



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

Case Reference : LON/00AG/LSC/2017/0275

Property : 28 Well Walk, London NW3 1LD

Applicant : Farlane Investments Ltd

Representative : D & S Property Management

Respondent :
1. Margaret Rose Hazel
2. Joy Berthoud
3. Shelley King and Trilby Harrison
4. Nasser Shakib
5. James Edwards and Chloe Dennis

Representative : Shakib & Co

Type of Application : Correction certificate

Tribunal Member(s) : Ruth Wayte (Tribunal Judge)
Michael Mathews FRICS

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

Date of Decision : 19 January 2018

DECISION

As Chairman of the Tribunal, which decided the above-mentioned case, I hereby correct the errors and clarify the decision dated 15 December 2017 as follows:¹

1. In paragraph 23, the total reduction in respect of the historic roof repairs should be **£46,238.39** and not £43,238.39 as stated (and **£35,834.39** if items 13, 18 and 19 have not been charged).
2. The determination in respect of the budget (page 1/121 in the bundle) at paragraph 36 takes into account a reduction in respect of legal fees of £750 (item 30 on the schedule) as well as the reductions made in respect of items 32 and 34.

Name: Ruth Wayte

Date: 19 January 2018

¹ Regulation 50 The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.



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(RESIDENTIAL PROPERTY)**

Case reference : LON/00AG/LSC/2017/0275

Property : 28 Well Walk, London NW3 1LD

Applicant : Farlane Investments Ltd

Representative : Mr J Sandhan, counsel

Respondent :
1. Margaret Rose Hazel
2. Joy Berthoud
3. Shelley King and Trilby Harrison
4. Nasser Shakib
5. James Edwards and Chloe Dennis

Representative : Mr D. Dovar, counsel

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

Tribunal members : Ruth Wayte (Tribunal Judge)
Michael Mathews FRICS

Venue : 10 Alfred Place, London WC1E 7LR

Date of decision : 15 December 2017
Corrected 18 January 2018

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £96,081.25 is payable in respect of the amended budget for 2016/17.
- (2) In addition to monies held on account, the Respondents are entitled to deduct from their contribution the overpayments made in relation to the historic roof works and other items as set out in the Scott Schedule annexed to this decision.
- (3) The Fourth Respondent's contribution is further reduced by £400, being his counterclaim for breach of covenant by the Applicant.
- (4) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.
- (5) The tribunal makes an order under paragraph 5A of the Commonhold and Leasehold Reform Act 2002 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees as an administration charge under their individual leases.

The application

1. The Applicant seeks 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 Respondents in respect of the on account payment demanded for the service charge year ending 24 December 2017. The Respondents sought to set off overpayments made in respect of historic roof works and other items.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant was represented by Mr Sandhan of counsel. Mr Greene, director of the Applicant company and Mr Newman, managing agent of D & S Property Management, appeared as witnesses on its behalf. The Respondents were represented by Mr Dovar of counsel. Mr Tilsiter, Mr Edwards and Mr Halai, surveyor of Si Property Consultants Ltd appeared as witnesses on their behalf.
4. Immediately prior to the hearing Mr Dovar handed in a skeleton argument, no objection was raised by the Applicant.

The background

5. The property which is the subject of this application is a period 4 storey brick building divided into 6 flats with a mansard roof and roof terrace. It was common ground that there had been a history of water penetration from the roof, mainly affecting flats 3, 4 and 5. Works had been carried out since at least 2010 to remedy the problems but they had only recently been solved following major works in 2017. The Respondents had withheld part of the on account payment due for 2017 on the basis that they were entitled to set off monies previously paid for defective roof works and other disputes as to the sum claimed. The Applicant had previously accepted that at least the roof works in 2014 were defective but had nevertheless chosen to issue these proceedings as a preliminary step in the preparation and service of forfeiture proceedings.
6. Photographs of the building were provided in the hearing bundle. Neither party requested an inspection and the tribunal did not consider that one would have assisted, since the dispute was mainly in relation to historic works, which had now been redone.
7. The Respondents each hold a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the leases will be referred to below, where appropriate.

The issues

8. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The payability and/or reasonableness of the estimated service charges for 2016/17.
 - (ii) Whether a credit or set-off should be given in relation to the historic service charges in respect of works to the roof carried out in 2010, 2011 and 2014 – effectively a challenge to the payability and/or reasonableness of those costs.
 - (iii) In relation to the 4th Respondent only, whether his uninsured losses of £400 in respect of water damage to his flat could be set off against any liability in respect of the 2016/17 on account payment.
9. 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. A Scott schedule listed 34 items in dispute (there was a numbering error meaning there is no

number 27). The items have been reproduced in a table annexed to this decision for ease of reference.

