (*Rapid Results College v Angell* (1986) 277 EG 856). So taken, it is clear that, not only does the lease not provide for a service charge, but also that that was its clear intention. To introduce obligations on the Lessee to repair and an obligation on the Lessee to contribute to the expense of meeting those obligations by means of a service charge would be radically to re-write the lease. It is beyond what could possibly be appropriate for this Tribunal.
21. Accordingly, we are obliged to strike out the application under rule 9(2)(a) of the Rules.

22. Ms Turnbull also submitted that we should strike out the application on the basis that it was an abuse of the process of the tribunal (rule 9(2)(d)). The submission was based on the Applicant's more general conduct, in particular in purporting to serve notices under Law of Property Act 1925, section 146 on several occasions, including after the Respondent's solicitor's had stated that there was no re-entry clause in the lease. She also relied on the tone of some of the Applicant's communications with the Respondent. We rejected this submission, on the basis that the Applicant's extraneous actions and his tone were insufficient to render his genuine pursuit of the application abusive.

### Costs

23. We announced our decision to strike out the application, following which the Respondent applied for costs under rule 13(1)(b) of the Rules. We were provided with a statement of costs in the sum of £5,532.
24. Rule 13 gives the Tribunal a discretion to award costs *only* if "a person has acted unreasonably in bringing, defending or conduction proceedings in ... a leasehold case". A leasehold case includes any relating to a jurisdiction under the Landlord and Tenant Act 1985 (rule 1(3), Commonhold and Leasehold Reform Act 2002, section 176A(2)(c).
25. Ms Turnbull's first submission was that the Applicant, while appearing in person, should not be considered to be wholly legally unrepresented. As part of his substantive case, the Applicant had argued that he could charge the Respondent certain "expenses and administrative costs" incurred by him. Ms Turnbull relied on the fact that the itemised list of these (at page 20 of the bundle) included the cost of two hours of the Applicant's time "liaising with solicitor" and five hours "liaising with the Lease Advisory Service".
26. Secondly, she relied on two offers of settlement. The first was an open offer made in a letter dated 9 October 2014 to settle the dispute for a payment of £2,000 by the Respondent. This was stated to be calculated as half of what the Respondent contended should have been the cost of the roof repairs, minus the Respondents legal costs at that time.
27. The second was a "without prejudice" offer contained in a letter dated 12 January 2015. In this letter, the Respondent offered "to pay you the sum of £4,000 in full and final settlement of the Tribunal proceedings ... and all and any liability for the roof works and/or any other service charge sums claimed by you from our client whether properly demanded and owed or not ...".
28. In the letter, the Respondent's solicitors explained the meaning of "without prejudice save as to costs". The letter also said "the Tribunal

will not usually award costs and if it does it will only award £500” and noted that the Respondent’s costs would exceed that sum.

29. The sum of £4,000 represented the whole of the claim that, by that point, the Applicant was pursuing in respect of the roof works.
30. Ms Turnbull submitted that, in failing to engage in any way with proposals to settle, the Applicant had acted unreasonably for the purposes of rule 13 in the conduct, if not the bringing, of proceedings before the Tribunal.
31. Asked by the Tribunal which of the costs claimed she argued were attributable to the Applicant’s alleged unreasonable conduct, she said all costs incurred after the “without prejudice” letter of 12 January 2015.
32. In response, the Applicant said that he thought the first, open, offer completely unreasonable, in that it proceeded on the basis of an estimate procured by the Respondent for the roof works, not the actual amount paid by the Applicant; and it required him to pay the Respondents costs.
33. As to the second, “without prejudice” offer, the Applicant said that he did not accept it because of the breadth of the matters that would have been settled. At first, he appeared to be maintaining that he thought that it would prevent him from taking any action in the future to enforce covenants in the Respondent’s lease. As a result of questioning by the Tribunal, the submission resolved itself into two assertions. First, it would have prevented him pursuing claims in respect of which he said there were existing on-going claims in addition to the roof works. Secondly, he looked to the Tribunal decisions on the substantive claims to clarify the nature of the Respondent’s obligations with a view to making it more likely that the Respondent would adhere to them in the future.
34. In addition, the Applicant said he entertained doubts as to whether the Respondent would actually pay the settlement sum, whereas he had more confidence that he would pay on the basis of findings by the Tribunal.
35. As to legal representation, the Applicant said that the “expenses and administrative costs” claim for liaising with a solicitor represented, in fact, informal conversations with a friend of his who was a solicitor. The claim for liaising with the “Lease Advisory Service” (again, it appears, LEASE) was in respect of a number of telephone calls to their call centre. The implication was that he was not substantively legally advised in the conduct of the proceedings.



