

11583



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

**Case reference** : **LON/00BD/LSC/2015/0433**

**Property** : **Flat 17, Gilbert House, 44 Trinity Road, Barnes, London SE13 8EG**

**Applicant** : **(1) Harold Wallace Stanley Allen  
(2) Janette Allen**

**Representative** : **Andrew Davies, counsel**

**Respondent** : **(1) Block E Gilbert House Management Company (2) Barnes Amenity Area No. 2 Management Company Limited (3) Barnes Waterside Estate Management Company Limited**

**Representative** : **G.C Colclough (Director of Respondents (1) and (2))**

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

**Tribunal members** : **Judge Hargreaves  
Trevor Johnson FRICS**

**Date and venue of hearing** : **4<sup>th</sup> March 2016  
10 Alfred Place, London WC1E 7LR**

**Date of decision** : **1<sup>st</sup> April 2016**

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**DECISION**

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## **Decisions of the Tribunal**

- (1) The Tribunal determines that the sum of £2,615 is payable by the Applicant in respect of the interim service charges for the year 2014/15 to the First Respondent, £504 is payable to the Second Respondent, and £238.36 is payable to the Third Respondent for the reasons set out below.
- (2) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.
- (3) Any application for costs should be made in writing and sent to the Tribunal and the other party by 5pm 19<sup>th</sup> April 2016, together with a schedule in a format similar to Form N260. The other party should file and serve submissions in reply by 5pm 27<sup>th</sup> April and the question of costs, if any, will be determined after that.

## **The application**

1. By an application made on 1<sup>st</sup> October 2015 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 Applicant in respect of the service charge year 25<sup>th</sup> December 2014 – 24<sup>th</sup> December 2015. The charges were levied by three different companies but are all interim service charges. The Applicants have paid various amounts which they have calculated as reasonable and the difference between the amounts they have paid and what has been demanded is relatively small, ie £1046, £116.06 and £45.68.
2. The relevant legal provisions are set out in the Appendix to this decision.

## **The hearing**

3. The Applicants were represented by Andrew Davies (counsel) at the hearing and the Respondents were represented by Mr Colclough, a director of the first two Respondents. Oral evidence was given by Mr Allen for the Applicants, and Graeme Fisher, a managing agent employed by Willmotts, for the three Respondents, who also made submissions. There are two bundles, one prepared by the Applicants, and one prepared by the Respondents. References to page number will be prefaced by “A” or “B” as appropriate (not to be confused with references to 1R, 2R, 3R being references to the Respondents).

## The background

4. The property which is the subject of this application is a flat in Gilbert House, part of what the parties describe as an upmarket development near the River Thames in Barnes, built and developed by Berkeley Homes (Thames Valley) Limited in the mid 90's, comprising several blocks of flats. There are useful photographs and plans at R204-207. See also the description in a decision of the Tribunal given in August 2009 which is at A82. The flats are set in extensive gardens.
5. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
6. The Applicants hold a long lease of the property which requires the Respondents to provide services and the Applicants to contribute towards their costs by way of a variable service charge. The lease, dated 18<sup>th</sup> July 1997, is at A13. There are numerous definitions at A14-15. "*The Building*" is the block of flats in which "*the Flat*" is situated. "*The Estate Maintained Property*" is described in the First Schedule (including all communal areas and grounds) and is the responsibility of the Estate Management Company (the Third Respondent). "*The Building Maintained Property*" is described in the Second Schedule (the structural parts of the *Building* as defined) and the responsibility of the First Respondent. "*The Amenity Maintained Property*" is the "*curtilage of Blocks E F G and H*" as outlined on Plan 2 and the responsibility of the Second Respondent (referred to in the rest of the decision as 1R, 2R, 3R as appropriate).
7. Further definitions are at A20-21 (clauses 34-45 of the Particulars). These include the "*Lessee's share of the building maintenance fund*", currently set at 10.46%, "*the Lessee's share of the amenity maintenance fund*" currently 1/72, the "*interim estate maintenance charge*", the "*interim building maintenance charge*" and "*the interim amenity maintenance charge*" which is 1/321. The "*Rent Day*" is 25<sup>th</sup> March. The "*management company*" and "*management fund*" mean all the companies and all the funds where the context permits.
8. The ground rent and insurance rent are recoverable as rent (clause 2(1)). By clause 4 the obligations of the Estate Management Company (3R) are set out in the Fifth Schedule (A54). By clause 4.1 the obligations of the Building Management Company (1R) are set out in the Sixth Schedule (A58), and similarly the obligations of the Amenity Management Company (2R) are set out in the Seventh Schedule (clause 4.2) (A63). The Applicants' obligations to pay each of them their share in respect of the maintenance year are set out in clause 7. In brief the scheme is to pay in advance on 24<sup>th</sup> June and 25<sup>th</sup> December the equivalent of one half in advance of the interim charges as defined (see paragraph 7 above). The accounts are then audited and a balancing

