



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

Case Reference : **LON/00AW/LSC/2021/0318**

HMCTS code : **Video**

Property : **7 Buckingham Court, 48
Kensington Park Road, W11 3BP**

Applicants : **Mr S Perera and Dr R Perera**

Representative : **In person**

Respondent : **P.B.M. Flats Management Limited**

Representative : **Mr Strelitz of counsel**

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

Tribunal Members : **Judge Prof R Percival
Mrs S Coughlin MCIEH**

**Date and venue of
Hearing** : **10 March 2022
Remote**

Date of Decision : **5 August 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was CVP. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents are in a bundle of 175 pages, the contents of which have been noted.

The application

1. The Applicants seek a determination pursuant to section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount of service charges payable by the Applicant attributable to the service charge years from 2017/18 to 2020/2021 in respect of reserve fund contributions, and as to liability for the same in future years.
2. The relevant legal provisions are set out in the Appendix to this decision.

The property

3. The property is a one bedroom flat in a mansion block. The block forms part of a larger estate of three blocks, comprising 145 flats in total.

The lease

4. The original lease was granted in 1971, and was subject to surrender and regrant in 2000, for a term of 999 years from 1986. The lease is in tripartite form between the lessor, the freeholder, and a management company. It is the management company that is the Respondent in this case.
5. The case turns on the construction of the tenant’s covenant (with both other parties separately) in relation to payment of the service charge in clause 4. It is appropriate to set the clause out extensively here:

THE TENANT HEREBY COVENANTS with the Company and as a separate covenant with the Lessor

(a) that the Tenant will during the said term pay to the Company:-

(i) AN annual amount equal to the insurance premium paid by the Company for the insurance cover of the Demised Premises as hereinbefore provided

(ii) AN annual amount equal to 1.90 per centum of the expenses and outgoings more particularly set out in the Fifth

Schedule hereto (including any proper allowances for the depreciation of capital equipment) reasonably and properly incurred by the Company in connection with the performance and observance during each and every year of the term hereby granted of the covenants on the part of the Company contained in Clause 3 hereof such payments to be calculated and paid in the manner hereinafter set out in the first payment being a proportionate amount for the period from the date hereof to the next half yearly date for payment as hereinafter provided.

(b) THE Company shall on or before the Twenty fourth day of June and the Twenty fifth day of December (or as soon thereafter as is practicable) in each year determine the estimated amount required by the Company from the Tenant for the purpose of meeting the costs of the expenses outgoings and matters set out in the Fifth Schedule hereto in the ensuing half year and the amount shall be based (with suitable modification in respect of any cost reasonably to be foreseen and for the amounts representing allowances for the depreciation of capital equipment) aforesaid upon the amounts expended by the Company in the course of the Company's financial year immediately preceding the half year commencing on the Twenty sixth day of March in each year or such other date to which the annual accounts of the Company shall be made up.

(c) THE Company shall on or after the Twenty fifth day of March (or as soon thereafter as is practicable) in each year determine the actual amount laid out by the Company (and required by the Company from the Tenant) in meeting the cost of the expenses outgoings and matters set out in the Fifth Schedule hereto in the preceding financial year as aforesaid of the Company.

(d) THE Company shall notify the Tenant of the amounts calculated in accordance with sub-Clauses (b) and (c) of this Clause and the Tenant will pay the percentage of such amounts within fourteen days of the demand but in the event that the payment made on account exceeds the actual amount subsequently ascertained as aforesaid (other than the amounts reserved as aforesaid for costs reasonably foreseen or for the depreciation of capital equipment) for balance shall be carried forward to the following half year for the credit of the Tenant and applied in reduction of the estimate for the ensuing half year PROVIDED ALWAYS

(i) [provision relating to auditors' certificates]

(ii) [provision relating to destruction of or damage to the property]

(iii) [provision relating to service charges for retained flats]

(iv) the payments mentioned in this Clause so far as they relate to costs reasonably to be foreseen and amounts representing allowances for the depreciation of capital equipment shall in so far as they are not actually expended in accordance with the provision of this Lease in the year (for taxation purposes) in which they are made be held by the Company Upon Trust to apply such payments in subsequent years in the manner authorised by this Lease and subject as aforesaid In Trust for the Tenant absolutely.

