FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AZ/LSC/2019/0231**
Property	:	**171A, Hither Green Road, London SE13 6QF**
Applicant	:	**Assethold Ltd.**
Representative	:	**Mr. R. Granby of counsel, instructed by Scott Cohen Solicitors**
Respondent	:	**Mr. Kenneth George Walter**
Representative	:	**In person**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay service charges and/or administration charges**
Tribunal Members	:	**Tribunal Judge Stuart Walker (Chairman)** **Mr. Michael Taylor FRICS** **Mrs. Lucy West**
Date and venue of Hearing	:	**7 November 2019 at** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**2 December 2019**

DECISION

Decisions of the Tribunal

(1) The Tribunal determines that the sums payable by the Respondent in respect of the service charges demanded for the year 2017 to 2018 and the interim payment for the year 2018 to 2019 are as follows;

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2017/2018	£1,807.68
2018/2019	£1,054.89

(2) The Tribunal determines that administration costs of £2,130 are also payable by the Respondent in respect of the 2018/2019 accounting period.

Reasons

The Application

1. On 11 March 2019 the Applicant issued proceedings in the County Court for payment of unpaid service charges, administration charges and rent. The Respondent filed a defence and on 10 June 2019 Deputy District Judge Robson sitting at the Bromley County Court made an Order transferring the proceedings to this Tribunal.

2. The terms of the Order were that the matter was transferred for "*determination of any sums due from the* [Respondent] *to the* [Applicant], *if any, in respect of service charges due under the lease dated 31 May 1996*".

3. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Respondent in respect of the service charge years 2017 to 2018 and 2018 to 2019. Subject to what is said below, the Applicant also seeks a determination pursuant to paragraph 5 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 as to the amount of administration charges payable by the Respondent for the same periods.

4. Directions were issued on 23 July 2019. These did not identify further the issues between the parties. However, the Applicant was required to complete a schedule identifying the matters in dispute and the Respondent was required to provide comments on those matters identified by the Applicant. These schedules are at pages 47 to 50 of the agreed bundle. The directions also provided that any representations on any application under section 20C of the 1985 Act that the Applicant's costs of these proceedings may not be added to the service charge and on any application for an order under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") extinguishing any liability to pay an administration charge in respect of litigation costs in connection with these proceedings could be made either in the supporting statements or made orally at the end of the hearing.

5. The relevant legal provisions are set out in the Appendix to this decision. Page numbers throughout this decision are references to the agreed bundle.

The Hearing

6. The Applicant was represented by Mr. R. Granby of counsel. The Respondent was not represented.

7. At the start of the hearing Mr. Granby provided the Applicant and the Tribunal with a skeleton argument. He began by addressing the Tribunal on a procedural issue. He pointed out that the terms of the County Court's Order transferring the proceedings to the Tribunal referred only to the payability of service charges and did not refer to administration charges, although as a matter of law the two are governed by different statutory regimes. He doubted whether, if the Tribunal took a strict approach to the scope of the dispute referred to it, the Tribunal had jurisdiction to decide any issues concerning administration charges rather than service charges.

8. Mr. Granby nevertheless invited the Tribunal to consider the issues as regards the disputed administration charges and to make findings which, even if not strictly binding on the parties, would be important considerations for the County Court if and when the dispute returned there.

9. The Respondent agreed that he would prefer to have all the outstanding issues decided by the Tribunal. As a result, it decided to consider the issues as regards both service charges and administration costs.

10. At the end of the hearing the Respondent confirmed that he was not making any application for an order under either section 20C of the 1985 Act or paragraph 5A of Schedule 11 of the 2002 Act.

The Background

11. The property which is the subject of this application consists of a two-bedroom self-contained ground floor flat forming part of a converted residential property. The Applicant acquired the freehold of the building on 18 December 1997.

12. 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 Lease

13. The Respondent has a lease that was originally granted for a term of 99 years from 1 January 1996. The lease is dated 31 May 1996. The Respondent acquired the lease on 11 November 2002.

14. By clause 3.2 of the lease (page 23) the Respondent covenanted to pay "*the service charge and interim charge in accordance with the Fourth Schedule on the dates stated there*".

15. The Fourth Schedule (page 32) provides that the service costs are the costs the landlord incurs in carrying out its obligations imposed by the lease.