charge certified as due. Any excess is repaid at the discretion of the relevant management company or retained on account of future payments due. There is no dispute as to the mechanics of the requests for payments on account, just as to the amounts demanded.

9. Each company has, in addition, the power to set aside an “*appropriate amount*” as a reserve fund. See Fifth Schedule paragraph 8(a)(b) at A57 for R3, Sixth Schedule paragraph 12(a)(b) at A61 for 1R and the Seventh Schedule paragraph 9(a)(b) at A65 for 2R.

### **The issues**

10. The issues are briefly defined in paragraph 2 of the Applicants’ statement of case at A73 and then expanded with reference to each Respondent company. The Applicants did not file and serve any evidence apart from that contained in the statement of case, which contains allegations but little in the way of particulars. The Respondent companies have filed a joint statement of case at R2 followed by individual statements at R6, R11 and R16. They were prepared in some detail by Graeme Fisher of Willmotts, on 9<sup>th</sup> December 2015, who both assisted in presenting the case for the Respondents and gave evidence. He was assisted from time to time by Mr Colclough, a director of 1R, who also provided a witness statement, along with others (R174-182). These were on the whole not useful, save for the statement (at R178) of Robert McMillan ICIOB, who should have given oral evidence to assist the Tribunal, Mr Fisher not realising that was required.
11. The best approach is to deal with the disputes involving each Respondent.

### **First Respondent: Block E Gilbert House Management Company Ltd: reserve fund dispute**

12. The Applicants had raised the question of the reasonableness of the reserve fund in 2009 proceedings before the Tribunal. At A85 in those proceedings the Tribunal determined that the sum of £10,000 set by Berkeley Homes for the reserve fund was reasonable. The Applicants do not have an issue with the increase from December 2011 to £15,000 but wish the Tribunal to determine the reasonableness of the 2014/2015 figure increased to £25,000. They contend that a reasonable figure is £15,000: see paragraphs 8-14 of the Applicants’ statement of case at A75-77.
13. The starting point is paragraph 12(a) of the Sixth Schedule to the lease, which provides that 1R “*shall be entitled to set aside each year an appropriate amount ... as a reserve fund for or towards those matters referred to in this Schedule which are likely to give rise to expenditure after such year or other period being matters which are likely to arise*

*only once during the then unexpired term of this Lease or at intervals of more than one year .... [followed by examples] .... (the said amount to be computed by the Building Management Company in such manner as to ensure as far as is reasonably foreseeable that the building maintenance charges shall not unduly fluctuate from year to year)".* Paragraph 12(b) refers to the application of the reserve fund.

