

12269



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

**Case reference** : LON/00AT/LSC/2016/0359

**Property** : 22 Grove Crescent TW13 6LY

**Applicant** : Notting Hill Home Ownership Limited  
("NHHO") (Landlord)

**Representative** : Mr Neil Coils of NHHO  
Ms Nicola Edwards Property Management  
Officer of NHHO  
Ms Ellie Desborough Head of leasehold of  
NHHO

**Respondent** : Mr Brian Rodericks and Mrs Kim  
Rodericks (Tenant)

**Representative** : None

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

**Tribunal members** : Judge: N Haria  
Member: Mr K M Cartwright JP FRICS

**Venue** : 10 Alfred Place, London WC1E 7LR

**Date of decision** : 27 June 2017

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**DECISION**

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## **Decisions of the tribunal**

- (1) The tribunal determines that the Respondents are liable to pay to the Applicant 1/35<sup>th</sup> (which equates to 2.86%) of the total estate service charge for the service charge years from 2011/12 to 2015/16. The alleged arrears of Estate service charge total £2,096.03. The Tribunal determines the respondents are liable to pay £2039.03 in respect of the Estate service charge.
- (2) Since the tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Staines County Court.

## **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 estate service charge payable by the Respondents in respect of the each of the service charge years from 2011/12 to 2015/16.
2. Proceedings were originally issued in the County Court Business Centre under claim no. C3QZ42G8. The claim was transferred to the Staines County Court and then in turn transferred to this tribunal, by order of District Judge Trigg on 16 September 2016.
3. The relevant legal provisions are set out in the Appendix to this decision.

## **The background**

4. The Applicant is the freeholder of the Estate known as The Cygnets, Grove Crescent Hanworth ("the Estate"). The Respondents hold a long lease of 22 Grove Crescent, a property which forms part of the Estate. The Respondents lease is dated 18 June 1999 and is made between the Appellant(1) and the Respondents (2) ("the Lease"). The Lease which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.
5. In accordance with the terms of clause 3(4) of the Lease the Respondent is required:  
  
"to contribute a fair proportion to be assessed from time to time by the Landlord of
  - (a) the reasonable cost of repairing maintaining renewing and cleaning as the case may be of any

boundary walls fences hedges lighting and Conducting Media (as defined in the Frits Schedule) and of any access roadways fore courts footpaths lighting and Visitors Parking Spaces and of any communal gardens or of any communal landscaped areas or communal facilities (save in so far as the same are adopted or fall within the cartilage of any dwelling) intended to be used as such ( hereinafter together referred to as the Common Parts in so far as the same form part of the Property)

(b) the reasonable fees charges and expenses of the surveyor accountant or other person whom the Landlord may from time to time reasonably employ in connection with the management and maintenance of the Communal Facilities and the computation of and collection of rent and collection of other monies due from the Leaseholder hereunder and if any such work shall be undertaken by an employee of the Landlord then a reasonable allowance for such work.

(c) The cost of providing repairing maintaining renewing and cleaning the Communal Facilities.

6. 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.

### **The hearing**

7. On the 6 December 2016 the tribunal issued Directions in the matter and set the application down for a hearing on the 3 April 2017. The parties requested extensions of time to comply with the Directions and as a result eventually the hearing was listed for the 24 April 2017.
8. The tribunal had before it a 782 page bundle produced by the Applicant for the hearing. The Respondents attended the hearing and the Applicant was represented at the hearing by the persons listed on the front of this decision.

### **The issues**

9. At the start of the hearing the parties identified the relevant issues for determination as follows:

(i) The reasonableness of proportion charged as Estate service charges for the years in question.

