

1295A



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

**Case Reference** : **LON/00BA/LSC/2018/126**

**Property** : **86 Monarch Parade, London Road,  
CR4 3HB**

**Applicant** : **Topcrest Properties Limited**

**Representative** : **Mr John Fowler of Stock Page  
Stock (managing agents)**

**Respondent** : **Mr Muhammad Zahid as Personal  
Representative of the estate of  
Mohammed Younas**

**Representative** : **Mr Muhammad Zahid**

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

**Tribunal Members** : **Tribunal Judge Prof R Percival  
Mr M Cairns MCIEH  
Mr A Ring**

**Date and venue of  
Hearing** : **23 July 2018  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **19 September 2018**

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**DECISION**

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## **The application**

1. The Applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the payability and reasonableness of service charges for the period from 25 December 2015 to the end of the second quarter in 2017.
2. Proceedings were originally issued in the County Court. The Tribunal was not provided with the county court orders and pleadings. However, it appears from the narrative in the directions made by Tribunal Judge Martynski on 17 April 2018 that originally the claim was for service charge arrears of £6,144 and associated claims. The applicant conceded the pre-2016 (strictly, pre-25 December 2015) service charge arrears, which predated the appointment of the current managing agent, as the applicant was not now able to locate the relevant paperwork. The amount claimed is now £1,626.88. The proceedings were transferred to the Tribunal by an order dated 21 February 2018.
3. The directions indicated that the Tribunal judge chairing the Tribunal would sit as a County Court judge to deal with non-service charge issues. In the event, the only remaining issue before us was the service charge and we accordingly sat only as a Tribunal.
4. The relevant legal provisions are set out in the Appendix to this decision.

## **The property**

5. The property is one of 42 flats in a purpose built block, with commercial premises on the ground floor. The block comprises two structures, the North Building and the South Building. Number 86 is located on the second floor of the South Building.
6. We inspected the two buildings and their immediate environs in the morning, immediately before the hearing. Entrance to the flats is gained via the rear of the buildings, access to which is through two gates which are electronically locked. There is a roadway running between the gates. Access to the flats themselves is afforded by open staircases and deck-access walkways. At the bottom of one of the staircase blocks are two small steel doors, secured with padlocks, which provide access to small storage spaces in which are located the electricity meters.
7. To the immediate rear of the buildings is a grassed area, beyond which is the roadway. Behind the roadway there are a series of domestic garages, and, at the South end, a larger commercial garage.

8. The physical condition of the buildings and their immediate environment can reasonably be described as scruffy, but not in obvious disrepair.

### **The lease**

9. The leasehold interest is held by the estate of Mr Mohammed Younas. By an order of the County Court dated 13 October 2017, Mr Zahid was appointed as the personal representative of the estate for the purposes of these proceedings. References to the respondent are to be construed accordingly.
10. The applicant landlord holds the residential properties in the block under a head lease from the freeholder, Goldplaza (Mitcham) Limited (the Tribunal was provided with a copy of the short register, but not the head lease itself).
11. The applicant's interest does not include the ground floor commercial premises (which comprise restaurants and shops). Nor does it extend to the commercial garage.
12. The respondent holds the flat under a lease granted in 1993 for a term of 999 years.
13. Clause 1(b) of the lease requires the lessee to pay "a fair and reasonable proportion" of the cost to the lessor of complying with the second schedule and with clause 3(2). These service charges ("further rents") are said, in the closing words of clause 1,  
"to be paid without any deduction on the quarter day next ensuing after the said expenditure".
14. Clause 2(8) requires the lessor:  
" (a) To pay a fair proportion (to be conclusively determined by the Surveyor for the time being of the Lessor) of the expenses incurred by the Lessor in respect of constructing repairing rebuilding and cleansing all party walls fences boundaries sewers drains channels sanitary apparatus pipes wires passageways stairways entrance ways roads pavements and other things the use of which is common the Demised Premises and to other premise  
(b) To pay the proportion of the service charge as set out in the second schedule hereto"
15. There is a distinct obligation imposed on the lessee to pay the expenses of the lessor on building insurance of the property (clause 1(a)).
16. Clause 3(2) requires the lessor to