36. The first question for the Tribunal is whether the threshold criterion of unreasonable behaviour has been satisfied.
37. A person acts “unreasonably” in this context not merely if their conduct is inefficient or thoughtless, but, in the words of Sir Thomas Bingham MR, as he then was, in *Ridehalgh v Horsfield* [1994] 3 All ER 848, if it is “conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case.” Similarly, in *Halliard Property Company Ltd v Belmonth Hall and Elm Court RTM Company Ltd*, the Lands Tribunal considered Commonhold and Leasehold Reform Act 2002, schedule 12, paragraph 10, where a similar costs jurisdiction is conditional on a party having “acted frivolously, vexatiously, abusively, disruptively, or otherwise unreasonably”. The Tribunal found that the first five adverbs describe modes of being “unreasonable”; and “otherwise unreasonably” was to be construed as describing conduct of the same kind.
38. For behaviour to be “unreasonable” in the relevant sense, therefore, it must be both out of the ordinary, and ill-motivated; motivated, that is, by something other than the proper initiation or conduct of proceedings. So understood, the question must be “was it reasonable *for this party* to behave as he or she did in the bringing, defending or conduction proceedings?” not “was the behaviour objectively reasonable?”
39. Accordingly, it is of importance whether the party against whom costs are sought is legally represented or not. What is unreasonable conduct for a party who is legally represented will not necessarily be unreasonable conduct for a litigant in person.
40. In this case, the Respondent argues that the Applicant had been guided by lawyers, or legal advice, on the basis of the claim for liaison in the “expenses and administrative costs” claim. The Applicant contests this. We conclude that the Applicant was not, in any substantial, or at least useful, way guided by legal representatives. Every step he has taken, since the lodging of his application to the Tribunal, has been characteristic of the conduct of a litigant in person, including the (voluminous) correspondence conducted by him with the Respondent and the Respondent’s solicitors and reproduced in the bundle before us. The only step he says that he took as a result of the advice – from LEASE, it appears – was to make his application to the Tribunal. In the event, as is clear from our decision on striking out, that was unfortunate. The Respondent’s “expenses and administrative costs” claim in this respect was, to put it no higher, highly speculative. Even if there had been service charge provision in the lease, and even if it allowed for the recovery of such expenses in principle, it is inconceivable that the Tribunal would have allowed these particular claims.

41. Ms Turnbull relies mainly on the failure of the Respondent to avail himself of the “without prejudice” offer, or at least negotiate on the basis of it. Clearly it would have been wise for the Applicant to have accepted the offer. Had a legally represented party failed to at least negotiate on the basis of the offer, it is highly likely that the Tribunal would find that they had acted unreasonably.
42. However, and not without difficulty, the Tribunal has concluded that, as an unrepresented party, the Applicant’s conduct was not unreasonable in the requisite sense of ill-motivated.
43. He thought he had a strong case. There were other claims in addition to the roof works, although both their value and statement were somewhat unclear at that stage. Even if, following subsequent distillation at the directions hearing, and indeed by us at the commencement of the hearing, they were of more moderate significance than the roof works, they clearly influenced the Applicant’s decision making at the time of the offer.
44. Moreover, the offer letter itself presented the Applicant’s position in a misleading way, and one which would make it less likely that he would accept, or meaningfully respond, to the offer. The letter erroneously stated that the Tribunal’s power to award costs was still limited to £500, which is not the case under the 2013 Rules. Obviously, the Applicant could not rely on “legal advice” from the Respondent’s solicitors in any formal sense. But the enquiry is into the facts relevant to his decision making process in declining the offer, and to that such a statement is clearly relevant. The Respondent said that he did take this statement into account, and although Ms Turnbull noted that he only made the point in response to a question from the Tribunal, we consider it likely to have influenced his understanding of what was at hazard if he failed to accept, or negotiate on, the offer. The Tribunal reminds itself that this is a factor going to whether the behaviour of the Applicant was reasonable, and thus whether the Tribunal has the discretion to award costs, not to the exercise of that discretion.
45. We also conclude that the Applicant was genuine in believing that the Tribunal would be a means to discipline the Respondent to comply with the obligations in his lease in the future. The background to the case was a break-down in personal relations between the Applicant and the Respondent. In effect, on-going bad relations as neighbours –for which the provisions of the lease were at least in part responsible – had been transformed into bad landlord/tenant relations by the Applicant’s purchase of the freehold. We have not been called on and do not seek to adjudicate on this long history of bad relations in any way. But it is clear enough that the application was in part motivated by the Applicant’s desire for a definitive ruling on the parties’ obligations under the lease. This is evidenced by the Applicant’s original application form, which asked (in effect) for various declarations as to

the Respondent's obligations. Those particular points were misconceived in terms of the jurisdiction of this Tribunal, but are indicative of the Respondent's motivation. And the definitive clarification of legal responsibilities is not an improper motive for proceedings before the Tribunal. This purpose would not have been served by settlement.

46. Finally, it is at least of note that at no time before the hearing did the Respondent advance the argument that the Tribunal had no jurisdiction by reason of the absence of provision for a service charge. The Respondent's statement of case refers to the prospect of an application to strike out, but on the narrow basis that the Applicant's statement of case did not adhere to the directions (by stating the provisions of the lease relied on), and referred to rule 9(3), not rule 9(2). In correspondence, the Respondent's solicitors assumed that there was a service charge, and, for instance, referred to the lack of proper service charge demands. The Applicant said, as we have recorded, that he dealt with the sharing of the expenditure on the roof works as a service charge demand rather than on a Lessee to Lessee basis because of that. It was only when Ms Turnbull made her oral submissions that the Respondent adverted to the decisive issue at all. The issue was apparent to the Tribunal on reading the lease.
  
47. These considerations may be relevant to the reasonableness or otherwise of the Applicant's decision making, as a litigant in person, before the hearing. If we had found that the Applicant had behaved unreasonably, they would have been relevant not only to the amount of any award of costs, but also to whether the Tribunal would have exercised its discretion to make an award.

**Name:** Tribunal Judge Richard Percival    **Date:** 27 April 2015

## **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 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).