Historic roof repairs – items 1-22

10. These repairs broke down into three items: modest amounts contained in the accounts for 2010 and 2011 and substantial works in 2014. Having issued the application in respect of the 2016/17 on account payment, in full knowledge of the dispute about at least the 2014 works to the roof, the Applicant simply put the Respondents to proof of their claim that a rebate was due – providing very little in the way of supporting documentation. Mr Greene's witness statement described the repairs as patch or periodic repairs, carried out in accordance with the advice from the Applicant's then agents, Defries and Associates Ltd.
11. The works in 2010 were described in a letter from the agent to the Applicant as repairs to "several areas of the roof...not foreseen at the time of preparing the budget". These amounted to £1,774.25 in the service charge accounts, although no separate invoice was produced to support the claim. There was no evidence from the Respondent about the works, not least as the person most affected – Mr Edwards, had not moved into flat 5 until December 2011.
12. £3,000 was subsequently charged for roof works in 2011, against an estimated amount of £1,500. There was no evidence to support what was actually done and no copy invoices produced to support the claim, which relied on the service charge accounts for that year. Mr Edwards gave evidence that the problems with water penetration started shortly after he moved in to his flat, after the works had been carried out. He had understood from the previous leaseholder that the works in 2010 and 2011 were intended to address those problems.
13. In November 2011 consultation began in relation to major works of external cyclical repair which culminated in the 2014 works, charged at £74,789 in the 2014 service charge accounts. It was common ground that the works were to more than the roof. Mr Greene in his witness statement stated that he understood the roof works were to be limited to those which were essential at the time and that in the circumstances future repair works would be required, including the replacement of the roof as a whole. Nevertheless, he accepted in evidence that the 2014 roof works had failed to cure the problems with water penetration, which had begun again in August 2014 as evidenced by a series of emails including him and his daughter, the long leaseholder of Flat 3.
14. In late December 2015 Mr Greene instructed Trend & Thomas to review the water penetration issues at the property and consider the 2014 works. They produced a report in May 2016 that Mr Greene has not shared with the leaseholders or this tribunal. A subsequent report on the 2014 specification and workmanship dated January 2017 was

shared, allowing the Respondents to include it in the trial bundle. The report was highly critical of the specification and the works, noting the lack of contract instructions or file notes to understand why and how changes to the scope of the works were made. Trend & Thomas subsequently produced a detailed specification intended to provide a long term solution to prevent any further water ingress and improve the thermal performance of the roof. These works were carried out in 2017 and fortunately appear to have been successful.

15. Both parties had been given permission to call expert evidence but only the Respondents had instructed an expert, Mr Ramesh Halai of Si Property Consultants. He had produced a report dated 30 October 2017, after the 2017 works had been completed. In the circumstances he could not give evidence about the state of the roof beforehand but had read all of the documentation, including the Trend & Thomas report and provided comments on each item in the Scott Schedule which he confirmed during his evidence. In particular, he considered that the 2014 roof repairs were ill-conceived, poorly undertaken and failed even to address the immediate problems with the roof. In his opinion, the works should have been carried out to the level of specification and standard subsequently undertaken in 2017. Much of the 2014 roof works were therefore valueless and could not be deemed to have met the repair obligations under the terms of the lease.
16. Mr Tilister's evidence confirmed the uninsured losses sought by Mr Shakib of Flat 4, amounting to £400 and comprising fees of £300 and the £100 insurance excess. Mr Edwards gave evidence that he had been assured that the works in 2014 would solve the problems with water penetration, as opposed to being further patch repairs. He pointed to an email from the then agents dated 15 January 2014 which stated that "...your leaks and those in Flat 4 should all be covered with the major works...".
17. The Respondents therefore sought to set off almost the entire cost of the previous roof works and core costs against the demand for 2017. The Applicant's closing submissions conceded that some £11,000 of work was "thrown away" by the 2017 works but that the "core" costs of scaffolding, preliminary fees and supervision should be apportioned due to the roof works only amounting to some 34% of the total cost.

The tribunal's decision

18. As stated in paragraph 8 above and confirmed in the Respondents' skeleton argument, the challenge to the historic roof works was really under section 19 of the Act: that they were not reasonably incurred and/or the work was not to a reasonable standard.
19. As detailed above, there was very little evidence in respect of the 2010 and 2011 roof repairs. In the absence of any evidence to the contrary

legal fees. No invoices were produced to support the amount and the objection was on the basis that the surveyor's fees were not payable as they were incurred as a result of the defective works and legal costs are not recoverable under the lease. The Applicant objected to the item being in dispute, although it and the Applicant's solicitor had been aware of the dispute prior to the hearing.