“maintain and keep in tenantable repair and condition the staircase ... access ways in respect of which the Demised premises may have rights of user or of way whether alone or in common ... and to keep in such repair and condition the sewers drains pipes water-courses cables and other services the use or benefit derived from which are enjoyed by the Demised Premises whether alone or in common ... and to maintain repair and renew and keep in good and substantial repair and condition the structure and fabric of the roof of the Building and the foundations and main and load bearing walls of the Building together with all paths fences and boundaries”.

17. The Second Schedule requires the lessee to pay

“on demand a fair proportion to be determined and apportioned between the Demised Premises and other residential premises in the Building (if any) (whether let independently or together with the commercial premises) by the Lessor’s Surveyor ... of any costs and expenses (including the attributable management costs professional fees and interest charges) incurred by the Lessor in maintaining cleansing lighting repairing renewing or rebuilding any staircase ... maintaining the flowerbeds and trees on the common parts and access ways thereto the use of which is enjoyed by the Demised Premises whether alone in in common ... or in maintaining repairing renewing or rebuilding the structure or fabric of the roof of the Building the structure and foundations of the Building or main or load bearing walls of the Building or in complying in whatsoever other manner with the Lessor’s obligations contained in sub-clause (2) of Clause 3 hereof”.

18. Other provisions are referred to where relevant below.

### **The hearing and the issues**

#### *Preliminary*

19. Mr Fowler of the managing agents (Stock Page Stock) represented the applicant, accompanied by his surveyor, Mr Mark Jones, who gave evidence. The respondent was represented by Mr Zahid. All three were present at the inspection.
20. At the start of the hearing the parties identified the relevant issues for determination as follows:
- (i) Whether the lease allowed for the collection of a reserve fund against future expenditure (the reserve fund issue);

- (ii) What the position is in relation to the contributions which should be made by the commercial occupiers of the blocks (the commercial contribution issue); and
- (iii) Whether the service charges demanded since 25 December 2015 were reasonably payable (the reasonableness issue).

*The reserve fund issue*

- 21. In its Statement of Case, the applicant states that “Monarch Parade is under a very unusual lease in that service charges are not paid on account, but in arrears after the charges have been incurred.” Nonetheless, in the hearing before us, Mr Fowler argued that the lease did make provision for a reserve or sinking fund charge to pay for future expenditure.
- 22. The service charge demands to which the application relates include a total sum described as a contribution to the reserve fund of £5,000 for 2016 and £5,000 for the two quarters of 2017 in issue. The respondent’s share of this sum is one forty-second, £238.
- 23. Mr Fowler relied on clause 2(2) of the lease. Clause 2 sets out tenant’s covenants. Clause 2(2) reads as follows:

“To defray (or in the absence of direct assessment on the Demised Premises to repay the Lessor) a fair proportion of all existing and future rates assessments charges and outgoings of every kind and description payable by law in respect of the Demised Premises or any part thereof by the owner lessee or occupier thereof”
- 24. Mr Fowler argued that payment by the tenant of the service charge was “payable by law in respect of the Demised Premises”; and the clause allowed collection of “future ... outgoings” as well as existing ones. The service charge fell within the description of an “outgoing of every kind or description payable by law”. Accordingly, argued Mr Fowler, the clause authorised the collection of advance service charges.
- 25. The respondent argued that the lease did not allow the demand of any money in advance.
- 26. It appears that there was a reserve fund in existence, which was placed in the hands of the managing agent when they took over management of the property March 2016. The respondent said that the reserve fund was, in effect, built up by voluntary contributions made by tenants.
- 27. We reject Mr Fowler’s submissions.