14. The chronology starts with the appointment of Willmotts as managing agents in 2011. On 14<sup>th</sup> November 2011 they produced a "Ten year maintenance plan" (R32) which refers to an attached long term maintenance plan (LTMP)(R33). The proposals (paragraph 4) were then based on the assumption that some capital works were initiated in 2012 which did not happen. The LTMP was revised in 2014 (R34) and that was reflected in the service charge budget for 2014/2015 which is at R22 and shows an assumption that the reserve fund is increased to £25,000. The 2014 revision refers to works carried out in 2014 at a total cost of £39,200, with a projected total cost of £118,196 for works to be done in 2016. The 2016 figures are noted to be "*based on Clayton House tender and allowances for further deterioration/defects and inflation*".
15. The balance sheet for the year ending December 2013 shows a healthy balance on the reserve of £77,820 (R43 and R47-48). For the year ending December 2014, see R57, R60-61. Those accounts show that in 2014 just over £16,000 was spent on major works, which was Phase 1 of a programme described by Mr Fisher as involving ground floor external works to Gilbert House, and carpet replacement.
16. The background to carrying out the Phase 1 works and the production of the revised 2014 LTMP is described by 1R at R7. R1 sent a letter of explanation dated 21<sup>st</sup> October 2014 to the Applicants (R208) indicating that R1's board of directors had agreed to increase the reserve fund contribution to £25,000 and apply a 10% annual increase to the reserve fund contribution thereafter. The Applicants are highly critical of Willmotts' use of the word "*guesstimates*" at R209, but its approach was in fact based on rather more than a guess. The thrust of the letter is that without an increase in the reserve fund there would be a shortfall to meet the Phase 2 costs in 2016, which would have an impact in one-off demands on leaseholders. 1R counters the "*guesstimates*" allegation by pointing to the schedule prepared in August 2014 at R180-182 for the Caldwell House works which were taken into account when preparing the revised LTMP, the two buildings being the same (though operated by different companies, also managed by Willmotts).
17. It is noted now by the Tribunal that one document refers to Clayton House and the other to Caldwell House: even if two different properties are referred to, the evidence is that both Clayton House and Caldwell House are the same and the Tribunal concludes that it makes no

difference to this decision, and certainly it was not a point on which the Applicants particularly relied.

18. It is part of the Applicants' case that the Phase 1 works were carried out and paid for but this was not taken into account when the reserve fund was increased to £25,000 in 2014, thereby unnecessarily. In addition the Applicants asserted that the presentation of information to leaseholders was inadequate and the forecasts relied upon excessive for the reasons set out in paragraph 11 of the Applicants' statement of case at A76. (The Tribunal finds that the Phase 1 costs were taken into account, but even if it is wrong about that, it would still reach the same conclusion.)
19. When Mr Allen gave oral evidence on his paragraph 11 points, he explained to the Tribunal that his first objection that the estimates prepared by Willmotts were "*excessive and unreasonable*" was because of the impact requiring an increase of the reserve fund which he regarded as too high, being a "*dramatic increase*". He accepted that apart from looking at it as a percentage increase, he could not say whether the increase was reasonable or not, though he accepted that it was prudent to have a reserve fund with funds in it. He put the increase down to bad management which is contradicted by the evidence of the approach taken by Willmotts outlined above, which the Tribunal accepts. There is no substance in this first point.
20. As to the second contention that the figure for redecoration in 2017 (£32,000 odd) is "*premature, excessive and unreasonable*", Mr Allen referred to the provisions of the lease which suggest that fluctuations should be avoided, and suggested that the increase was unaffordable. This position is not evidence supporting his contention. The point of the reserve fund is to avoid fluctuations, a point Mr Fisher stressed in his evidence.
21. The third criticism, that the revised LTMP allows for inflation at the rate of 5% pa which is also "*excessive and unreasonable*", was based on the fact that inflation is below 2% on government figures. When the Tribunal asked him whether he had considered that 5% is reasonable in the building profession, he responded that if that is the case, it should have been explained better. Again, that is not evidence in support of the criticism, which is not founded, the figure of 5% being within an acceptable range.
22. The fourth criticism is that 12.5% for management fees is "*excessive and unreasonable*". This figure is within the industry standard so the Applicants' point, otherwise unsubstantiated by any evidence, is rejected.
23. Mr Colclough explained that the directors of 1R had taken professional advice on the reserve fund and acted on it; other blocks on the estate

had higher reserves and the Applicants were the only leaseholders who had objected. Although Phase 1 works had been carried out, the balance of the planned works had been deferred until 2017 when funds would be in place. His approach was accepted as entirely reasonable by the Tribunal.