6. The fifth schedule sets out matters to be included in the service charge. These are the expenses of the repairing obligations, the boilers, fuel, the porters, cleaning etc common areas, an entry phone system, insurance, general management, service charge accounting etc, paths and service pipes, television and radio aerials, gardening, and making planning representations.

The issues and the hearing

7. Mr Perera represented himself and his wife. Mr Strelitz of counsel represented the Respondent.

Preliminary issue

8. We considered as a preliminary issue whether we should accept a witness statement of a Mr Fletcher, of the managing agents. The witness statement was submitted by the Respondent shortly before the hearing. It was received by the members of the Tribunal late the previous day. It comprised, with exhibits, 301 pages, and related to the mechanism for the reserve fund and its use in the building.
9. Mr Strelitz said that it had been prepared in case it was necessary to deal with issues relating to the amount or use of the reserve fund. Mr Strelitz believed that the issue before the tribunal was a narrow issue of construction as to whether the lease allowed for the collection of a reserve fund. The witness statement was not relevant to that issue, but, Mr Strelitz explained, it was prepared on the basis that it might be helpful to the Tribunal and the Applicants if broader issues were to be covered.
10. The Tribunal confirmed with the Applicants that they considered that the only issue was what Mr Strelitz termed the narrow one of construction (an understanding shared by the Tribunal, in advance of the hearing). Mr Perera said that if the witness statement were allowed in, he would ask for an adjournment to consider it.
11. In the light of the very late submission of the witness statement, and its lack of relevance to the issue before the Tribunal, we declined to receive it.

The construction of the lease

12. Mr Perera was happy to rely on his extensive written submissions, rather than to address us orally in the first instance.
13. His written case was that there is no express provision in the lease for a reserve fund. His analysis was that the lease contains tightly drafted and limited provision for a six-monthly assessment of charges which constituted the service charge. These were confined to the matters set out in the fifth schedule to the lease, which is headed “the Company’s expenses and outgoings and other heads of expenditure in respect of which the tenant is to pay a proportionate part by way of service charge”.
14. The costs referred to were to be incurred “in the ensuing half year”, which is to be an “estimated amount” based on expenditure in the “immediately preceding half year”, albeit with “with suitable modification in respect of any cost reasonably to be foreseen and for the amounts representing allowances for the depreciation of capital equipment”. Payment was six-monthly in advance.
15. Mr Perera accepted that if the amount paid by leaseholders exceeded actual expenditure, then the excess amount could be held on trust for expenditure on “costs reasonably to be foreseen and amounts representing allowances for the depreciation of capital equipment”. But this, he suggested, had inappropriately been “supplanted” by the term “reserve fund”.
16. Thus the Respondent was entitled only to demand the proper estimated funds for the next six-month period. It could apply incidental surpluses to expenditure in future years (beyond the immediate six-month period), but it could not base a demand on such expenditure.
17. This conclusion was reinforced by the use of the term “estimated amount”, and a mechanism is in place to ground the estimate in previous expenditure. Contributions to a reserve fund were not estimated by way of the mechanism (ie based on the previous year’s expenditure), and thus could not be described as an “estimate”.
18. In short, his contention was that the clear terms of clause 4 were that the only charges payable were the service charge, which in turn was limited to the expenses and outgoings to be incurred in the next six-monthly period. There was no provision to demand charges beyond that time frame (albeit incidental surpluses could be applied in future years).
19. Mr Perera cited *Arnold v Britton and Others* [2015] UKSC 36, [2015] AC 1619 and contended that the ordinary and natural meaning of the words of the lease supported his position. There was no ambiguity.