The tribunal's decision

28. Although item 35 was raised very late in the day, the reason for that delay was the failure of the Applicant to provide the 2016 accounts earlier. In the circumstances the tribunal will determine the item. In this lease, there is no mention of solicitor's costs other than in clause 3(d) of the tenant's covenants which is an express covenant to pay all costs incurred in respect of forfeiture proceedings. The Fourth Schedule contains a list of expenses in relation to the maintenance and repair of the property and in this context the tribunal determines that paragraph 8 is not intended to apply to legal expenses, which in any event are not "expenses of a recurring nature". In addition, these costs were apparently incurred in respect of the previous defective works. For each of these reasons, the tribunal determines that they are not payable, producing a further reduction of £3,570.

2017 budget: items 32-34

29. Items 31 was conceded by the Respondents before the hearing. Item 32 is for additional management fees charged for the consultation exercise on the works recommended by the fire risk assessment carried out in 2016. The objection was on reasonableness. The works were estimated to cost £3,500 and an additional management fee of £750 for the statutory consultation exercise was simply too high, this was standard work which should have been covered by the annual charge of £2,700. The Applicant's response was to point to the management agreement which clearly excluded consultation from the annual fee. There was no dispute that management fees were recoverable in principle.
30. Item 33 is an invoice for surveyors fees incurred in respect of an insurance valuation. The challenge was that it was not chargeable under the terms of the lease. The Applicant relied on the Fourth Schedule and in particular paragraph 7, which reads "*The cost of insurance premiums payable by the Lessor for taking out and maintaining in force the insurance policy or policies referred to in clause 5(e) hereof and such other insurances as the Lessor may from time to time deem necessary or desirable.*"
31. Item 34 is an estimate for a further fire risk assessment. The challenge was that given there was a fire risk assessment carried out in 2016, it was unreasonable to carry out another one in 2017. The Applicant's response was that the assessment itself provided for a review date in a

year and/or that given works were to be carried out in response to the 2016 assessment, a further assessment would be due.

The tribunal's decision

32. The management agreement provides for fees of £2,700 in respect of the property. It does state that section 20 consultations are excluded but the agreement appears to refer specifically to the consultation exercise for the 2017 roof works as opposed to other consultation exercises. The tribunal considers that an additional charge is due but £750 is too high: the works were relatively minor and the agents should have template letters. In the circumstances the tribunal determines that £150 is payable in respect of item 32.
33. The tribunal determines that the re-valuation fee is payable under paragraph 8 of the Fourth Schedule, set out at paragraph 26 above. Paragraph 7 only covers the cost of the premium but a valuation for insurance purposes is an expense of a recurring nature (albeit only every 5-10 years) which is likely to be in the interest of good management. An invoice was produced and the cost is reasonable. Item 33 is therefore determined at £450.
35. The tribunal agrees with the respondent that item 34 is not payable. It is not reasonable to undertake a fire risk assessment every year in the absence of any good reason to do so. With respect, given that the works were recommended by the 2016 report, the fact that they are carried out is not of itself a good reason to redo the assessment. In any event, the works have not yet been carried out. In the circumstances the tribunal determines that nothing is payable in respect of item 34.
36. The tribunal therefore determines that £96,081.25 is payable in respect of the budget, less monies held on account and the reductions determined above (**reduced by items 30, 32 and 34**).

Claim for uninsured losses – 4th Respondent

37. This claim was set out in the supplemental statement of case dated 2 September 2017. In short, the 4th Respondent made an insurance claim in respect of the losses caused as a result of water ingress into his flat. The claim was paid in full less the excess and costs. The £400 outstanding was thus claimed as damages for the breach of covenant by the Lessor, to be set off against any liability for the present claim. Mr Tilsiter gave evidence in support of the claim, on behalf of the 4th Respondent, which the Applicant did not dispute.
38. The tribunal allows this claim. The Applicant was on notice of the need for works to the roof since at least 2011. It does not dispute that the 2014 works were defective and therefore has failed to comply with its

covenant to maintain the roof, causing the damage to the 4th Respondent's flat. Such losses can be set off against any liability in respect of future service charges as set out in *Continental Properties v White* [2006] 1 EGLR 85.

Costs

40. In their Statement of Case the Respondents sought an order under section 20C of the Act and/or paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 preventing the Applicant from recovering the costs of these proceedings either through the service charge or as an administration charge. They relied on the fact that the Applicant had admitted the 2014 roof works were substandard but failed to adjust the service charge, that it had previously promised to recover those costs from the former agents and then reneged on that promise and issued proceedings against the Respondents instead and that it refused to enter into mediation.
41. The Applicant's response was that the Landlord was entitled to apply for a determination and that these proceedings were the best way to calculate liability. Mr Sandhan also sought to distinguish between a refusal to engage in mediation as opposed to a refusal to mediate.
42. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. This means that the Applicant may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge or as an administration charge. As indicated above, the Applicant has been in breach of its covenant to maintain the roof. It cannot escape liability by relying on its agents and was well aware that the 2014 works were defective. Its conduct in issuing these proceedings and the approach of putting the Respondents to proof in respect of its own service charges appears to this tribunal to be a cynical ploy to put them to the cost of establishing liability in respect of those works, rather than accepting its own responsibility under the Lease.

