

11937



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

Case Reference : **LON/00BK/LSC/2015/0449 &
2016/0060**

Property : **Flats 8,17,23, 35, 38, 40, 46, 50, 51,
53 and 54 Basildon Court, 28
Devonshire Street, London W1G
6PP**

Applicant : **Basildon Court Residents Company
Limited (the 'Company')**

Representative : **Aubrey David Solicitors**

Respondent : **Zulfikar Remtulla Jetha (1)
Shelina Zulfikar Jetha (2)**

Representative : **Guillames LLP**

Type of Application : **Liability to pay service charges and
liability to pay administration
charges**

Tribunal Members : **Judge Carr
M.Cairns**

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

Date of Decision : **5th July 2016**

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the administration charges demanded in connection with late payment and legal costs are not payable under the lease.
- (2) The Tribunal determines that the correct percentage contribution for Flat 46 is 2.2%
- (3) The Tribunal determines that, based upon estoppel by convention, the Respondents are liable for service charges payments demanded in advance and contributions to the reserve fund.
- (4) The Tribunal makes the determinations as set out under the various headings in this Decision
- (5) Since the Tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the County Court sitting at Central London.

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 administration charges payable by the Respondent in respect of the service charge years 2014 and 2015.
2. Proceedings were originally issued in the County Court Money Claims Centre under claim no. B88YJ538.
3. The claim was transferred to the County Court at Central London and then in turn transferred to this tribunal, by order of His Honour Judge Freeland QC on 28th July 2015. The terms of the transfer are that the First Tier Tribunal is to determine ‘all issues relating to the service and administration charges’.
4. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

5. The Applicant was represented by Ms Claire Cullen of Counsel at the hearing and the Respondent was represented by Mr Alistair Redpath-Stevens of Counsel.
6. Also present at the hearing for the Applicant were Mr Alex Digwell, Solicitor with Guillaumes LLP, and four Directors of the Applicant, Ms Penelope Farquhar-Oliver, Ms Patricia Barham, Mr David Cooper and Lady Rosamund Cox, who is the Chairman of the Applicant.
7. For the Respondents Mr Jetha attended the hearing as did Mr Emmanuel Andreopoulos.
8. Immediately prior to the hearing the parties handed in further documents, namely skeleton arguments and additional authorities. The start of the hearing was delayed while the Tribunal considered these new documents.

The background

9. The 11 properties which are the subject of this application are all flats within Basildon Court, a prestigious mansion block built in 1934, which comprises 56 flats in total.
10. 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.
11. The Respondents hold long leases of the properties that, together with separate Deeds of Covenant, require the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.
12. The specific provisions of the leases and the Deeds of Covenant will be referred to below, where appropriate. In general terms pursuant to the leases, the Respondents' covenant to
 - (i) Enter into Deeds of Covenant with the Applicant (as Service Company)
 - (ii) Comply with rules and regulations formulated by the Applicant (as Service Company)
 - (iii) Pay a percentage of the total service charge to the Service Company in respect of the obligations under the Common Parts Lease.

13. Pursuant to the Deeds of Covenant, the Respondents covenant in general terms with the applicant to:-
- (i) Pay a percentage of the total service charge to the applicant
 - (ii) Observe and perform the respondents' obligations under the relevant lease
 - (iii) Observe and perform any rules and regulations imposed by the applicant.

The issues

14. Respondent's Counsel argues that the Respondents are not liable to pay any of the monies claimed by the Applicant because the Applicant has not operated the service charge provisions in accordance with the contractual provisions of the Deeds of Covenant.
15. In particular the Respondents argue that the Tribunal must determine whether:-
- (i) When the Specified percentage in the Deed of Covenant executed in respect of Flat 46 is 2.2% of the Applicant's total liability under a Common Parts Lease, the Applicant is entitled to demand sums at the rate of 2.5%;
 - (ii) The Deeds of Covenant provide for the collection of an interim service charge on account;
 - (iii) The level of the sinking fund has been properly agreed at the annual general meeting of the Applicant each year in respect of the accounting years ending 31 December 2014 and 2015;
 - (iv) There is a provision in the leases or Deeds of Covenant for an administration charge to be levied in respect of overdue monies;
 - (v) The regulation relied on in relation to legal costs is a regulation within the meaning of the Deed of Covenant and lease
16. Counsel for the Applicant agreed items (i) – (v) of paragraph 13 provided a useful summary of the issues in dispute between the parties.