(ii) The payability and the reasonableness of the charges for the following:

- a. Estate Management £9.55
- b. External cleaning £35.75
- c. Garden works £656.49
- d. Management fee £1, 430.16
- e. Examination/audit fee £21.78

Total amount disputed: £2,153.73

(iii) During the course of the hearing upon examining and considering the supporting evidence it became apparent that the amounts quoted by the Applicant in respect of the various items disputed were incorrect and so they were recalculated and the amounts were revised as follows:

- a. Estate Management £6.75
- b. External cleaning £35.75
- c. Garden works £599.07
- d. Management fee £1, 430.16
- e. Examination/audit fee £24.30

Total amount disputed: £2,096.03

**The applicant's case:**

10. The applicant's case is set out in the bundle at pages 94- 162 and in the witness statement of Ms Nicola Edwards pages 170-179. It can be summarised as follows:

11. The applicant's are of the view that 22 Grove Crescent forms part of the Cygnets Estate. There are 35 properties on the Cygnets Estate. The applicant charges an Estate service charge for services provided to the

Estate and the total Estate service charge is divided and charged equally to 34 of the properties. The reason for this being that about 8 to 10 years ago the owners of Number 24 Grove Crescent acquired the freehold interest in their property and so they do not pay towards the Estate service charge.

12. The 35 properties comprise 8 properties held on shared ownership, 11 assured tenancies and 16 privately owned properties. Other than the freehold property the remaining 34 properties pay an equal contribution of 1/34<sup>th</sup> of the Estate service charge which is equivalent to 2.94%. At the hearing Mr Coils stated that they decided to apportion the Estate service charge equally to the properties as opposed to using a square footage basis of apportionment as per the RICS guidelines this is another reasonable method of apportionment but it would result in the respondents paying a higher proportion than they currently pay.
13. The applicant has confirmed the respondents are not being charged for any costs in relation to street lighting, bulk refuse collection, pest control, sinking fund or visitor parking.
14. The sum of £14.70 collected in respect of the sinking fund from the respondents in error in 2015/16 was refunded to them on 18.01.2017.
15. Estate Maintenance: The details of the charges are set out in Ms Edwards witness statement. The respondents have been charged under this heading in the service charge years 2011-12 and 2012-13. There has been no charge for this item in the remaining years.
16. The total actual costs in 2011-12 amounted to £76.57 and not £117.82 as set out in Ms Edwards witness statement. The cost of £76.57 was in relation to unblocking car park drains. The remainder of the charge was for repairs to lamp post lights in the sum of £91.92 and picking up litter in the sum of £3.33. Mr Coils agreed on behalf of the applicant that the respondent should not have been charged to repair the lamp post lights and as they could not produce an invoice in relation to the charge for litter picking this would be removed.
17. In 2012-13 the total actual cost came to £153.14. This was for unblocking the drains in the car park. The applicant produced a copy of the purchase order raised in payment of the invoice for this charge but a copy of the invoice could not be located by the applicant.
18. The respondents contribution towards this cost at 2.94 % amounts to £6.75
19. External Cleaning: A charge for this item was made as follows:

<b>Year</b>	<b>Total budgeted costs</b> <b>£</b>	<b>Total actual costs</b> <b>£</b>	<b>Costs payable by Respondents</b> <b>£</b>
2013-14	389.00	388.90	11.43
2014-15	0.00	408.44	12.01
2015-16	400.00	418.73	12.31
<b>Total:</b>			35.75

20. The applicant employed Just Ask Services Limited on an estates service contract to clean 105 sites across Hammersmith & Fulham, Kensington & Chelsea, Westminster, Ealing, Hounslow, Brent and Harrow. The contract was awarded after a group wide tendering process which resulted in Just Ask Services Limited being awarded a long term qualifying agreement for the provision of external cleaning services.
21. The work involved cleaning all common parts, jet washing of hard surfaces, removal of graffiti and litter picking.
22. Just Ask Services Limited renders monthly consolidated invoices for all the schemes. The copies of the invoices and purchase orders are produced.
23. Gardening: The gardening services for the service charge year 2011-12 and until June 2012 were provided by Just Ask Services Ltd. Thereafter the applicant employed Ginkgo Gardens Limited for around about 60 sites. Copies of invoices and the purchase orders raised by the applicant for payment have been produced.
24. Ms Edwards witness statement set out the following table of costs. The total payable by the respondents was stated to be £656.49 in error so this was corrected to £599.02.