16. Under clause 4.2(a) of the lease (page 28) the landlord is required to insure the building with an insurance policy which meets a number of conditions. It is not necessary to set out the details of those conditions.

17. Under clause 4.4 of the lease (page 29) the landlord is required to provide the services listed in the Fifth Schedule. These include the requirement in paragraph 11 of the Fifth Schedule of "*obtaining insurance valuations of the building from time to time*" (page 35).

18. Under the Fourth Schedule the tenant is to pay an interim charge which is a half-yearly payment to be paid on account of the service charge in each accounting period which is to be a fair and reasonable interim payment having regard to the anticipated cost of services for the relevant accounting period. This is to be paid on each day the rent is due. The landlord is obliged to certify the accounts in each year and the actual expenditure in each period. The final service charge is defined as 40% of the service costs. Any deficiency in the sums collected on account is to be paid by the tenant within 14 days of service of the end of year certification and any surplus credited to the tenant's account.

19. Under clause 3.26 (page 27) the tenant is required to pay all expenses which the landlord incurs in preparing and serving a notice under section 146 of the Law of Property Act 1925 even if forfeiture is avoided without a court order.

20. Under clause 3.27 (page 27) the tenant is also obliged to;

> "*pay all legal and other costs and expenses incurred by the Landlord on a full indemnity basis of and incidental to the collection from the Tenant of any arrears of the annual rent any service charge or any interim charge or any other payments due or in connection with any breach of any covenants by the Tenant contained in this Lease and interest payable thereon and for any legal proceedings instituted by the Landlord in connection therewith*"

21. By clause 3.1 (page 23) rent is due on 25 March and 29 September in each year and by paragraph 2(b) of the Fourth Schedule the service charge statements are to be prepared for each accounting period ending on 24 March.

<u>The Issues</u>

22. The County Court proceedings were issued in respect of the final service charges for the 2017/2018 accounting year and the estimated service charges for the 2018/2019 accounting year, and it was consideration of these charges which was transferred to this Tribunal.

23. The matters put in dispute by the Respondent appear in his schedule at page 47. They are as follows;

    i) ground rent
    ii) insurance commission
    iii) survey fees
    iv) solicitors' fees
    v) administration costs

    These are considered in turn below. At the hearing the Respondent made it clear that he had no issue about whether the terms of the lease permitted recovery of the charges sought.

Ground Rent

24. The Tribunal accepted the argument raised by the Applicant and set out at paragraph 9 of Mr. Granby's skeleton argument that the Tribunal has no jurisdiction to deal with issues relating to ground rent. Ground rent is simply not something which falls within the scope of the Tribunal's powers and the Tribunal did not consider this aspect of the case further.

25. The Tribunal then considered the matters which fall within the scope of service charges. These were the insurance commission and the survey fees.

Insurance Commission

The Respondent's Case

26. In his schedule the Respondent contended that any broker's fee paid by the Applicant in respect of obtaining insurance should be paid by the insurers and should not form part of the costs passed on to the tenants. At the hearing he made it clear that this was his only contention as regards the insurance. He did not challenge the amount of the premium nor did he produce any alternative quotations.

The Applicant's Case

27. The Applicant contended that the obligation to insure appeared in paragraph 4.2 of the lease. The definition of the service costs in the Fourth Schedule of the lease was the amount the landlord spent in performing its obligations under the lease. This, it was argued, extended beyond the mere amount of the premium and included any costs incurred in obtaining insurance. In this case there was a fee of £50 payable to a broker for obtaining the insurance for the 2017/2018 year and an estimate of a similar amount was included in the 2018/2019 interim charge. This was made clear at paragraph 16 of Mr. Gurvits' witness statement (page 83) and by a letter from the broker dated 24 July 2017 (page 131). In addition, it was argued, clause 4.4(i) of the lease enabled the landlord to engage the services of any employees and/or agents and to pay them proper fees and charges.