28. The terms of the passage in clause 1 quoted in paragraph 13# above, and of the second schedule, clearly relate solely to expenditure already incurred. Clause 2(2) is not effective to transform this obligation into one to contribute to future expenditure, whether by way of an interim or advance service charge, or a reserve or sinking fund.
29. In the first place, clause 2(2) is in our view clearly aimed at external imposts relating to the premises by authorities other than the parties to the lease, of which the most obvious example would be domestic rates, and now council tax. The terms "rates", "assessments" and "charges" indicate this. This conclusion is reinforced by the phrase in parenthesis, which assumes that the rates etc are imposed on either the tenant directly or on the landlord (who must therefore be repaid) by a third party. If this is right, then the sweeping up clause "outgoings of every kind and description" must be read *ejusdem generis*; that is, as confined to items similar in kind to those indicated by the preceding specific items. As such it is not apt to describe the detailed provisions made *between the parties* for the payment of the service charge.
30. Secondly, the argument is in any event flawed. Even if Mr Fowler were right that the list of things payable was capable of including the service charge, the clause would oblige a tenant to "defray ... all future ... [service charges] ... payable by law". But no future service charges *are* payable by law. The clause, even if so interpreted, cannot turn a legal obligation limited to retrospective payment of a service charge into an obligation to pay a service charge on account or to create a fund to be used against future expenditure.
31. Mr Fowler adverted to the practical difficulties created by the inability of the applicant to build up a reserve fund or collect interim or advance service charges. These difficulties will become acute, he told us, because works relating to asbestos in the lining of water tanks on the roof would be required shortly. We entirely accept what Mr Fowler says. Indeed, we consider that this defect in the leases is of particular importance in a property of this nature and character. However, these problems cannot render the wording of the lease other than it is.
32. *Decision:* The lease does not allow for service charge to be demanded to build up a reserve or sinking fund. To the extent that service charge is demanded from the respondent for this purpose, it is not payable.

*The commercial contribution issue*

33. We were not provided with a copy of the head lease, nor of the freeholder's leases with the commercial occupiers. The applicant's evidence was that the demise under the head lease included all of the garden area save for a small strip that the applicant described as negligible, and the domestic garages. The domestic garages are only let to tenants of the flats. The freeholder retained the ground floor commercial premises, and the commercial garage.

34. As a matter of fact, the commercial premises/freeholder did not contribute to the upkeep of the gates or the garden area. The applicant was unclear as to whether the users of the commercial premises have a right of way over the roadway (although it was the case that the lessee of the commercial garage used the roadway). The commercial occupiers had not been given the codes to unlock the gates by the managing agents. If they had them, the information had come from somewhere else.
35. The respondent said it was unclear to what expenditure the commercial users contributed. He said that use of the drains and manholes were shared between the flats and the commercial premises. He also observed that it appeared that the tenants of the flats were paying for the maintenance of that part of the garden that had not been demised to the applicant. However, when asked to identify the expenditure that had been charged in the service charge to which, he contended, the commercial occupiers should have contributed, he was unable to do so.
36. The Tribunal shares the respondent's concern about the lack of clarity as to the comparative responsibilities of the freeholder as freeholder, and its commercial lessees, as against the lessees of the flats. It may be that the applicant's head lease and the leases of the commercial lessees would throw light on these relationships, but none of these were available to us. If significant spending were in issue, then we would have had to have investigated these matters, and come to conclusions as to their impact on the payability and/or the reasonableness of the respondent's service charge.
37. However, that is not the situation before us on this application. As we have observed, the respondent is unable to indicate any expenditure giving rise to service charges that might be affected by the commercial users. There may be some, but if there is, we consider it negligible. By way of example, we have seen the garden area during our inspection. Our view is that the additional time, if any, that mowing the thin strip of grass which we were told (again, we did not see the instrument itself) was not demised would not be likely to have any impact on the charge for gardening. Indeed, it may well be that it would take as long to avoid mowing the strip as it would to mow it.
38. Accordingly, given the negligible monetary impact of the issue, we consider that it would be disproportionate to investigate it further. In doing so, we have regard to the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, rule 3(2)(a).
39. *Decision:* The relationship between the rights and responsibilities of the freeholder and the commercial lessees as against the lessees of the flats is obscure. However, any expenditure in issue on this application which raises the issue is negligible, such that it would be disproportionate for the Tribunal to investigate and rule on the question.