24. It was an approach which was explained in more detail by Mr Fisher, not a qualified surveyor, but a member of the IRPM, employed for 12 years, and having worked for Willmotts for 8 years. For the last 4 years he has been involved in managing blocks on the estate including Gilbert House, and the majority of his work is taken up by this, being responsible for three management contracts. He had not drawn up the LTMP personally (done by an employee who has left Willmotts) and did not regard it as his responsibility to check the input figures, but attended directors' meetings and the relevant AGMs. He began to look in detail at the reserve fund in 2014, having advised on it from about 2012. It made sense from a project management point of view to undertake the Phase 1 works at the same time that work was carried out on other blocks, as that reduced some costs eg by sharing staff amenity facilities. He was pressed by Mr Davies to concede that the LTMP provided for major works to be carried out in 2016, but his view was that this was not a commitment, but a plan to take into account future liabilities.
25. He was responsible for making changes to the revised LTMP, having consulted Robert McMillan on the figures to be included which he provided, and as far as he recalled, the Phase 1 costs were known when the plan was revised. That is clear from the revised LTMP on the face of it because it includes a figure of eg £15,222 for 2014 for external works to the building. Although the projected costs had reduced, he maintained that they still required an increase in the reserve fund, and that is also the case on the face of the figures. However he was challenged as to the accuracy of the revised LTMP on the basis that, taking 2014 for example, he had overstated expenditure as against audited figures (see eg p56), with a consequent unnecessary decision to increase the reserve fund to £25,000 for the following year. But the nature of the reserve fund requires advance planning and it would be hard to agree with the Applicants that the IR's planning had been wildly pessimistic and based on unreasonable forecasts, which had been based on works carried out to an identical property, Clayton House and projected costs based on the Caldwell House tender documents. Furthermore, as Mr Fisher pointed out, the year end result for 2014 were not available until May 2015, after the revised LTMP was drawn up and the disputed budget set.
26. It was unfortunate that Robert McMillan, whose statement is at p178, did not attend to give direct evidence. Nevertheless, his evidence, together with that of Mr Fisher, that the projected costs for the rest of the major works are based on the Caldwell House estimate (p180-182) is accepted by the Tribunal as a reasonable approach and Mr Davies did

not seek to exclude it. That conclusion leaves little of substance in paragraphs 13 and 14 of the Applicants' statement of case. It cannot be unprofessional to rely for budget purposes on a tender submitted for an identical property when surveys carried out in 2014 had been taken into account and it was merely a decision of 1R's board to delay major works rather than proceed with the full project as in the case of Caldwell House, for example. The analysis undertaken was different to the facts in *Hyde Housing Association v Lane* [2009] UKUT (LC) on which Mr Davies relies, and the case is distinguishable. 1R has relied on the advice of qualified professionals whose own figures are based on actual estimates and tenders applicable to similar projects.

27. Furthermore when the Tribunal pushed Mr Fisher to explain his approach to increasing the reserve fund to £25,000, he referred to the likely deficit which is evidenced on the revised LTMP, and considered that an increase up to £35,000 would not have been unreasonable. On similar facts, the reserve fund for Caldwell House is £38,000. He regarded the proposed increases to the reserve fund (not actually the subject matter of this determination) as increases, not fluctuations, an approach which is supported by the LTMP calculations.
28. The Tribunal disagrees with Mr Davies' submission that the picture which emerged from the evidence is "*unimpressive*". Granted, Mr McMillan had not attended and Mr Fisher was not the originator of the figures in the LTMP, but he was a sensible and credible witness who gave reasoned answers in response to the Applicants' mere assertions, which short of hoping to undermine the Respondents' cases, they had not thought to support with any useful evidence of their own. The Applicants have no basis for their submission through counsel that the 1R had failed to consider its figures properly and apply them reasonably. As Mr Colclough pointed out, there was no suggestion that Mr McMillan's evidence was in fact contested. The Applicants lacked primary evidence to counter 1R's case, and the probing by Mr Davies did not undermine the methods or figures relied upon.
29. It follows that the Tribunal rejects the Applicants' case against 1R. The reserve fund and the budget set in 2014 insofar as this element is concerned, is reasonable and payable by the Applicants.

**Second Respondent: Barnes Amenity Area No 2 Management Company Limited: new gardens contractor**

30. The Applicants say that the increase in the budget for the year ending December 2015 for 2R, (see R24) is unreasonable principally due to the rise in the budget for "Maintenance – Garden Landscape" from under £14,000 to £22,000. That was the item in contention. It is on the face of it a substantial rise which is the Applicants' main point. The Applicants' pleaded case is in paragraph 17 of their statement of case at A77. They have brought to the Tribunal no evidence on the appropriate



figures for the service provided; in effect they put 2R to proof that the budget figure is reasonable.