The Tribunal's Decision

28. The Tribunal was satisfied that the costs of obtaining insurance, including the cost of a broker's fee, are recoverable under the terms of the lease as contended by the Applicant. It was satisfied that in the 2017/2018 accounting period the premium paid was £778.39 (see page 133) and that a broker's fee of £50 was also paid as shown by the letter at page 131. It considered that this was a reasonable fee. With regard to the 2018/2019 interim charge the sum sought for insurance including a broker's fee was £911.23. Given the sums incurred for the year 2017/2018 the Tribunal considered that this was a reasonable sum. The Tribunal therefore concluded that the sums sought for insurance in both accounting periods were reasonable and payable.

Survey Fees

The Respondent's Case

29. The Respondent's case as set out in the schedule was that the sum sought for 2018/2019 was substantially higher than that charged for the 2017/2018 and he argued that the sum was not reasonable and not recoverable.

The Applicant's Case

30. The Applicant argued that the cost of carrying out a survey for insurance purposes was clearly within the scope of the service charges as the obtaining of insurance valuations of the building from time to time was expressly provided for in paragraph 11 of the Fifth Schedule of the lease.

31. A survey had been carried out in July 2017 (page 136) and the cost of this was £630 (page 135). This was the sum which had been sought in the 2017/2018 year. Mr. Granby pointed out that the survey was stated to be valid for a period of 12 months (page 141). The interim demand for 2018/2019 included a sum of £900 for a further survey (page 58).

32. However, Mr. Granby also accepted that in fact the Applicant had decided that it would not be proportionate to undertake another survey in 2018/2019 and no sum appeared in respect of this in the final service charge account for that year (page 114).

33. The Tribunal also drew to the attention of Mr. Granby the fact that the survey itself, whilst stating that it was valid for 12 months, also stated the following (at page 141)

> "*We recommend that annual indices are applied to upgrade the valuation and that a full revaluation is undertaken at least every three years. It is recommended that if any significant extensions or alterations are made to the building, a reassessment should be undertaken.*"

There was no suggestion that there had been any extensions or significant alterations. The Tribunal therefore asked Mr. Granby to explain why he considered it reasonable to include within the budget for 2018/2019 a sum of £900 for a further survey.

34. Mr. Granby reminded the Tribunal that the relevant provision with regard to estimated future expenditure was section 19(2) of the 1985 Act and argued that the issue was simply whether or not the total amount sought was reasonable. He argued that whilst no sum had been incurred for a further survey, the actual total service charge at the end of the year shown at page 114 was considerably larger than the budgeted sum, that there was an element of "swings and roundabouts" and that it would not be appropriate to strip out items from the budget even if no money was in fact spent on that item.

The Tribunal's Decision

35. With regard to the survey which was charged for in the 2017/2018 accounting period, the Tribunal was satisfied that the cost was recoverable under the terms of the lease as argued by the Applicant. It was also satisfied that the sum incurred was a reasonable one. The survey appears at page 136 onwards and the invoice is at page 135. The Tribunal was satisfied that the sum charged - £630 – was reasonable. The Tribunal therefore concluded that the sum sought for the carrying out of a survey in 2017/2018 was reasonable and payable.

36. The Tribunal did not, though, accept the Applicant's arguments with regard to the budget item in respect of a further survey in 2018/2019. It noted the

comments in the survey itself set out above and Mr. Granby's own observation that the Applicant had decided not to commission another survey as it considered that to do so would be disproportionate.

37. The Tribunal considered section 19(2) of the 1985 Act. What it had to consider was whether the amount sought was greater than is reasonable. The Tribunal did not take account of the fact that no costs were ultimately incurred for a survey, as that would not be appropriate. It also bore in mind that the 2017/2018 survey was valid for only a year. The Tribunal accepted, therefore, that it was reasonable to obtain an updated insurance valuation. It noted, however, that paragraph 11 of the Fifth Schedule of the lease did not refer expressly to the carrying out of a survey but rather to obtaining an insurance valuation.

38. The Tribunal bore in mind that there had been no extensions or substantial alterations to the property and that the survey itself recommended the use of annual indices to upgrade the valuation. This would be a table-top exercise and certainly would not require the carrying out of a whole new survey. In its view the Tribunal considered that an appropriate estimate for such a basic exercise would be the sum of £50. In its view the sum of £900 was not a reasonable estimate of the cost of obtaining a new insurance valuation in 2018/2019 and it concluded that the appropriate fee which was reasonable and payable was £50.