20. Mr Strelitz submitted that the absence of the words “reserve fund” (or similar terms) in a lease did not mean that a landlord could not collect such a fund, citing *Leicester City Council v Master*, LRX/175/2007, 12 December 2008), a Lands Tribunal case, and *St Mary’s Mansions Ltd v Limegate Investment Co Ltd and Others* [2002] EWCA Civ 1491, [2003] HLR 24.
21. The lease is not to be construed in a vacuum, Mr Strelitz argued. The context was that the flat was in a block which included a number of high value items of plant, including a boiler system recently replaced, and lifts, and there was a general requirement to maintain the building. There were, therefore, evident advantages in a reserve fund in respect of such a building.
22. In clause 4(a)(ii), the description of the service charge obligation referred to the fifth schedule, followed by, in parenthesis, “including any proper allowance for the depreciation of capital”. The sub-clause went on to refer to expenditures on the Respondent’s obligations “during each and every year”, and went on specify that the payments be calculated as followed. Thus, Mr Strelitz argued, the lease highlighted the inclusion of depreciation of capital equipment, and set up the requirement to follow the method of calculation to be set out.
23. Mr Strelitz then argued that the basis of calculation cued up by the preceding sub-clause included the words in parenthesis in clause 4(b), quoted in paragraph 14 above. Those allow modification of the procedure for estimating a six monthly advance charge by reference to previous expenditure in respect of two heads of expenditure, to wit “costs reasonably to be foreseen” and “for the amounts representing allowances for the depreciation of capital equipment”.
24. Mr Strelitz went on to argue that clause 4(d) made provision for different treatment depending on whether they fell into the category of routine expenditure (derived from previous expenditure), or the two additional heads identified in clause 4(b), foreseen future expenditure and capital depreciation. That took Mr Strelitz to clause 4(d)(iv), in which it is spelled out that service charges reflecting those two heads may not be spent in the year in which they were made, but rather held in trust as authorised by the lease. On that basis, the monies held in the trust fund could not be expended on in-year routine expenses, for example. The trust fund provision strengthened the conclusion that the lease provided for the collection of a fund for the stated purposes.
25. So, Mr Strelitz submitted, whether the term “reserve fund” was apt or not, the lease allowed the maintenance of a fund to cover future maintenance and to represent depreciation of capital.
26. In his response, Mr Perera submitted three main points.

27. First, he said that the lack of a reserve fund provision in the lease was explained by its age.
28. Secondly, clause 4(b) sets out the leaseholders' obligations to pay an estimated service charge on a six monthly basis. The contested expression in parenthesis in clause 4(b) ("with suitable modifications in respect of any costs reasonably to be foreseen and for the amounts representing allowances for depreciation of capital equipment") means that there would be variations in the service charge depending on whether expenditure exceeded the total demanded, or whether any equipment needed repair or replacement.
29. Thirdly, clause 4(d) provided for a surplus to be credited to the leaseholder, save as stated, which meant that a surplus could be applied to those matters (foreseen expenditure and depreciation), and that was to be held on trust (clause 4(d)(iv)). It did not mean that the trust fund could be fattened up by demanding more than the estimated six-monthly expenditure.
30. The term "costs to be reasonably foreseen" should not be isolated from the other words that qualify them in clause 4(b). Mr Perera charged Mr Strelitz with taking the qualifications out of context.
31. Mr Perera put emphasis on what he said was the clear and unambiguous, albeit somewhat old-fashioned, language of the lease. The leases in the cases cited by Mr Strelitz were totally different in wording, and in age, from this lease.
32. Our conclusion is that the lease does allow the maintenance of a fund to cover both depreciation of capital equipment and reasonably foreseeable future expenditure, and that that fund may be accumulated by demands for those purposes. However, the fund cannot be accumulated by accidental surpluses in respect of the in-year (or in-six-months) advance service charges (which we will refer to as routine expenses or charges), which must be credited to the lessees in respect of the next estimated advance charge.
33. In coming to this conclusion, we do not, as Mr Strelitz urged, take into account that it would be helpful, convenient, or sensible if the lease allowed for a reserve fund. Rather, we agree with Mr Perera that the meaning of the lease must be gleaned from the natural meaning of the language used. As the Supreme Court said in *Arnold v Britton*, we must not search for drafting infelicities in order to depart from the natural meaning of the lease. Despite awkward drafting, we consider that the meaning of the lease is clear and unambiguous.
34. We accept Mr Strelitz's argument that there is no requirement for the express term "reserve fund" (or a similar term) to appear in the lease.