<b>Service charge year</b>	<b>Total budgeted cost</b> <b>£</b>	<b>Total actual cost</b> <b>£</b>	<b>Costs payable by respondent</b> <b>£</b>
2011-12	5,300.00	4611.60	135.58

2012-13	5,300.00	5042.10	148.24	
2013-14	3,820.00	3842.16	112.95	
2014-15	6838.00	4882.38	143.54	
2015-16	2,229.00	1,998.47	58.76	
<b>TOTAL</b>			599.02	

25. The Management fee: The applicant charges a standard management fee which covers the costs of managing the leases administering the service charge including the applicants office costs and staff salaries. These costs are apportioned across the applicant's portfolio of properties. The leaseholders are provided with a Leasehold Guide about the various charges including the management fee p 718 -719 of the bundle is a copy of the information on management fees.

26. The following table is included in Ms Edwards witness statement and sets out the management fees charged:

<b>Service charge year</b>	<b>Total budgeted cost</b>	<b>Total actual cost</b>	<b>Costs payable by respondent</b>
	<b>£</b>	<b>£</b>	<b>£</b>
2011-12	9,240.00	9,240.00	271.65
2012-13	9765.00	9486.00	278.88
2013-14	9765.00	9765.00	287.09
2014-15	10,077.48	10,077.48	296.27
2015-16	10,077.48	10,077.48	296.27
<b>TOTAL</b>			1,430.16

27. The Tribunal heard from Ms Edwards that the management fee included the cost of a designated property manager for the Cygnets Estate. The property manager undertook monthly site visits and more frequent visits if works were needed and also provided monthly updates to the residents. The property manager would inspect the

gardening and external cleaning and escalate any issues. The applicant also has an internal team of technical people such as a surveyor, mechanical and electrical team, heating and hot water specialists.

28. Mr Coils stated that the fee is reviewed annually, the leaseholders are informed each December of the proposals and given a chance to feedback and then the fee is decided in the following April. Ms Desborough stated that they internally audit the management fee, it is signed off by the board and they bench mark the fee. There is an amount of their management costs that are not recovered.
29. The Examination fee: This is a fee charged by the accountants for auditing the accounts.

### **The respondents case:**

30. The respondents challenge the reasonableness of the Estate service charge.
31. The only part of the Estate service charge the respondents accept is the cost of insurance. The respondents rely on the photographs showing the location of their property and do not accept that their property is part of the Cygnets Estate and they claim they do not get the benefit of any of the Estate services so they do not accept the Estate service charge. They state that no Estate maintenance, external cleaning or gardening has been carried out on or even near their property. They do not accept the charge for the Visitors parking as any member of the public can park there and a specific parking space has not been allocated to them.
32. At the hearing the respondents stated they considered the apportionment of 1/34<sup>th</sup> to be an issue as well.
33. In relation to the management fee the respondent's stated that there were 2 leasehold meetings when they first moved in but they have not been aware of any other meetings and although they are aware there is a housing officer they have not heard from the housing officer.
34. The respondents did not have any comment on the examination fee as they do not know about accountancy fees.

### **The tribunal's decision**

35. 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.



36. The tribunal determines that the respondents are liable to pay to the applicant a contribution of 1/35<sup>th</sup> of the total Estate service charges.
37. The tribunal calculates that in respect of the items in dispute this amounts to:
- (i) Estate maintenance £6.57
  - (ii) External Cleaning £34.78
  - (iii) Gardening £582.77
  - (iv) Management fee £ 1,391.27
  - (v) Examination fee £23.64

#### **Reasons for the tribunal's decision**

38. 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.
39. In making its determination the tribunal had in mind the guidance given in the case of Yorkbrook Investments Ltd v Batten [1985] 2EGLR 100, which was followed in the Lands Tribunal case Schilling v Canary Riverside Development PTD Ltd LRX/26/2005 in support of the fact that it is for the Applicants to make a prima facie case. At paragraph 15 of the Lands Tribunal decision Judge Rich QC states:

*“... if the landlord is seeking a declaration that a service charge is payable he must show not only that the costs was incurred but also that it was reasonably incurred to provide services or works of a reasonable standard and if the tenant seeks a declaration to the opposite effect, he must show that either the cost or the standard was unreasonable. In discharging that burden the observations of Wood J in the Yorkbrook case makes clear the necessity for the LVT to ensure that the parties know the case which each has to meet and for the evidential burden to require the tenant to provide a prima facie case of unreasonable cost or standard*

40. The “Estate” is defined in the recitals of the Lease as “the land and buildings now or formerly comprised in the above title number”. The title number referred to is Title Number AGL 56432, this is the applicant’s freehold title to the Estate known as the Cygnets. The respondents lease is noted in the schedule of leases of the Title Number AGL 56432. So although the respondents property is located on a

corner off the road which serves the Cygnets according to the Lease and the applicant's freehold title the respondents property does fall within the Estate.