39. In reaching its conclusion the Tribunal rejected the Applicant's argument that all that had to be considered was whether the overall total budgeted sum for all service charges was reasonable. The Applicant had itself itemised the various aspects of the budget under different heads and the Tribunal considered that, to the extent that these heads were put in issue by the Respondent, they could be considered independently by the Tribunal.

Conclusion – Service Charges

40. The effect of these decisions of the Tribunal is that it was satisfied that for the accounting period 2017/2018 a total of £1,807.68 was reasonable and was payable by the Respondent. This was the sum sought by the Applicant.

41. With regard to the interim charge for 2018/2019, the Tribunal concluded that the total sum which was reasonable and payable as service charges for the whole property should be reduced by £850, giving a total of £2,637.23. The Respondent's 40% share of this sum is £1,054.89.

42. The Respondent should be aware, of course, that this decision only relates to the interim charges for 2018/2019. Whilst this reduction may be of relevance to the County Court proceedings, it may well be that the sum finally due for the 2018/2019 accounting period is greater than the sum found due on an interim basis by the Tribunal.

Administration Costs

43. The remaining charges to be considered by the Tribunal were in the form of administration costs. The sums being sought by the Applicant were itemised at paras 2 vi to xii of their statement of case. The total amount sought was £2,130.

They all related to the 2018/2019 accounting period. The only sums in issue were as follows

Solicitors' Fees

The Respondent's Case

44. The Respondent objected to fees of £1,200 charged in respect of solicitors' fees. His argument was that it was not necessary to incur these costs as he had made numerous offers to pay arrears of service charges.

The Applicant's Case.

45. Mr. Granby argued that the solicitors' costs were incurred as part of the pre-action steps taken by the Applicant in respect of arrears of both service charges and ground rent, and also the costs of issuing proceedings in the County Court. These were all, he argued, recoverable under the terms of clause 3.27 of the lease.

46. In his skeleton argument Mr. Granby drew the Tribunal's attention to para 2 of Schedule 11 of the 2002 Act, pointing out that the Tribunal's jurisdiction is limited to determining whether the amount of an administration charge is reasonable. There is no jurisdiction to determine whether the charge was reasonably incurred. He argued, in any event, that the charges in this case were reasonably incurred.

47. Mr. Granby explained that there were 2 sums of £600 each charged by the Applicant's solicitors. The first was for pre-action work and the second was for the issuing of proceedings. These were fixed fees charged by the solicitors. He relied on para 15 of the Applicant's statement of case in which the work covered by the two charges is set out in detail.

The Tribunal's Decision

48. On 2 March 2018 the Applicant demanded an outstanding sum of £744.08 from the 2017/2018 accounting period and the first half-yearly interim service charge for 2018/2019. Even using the interim figure found by the Tribunal, this would be an additional £527.45, making a total owing of £1,271.53. This demand also shows that ground rent of £150 was also unpaid at that time (page 58), making a total debt of £1,421.53. A statement of account, which has not been challenged by the Respondent (page 61) shows that between March and July 2018 he paid a total of £690 – less than half the sum owing – and a further sum of £527.45 would have come due in September 2018. The total owing by October 2018, even on the reduced figure for the interim 2018/2019 charges and ignoring related administration costs was £1,258.98.

49. Whilst the Tribunal accepted that there was, in October 2018, correspondence between the Respondent and the Applicant in which offers to pay were put forward, these were not accepted by the Applicant as they would result in a continued shortfall. The Applicant suggested that the Respondent's mortgage company should be approached (see pages 86 to 89). Despite these offers, by 23 January 2019 no further payments had been made (page 92). There was, though, an e-mail from the Respondent dated 29 January 2019 (page 94) which suggests that he had assumed that the Applicant would approach his mortgage lender directly but which also said that he had managed to borrow the

outstanding money but would not be able to pay until the end of February. A letter before action was sent by the Applicant's solicitors on 1 February 2019 (page 96). No payment or offer to pay was made in response to that letter and proceedings were issued on 11 March 2019.

