FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/21UD/LSC/2018/0060
Property	**:**	27,35,39,40,41,43 Queens Apartments, Robertson Terrace, Hastings, East Sussex TN34 1JN
Applicant	**:**	James Mackie
Representative	**:**	n/a
Respondent	**:**	Pater Stavri and David Gould
Representative	**:**	Miss Ackerly of Counsel instructed by Brethertons LLP
Type of Application	**:**	For the determination of the reasonableness of and the liability to pay a service charge
Tribunal Member(s)	**:**	Judge JA Talbot Mr RA Wilkey FRICS
Date and Venue of Hearing	**:**	4 December 2018, Hastings
Date of Decision	**:**	14 January 2019

DECISION

Decisions of the Tribunal

1. The Tribunal makes the determinations as set out under the various headings in this Decision.

2. The Tribunal does not make an order under Section 20C of the Landlord and Tenant Act 1985.

The application

3. The Applicant seeks a determination pursuant to Section 27A of the Landlord and Tenant Act 1985 ("the Act") as to the amount of service charges payable by the Applicant in respect of the service charge years 2016, 2017 and 2018.

4. Directions were issued by Judge DR Whitney on 8 June and 4 July 2018. He directed that the Respondent to the application should be amended from Oakfield Property Management Limited ("Oakfield") to Peter Stavri and David Gould trading as "We Make It Happen LLP". This was because Oakfield are the managing agents, not the freeholder. However, the joint landlords in the leases are in fact Peter Stavri and David Gould as individuals so in this Decision they are accordingly correctly so named as the Respondents.

5. A Case Management Hearing took place on 25 July 2018 chaired by Mr D Banfield FRICS who issued further Directions to bring the matter to a hearing. Both parties complied with the Directions.

6. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

7. The Applicant, Mr Mackie, appeared in person at the hearing. The Respondents were represented by Miss R Ackerley of Counsel accompanied by Ms R Harmer and Ms S Hensher from Oakfield.

8. Immediately prior to the hearing the parties handed in further documents, namely a further Witness Statement from Mr Mackie and a Skeleton Argument from Miss Ackerley. The start of the hearing was delayed while the Tribunal considered these new documents. Miss Ackerley objected to the inclusion of Mr Mackie's late Statement. The Tribunal decided to admit the statement as it amplified his case as already set out and assisted the Tribunal. It did not add any new material of such significance as to require an adjournment and its inclusion did not prejudice the Respondents.

The background

9. The properties which are the subject of this application comprise 5 converted flats, all of which are sub-let to tenants. The application initially referred to 6 flats but one (no.35) has since been sold.

10. The Tribunal inspected the property before the hearing in the presence of Mr Mackie, Miss Ackerley, Ms Harmer and Ms Hensher. Queens Apartments is a substantial building with an Art Deco theme overlooking the main coast road and sea front in Hastings. The east flank wall has frontage to a road leading to town centre shops and amenities. It was part of the Queens Hotel which was fashionable in the late 1800's but later fell into disrepair and has now been converted into residential flats with commercial units on much of the ground floor.

11. The building is arranged as three blocks: Block A is the section on the west side, Block B is the central part and Block C is on the east side with a separate entrance from the return frontage to Harold Place. At the time of the inspection, scaffolding was in place to Blocks A and B and workmen were present. This severely restricted the inspection of the exterior. Works of external refurbishment and redecoration were plainly in progress to part of the building. The external rendering on the east side was in poor condition and in need of repair and redecoration.

12. The Tribunal inspected the public ways of Block C which comprises 7 flats arranged as 2 flats per floor plus 1 on the top floor, including 4 of the subject flats – nos. 39,40,41, & 43. There are no commercial units associated with Block C. The common parts were carpeted and in generally clean decorative order. There was a passenger lift serving all floors and a modern fire alarm panel on the wall in the ground floor lobby. The Tribunal did not inspect the interior of Block B, which contains flat 27.