In addition she asks the Tribunal to determine, in connection with the issue of whether or not the Applicant has complied with the contractual provisions under the Deeds of Covenants, whether the principle of estoppel by convention applies.

17. An argument had been made in connection with failure to comply with statutory consultation requirements for major works. However both parties agreed that as none of the monies demanded related to major works this was no longer an issue in dispute.
18. 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.

What is the Respondent's liability when the specified percentage in the Deed of Covenant in respect of Flat 46 is 2.2% but under the Common Parts Lease, the Applicant is entitled to demand sums at the rate of 2.5%?

19. Whilst the Applicant acknowledges that the Deed of Covenant for Flat 46 refers to 2.2% as the payable percentage of the total advance service charge and reserve fund in respect of Flat 46 the Applicant contends that a mistake has been made within the Deed and that if properly construed the Deed entitles the Applicant to the 2.5% it has been demanding.
20. The Applicant argues that to interpret the Deed of Covenant the Tribunal has to consider the meaning the document would convey to the reasonable person having all the background knowledge that would reasonably have been available to the parties.
21. The Applicant argues that in this case the background includes the lease dated 5th April 1978 in particular the following terms:
 - (i) Clause 3, the Lessee hereby covenants with the Lessor at the joint expense of the parties thereto to enter into a Deed of Covenant with Basildon Court Residents Company limited (hereinafter called 'the Service Company') in the form set out in the Fifth Schedule hereto
 - (ii) Clause 5(16) ' ... at no time during the said term to assign, sub-let or part with possession or attempt to assign sub-let or part with possession of any part other than the whole of the demised premises provided nevertheless that contemporaneously with any assignment of this Lease.. (b) the Lessee shall cause and require the assignee to enter into a Deed

of Covenant with the Service Company in the form of the said Deed specified in the Fifth Schedule hereto.'

- (iii) Clause 5(19) To pay to the Lessor Two point five per centum (2.5%) of any insurance premiums or parts of such insurance premiums not paid by the Service Company.
 - (iv) Second Schedule para 2 'The Lessee shall at all times during the term hereby granted keep the Service Company indemnified from and against Two point five per centum (2.5%) of all costs charge and expenses....'
 - (v) Fifth Schedule sample Deed of Covenants Clauses (3) (a) (i) and (ii) where the Lessee covenants to repay 2.5% of the policy of the insurance, the service charge and sinking fund.
22. Further the Deed of Covenant itself provides that the Respondents will comply with the covenants 'made between the Superior Landlord on the one part and the Lessee on the other part' (clause 3(d)) which includes the terms set out above at paragraph 34.
23. The Applicant therefore argues that there was clearly a mistake when referring to 2.2% in the Deed of Covenant and the Deed should be interpreted by substituting 2.5% for 2.2%.
24. The Respondent argues that the Applicant has not demonstrated that there is a mistake in the Deed of Covenant.
25. The Tribunal asked if there was a schedule available to demonstrate that the percentage contributions totalled 100% on the basis of a contribution from Flat 46 of 2.5%. Counsel for the Respondent indicated that he would object if such a schedule was produced at this stage of the dispute. Counsel for the Applicants said that such a schedule was available and would be produced later in the day. In the event no such schedule was produced.

The Tribunal's decision

26. The Tribunal determines that the liability of Flat 46 is 2.2%

Reasons for the Tribunal's decision

27. The Tribunal does not consider that the Applicant has done sufficient to demonstrate that a mistake has been made

Do the Deeds of Covenant provide for the collection of an interim service charge on account?