Name: Ruth Wayte

Date: 15 December 2017

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Annex – Tribunal’s decisions on the Scott Schedule

No.	Item	Cost inc VAT	Tribunal’s comments	Amount allowed
1	2010 roof repairs	£1,774.27	Reasonably incurred – some information provided in support and no evidence that defective	£1,774.27
2	2011 roof repairs	£3,000.00	Not reasonably incurred – evidence that works defective and no invoice provided	£nil
3	2014 parking	£989.83	Not reasonably incurred – accept the evidence of Mr Halai that cost duplicated in 2017 as works should have been done together	£nil
4	2014 scaffold	£10,380	Deduct the 2017 scaffolding costs as submitted by Mr Halai. If works had been done together the scaffolding would have been more expensive to allow for access to the facades as well as the roof	£1,017.56
5	Pitched slate roofs	£6,720	Not reasonably incurred – work defective and redone in 2017	£nil
6	Pitched slate roofs	£540	As above	£nil
7	Box gutter	£504	As above	£nil
8	Four existing dormers	£144	As above	£nil
9	Raised parapets/peri meter walls	£582	As above	£nil
10	Coping stones	£1,488	As above	£nil
11	Flaunching to chimney stacks	£1,920	As above	£nil
12	Prelims	£2,160	Not reasonably incurred – the prelims for the 2017 contract are higher and sufficient to cover any increased cost if the works	£nil

			had been done at the same time	
13	Management fee	[£7,584]	It is not clear where this has been charged and appears to the tribunal to be a duplication of item 17. In the circumstances the tribunal proposes to discount this item from both the cost and the deductions. If a management fee of 12.5% was charged by Defries the tribunal would not consider this to be reasonably incurred.	[£nil]
14	Portaloo	£480	Not reasonably incurred. This item is covered by the prelims for 2017 and as stated by Mr Halai is a duplicate cost	£nil
15	Skips and licence	£1,440	Not reasonably incurred. The skips were mainly for the roof and therefore duplicated in the 2017 works	£nil
16	Rear bay roof	£720	Not reasonably incurred – work defective and redone in 2017	£nil
17	Surveyor's fee for major works	£6,320.37	The tribunal allows 12.5% of the non-roof works, as this has not been duplicated or subject to challenge	£2,876.25
18	Surveyor's fee for major works	[£1,500]	This appears to be a duplicate of 17 above, or in any event an on account payment. The total allowed for items 17, 18 and 19 is £2,876.25.	[nil]
19	Surveyor's fee for major works	[£1,320]	As above – on account payment of 17 above	[nil]
20	Surveyor's fees	£1,680	The best evidence is that this was charged following a site visit in December 2015 – see email at page 645. In the circumstances this is not	£nil

			reasonably incurred as it relates to the defective works that were redone in 2017	
21	Scaffold extra over hire	£660	The tribunal considers that this would be covered by the amount allowed in 4 and therefore this is not reasonably incurred as it relates to the defective works in 2014	£nil
22	Scaffolding licence	£4,070	Reasonably incurred – relates to non-roof works	£4,070
23	Scaffolding in 2016	£1,860	Reasonably incurred – relates to 2017 works	£1,860
24	Surveyor's fees	£2,280	Reasonably incurred – relates to 2017 works	£2,280
25	Surveyor's fees – report on 2014 works	£720	Not reasonably incurred – relates to defective works	£nil
26	Legal fees	£500	Not recoverable under the lease	£nil
28	Legal fees	£500	Not recoverable under the lease	£nil
29	Legal fees	£250	Not recoverable under the lease	£nil
30	Legal fees	£750	Not recoverable under the lease	£nil
32	Management fees – s20 consultation re fire works	£750	Cost too high for routine exercise and given cost of works	£150
33	Surveyor's fees – revaluation for insurance	£450	Reasonably incurred, chargeable under the Fourth Schedule paragraph 8	£450
34	Fire Risk Assessment	£400	Not reasonable given report in 2016	£nil
35	Surveyor and legal fees in 2016 accounts	£1,570	Not reasonably incurred, no invoice for surveyor's fees but likely to be in relation to 2014 works. Legal costs not recoverable under the lease	£nil

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;
 - © 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,
 - © 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).

Limitation of administration charges: costs of proceedings

- 5A (1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.
- (2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.