35. Clause 4(a)(ii) contains the foundational covenant that the lessee pay a proportion of the expenses as set out in the fifth schedule. There is no argument as to the nature of the fifth schedule expenditures, which include maintenance of the building itself and the major capital items within it. We were initially troubled by the fact that the parenthesis in this sub-clause referred only to depreciation of capital equipment, and not future foreseen expenditure. However, we conclude that that concern was misplaced. The subsequent references to future foreseen expenditure are necessary because it is in setting out the mechanism for payment for the fifth schedule expenditures that specific provision must be made for *the calculation of* beyond routine expenditure. It is evident from the nature of the expenditure provided for in the fifth schedule that some of it will necessarily be incurred on an occasional, major works basis, not every year or six months.
36. On that basis, we do not have to decide why it was thought appropriate to include a reference to depreciation in clause 4(a)(ii). We note that the parenthesis starts with “including”, indicating that the following words may be there on an avoidance of doubt basis. It may be that the drafter had in mind that it would not have been immediately obvious that the charge could include a separate allowance to represent the in-year cost of the reduction in value of the capital plant, rather than the saving up for the future basis implied by the later references to reasonably foreseeable future expenditure.
37. Accordingly, it is only at the point that the means of calculation is set out that express provision needs to be made for future non-routine expenditure. Clause 4(b) does that job. It creates as a starting point basis of calculation for routine expenditure. The point of doing so is to tie future routine expenditure to past routine expenditure, an obvious an appropriate protection for the lessees. The point of the key parenthesis in clause 4(b) is to “modify” that mode of calculation in the context in which it is not relevant or appropriate – “costs reasonably to be foreseen” (and allowances for depreciation). The modification amounts to the exclusion of the clearly inappropriate link to previous *routine* expenditure in respect of such reasonably foreseen future expenditure. Mr Perera’s interpretation sees the parenthesis as subordinate to the general mode of calculation (ie for routine expenditure). For the reasons we give, we consider this mistaken. It is, rather, a bypassing of that mode, which is inherently inappropriate to non-routine expenditure.
38. That bifurcation of approach between routine and reasonably foreseeable expenditure is followed through in clause 4(d), which deals with reconciliation. Over-payment is to be credited to the tenant, but the effect of the parenthesis here (“other than the amounts reserved for costs reasonably foreseen or for the depreciation of capital equipment”) is to exclude the element demanded for those purposes from the definition of “over-payment”. Again, this is obviously necessary.

39. Thus the effect of clause 4(d)(iv) is to allow expenditure of charges collected on the non-routine basis to be expended in the year in which they are collected (ie on non-routine major items that happen to require payment in that year), but otherwise for charges collected for non-routine purposes to be held on trust (anticipating, as Mr Strelitz noted, the statutory trust now provided for in section 42 of the 1985 Act). As we understand it, Mr Perera interprets this provision as that which allows accidental surpluses to be accumulated and applied in future years. As will be evident, we reject that interpretation. Rather, it provides for the mode in which funds demanded on the non-routine basis are to be held. Further, in our view, the provision does not qualify the requirement that over-payment of routinely demanded service charges should be credited to the lessee to reduce the next advance sum demanded.
40. *Decision:* (1) The lease allows the maintenance of a fund to cover both depreciation of capital equipment and reasonably foreseeable future expenditure, accumulated by demands for those purposes.
(2) Over payment by a lessee of routine advance demands (ie those not referable to capital deprecation/foreseeable future expenditure) must be credited to the lessee by means of a reduction in the next estimated advanced demand, and cannot be applied to the non-routine expenditure fund.
41. We add that we assume that the reserve fund that the Respondent operates is based on the reasonably foreseeable future expenditure head, not that relating to depreciation. Were it to be the latter, we would expect the charges to be based on some rational calculation of the annualised cost of future capital expenditure, rather than a more inexact but reasonable approach of saving up money for future major works expenditure.