28. The Respondent submits that the Deeds of Covenant do not allow for an indemnity payment to be demanded on account of future expenditure on service charges. Their argument is that only the sinking fund payments can be demanded in advance.

29. The relevant clause of the Deeds of Covenant – clause 3.1.2 - provides as follows:

To refund to the Service Company [specified percentage](or such other proportion reasonably determined by the Service Company and previously notified to the Lessee in writing) of all costs and expenses (including without prejudice to the generality of the foregoing any Value Added Tax payable or chargeable to the Service Company or for which the Service Company is obliged to account in connection therewith incurred by the Service Company carrying out its obligations to the Superior Landlord pursuant to the provisions of the Lease and of the sinking fund referred to in Clause 4.1 hereof such sums and such times and in advance or arrear as the Service Company shall at its annual general meeting by majority agree.

30. This clause, according to the Respondents, creates an obligation 'to refund' the specified percentage of 'all costs and expenses... incurred by the Service Company. The Respondent argues that the use of the past tense in the clause is clear and unambiguous and the extent to which it is not, then the Deed is to be construed *contra proferentem* the Applicant.

31. The Respondent draws the attention of the Tribunal to clause 3.1.1 which creates an obligation 'to repay' the specified percentage of the insurance premium, and therefore similarly presumes that payment is subsequent to the expenditure of monies.

32. The Respondent asks the Tribunal to note that there is no mention of any estimated sums or any requirement on the Applicant to produce an estimated budget in a timely manner. Nor is there any mechanism for balancing any shortfall or surplus that would be necessary if the Deeds of Covenant provided for an interim demand. The Respondent explains this is because the Deeds of Covenant expressly provide for the recovery of known sums of monies that have already been expended by the Applicant.

33. The Applicant in response to this particular point argues that the absence of a balancing payment provision does not prevent an interim service charge from being payable.
34. More broadly the Applicant argues that it is entitled to demand service charges in advance in accordance with the relevant clauses of the Deeds of Covenant all of which refer to payment being as 'such sums and such times and in advance or arrear as the Service Company shall at its annual general meeting by majority agree.
35. The Applicant asserts that the correct interpretation of the Deeds of Covenant in respect of all properties is that this enables the Applicant to seek advance payments of the service charge.
36. The Applicant disputes the Respondent's contention that the reference to 'advance or arrear' only concerns the sinking fund. For the Applicant that position would be illogical given that the sinking fund monies will always be payable in advance. The Applicant also does not accept the Respondents' argument on the use of 'refund' and 'incurred' in the Deeds of Covenant arguing that this has to be read in conjunction with the reference to 'advance or arrear' and further that the reference to 'refund' in the Deeds of Covenant applies as much to the 'sinking fund' as it does to the general service charge therefore undermining the Respondents' construction that it can only be the sinking fund which can be demanded in advance because of the use of this work.
37. In addition to the argument that the Applicant is entitled to demand service charges in advance, it further argues that its right to do so is not contingent on agreement at the Applicant's AGM.
38. Here the Applicant relies on *Clacy v Sanchez* [2015] UKUT 0387 and *Elysian Fields Management Company v Nixon* [2015] UKUT 0427 which both emphasise that Tribunals must take great care not to imply a condition precedent when proper construction of the lease does not support such an implication.
39. The Applicant argues that in this particular case no such term should be implied:
 - (i) This is merely the machinery and not an essential pre-condition of payment
 - (ii) The relevant clauses set out the Respondents primary obligation to pay the service charge. This payment is not expressed to be conditional upon the AGM agreement.