41. In relation to the proportion of the applicant landlord's costs payable by the respondents this is usually specified in the lease. In this case the Lease specifies that the respondents should pay "to contribute a fair proportion to be assessed from time to time by the Landlord". Where the service charge proportion is to be calculated by the landlord or his surveyor acting reasonably, the question is whether the decision is a reasonable one: if it is, it does not matter that other reasonable decisions could have been taken **Westminster CC v Fleury [2010] UKUT 136 at [10] : PAS Property Services v Hayes [2014] UKUT 0026(LC) at [52]**.
42. There are 35 properties within the Estate. The applicants state they apportion the total costs of the Estate service charge between all the properties but as one of the properties has acquired the freehold interest they no longer pay a contribution towards the Estate service charge so the cost is divided between 34 properties. The applicants state that the freehold was transferred some 8 to 10 years ago, so this would have been about 10 years or so after the lease was granted to the respondents. Prior to the transfer of the freehold the Estate service charge costs were presumably apportioned equally between 35 properties with each paying a contribution of 1/35<sup>th</sup> of the total cost.
43. There is no presumption in construing a lease that the service charge provisions will enable the landlord to recover 100 percent of his expenditure through service charges **Rapid Results College v Angell [1986] 1 EGLR 53**.
44. Where a lease obliges the leaseholder to pay a 'fair proportion' of the costs of works or services, it will be a question of fact and degree in each case whether the resulting charge meets these conditions. In this case the applicant decided to apportion the costs equally between all the properties on the Estate. The Tribunal agrees that it is fair to apportion the costs in this manner and each property should be liable to pay a contribution of 1/35<sup>th</sup> of the total cost.
45. In this case the applicant does not charge 1/35<sup>th</sup> but charges 1/34<sup>th</sup> as one of the properties on the Estate is no longer required to contribute towards the Estate service charge. The tribunal considers that regardless of the tenure of a property if it falls within the Estate it should contribute. It is a matter for the applicant to ensure that upon the transfer of the freehold it obtains a covenant to pay a contribution towards the Estate Service charge. In this case it seems that the freehold was transferred without such a covenant and so the applicant is no longer able to recoup any Estate service charge from that property. Although the tribunal appreciates that by charging the

remaining properties 1/34<sup>th</sup> of the total cost, the applicant is merely trying to recover all the Estate service charge by apportioning the Estate service charge between the remaining leasehold properties. This cannot be fair as the proportion payable by the remaining properties will continue to increase as more and more residents of properties acquire the freehold interest. Under the circumstances the tribunal does not consider 1/34<sup>th</sup> to be a "fair proportion". The tribunal considers a fair proportion to be 1/35<sup>th</sup>, which equates to 2.86%.

46. The requirement under Section 19 of the 1985 Act that costs be reasonably incurred does not mean that the relevant expenditure must be the cheapest available, although this does not give the landlord a licence to charge a amount which is out of line with the market norm **Forcelux v Sweetman [2001] ELGR 173**. It is therefore a matter for the landlord to show that the costs are within a range of reasonable prices.
47. The costs do not necessarily have to be the lowest as there is a band within which costs will be considered reasonable. The service charges payable by a leaseholder are determined by the provisions of the lease, it is irrelevant whether or not the leaseholder gains any benefit from the services **Broomleigh Housing Association v Hughes (1999) EGCS 143; Billson v Tristrem [2000] L&TR 220**.
48. In the absence of any cogent detailed reasons as to why the Estate service charges are not reasonable or not payable and on the basis of the evidence produced by the applicant the tribunal finds the charges to be reasonable subject to the respondents being liable to pay a contribution 1/35<sup>th</sup> of the total costs incurred as Estate service charge.

### The next steps

49. The tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the Staines County Court.

Name: Judge N Haria

Date:  
27/6/2017

### **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).

## 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).