13. At Mr Mackie's request, the Tribunal viewed the rear of the building, as work carried out to an area of rendering to Block B was one of the items challenged. However, it was not possible to examine the relevant area from the ground and no further access was possible.

The Leases

14. Mr Mackie holds long leases of all the flats, which require 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 will be referred to below, where appropriate.

15. At this point it is worth noting that in Block C, the service charge proportion of landlord's expenditure is specified at 14.3% per flat, whereas in Block B (flat 27 in this case) it is "a fair and reasonable proportion (determined by the Landlord, acting reasonably) of the Building Expenditure (after deduction from the Building Expenditure of the Commercial Units Charge)". Initially there was some confusion over this because the Respondents had asserted in the Statement of Case that each lease was in identical terms, and Mr Mackie denied he had signed a

lease in that form for flat 27. Neither assertion was correct.

The issues

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

    - The payability and reasonableness of service charges for 2016, 2017 and 2018, relating in particular to:
    - The validity and service of service charge demands
    - Annual overall increases in interim demands, including reserve fund
    - Whether the statutory consultation procedure under section 20 of the Landlord and Tenant Act 1985 had been correctly followed, and the cost of major works
    - Service charge costs of the following items: general maintenance, health and safety, fire safety, cleaning of common parts, communal electricity, telephone charges, management charges, bank charges.

17. 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. In each case, where the service charges are determined to be payable and reasonably incurred, the total amount is stated and Mr Mackie's contribution for Block C is 14.3% per flat.

Validity of Service Charge Demands

18. Mr Mackie submitted that the service charge demands he had received during the relevant years did not comply with the statutory requirements because they did not contain the landlord's correct name and address for service in the UK.

19. Service charge demands dated e.g. 15/12/2015 and 13/06/2016 gave the landlord's name as We Make It Happen Ltd with an address of Chameleon House, Drury Lane, St Leonards on Sea. Ms Harmer confirmed this was the company's registered address at that time. Later demands, dated e.g. 06/06/2017 still gave the company name but at a new company address, 20 Havelock Road Hastings. By 27/03/2018, the demand named the landlord as Peter Stavri and David Gould t/a We Make It Happen LLP at 20 Havelock Road.

20. Mr Mackie argued that none of these were correct and had obscured the true identity of the landlords, which were Peter Stavri and David Gould as individuals, not trading as a company.

21. Ms Ackerley argued that all the service charge demands were re-served in 2018 with both landlord's correct names and individual addresses and address for service at 20 Havelock Road. She submitted that the inclusion of copies of these demands annexed to the Respondents' statement of case amounted to valid service.

22. However, it emerged at the hearing that a further attempt had been made by Brethertons to serve the rectified demands on Mr Mackie by email on 16 November 2018. He handed in a covering email from a Mr Lydon of Brethertons stating that the new demands would also be sent by post, but Mr Mackie stated he had not received them by post.

23. Ms Hensher and Ms Harmer had no evidence to support service by post, but said that according to the witness statement of Bethany Mallett, administrator at Oakfield, Mr Mackie had asked during a telephone call with her in December 2017 for all documents to be sent by email and post to ensure receipt, as he had not previously received all items by post. Mr Mackie did not fully recall the conversation but accepted he may well have agreed to email correspondence and that he had received the service charge demands sent by email on 16 November.

The Tribunal's decision

The Tribunal decided that the service charge demands were valid and had been correctly served so that the sums demanded were lawfully due.

Reasons

24. By section 48 of the Landlord and Tenant Act 1987, there is a clear statutory requirement for all notices sent by a landlord on a tenant to contain the landlord's name and address for service in the UK. Plainly, these details must correct. It is therefore beyond doubt that the demands sent in the name of We Make It Happen LLP and Peter Stavri & David Gould t/a We Make It Happen LLP were defective.