Application for orders under Section 20C of the 1985 Act/Commonhold and Leasehold Reform Act 2002, schedule 11, paragraph 5A; and for reimbursement of hearing fee

42. The Applicant applied for orders under section 20C of the 1985 Act that the costs of these proceedings may not be considered relevant costs for the purposes of determining a service charge; and an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 extinguishing any liability to pay an administration charge in respect of litigation cost in relation to the proceedings.
43. We consider these applications on the basis that the lease does provide for such costs to be passed on either in the service charge or as administration charges, without deciding whether that is the case or not. Whether the lease does, in fact, make such provision is, accordingly, an open question should the matter be litigated in the future.

44. In addition, there was before the Tribunal (in effect) an application for the reimbursement of the hearing fee. We put it like that, in that the Applicants objected to paying the hearing fee, and the question of whether they should do so was held over by a procedural judge to this hearing.
45. Mr Perera forcefully objected to the way in which the Respondent conducted itself. He made his objections at more than one point, but one was in respect of these applications, and it is convenient to consider them here. In general terms, his objection was that the Respondent had not abided by the directions, and in particular had effectively kept the Respondents in the dark on certain matters. As we understand it, the two matters that Mr Perera specifically relied on were that the Applicants had not known that the Respondents had requested a hearing; and had not had an opportunity to consider the Respondent's skeleton argument, which was emailed 10 or 15 minutes before the start of the hearing.
46. Mr Perera's objection to the Respondent requesting a hearing is directly relevant to the application for reimbursement of hearing fee. In addition to objecting to the lack of notice of the Respondent's request, Mr Perera argued that the issue was a purely legal one, and did not require a hearing to determinate it.
47. The default position is that the Tribunal will hear an application under section 27A of the 1985 Act, and the Applicant pays the hearing fee. Provision is made for a paper determination if both parties consent. An Applicant can indicate that he or she considers an application appropriate for paper determination on the application form. We refer to a "request" by a party for a hearing, but in truth, it is a notification that the party does not consent to a paper determination. It is more akin to exercising a right than making a request for the exercise of a discretion by the Tribunal. We put it tentatively, as the Tribunal has wide case management powers, and so we cannot exclude the possibility that the Tribunal might have the power to order a paper-only hearing without the consent of a party, but the circumstances in which the Tribunal might do so would be exceptional. The facts of this case certainly do not fall into such a category.
48. Mr Strelitz was not in a position to comment on the email requesting a hearing.
49. We proceed on the basis that Mr Perera is right to assert the email was not copied to the Applicants. It was no doubt discourteous for the Respondent not to copy the email to the Applicant. It was also breach of the note on the directions requiring parties to copy communications to the Tribunal to the other party. We asked Mr Perera how he was prejudiced by lack of notice, and he said that it meant that the

Applicants had had to apply for an extension of time to produce the bundle.

50. If there was any prejudice to the Applicants as a result of the lack of notice, it was cured by the extension of time, although we see force in Mr Strelitz's argument in response that it should not take more time or work to prepare a bundle for an oral hearing compared with a paper determination.
51. While we deprecate the conduct of the Respondent in not copying the email to the Applicant, it cannot provide an independent basis upon which we might order a reimbursement of the hearing fee.
52. Mr Perera's other specific complaint might have relevance to the section 20C and paragraph 5A, so we deal with that here, too.
53. The Tribunal will in general accept a skeleton argument from a party late in the proceedings. Our standard directions (including in this case) specify that the document should be provided three days before a hearing, but we accept that that is optimistic.
54. We also accept that the practice is not one that will be familiar to an unrepresented litigant, so some explanation may assist the Applicants.
55. A skeleton argument, as experience by the Tribunal, is generally a brief document setting out in written form a summary of an advocate's oral submissions. As such, it is often helpful to the Tribunal as an aide memoire and an efficient way of dealing with quotations and avoiding such things as having to orally spell out case references. It should not contain any new information or evidence. They are, in sum, a useful addendum to counsel's submissions, but no more than that.
56. We have said that skeleton arguments are rarely provided within the time specified in the directions. It is true that in this case, Mr Strelitz's was particularly late, and the Tribunal had not read it before the hearing started.
57. We do not think that the Applicants were disadvantaged by having the skeleton argument at the same, late, time as the Tribunal. Mr Strelitz's oral submissions were more extensive than those set out in the skeleton argument, and we have no doubt that Mr Perera understood, and was capable of addressing, those arguments. Mr Perera objected that one of the two authorities upon which Mr Strelitz relied to support his argument that there was no need for an express reference to a reserve fund was new to him. However, the other (adequate on its own) had been previously referred to by the Respondent in the pleadings, and Mr Perera was able to make the key point – that the leases in those cases were not the same as the lease in this – perfectly well.