- (iii) A construction that the Respondents' obligation to pay the service charge only arises on the AGM having agreed the nature of the payments would mean that the Respondents could avoid payment altogether in the absence of agreement which cannot be the correct interpretation in circumstances where the applicant is a Service Company made up of shareholders who are lessees.
40. Finally the Applicant argues that, even if there was a requirement for prior approval at the Applicant's AGM, the AGM agreed to advance quarterly payments in 1996 and this approval has continued since that date.
41. The Applicant states that at the 1996 AGM it was agreed that the service charges would be payable quarterly in advance. The Applicant was unable to produce the relevant AGM minutes to the Tribunal but draws the attention of the Tribunal to the notice of AGM on 22nd May 1996 which stated that one of the purposes of the AGM was 'to resolve that from the first quarter 1997 service charge and reserve fund contributions to be payable quarterly in advance. Further supporting evidence is found in the Chairman's statements dated March 1996 and 31st December 1997 referring respectively to the need for and benefits of service charges being paid in advance.

The Tribunal's decision

42. The Tribunal determines that the Deeds of Covenant do provide for the collection of an interim service charge on account but only when there has been prior approval by the AGM. The Tribunal further determines that there has been no prior approval by the AGM and therefore, subject to the Tribunal's decision on the estoppel by convention argument, interim service charges are not payable.

Reasons for the Tribunal's decision

43. The relevant clause of the Deeds of Covenant is not very clear. However the Tribunal accepts the interpretation presented by the Applicant as a reasonable interpretation of the clause. In particular it is persuaded that the final sub clause, 'and in advance or arrear as the Service Company shall at its annual general meeting by majority agree' applies to both the sinking fund provisions and the service charge demands.
44. However the Tribunal also considers that the requirement for agreement at the AGM is more than mere machinery but is a pre-requisite for making service charge and reserve fund demands. The

Applicant is unable to provide evidence of relevant resolutions at the AGMs and is therefore procedurally prevented from making demands.

Has the level of the sinking fund has been properly agreed at the annual general meeting of the Applicant each year in respect of the accounting years ending 31 December 2014 and 2015?

45. Once again the relevant clause of the lease is clause 3.1.2 of the Deeds of Covenant. This has been duplicated in order to assist the parties.

To refund to the Service Company [specified percentage](or such other proportion reasonably determined by the Service Company and previously notified to the Lessee in writing) of all costs and expenses (including without prejudice to the generality of the foregoing any Value Added Tax payable or chargeable to the Service Company or for which the Service Company is obliged to account in connection therewith incurred by the Service Company carrying out its obligations to the Superior Landlord pursuant to the provisions of the Lease and of the sinking fund referred to in Clause 4.1 hereof such sums and such times and in advance or arrear as the Service Company shall at its annual general meeting by majority agree

46. The Respondent argues that whilst prima facie clause 3.1.2 appears ungrammatical when correctly punctuated the meaning becomes clear. The provision Counsel argues should be read as follows:

To refund to the [Applicant] (the agreed percentage) of

All costs and expenses... incurred by the [applicant] carrying out its obligations to [REA] pursuant to the provisions of the [common parts lease] and

(of the sinking fund referred to in clause 4.1 hereof) such sums, and at such times and in advance or are as the [applicant] shall at is annual general meeting agree.

47. The Respondent argues that rather than permitting the Applicant to set some sort of general level of an interim demand at an AGM, this clause creates an obligation to pay a percentage of the sinking fund provision agreed by a majority at the Applicant's AGM and furthermore the Respondent submits that majority agreement is a condition precedent to any demand for and recovery of a sinking fund contribution.