*The reasonableness issue*

40. At the hearing, the applicant took the Tribunal through each of the six quarterly summaries of costs from which the service charge demands were derived in turn, with a view to satisfying us of the reasonableness in each case, the respondent equally putting his objections. Rather than do so in this decision, it is more economical to deal with the questions raised issue by issue. We do not consider heads of expenditure to which the respondent did not object.
41. Before doing so, we observe that the respondent repeatedly questioned the personal honesty of those employed by the applicant's managing agents. We understand the tensions that can arise in relationships between lessors and their tenants where disputes develop over service charges and other matters. Further, the Tribunal will allow significantly greater latitude to those representing themselves in relation to such allegations. Nonetheless, such allegations should not be made in the absence of cogent evidence, or at any rate, some evidence. And in no case in which the respondent made these allegations was he able to provide any evidence at all. The Tribunal will, of course, decline to act on allegations of this nature. Further, we deprecate the respondent's conduct. He should understand that it does him no credit and brings his cause no advantage.
42. *Communal electricity:* The applicant produced invoices to support charges for communal electricity. The respondent contested the reasonableness of these on the basis that the electricity was consumed by lights, which had originally been on a timer. The timer was broken by a rough sleeper who had accessed one of the storage spaces under the stairs, after which the lights were on all day, every day.
43. Mr Jones' evidence for the applicant was that he had inspected the site when the managing agent took over, and regularly thereafter. The lights were at all times subject to control. Initially, they were on a timer, and he accepted that there had been problems with the use of the timer, which had become out of sequence, but they had then been changed to motion sensors, which now governed their operation. The effect of his evidence was that the timer problem was short lived, although he did not give exact times.
44. We prefer the evidence of Mr Jones. Whatever the timer problems, the lights were not on all of the time. They were not on when we inspected. The respondent provided photographs of the lights, illuminated during the hours of daylight, but that is not inconsistent with Mr Jones' evidence about the sequencing problem. It may be, therefore, that there was a period during which the lights were inappropriately sequenced, but the managing agent dealt with that problem in due course. The fact that the problem occurred does not in itself mean the expenditure is unreasonable. There is no evidence from which we can conclude that



the approach of the managing agents to remedying the problem was anything other than reasonable.

45. *Relocation of CCTV monitors:* the CCTV monitors had been located in the flat belonging to Ms Zoe West, the person who had managed the property before the current managing agents were engaged. The expense was supported by an invoice. The respondent's objection that "it seems quite high" goes nowhere near justifying a finding of unreasonableness. The invoice is for £1,400, but this includes the supply and fitting the metal doors to the storage area (see below).
46. *Replacement of doors:* The doors to the storage space under the staircase had been wooden. They became insecure. They were replaced with metal doors, at the same time that the CCTV system monitor was relocated there. The respondent claimed that Ms West had broken the wooden doors and should therefore have replaced them. Mr Jones' evidence was that the wood had become rotten and was damaged by the rough sleeper to secure access. It was reasonable to replace the wooden doors with metal ones, which provide greater security. We accept Mr Jones' evidence as to the cause of the damage to the wooden doors.
47. The respondent raised an issue with the fact that the same person who was a director of the firm providing the invoice for the CCTV work and the doors also undertook other work under his own name. He accused Mr Fowler of unspecified dishonesty in relation to the transaction, but presented no evidence to support the allegation. Mr Fowler said he had no connection with the company or the person, save that he had used him professionally for a long time for legitimate reasons. The firm complied with the RICS code of practice and did not use related companies. There is nothing in this allegation.
48. *Management fees:* The respondent considered the managing agent's fees excessive. The applicant's evidence was that £250 (excluding VAT) per unit per year was their standard charge in all 70 or so blocks that they managed. Mr Evans said that this block was the most difficult of all of those in their portfolio.
49. The respondent did not particularise his challenge. The Tribunal indicated that it would take account of its specialist knowledge of management fees in London, which expertise arose from a general acquaintance with the market rather than specific, disclosable pieces of evidence. Both parties expressed themselves content with this.
50. We conclude that £250 per unit per year was a reasonable sum to charge for the services provided, which were those typically provided by managing agents. Even apart from our understanding that this was well within the normal, reasonable range for any block, let alone what is a difficult-to-manage block, there was no real substance in the respondent's objection.