25. It is settled law that such defects can be remedied by later service of correct demands which retrospectively validates all the earlier defective demands. However, service charges are not lawfully due unless validly demanded in accordance with the terms of the lease and statutory requirements (including a summary of rights and obligations, which were annexed to all the demands in the papers).

26. The Tribunal was not persuaded by Miss Ackerley's argument that the inclusion of copies of the corrected demands dated 21/08/2018, as annexed to the Respondents' statement of case, along with several hundred other documents, amounted to good service.

27. The purpose of a statement of case with supporting documents is to set out a party's case with existing evidence, not to attempt service of new documents which legally require separate service. Indeed, the last-minute attempt by the Respondents' solicitors to serve the rectified demands by email just 2 weeks before the hearing suggests that they were well aware of this, and that it had not already been done.

28. On the question of whether service by email alone was valid service, the starting point is the terms of the leases. At clause 7.10.1, the parties agree that "any demand for payment notice in writing certificate or other

document to be given or served under or connection with this Lease will be sufficiently given or served if it is sent by ordinary post in a prepaid letter addressed to the person to or upon whom it is to be given or served by name at its usual place of abode or business".

29. Whilst the Tribunal considered it unlikely, given the wording of Brethertons' email and Mr Mackie's evidence, that the rectified service charge demands had been sent by post, the Tribunal took the view that Mr Mackie's agreement with Oakfield to accept documents by email overrode the provisions of the lease. As a result, service by email of the rectified service charge demands was good service.

Annual service charge increases

30. Mr Mackie objected generally to annual increases in service charges demanded for all the flats, which he regarded as excessive and unreasonable and without explanation or breakdown. He submitted that Oakfield had not responded to his requests for information which made it difficult for him to challenge the costs or obtain alternative quotes. The service charges exceeded the rental income achieved and made the flats difficult to sell. He questioned the need for a sinking fund (or reserve fund) and the sums demanded.

31. The Respondents, in their statement of case and as submitted by Miss Ackerley, argued that Mr Mackie's objections amounted to a bare assertion that the overall service charge increases were too high. The service charge demands reflected the actual expenditure incurred by the landlords in complying with their obligations under the lease. Oakfield estimated the likely costs for the coming year and produced a budget on which the service charge demands were calculated, which was sent to the lessees for information.

32. The Respondents further submitted that the purpose of the reserve fund was to build up a balance towards payment for future items of major expenditure, based on Oakfield's knowledge and experience.

The Tribunal's Decision

33. The Tribunal determines that the interim service charges demanded for years 2016, 2017 and 2018 were reasonably incurred and are payable, including the reserve fund.

Reasons

34. The Tribunal broadly accepted the Respondents' case. The interim demands under the lease are sums paid on account as the landlord or managing agents "shall specify to be a fair interim payment" which may be adjusted during the financial period (calendar year) "should it reasonably appear necessary or appropriate" (clause 1.13). This gives the landlord a wide discretion. The annual increases inevitably reflected the costs of managing a large and complex building and would also

inevitably vary depending on the works required. The sums demanded were based on budgets which appeared to the Tribunal to be reasonable in all the circumstances.

35. The leases provide for a reserve fund at para.21 of Schedule 6, which defines the Building Services for which service charges are payable, "against the cost of the repair, maintenance and decoration of the Building, Common Parts or any part thereof". The sums demanded by the Respondents for the reserve fund were regarded as reasonable, especially with the planned major works.

Section 20 Consultation and Major Works

36. Mr Mackie contended that the major external works to Block C were not necessary. He considered that as the owner of the majority of the flats in Block C, he should have been personally consulted for his agreement before the process began. He accepted that he had received the section 20 consultation notices by email, but not by post (albeit that this was apparently because it went into his spam folder).

37. Mr Mackie objected to the choice of Downton Builders for the major works contract. He believed the owners of Downton were the same as the directors of We Make It Happen LLP, so that in effect the Respondents were requiring the lessees to pay to protect their own investment.