58. We turn to the generality of the applications. An application under section 20C is to be determined on the basis of what is just and equitable in all the circumstances (*Tenants of Langford Court v Doren Ltd* (LRX/37/2000). The approach must be the same under paragraph 5A, which was enacted to ensure that a parallel jurisdiction existed in relation to administration charges to that conferred by section 20C.
59. Such orders are an interference with the landlord's contractual rights, and must never be made as a matter of course.
60. We should take into account the effect of the order on others affected, including the landlord: *Re SCMLLA (Freehold) Ltd* [2014] UKUT 58 (LC); *Conway v Jam Factory Freehold Ltd* [2013] UKUT 592 (LC); [2014] 1 EGLR 111.
61. The success or failure of a party to the proceedings is not determinative. Comparative success is, however, a significant matter in weighing up what is just and equitable in the circumstances.
62. In this case, all of those factors point to refusing the orders. The Respondent has been successful on the substantive point. It has, or may have (see paragraph 51 above) a contractual right to its costs. And the Respondent is management company with no recourse to resources other than those derived from the leases.
63. The same considerations apply to the application for a reimbursement of the hearing fee.
64. There is, however, a further argument for us to make orders in part in favour of the Applicants. We have set out above (paragraphs [8] to [11]) the circumstances in which we declined to receive Mr Fletcher's witness statements and the exhibits thereto. We do not think there was any reasonable justification for those costs to be incurred. The Applicants had been clear in their written materials that the construction point was their only point. If we had gone beyond that to consider substantive reasonableness, the eventuality against which Mr Fletcher's evidence was produced, the Respondent would have had an unanswerable ground of appeal. Mr Strelitz conceded that it would not be appropriate to pass the costs of preparing that witness statement on, and we so order.
65. *Decision:* The applications under section 20C of the 1985 Act and Commonhold and Leasehold Reform Act 2002, schedule 11, paragraph 5A are refused, save that the Tribunal orders, in respect only of any costs that relate to the preparation of the witness statement of Mr J Fletcher dated 7 March 2022, that

(1) those costs are not to be taken into account in determining the amount of any service charge under section 20C of the 1985 Act; and

(2) that any liability of the Applicants to pay litigation costs as defined in paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002 are extinguished insofar as they relate to those costs.

The application for an order to reimburse the Applicant for the hearing fee is refused.

Rights of appeal

66. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the London regional office.
67. The application for permission to appeal must arrive at the office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
68. If the application is not made within the 28 day time limit, the 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 these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
69. The application for permission to appeal must identify the decision of the Tribunal to which it relates, 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.

Name: Tribunal Judge Professor Richard Percival **Date:** 5 August 2022

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 provision 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.

(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 of an application under subsection (1) or (3).

(7) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

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 20ZA

(1) Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

(2) In section 20 and this section—

“qualifying works” means works on a building or any other premises, and

“qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

(a) if it is an agreement of a description prescribed by the regulations, or

(b) in any circumstances so prescribed.

(4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord—

(a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,

(b) to obtain estimates for proposed works or agreements,

(c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,

(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and

(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6) Regulations under section 20 or this section—

(a) may make provision generally or only in relation to specific cases, and

(b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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 tribunal² or leasehold valuation tribunal or the First-tier Tribunal³, or the Upper Tribunal⁴, 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 the county court;

(aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;

(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

(ba) in the case of proceedings before the First-tier Tribunal, to the tribunal;

(c) in the case of proceedings before the Upper Tribunal⁴, 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 the 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]¹ 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).