51. *Electronic fob keys:* The respondent contested the purchase of two electronic fob keys for members of staff of the managing agents to gain access to the blocks. The respondent said that the managing agents were double charging for fobs that were then sold to tenants. He had no evidence to support this allegation. We reject it.
52. *Cleaning and gardening:* There was some lack of clarity as to the way the costs of cleaning and gardening were presented in the statement, as both were undertaken by the same company. However, once the invoices were explained, it was apparent that the totals charged were in line with the invoices. The respondent did not challenge the figures, but did claim that both cleaning and gardening visits were less frequent than the invoices stated. Mr Jones' response was that the level of cleanliness was in line with the invoiced sum, and that it was a trustworthy contractor. We prefer the evidence of Mr Jones over the un-particularised and un-supported allegations of the respondent.
53. *Water tanks:* The respondent contested the expenditure on a test for legionnaires disease carried out on cold water tanks on the roof. There was some dispute as to whether the tanks were in fact connected (for grey water use) to any of the flats. The respondent thought they were not. Mr Jones thought some might still be, but agreed he could not be sure. But, said Mr Jones, in any event the test was a legal requirement where there were tanks containing water, regardless of connectivity. We consider in these circumstances that the expenditure was reasonably incurred.
54. There were additional charges for inspection of the water tanks in performance of a contract relating to water hygiene in late 2016. We heard evidence that at about this time it became apparent that there was asbestos in the lining to the water tanks. While no expenditure to date appears to be attributable to this, the applicant explained that it is likely to result in a need for major works in due course. While the respondent criticised the applicant's approach, we do not consider that there is any issue for us to determine.
55. *Rubbish removal:* The respondent objected to charges for rubbish removal. Apart from objecting to what he thought was late provision of information in relation to this matter, his objection boiled down to an insistence that there had never been nine old refrigerators requiring removal at one time, that being the number in respect of which the charge was made ("rubbish removal also including x9 fridges and x2 loads"). Mr Jones made the general point that it was a reputable contractor that they regularly used.
56. We regard it as inherently unlikely that the respondent meticulously counted the number of refrigerators dumped in the (large) rear area behind the blocks on a regular basis, such that he could indeed be sure that in April 2016 that there were not nine of them. Rather, we consider

it more likely that it is indicative of his unreliable approach to his evidence, other aspects of which we have already remarked on.

57. Further, it is inherently unlikely that even an untrustworthy contractor would pointlessly specify the number of refrigerators moved, the fact having no obvious bearing on whether their invoice would be paid, whether it was honest or not.
58. In these circumstances, and taking into account Mr Jones' evidence, we consider it more likely than not the invoice is reasonable.
59. *Gates*: There were significant problems in the second quarter of 2017 when the gates to the property became stuck in the open position. The respondent appeared to contest the cost of repairs, but we are satisfied that this arose from his confusion between the contract for routine maintenance and that for the one-off repair of the defective gates.
60. *Professional fees*: The respondent claimed that there was no need for certified accounts to be prepared. They are required by the lease. The respondent also queried a solicitors' invoice for £200 for several months' engagement with a tenant in arrears. We are satisfied the expenditure was reasonable.
61. *Decision*: The service charge as demanded is reasonably payable (the sums relating to the reserve fund apart).

### **Concluding matters**

62. There was no application under section 20C of the 1985 Act.
63. This matter should now be returned to the County Court.

**Name:** Tribunal Judge Richard Percival      **Date:** 19 September 2018

## **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).