38. On questioning from the Tribunal, Mr Mackie said he thought all Block C required was a coat of paint, so he was being asked to pay too much, but if all the works in the Specification were needed, the quote for Block C of approximately £45,000 was not unreasonable. He had not obtained any alternative quotes.

39. Miss Ackerley submitted that the Respondents had complied with all the statutory requirements, and in their documents had produced copies of the section 20 consultation notices and evidence of service by email. Ms Harmer stated that Oakfield's records showed the initial, 2nd and 3rd stage notices were also sent by post on 28/05/2017, 30/01/2018 and 20/03/2018, but the system did not enable a manually generated letter to be printed off as proof.

40. In addition, as evidenced in the witness statement of Peter Snatt of Oakfield, Mr Mackie had met with him on 26/04/2018 to discuss the works when he was informed that the lease obliged the landlord to decorate the exterior every 5 years, the work was overdue, and the Council had contacted Oakfield requiring works to be done.

41. Miss Ackerley explained that one of the joint owners of Downton Builders Ltd was David Stavri, Peter Stavri's son. It was a separate company. Although there was a family connection, the statutory consultation regulations permitted the landlord to obtain quotes from a connected company provided at least one of the quotes was from a contractor unconnected with the landlord. Downton was asked to tender

for the works on the same terms as four other contractors, and was awarded the contract across all the Blocks because they submitted the overall cheapest quote. Downton's offices were in Block B, not Block C, which has no commercial units.

The Tribunal's decision

42. The section 20 statutory consultation procedure had been complied with. It was reasonable for the Respondent to demand interim service charges based on the overall tender cost from Downton Property Limited of £181,074.40 plus VAT.

Reasons

43. Again, the Tribunal broadly accepted the evidence and submissions of the Respondents, supported by comprehensive documents, including the Specification of work and tender analysis, along with the section 20 Notices and additional email information sent to Mr Mackie by Mr Snatt, all of which the Tribunal carefully considered.

44. The Tribunal found some of Mr Mackie's points to be mistaken. For example, there is no requirement for a landlord to obtain any lessee's prior agreement to carry out works. The landlord must comply with its repair and maintenance obligations under any lease, and the usual structure of leases then requires the lessees to contribute a proportion of those costs via the service charge. The statutory consultation procedure must also be followed, as it has here.

45. In addition, there are no commercial units in Block C, including Downton's offices, but under the lease for Block B, is it clear that the commercial units make own contribution which is taken into account when assessing a fair and reasonable proportion for the lessees to pay.

46. It stands to reason that carrying out major works in compliance with lease requirements will protect the freehold investment, but it will also benefit the lessees' investments to have a well-maintained building. The Tribunal's inspection showed that the exterior to Block C was in poor condition and the works were therefore necessary.

General Maintenance

47. The next disputed matters concern various items as listed in the Freehold Management Accounts showing income and expenditure. The headings are the same for each year, and also appear in the budgets for anticipated expenditure.

48. Mr Mackie objected to the "general maintenance" figures because as there was no breakdown he did not know what works the sums related to. In his statement of case he queried costs for Block C for 2017 but not for 2016 or 2018. He also thought the projected budget increase of £2,000 for 2018 was unjustified.

49. The Respondent's case was that the heading "general maintenance" encompassed various minor low-cost works and repairs. They provided a list for 2017 which included items such as investigating a leak, fixing a balustrade, painting railings and removing rubbish. Contractors' invoices were included for these items. Ms Harmer said the projected figure for 2018 was higher because of an anticipated skylight repair. She could not confirm if this had been carried out, but if not, there would be a service charge credit.

50. In particular, the 2017 list included a cost of £1,740 for exterior repair to the wall of the rear of flat 37, which Mr Mackie had asked the Tribunal to view. An invoice from SDS Builders & Decorators dated 20/20/2017 was evidence that this cost had been incurred and there was no suggestion or evidence that the work was not of a reasonable standard. Mr Mackie had not specifically challenged any items in 2016 or 2018.