48. The Respondent continues to argue that the Applicant cannot point to any relevant majority agreement at any AGM for the sinking fund: merely a suggestion by the Chairman but with no vote or resolution or minuted agreement. The Respondent argues that the need for the majority agreement of the AGM provides the constraint upon demands and without it the monies cannot be demanded.
49. The Applicant argues that the liability of the Respondents to pay the sinking fund is not contingent on agreement at the applicant's AGM and repeats the arguments paid in connection with service charges demanded in advance.
50. The Applicant further argues that even if the liability of the Respondents to pay the sinking fund is contingent upon agreement at the applicant's AGM there is evidence before the Tribunal that the AGM did agree to raise the sinking fund at the AGM in 2005.
51. The Applicant's case is that at the AGM in November 2005 it was agreed that the sinking fund/reserve fund would be increased to £100,000.
52. The documentary evidence it produces in support are minutes of the AGM dated 15 December 2004 and the Chairman's report of the year ended 31st December 2004 both of which refer to the need to increase the Reserve Fund charge, together with the minutes of the AGM on 1st November 2005 which refer to the Chairman's report of 31st December 2004 having been circulated. The Applicant argues therefore that the minutes should be read in conjunction with the report. The Applicant also notes that there is no reference in the minutes to any objections being raised to the increase of the reserve fund as set out in the Chairman's report.
53. The Applicant argues that any requirement that the AGM agree to the level of the sinking fund before the Respondents are liable should be construed as a requirement that this be done on a yearly basis. It is sufficient, it argues, that this was agreed in 2005 and that it has remained at this level thereafter. In other words there is no need for further agreement unless there was a change in the level of the sinking fund.
54. The Applicant further argues that even if the Tribunal find that the Applicant was not entitled to claim the sinking fund at £100,000 because that level had not been agreed by the AGM, the Tribunal should still find that the Respondents are required to pay their percentage of the sinking fund at the level previously agreed.

The Tribunal's decision

55. The Tribunal determines that the lease requires that the level of contributions to the sinking fund must be determined by a majority at the AGM of the company.

Reasons for the Tribunal's decision

56. The Tribunal accepts the argument of the Respondent as to the interpretation of the lease and does not accept the argument of the Applicant that the requirement for the approval of the AGM is not a condition precedent.
57. The Tribunal considers that there is insufficient evidence of the requisite resolutions being passed at the AGM and therefore the Applicant has not fulfilled the necessary procedural requirements.

Is the Applicant to levy administration charge in respect of overdue monies?

58. The Applicant argues that the Respondents have agreed pursuant to both the individual leases and Deeds of Covenant to comply with rules and regulations imposed by the Service Company. This includes a resolution on 8th May 1991 which the Applicants argue is drafted widely enough to include the administration fees claimed.
59. The Respondent argues that this is insufficient. What is required is a relevant clause within either the individual leases or the Deeds of Covenant.

The Tribunal's decision

60. The Tribunal determines that the Applicant is not entitled to levy administration charges in respect of overdue monies.

Reasons for the Tribunal's decision

61. The Tribunal accepts the argument of the Respondent. Without a relevant clause in either the lease or the Deed of Covenant the Applicant is not entitled to demand the monies.

Does the principle of estoppel by convention apply?

62. The Applicant argues that even if the Tribunal finds that the applicant has not complied with the contractual provisions under the Deeds of Covenant the amounts demanded should still be payable by the Respondent on the basis of estoppel by convention.

63. The Applicant argues that the parties have proceeded on an underlying assumption that the applicant is entitled to claim the service charge in advance and the sinking fund/reserve fund at a level of £100,000 since 1996 and 2005 respectively.
64. The evidence for the underlying assumption is that the Respondents have held a leasehold interest in flat 23 since 2003 and have since that date paid their service charges until the current dispute.
65. The Applicant maintains that it would be unfair or unjust to allow the Respondents to go back on this assumption for the service charges claimed given that the applicant has made demands on the basis of this assumption.
66. The Applicant provided a number of authorities in connection with estoppel by convention.
67. Counsel for the Applicant put points relating to the estoppel argument to the Respondent.
68. Mr Jetha gave evidence that established that he had been paying service charges since he acquired his first flat in the block in 2003. Although he agreed he had paid contributions to the sinking fund in the past he stated that he had not been aware of any decisions made in connection with the sinking fund. He agreed that he had not attended AGMS but stated that he had never received correspondence relating to the AGMs. He agreed that he received service charge accounts and budgets probably on a three monthly basis.
69. When asked by the Tribunal why he had stopped paying his service charges he stated that it was his reaction to poor management of the block. There were infestations of rats and low water pressure. This affected his tenants and their willingness to pay rent. After he failed to get a response from the management he asked his solicitors to consider the matter. It was following their scrutiny of the relevant documents that he became aware of the procedural defects in the process of demanding service charges and he decided to stop paying.
70. The Respondent argues that he is entitled to rely on the integrity of the Applicant, in particular that the Applicant has made its service demands in accordance with the lease and the Deed of Covenant. He cannot be prevented from pointing out failures in process simply because he had not realised in the past that the demands for monies were defective.
71. The Tribunal notes that the Applicant had no evidence available to put before the Tribunal to demonstrate that the Respondent had received appropriate notice of the AGMs.