31. The 2R's detailed response is set out in full at R11-15, to which reference should be made. In brief, the original gardening contractor (Archway Green) was sacked and a replacement (Greenmantle) was appointed, being the next cheapest option (after Archway Green) out of 5 contractors asked to tender. There is clear evidence that the Applicants considered Archway Green to be unsatisfactory. Additional costs were included in the budget to reflect additional works required (see the bottom of R13). The Greenmantle invoices from December 2014 are included at R158-172 and show a monthly outgoing of over £1300 with an additional July 2015 invoice for about £4500 for extra works, coming in at £20,000 or thereabouts, not far short of the budgeted figure.
32. In his submissions Mr Davies asserted that 2R should have made Archway Green perform their contract more efficiently. Given the 2R's account of their dealings with Archway Green, this was a faint hope; chances to improve were given and action finally taken as an improvement in service did not happen. It was wholly reasonable to appoint another contractor and to choose the next cheapest option. Given that Mr Allen conceded in evidence that the gardens had improved, that the previous standard was appalling, and that changes should have been implemented earlier, it is hard to accept that the changes, achieved with success at a higher cost, have come at an unreasonable price. There is no evidence that the costs have increased due to a late change of contractor. The Tribunal takes into account the evidence that the area under the control of 2R is a large and important area of garden, due to its particular location, rather different to the often small and easy to maintain areas which might surround other developments. That is not an unimportant factor. It is also significant that the Applicants do not say why their suggested figure is reasonable, supported by any evidence. Again, their case was based on a stated resistance to an increase, but there is clear evidence justifying the increase and the amount charged as reasonable.
33. To be fair to Mr Davies, his final submission was to invite the Tribunal to look carefully at 2R's evidence: we have, and we are satisfied that there is no substance to the Applicants' challenge to the 2R's budget, which is reasonable and payable.

**Third Respondent: Barnes Waterside Estate Management Company Limited: increase in service charge budget for year ending December 2015**

34. The Applicants' case is pleaded at paragraphs 18-20 of their statement of case at A78. The relevant budget is at R26 and the objection is to the increase from £59,058 for the year ending 2014 to £73,724 for the year

ending December 2015, with particular increases noted for “*grounds maintenance*” and “*wildlife corridors and tree works*”, “*water rates*” and “*professional fees*” (attributable to the legal fees incurred in dealing with a legal dispute). 3R’s case is put in a letter dated 24<sup>th</sup> February 2015 at R253, incorporated into its statement of case at R16.

35. The Applicants contend that some of the works undertaken are outside the ambit of the provisions of the Fifth Schedule of the Lease. The basic maintenance obligations are set out in paragraph 2 of the Fifth Schedule, ie “*Whenever reasonably necessary to maintain repair renew and keep neat and tidy as appropriate ... (b) the gardens and grounds ... including tending and renewing any lawns flower beds shrubs trees and other amenities (c) the Wetlands open spaces and other amenity areas ...*” The Applicants’ case is vague and unparticularised, as it merely alleges that there has been “*enhancement*” without seeking to plead any instances. See paragraph 20(1)(2) at A78.
36. No evidence was adduced by the Applicants to support their contentions. Mr Fisher denied there were any enhancements as such to the amenity areas, and he was not challenged as to 3R’s pleaded case or evidence in any substantial way. Again, taking into account the evidence before the Tribunal as to the nature of the grounds under the control of 3R (extensive, with wetland corridors), this is not a standard gardening contract, but without evidence that anything is capable of proper challenge, the Tribunal is entitled to (and does) rely on the evidence of Mr Fisher that all budgeted works were carried out within the provisions of the Lease.
37. The allegation that the 3R’s budget is a breach of the non-fluctuation provisions of the lease because it did not include a sufficient reserve to avoid fluctuations (see paragraph 8(a) at A57) is somewhat hard to reconcile with the Applicants’ other complaints that the reserve funds have been set too high, in the case of 1R. Again, to be fair to Mr Davies, he did not push the Tribunal in closing submissions. We consider the Applicants’ challenge to the third item, which was unsupported to start with, was unsupportable after taken into account 3R’s response.

### **Application under s.20C**

38. In the light of our decision, it would be wrong to make any order in favour of the Applicants under s20C.

**Costs**

39. Directions are given as to costs above.

Judge Hargreaves

Trevor Johnson FRICS

1<sup>st</sup> April 2016

## **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).