The Tribunal's decision

51. Service charges in 2017 for general maintenance of £2,846.24 to Block C are payable and were reasonably incurred.

Reasons

52. Tribunal was satisfied with the Respondents' explanation and supporting evidence. From its own knowledge and experience the Tribunal accepted that it is not uncommon or unreasonable for a landlord or managing agent to include a heading such as "general maintenance" in annual accounts where the costs and works to which they relate are relatively minor and for which statutory consultation is not required. The tenant is entitled to inspect vouchers and receipts, which have been provided in the course of these proceedings.

53. In particular, there was no evidence that the cost of £1,740 for works to the exterior rear wall to flat 37 was unreasonable or that the works were not of a reasonable standard. The budget increase was also reasonable in all the circumstances.

Health and Safety

54. Mr Mackie did not specifically challenge any costs but required a breakdown so that he could obtain comparable quotes.

55. The Respondents' case was that health and safety and fire risk inspections were required every 2 years. The last one was in 2016 at a cost of £462 as shown in the accounts, and the next was due in 2018.

The Tribunal's decision and reasons

56. Service charge costs for health & safety of £462 for Block C are payable and reasonable. The Tribunal accepted that the risk assessment was a

legal requirement and that it was good practice for it to be carried out every two years.

Fire Safety

57. Mr Mackie submitted that the cost for 2016 of £3,313.20 was excessive. For 2017 it was £1,648. He contended that he had obtained an alternative quote of £300 plus VAT per year to manage and maintain the fire alarm, and that the alarm itself (which the Tribunal saw wall-mounted in the hallway to Block C) costs around £369 to purchase new.

58. The Respondents' case, as submitted by Ms Harmer, was that the costs supported by invoices from JS Fire Protection included not only 6 monthly servicing of the fire safety system but also emergency lighting and various extra call out charges. The actual expenditure therefore varied per year and it so happened that the costs incurred for 2016 amounted to £3,313.20 and a lower amount of £1,648.00 for 2017.

The Tribunal's decision

59. Service charges of £3,313,20 for 2016 and £1,648.00 for 2017 are payable and reasonable.

Reasons

60. The Tribunal accepted the Respondents' figures and explanation. The Tribunal was satisfied that Mr Mackie's quote was not on a like for like basis. The landlord's actual expenditure was supported by invoices from JS Fire Protection Ltd. The landlord is not obliged to instruct the cheapest possible contractor if it has a preferred reputable, reliable and competent contractor whose costs are within a reasonable range.

Cleaning Charges

61. Mr Mackie challenged the costs of cleaning the common parts to Block C on grounds that they were too high and that his tenants had reported that cleaning was not done regularly or to a satisfactory standard.

62. The Respondents' case was that cleaning was carried out twice weekly for 2.5 hours per week at £15 per hour, which was a reasonable market rate, plus additional ad hoc work. Invoices in support from Platinum Property were provided. There was no contract as such but an agreed schedule of work with a cleaning company that was known to Oakfield. The work was monitored by quarterly inspections and any complaints were taken up with the contractors.

The Tribunal's decision

63. The service charges for cleaning costs were reasonable and payable as follows: 2016, £2,104.58; 2017, £2,246.25; 2018 budget, £2,050.00

Reasons

64. The Tribunal accepted the submissions and evidence of the Respondents. The cleaning charges and timings were reasonable and supported by documentary evidence. At the inspection, the Tribunal observed the common parts of Block C to be generally clean and tidy. Although the inspection was inevitably just a snapshot, there was no evidence of neglect such as staining to the carpets or ingrained dirt.

Telephone and Electricity Costs

65. These costs can be conveniently and shortly dealt with together. Mr Mackie's objection was essentially that he had not received a requested breakdown of the costs. The telephone and electricity bills were provided annexed to the Respondents' statement of case. Ms Harmer explained that these reflected actual costs and that the Block C electricity costs were allocated according to the "npower" reference numbers. She confirmed that the commercial units were billed separately and that there was no subsidy from the residential units of Blocks B or C.