The Tribunal's decision

72. The Tribunal determines that the principle of estoppel by convention applies in this particular case.

Reasons for the Tribunal's decision

73. The starting point for the Tribunal is the Upper Tribunal decision in *Clacy v Sanchez* [2015] UKUT 0387 (LC). Here the court decided that there was evidence of a course of conduct which constituted an equitable estoppel which precluded the lessees from seeking to assert that there was a procedural defect in the way in which service charges had been demanded or alternatively the lessees have waived their rights to challenge procedures that had been adopted for some considerable time.
74. Although in *Clacy* there had been a meeting between the parties about procedural requirements, the following paragraphs of the Upper Tribunal decision indicates that there is no need for express representations or promises.

34. The doctrine may therefore apply where the party against whom the estoppel by convention has been raised made no representation or promise. In the present case it is said that the assumption made by the Appellants for some 19 years was that there was no requirement to obtain certification before making demand either because the Lessor was acting under the first of the options in the relevant clause of the Standard Lease Provisions, or the lessees did not require them to do so. It would therefore, so it is submitted, be unjust to allow the lessees to resile from the course of conduct that certification would not be required, and they ought to be precluded from doing so. The Appellants have suffered detriment, and the Respondents would be unjustly enriched if they did not have to pay for the benefits which they had willingly accepted.

35. An alternative basis for the Appellants' submissions is that by the conduct of the Respondents, and their predecessors in title, in not requiring certification but accepting demands and paying demands, the lessees have waived any rights to resile from that position and to insist that certification was a pre-condition of their liability.

36. Having regard to these various submissions made in relation to the second issue, in my judgment, either there has been a course of conduct which constitutes an equitable estoppel by precluding the Respondents from seeking to assert that there should now be a certification process in accordance with the terms of the Standard Lease Provisions, or the Respondents have waived any right to resile from the position that has been adopted throughout the period of 19 years or so both by themselves and their predecessors in title.

75. In this particular case the Respondents had owned property within the block since 2003, They had made no complaints about procedural defects until the current dispute. The Respondents are members of the Company, entitled to attend the AGM and to propose motions.
76. In the absence of any evidence to the contrary, the Tribunal accepts that the Respondents did not receive invitations to the AGMs. However they are business people who own a portfolio of properties. They must have been aware of the requirements for an AGM and could easily have made enquiries about its timing and location. The AGM would have been the correct forum to challenge service charge and sinking fund procedures.
77. The evidence from the Respondent is telling. He was content to accept the system of service charge and sinking fund demands until he was suffering the consequences of management problems within the building.
78. The appropriate way to challenge procedural improprieties after such a long period of ownership would be to raise the matter at the AGM. This would enable the Company of which he is a member to put the matter right.
79. In the particular circumstances of this case it is appropriate for the Respondents to pay the service charges and contributions to the reserve funds. Otherwise the Applicants would suffer detriment and the Respondents would be unjustly enriched by not paying for benefits which they have willingly accepted.

Application under s.20C and refund of fees

80. At the end of the hearing the Tribunal agreed with the parties that they could make written submissions in connection with s.20C of the 1985 Act subsequent to receipt of decision.

The next steps

81. The Tribunal has no jurisdiction over county court costs. This matter should now be returned to the County Court at Central London.

Name: Judge Carr

Date: 5th July 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).