50. The Tribunal was satisfied that the solicitors' costs of £1,200 were legal costs incurred in the recovery of arrears of service charges and rent and so fall within the scope of clause 3.27 of the lease. To the extent that it is necessary to do so, the Tribunal concluded that these costs were reasonably incurred as, despite offers to pay, no actual payments were made between October 2018 and January 2019. In any event, payment was well overdue and the Tribunal considered that it was reasonable for the Applicant to take the steps that they did so as not to be kept out of their money any longer.

51. The Tribunal was also satisfied that the costs incurred were reasonable. It bore in mind paragraphs 12 to 15 of the Applicant's statement of case. It accepted that the work was undertaken or supervised by a Grade A solicitor who specialises in landlord and tenant work whose chargeable rate is £275 per hour. It considered it reasonable for the Applicant to employ such a solicitor. The fees charged amount to £1,000 plus VAT, making a total of less than 4 hours work for the whole of the pre-action correspondence and the issuing of proceedings. This work is particularised in paragraph 15 of the Applicant's statement of case and it is not necessary to repeat what is said there. The Tribunal was satisfied that these costs were reasonable.

52. There was one aspect of the solicitor's costs which did concern the Tribunal. It noted that although the second charge of £600 was for work undertaken in respect of the issuing of proceedings, the sum has been stated as falling due on 1 February 2019, which was the date of the letter before action, and proceedings were not in fact issued until 11 March 2019 (see page 45). Had the Tribunal been considering the position as at 1 February 2019 it might have found it difficult to see how solicitors' costs of issuing proceedings could be reasonable at a time when a letter before action had only just been sent. However, the Tribunal accepted that these costs were in fact connected with the issue of proceedings – which did in due course take place – and that they were reasonable. The Respondent did not challenge the Applicant's case that this work was in fact done.

53. It follows that the Tribunal was satisfied that the solicitors' costs of £1,200 were administration charges which were reasonable and payable.

Administration Charges

The Respondent's Case

54. The Respondent took issue with a charge of £240 for administration costs. His case was that these were incurred before the legal proceedings had commenced and so they were not recoverable.

The Applicant's Case

55. Mr. Granby argued that the costs in question were costs incurred by the Applicant's managing agents which were not covered by the management agreement they had with the Applicant. He relied on paragraph 15(iii) of Mr.

Gurvits' witness statement which explained the nature of the work covered (page 83). The charge was £200 plus VAT for the cost of providing assistance and documentation to the solicitors after the issue of proceedings. These too, he argued, were costs which fell within the scope of clause 3.27 of the lease.

The Tribunal's Decision

56. The Tribunal took account of the management agreement between the Applicant and Eagerstates Ltd – the managing agent (page 116 onwards). By clause 3.2 of the agreement (page 118) additional charges are to be provided at additional cost. These charges include a fee of £150 per hour for work including the instructing of solicitors (page 127).

57. The Tribunal was satisfied that the costs of instructing solicitors to recover unpaid service charges and rent falls within the scope of clause 3.27 of the lease.

58. The Tribunal considered that it was reasonable for the Applicant's managing agents to be employed to instruct the Applicant's solicitors after the issue of proceedings. It accepted the explanation at para 15(iii) of Mr. Gurvits' statement (page 83) that the work included the provision of information to the solicitors. At a rate of £150 per hour, which the Tribunal considered reasonable, this amounted to only 1 hour and 20 minutes work.

59. As with the solicitors' costs, the Tribunal noticed that these administration costs were in fact initially charged for on 1 February 2019 (see page 45). However, on the basis of what is contained in Mr. Gurvits' witness statement, which was not challenged by the Respondent, it was satisfied that this work was done after the issue of proceedings. The Tribunal was also satisfied that it was reasonable for that work to be done, and that the cost was reasonable.

60. It follows that the Tribunal was satisfied that the administration costs of £240 were administration charges which were reasonable and payable.

Other Applications

61. There were no other applications before the Tribunal.

Name:	Tribunal Judge S.J. Walker	**Date:**	2 December 2019

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.

- If a party wishes to appeal against 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.

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).

Schedule 11, paragraph 5A

5A(1)A tenant of a dwelling in England may apply to the relevant court or Tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2)The relevant court or Tribunal may make whatever order on the application it considers to be just and equitable.

(3)In this paragraph—

(a)“litigation costs” means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and

(b)“the relevant court or Tribunal” means the court or Tribunal mentioned in the table in relation to those proceedings.