The Tribunal's Decision

66. Service charge costs for telephone and electricity are payable and reasonable as follows: 2016: telephone £509.47, electricity £1,810.47 2017; telephone 73.20, electricity £1,320.79.

Reasons

67. The Tribunal was satisfied that these were actual costs supported by bills and correctly attributed to Block C.

Management Fees

68. Mr Mackie was concerned that Oakfield's management charges might include a percentage of the service charges, major works or reserve fund. He also disputed an increase from £150 per flat for Block B in 2015, 2016 and 2017 to £300 in 2018. In reply to a question from the Tribunal, he confirmed it was the 100% increase he was challenging rather than the actual amount.

69. The Respondents' statement of case set out the menu of items covered in the management charge. The per unit fee of £225 per flat (Block C) and £300 per flat (Block B) (inclusive of VAT) was based on the anticipated work to be undertaken. Ms Hensher added that the previous rate of £150 per unit had been low for some years and that £225 for Block C still represented a discounted rate. This was a flat rate with no percentage extras, although in accordance with usual practice Oakfield charged separately for additional work associated with major works.

The Tribunal's decision

70. The Tribunal determined that the management fees of £225 and £300 per unit were payable and reasonable.

Reasons

71. The Tribunal accepted that the rates per unit were not excessive and were in line with management charges in the area. The increase was not unreasonable given that the rates had been lower for some years. The Tribunal further accepted that it was normal practice for professional managing agents to charge an additional percentage based fee for administration of major works.

Bank Charges

72. Mr Mackie queried the sum of £120 per year (£10 per month) across all properties managed by Oakfield, which he regarded as excessive. He sought proof of payments.

73. Ms Harmer, in reply to questions from the Tribunal, confirmed that Oakfield operated a global client account with software to separate the properties. Bank charges were estimated over all managed properties and the cost of £10 per month per block included a profit element.

The Tribunal's decision

74. Bank charges of £120 per year per Block are not recoverable.

Reasons

75. The lease at paragraph 10 of Schedule 6 allows the landlord to recover as service charges "the payment of all charges assessments and other outgoings payable in respect of all parts of the Building", which in the Tribunal's view, include bank charges.

76. However, this does not entitle the landlord to estimate average bank charges across all the properties it owns or which are managed by Oakfield. It certainly does not include a profit element.

77. Therefore, the charge of £120 per year is not recoverable. If the actual bank charges for Queens Apartments can be ascertained, these would be chargeable.

Application under S20C and refund of fees

78. At the hearing, Mr Mackie applied for an order under Section 20C of the 1985 Act. He said that he only brought the Application to the Tribunal because his understanding was if he made a Section 20C application this would automatically be granted and he would not be at any costs risk.

79. Miss Ackerley opposed the application. She submitted that under clause 1.26.5 and paragraph 17 of Schedule 6 of the leases the landlords were

entitled to recover "all professional charges fees and expenses payable by the landlord" which included legal costs.

80. In addition, it would not be just and equitable to make an order because the landlords had responded to all the queries raised by Mr Mackie and had incurred considerable expense in providing copies of all documents, invoices and receipts, which he could have viewed by appointment at Oakfield's offices. Although in the Tribunal as opposed to the Courts, costs did not necessarily follow the event, Miss Ackerley submitted that if the Respondents were largely successful in these proceedings, they should be entitled to recover their legal costs as service charges, and intended to do so.

The Tribunal's decision

81. The section 20C application is refused. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines that it is not just and equitable in the circumstances for an order to be made under Section 20C of the 1985 Act. Mr Mackie had only succeeded in one relatively minor issue of bank charges. His impression that a Section 20C order would automatically be granted was mistaken. The Respondent is therefore not precluded from passing any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

Name: Judge JA Talbot

Date: 14 January 2019

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).

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking