



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

**Case reference** : **LON/00AN/LSC/2022/0209**

**Property** : **7 Epirus Mansions, Epirus Road,  
London SW6 7UJ**

**Applicant** : **Rachel Tompkins**

**Representative** : **Self**

**Respondent** : **E.M. (Freehold) Ltd**

**Representative** : **John-Paul Tettmar-Saleh (direct  
access)**

**Type of application** : **S27A LTA 1985 service charges**

**Tribunal members** : **Judge Hargreaves  
Stephen Mason BSc FRICS**

**Date and venue of  
hearing** : **5<sup>th</sup> December 2022 Alfred Place**

**Date of decision** : **5<sup>th</sup> January 2023**

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**DECISION**

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## **Decisions of the Tribunal**

1. Robert Owen Churcher, Duncan Churcher and Fiona Finch remain as Respondents on the grounds that though they were inappropriately joined as directors of E.M (Freehold) Limited and have no personal liability as such in this matter, they are interested in the outcome as individual leaseholders for reasons explained below: see generally Tribunal Rule 10.
2. As to the dispute in relation to the correction of accounting errors claimed in the sum of £2218 by invoice dated 20<sup>th</sup> May 2022: this is a reasonable sum for the Applicant to pay in respect of service charges.
3. In respect of the sum of £3447.83 for service charges for the period 1<sup>st</sup> January – 31 December 2022: this is a reasonable sum for the Applicant to pay in respect of service charges save as to the item dealt with in paragraph 24 (costs of company secretary £400).
4. In respect of the claim for 50% of the Bishop and Sewell invoice: this is not a service charge within the meaning of *s18 LTA 1985* and the Tribunal therefore has no jurisdiction over it.
5. In respect of the dilapidations/housing conditions claim: the Tribunal has no jurisdiction to deal with this head of claim in these proceedings.

## **REASONS**

### **The application**

1. In support of her application the Applicant has provided a 4-volume trial bundle which exceeds 1000 pages. For the hearing it was divided into four bundles so the original index is not electronically reliable, and therefore we give the printed page references prefixed by the bundle number. All references save where otherwise clarified refer to this bundle. We cannot and do not refer to the whole of this trial bundle (it would be disproportionate and unnecessary to decide the issues) and as usual the issues we had to deal with fall into a much narrower remit than envisaged by the Applicant. Examples of a considerable amount of unnecessary documentation include (i) general correspondence (ii) evidence relating to varying the leases of Flats 5 and 7 (iii) correspondence relating to the Thames Water leak, damage, expert reports etc (iv) other parties' service charge demands. We regret to note that this application appears to be part 2 of an ongoing dispute which is unlikely to be resolved by the issues we decide, the Applicant indicating at the end of the hearing that she would likely be returning to the Tribunal as part of an ongoing challenge to the management of the building by the First Respondent.

2. We decided at the start of the hearing to remove the Second – Fourth Respondents as parties because they were joined as directors of the First Respondent, and plainly wrongly joined on that basis. However, on reconsidering their position, they also have a personal interest in the outcome as leaseholders and therefore on that basis, they remain as parties. See generally Tribunal Rule 10 which gives the Tribunal a wide jurisdiction in this regard. Again, as usual, we urge the parties, particularly the Applicant, not to regard the Tribunal as an ever-receptive dispute resolution provider: the issues raised in s27A disputes raise factual and legal issues for the parties to prove and argue and it is not the Tribunal's role to provide answers to ongoing hypothetical questions such as those raised by the Applicant in the course of a hearing. There are burdens of proof to overcome, and the Tribunal does not provide an advisory role during the course of any hearing, though the Applicant frequently urged the Tribunal to adopt this role. The parties are always entitled to mediate within or without the Tribunal system (only if offered by the Tribunal).
  
3. The Tribunal's function is to deal with the application, which is at 1/2-21 and was made on 21<sup>st</sup> June 2022. The Applicant's challenges to the 2021 and 2022 accounts are presented in a complicated and detailed statement; see for example 1/14-19. The date of the application is significant. The Applicant and Thomas Gordon had been freeholders of the building known as Epirus Mansions until the First Respondent spear-headed by Messrs Robert and Duncan Churcher (Flats 4 and 1) and Fiona Finch (Flat 3), its directors, collectively enfranchised the freehold in February 2022. The application form lists the years 2021 and 2022 as the years for which a determination is sought. The application values the issues to be determined as amounting to service charges of £39,292, but that figure over-amplifies what was at stake in the hearing before us, for a number of reasons which should be clarified below.
  
4. Prior to this application, a year ago, the Churchers and Fiona and David Finch were Applicants in LON/00AN/LSC/2021/0218, with Ms Tompkins and Mr Gordon the Respondents ('the first proceedings') and also lessees of Flats 7 and 5 respectively. The Applicants in the first proceedings sought a review of service charges for the years 2013-2021. The hearing was conducted by CVP on 18<sup>th</sup> October 2021 and the decision is dated 1<sup>st</sup> November 2021. Documents including the 2021 application, the decision, a Scott Schedule dated 15<sup>th</sup> October 2021 and an official transcript of the hearing are at 2/264-405. From this we deduce and observe that relations between the parties remain less than equitable, aggravated by issues arising out of ingress of water into Flats 5 and 7 caused (putting it as neutrally as possible on the evidence we have) by Thames Water around the time of the transfer of the freehold from the Applicant and Mr Gordon to the Respondent, and how that problem has been handled or rectified. Neither party appealed the first decision. It was repeatedly relied upon by the parties in relation to certain points and we will need to refer to it in this decision. Suffice it to

say at this stage that the parties clash over its findings and interpretation, which the Applicant pleads at 1/37, and the Respondent at paragraph 8, 1/55-56.

5. Part of the essential background to both sets of proceedings is to understand the lay-out of Epirus Mansions, a substantial corner building. Useful photographs are at p574-577. The ground and basement floors were originally commercial premises divided into three units with residential above, one flat per floor (Flats 1-3). Flat 4 (or the 'penthouse') was added within the mansard roof in 1981. Flats 1-4 are known as the internal flats, because they are accessed by a communal hallway.<sup>1</sup> In 2013 the ground and basement floors were developed into two storey self-contained residential units with long leases granted to the Applicant and Mr Gordon respectively by themselves as landlords of the building; these are known as the external flats (Flats 5 and 7). They are accessed separately from and to the street and rear yard. The Applicant's response to the water damage to Flat 7 is relevant to issues in relation to insurance charges and contributions to the reserve fund.
6. As landlords, the Applicant and Mr Gordon allocated service charges to two Schedules. Schedule 1 expenses were charged to all six flats. Schedule 2 expenses were charged to the internal flats. The Respondents in the first proceedings challenged the allocation and have now re-stated the accounts, pursuant to the first decision. The crux of the current dispute is based on the first and second findings in the first proceedings at 2/306 where the Tribunal allocated certain charges as reasonably incurred in the proportions payable under Schedule 1 (paragraph 2 of the decision, all flats) and Schedule 2 (paragraph 1 of the decision, the internal flats).
7. As there is no formal accounting scheme set out in the leases for a Schedule 1/Schedule 2 allocation, it is necessary to consider the relevant clauses in the lease of Flat 7. As pleaded by the Respondents, the Applicant's statement of case was incomplete in this respect. For the avoidance of doubt, we set out what we consider to be the relevant clauses in the lease of Flat 7, which is at 2/183. '*The Building*' is the land and the building known as Epirus Mansions registered under NGL 557487. '*The Flat*' is defined by reference to the area edged red on the attached plan (2/207) and includes '*the external area and steps leading to the Lower Ground Floor of the Flat*'. There is a wide definition of '*Common Parts*' which includes the entrance hall and communal staircases as well as the external areas and passageways not included in any flat demise capable of being used in common with others. Further definitions are contained in clause 1(2).
8. '*The Service Charge Proportions*' are chargeable in respect of Second Schedule (ie by reference to the lease definition, not the practice of

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<sup>1</sup> Agreed to be described as such for the purpose of these proceedings (the actual numbering is more complicated).

dividing the service charges) expenses by reference to the rateable value of the Flat, and if not available, then *'the proportionate part shall be a fair and rateable proportion as the Lessor's surveyor shall from time to time certify ...'* No use of the rateable value method has been used so far as we are aware and there is no evidence as to what they are. The service charge year is the calendar year, and clause 3(2) contains provisions for finalising and certifying year end accounts and including *'provision for anticipated future expenditure'* and payments on account. The Landlord's covenants are set out in clause 5, and the *Second Schedule* (as mentioned) contains a list of the items which fall within service charges, including a *'Reserve Fund'* in respect of *Second Schedule* charges. This is a wide and general list to which we will refer when necessary (see eg paragraphs 10 and 11 of the *Second Schedule*).

9. By way of further background, it appears that the Applicant and Mr Thomas have varied their leases, primarily to introduce a one-sixth share of the service charges for the *Second Schedule* charges (together with other variations). Their applications to register the varied leases have been opposed by the First Respondent and are currently in the HMLR system. We do not have an accurate picture of this side of the story. But on the basis that the varied leases have not been registered, we apply the conditions and covenants in the current (unvaried) lease of Flat 7. The Applicant says she undertook the variation in response to the first Tribunal decision: without involving the First Respondent and all the other leaseholders, this seems a risky strategy but we need reach no conclusions on this developing issue as the current lease applies to this dispute. On the Applicant's evidence, the apportionment into two Schedules did not take place until 2016.
10. The Applicant's statement of case is at 1/34-41 and the Respondents' is at 1/49-74. The Applicant replied at 1/92-101. These are detailed submissions. On the face of it they present a set of issues incapable of determination by a day's sitting. But we considered Mr Tettmar-Saleh's skeleton argument provided, with the Scott Schedule completed by parties, a route through what might have appeared an insuperable set of issues.<sup>2</sup> In particular we decided to follow the scheme set out in paragraph 10 of his skeleton argument, and to ensure there is no future debate about this, we set it out as written:

*'On 20 May 2022 R1 served service charge demands on the Applicant for the total sum of £6,190.83 (the **Sum**). The Sum is broken down as follows:*

- (a) *Correction of accounting errors pursuant to the Financial Review: £2,218 (comprised of three separate invoices: £2,796 debit, £558.56 debit, and £1,136 credit).*

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<sup>2</sup> In addition, he provided an A4 sheet headed *'Index of References for R's submissions'* which contained a list of the most useful page references.

*(b) Service charges for the period 1 January 2022-31 December 2022 (the 2022 Service Charges): £3,447.83; and*

*(c) 50% of the invoice issued by Bishop & Sewell solicitors (the **Legal Charge**).*'

This is something of an oversimplification of the Applicant's approach but as we have indicated, provides a way forwards and deals with the issues in a comprehensive way. The relevant service charge demand/application for payment is at 3/411 in the sum of £5,107.27, including a balance brought forward of £1659.44, service charges for 2022 in the sum of £2697.83 and a reserve fund charge for 2022 in the sum of £750. It is in the format of a service charge demand under the relevant legislation and of course the Applicant's challenge in these proceedings is predicated on the amounts being service charges. It was accompanied by an explanatory email from the managing agents (Urang) dated 16<sup>th</sup> May, at 3/409-410. It also included the budget certificate for the service charges 1<sup>st</sup> January-31<sup>st</sup> December 2022, divided into Schedule 1 and Schedule 2 charges (3/413), with percentages at 3/414, and an account statement for the period 12<sup>th</sup> February 2016-16<sup>th</sup> May 2022 with a closing balance of £6,190.83 as per paragraph 10 of the Respondents' skeleton argument (3/415-416, see also 3/638).

11. Another useful guide to the Respondents' analysis of the principal issues is the First Respondent's solicitor's letter dated 23<sup>rd</sup> August 2022 at 3/536 which again breaks down the skeleton argument paragraph 10 issues at 3/537. We turn to each of those issues now.

### **The re-statement claim (£2218)**

12. The detail for the first part of the claim (paragraph 10(a)) is based on the Financial Review primarily conducted by Robert Churcher and his father (both qualified accountants), then reviewed and signed off by a firm of accountants before making its way to the Urang demand. The review covered the period 2012-2021. We have considered, without the benefit of detailed submissions on the appropriate legal principles applicable, certain points arising from the consequences of this review.<sup>3</sup> The review from 2012-2021 produced the £2218 figure. So far as this figure has been produced by a re-statement of accounts, it amounts to a new demand for service charges which on the First Respondent's case were underpaid by the Applicant and overpaid by the leaseholders of Flat 1-4 because she allocated certain figures to the wrong account. How that sum is re-allocated to the other Respondents in financial

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<sup>3</sup> The Tribunal was invited to consider whether it has jurisdiction to consider corrections to accounting issues: see Respondents' comments, Scott Schedule, item1, 1/77. This is not helpful to the Tribunal and was not developed by either party. We have given brief reasons for deciding the application and assuming jurisdiction.

terms is not a matter for us. But we have concluded that it is appropriate for the Tribunal to treat the claim as relating to a 'service charge' as defined by *s18 LTA 1985*, particularly because the *s18* definition of 'service charge' is wide and includes the issue of when they were incurred/payable by the Applicant: see *s18(3)(b)*. Certainly, the parties have treated the dispute as relating to service charges, otherwise this element would not have formed part of the Applicant's application. As to limitation periods, the question of an underpayment by the Applicant on the First Respondent's case was only calculated this year and is therefore not time-barred. Neither party raised any direct issues on jurisdiction and we conclude that none arise.

13. Because the accounts from 2012 were accessible to Mr Churcher (even if not all in the bundle), a complete picture of the re-statement has been provided to the Tribunal. In the event and at our invitation for a more efficient hearing, Mr Tettmar-Saleh handed over the detailed explanation to be provided orally by Robert Churcher. We have determined, having listened to his oral evidence taking the Tribunal through the pleadings, the skeleton argument and the documents in the bundle on which the re-statement was based, that Mr Churcher's evidence was credible, careful and cogent and mathematically reliable. The Applicant could not mount any meaningful challenge to his methodology or his calculations and we want to stress that we accept Mr Churcher's evidence and approach as supportive of his calculation of the re-statement figure of £2218. Our conclusion is based primarily on the evidence and submissions before us and we have in this regard paid little attention to some of the statements made during submissions in the first hearing, and of course the re-statement had not taken place until after the first hearing in any event.
  
14. Key documents in Robert Churcher's evidence include the summary of adjustments for the period 2012-2021 at 3/689-90, leading to revised accounts for the years 2012-2021 at 3/691-700. He explained that the biggest correction derived from re-stating the 2017 accounts as per the 2021 year end, only available in 2021 for the first time. That produced a deficit of £16,777 against Schedule 1 because expenses were wrongly allocated to Schedule 2 expenses, the internal flats subsidising (on the Respondents' case) expenses attributable to all flats under Schedule 1 (see the last box at the bottom of the 2021 revised accounts at 3/700). Between six flats, that amounts to £2796 per flat, the starting point for the paragraph 10(a) calculation. Once that is understood, the other debit/credits make sense and we accept the £2218 as explained by Robert Churcher, particularly in his response to the Applicant's challenges by reference to the summary at 3/689. We stress that the re-statement followed the decisions summarised in paragraph 1 and 2 of the first tribunal decision at 1/306. Neither party appealed those findings.

## The Scott Schedule

15. At this point, with the Applicant unable to accept Robert Churcher's analysis, we turned to deal with the Scott Schedule: the completed version is at 1/75-91. This contains the nub of the Applicant's response to the Respondents' case, which is to challenge the First Respondent's treatment of certain items both in respect of the re-statement and the other issues. We endeavour to deal with the detail of the Applicant's case as set out in the Scott Schedule as succinctly as possible, and at this stage in the decision, to ensure we deal with the Applicant's detailed challenges whichever issue they affect, by reference to the item numbering used by both parties. **First, the challenge to the re-stated 2021 accounts (as it is put by the Applicant) is at 1/75-84.**
16. **Items 1-2 for year 2021:** this is (in effect and after discussion of the presentation of the figures concerned) a challenge to the First Respondent's treatment of the £16,777 deficit in the closing balance for Schedule 1 at the end of 2021 (3/700). As such the arguments have been overtaken by the conclusions we have already expressed above as to Robert Churcher's methodology. The figure is not based on new service charges, but services charges incurred by the Applicant and Mr Gordon as previous freeholders (and therefore it would be hard to see how the Applicant could challenge their reasonableness) which they allocated to the wrong Schedule. We accept the First Respondent's comments in response to items 1 and 2 as correct, and the significance of this is that this conclusion is repeated (see below).
17. **Item 3 duplicated with item 7 for 2021: the Bishop and Sewell invoice (paragraph 10(c)):** it is convenient to deal with this at this stage. The Respondents' case is pleaded at paragraphs 23-30 of their statement of case ie that it is not a service charge at all. The Applicant and Mr Gordon used service charge funds to pay an invoice presented by Bishop and Sewell to them for £1050 incurred before March 2021 and the available evidence presented only by the Respondents shows that on the balance of probabilities it related to advice given to the previous freeholders in relation to the first tribunal proceedings (and not in relation to any other potential proceedings). It is therefore at most covered by the s20C order in the first tribunal decision at paragraph 43 (2/314) on the evidence before us, as the Respondents argue (moreover Mr Gordon has paid his 50% share of the £1050).
18. The Applicant appeared to suggest that it related to other proceedings contemplated against Robert Churcher in respect of the roof to his flat, see 1/15 for example. The problem with the Applicant's position is that there is no evidence to support this that has been identified or relied upon despite the size of the documentary evidence available. In the circumstances there are no grounds on which we can identify this as a service charge rather than a debt payable by the previous freeholders. If



it is a service charge then the Applicant's challenge to its reasonableness must fail as she and Mr Gordon incurred it (and on the face of it, successfully secured a discount as well, making it even more reasonable a sum). To summarise, we are not satisfied on the balance of probabilities that this item is recoverable as a service charge and therefore Robert Churcher's treatment of it is correct.

19. **Items 4, 5, 6, 8 for 2021:** these are complaints which did not identify as any particular service charge but fall under the Applicant's complaints about the re-statement of the service charges. As such our decision at paragraph 16 above applies and the challenges are rejected.

### **The Scott Schedule and the 2022 service charges (1/85-91)**

20. This relates to the paragraph 10(b) claim for £3447.83 claim. The relevant evidence for this claim on account is based on the budget certificate for 2022 dated 6<sup>th</sup> May 2022 and drawn up by Urang at 2/239 or 262. The overall budget for Schedule 1 expenses is £16,187, with £980 allocated to Schedule 2, plus a contribution of £4500 to the reserve fund. The Applicant's challenges are itemised and as follows. She says the budget is unreasonable.
21. **Item 1:** The budgeted cost of including fire equipment maintenance charges is plainly recoverable under the lease (*paragraph 10, Second Schedule*), and to be shared between all six flats on the grounds that even if located in the common parts to which the external flats have no access, it benefits 'the Building' and therefore can properly and reasonably be treated as a Schedule 1 expense. More to the point the Respondents allege the Applicant allocated this expenditure to Schedule 1 in 2019 and 2020. There is no evidence that the budgeted figure of £450 is unreasonable. See 3/701.
22. **Item 2:** Again, we have decided that gutter cleaning/drain clearing (the precise label does not matter in this context and our decision applies to both activities if necessary) is clearly an expense attributable to 'the Building', is recoverable pursuant to *paragraphs 1, 9 and 10, Second Schedule* and is also plainly a Schedule 1 expense. Again, the Applicant's challenge is inconsistent with her previous budgets and in terms of amounts, given the size and nature of Epirus Mansions, is reasonable. Compare the actual 2022 figure so far at 3/702.
23. **Item 3:** General building works at £3000 is in our judgment also reasonable (though a 100% increase on the 2021 budget figure since when construction inflation has been of general note which we can take into account, as well as the fact that the 2022 figure so far exceeds £3000, see 3/702), attributable to Schedule 1 and clearly recoverably in principle under various provisions of *Schedule 2* of the lease.

24. **Item 4:** £400 is chargeable to administrative/statutory fees relating to the company secretary. For the actual amount see 3/701. The Respondent relies on *paragraph 10, Second Schedule* but the cost is not attributable to *'the proper maintenance and administration or inspection of the Building'* but to the requirements of the Companies Acts. We reject the submission that the cost is recoverable as a service charge. It does not fall within *s18(1)(a) 3(a) LTA 1985* in our judgment either.
25. **Item 5:** as to the budgeted figure of £3000 described as insurance works/excess, some details for the year so far appear at 3/702 and indicate that nearly £3000 had been spent by the end of September. This head of claim relates to the Thames Water ingress incident and the Applicant herself notified the insurers before the transfer of the freehold. In these circumstances it would be difficult for her to challenge what the evidence before the Tribunal suggests is a sound and reasonable budget figure and we therefore consider it recoverable and reasonable, see *paragraphs 5, 9, 10, 11, Second Schedule*. The email trails in volume 4 are extensive and demonstrate time and management costs incurred beyond what normally be required. On any view this figure is within what might be reasonably budgeted given the evidence at 4/943-1075.
26. **Item 6:** we consider the reserve fund contribution of £4500 to be reasonable and appropriate particularly after the re-statement of the accounts. In the context of the costs overall associated with Epirus Mansions the figure is reasonable and proportionate. See item 5 above which we also take into account in this context.
27. **Item 7:** by September 2022 the First Respondent had incurred an actual cost of over £5000 on insurance (3/701) and so a budgeted figure of £4,200 is reasonable. This is against the background of the Thames Water leak referred to in item 5 above. The Respondent's case is that the reporting of the leak to the insurers prior to them taking over the management rather than making the repairs the responsibility of Thames Water has had the usual detrimental effect on premiums. The sum is plainly recoverable under *paragraph 2, Second Schedule*. The Applicant introduced no evidence to support her case that the premium or the budget figures were unreasonable.
28. **Item 8:** the Tribunal declines to determine the question raised by the Applicant as to whether Judge Sykes Frixou's (letter 23<sup>rd</sup> August 2022) claim for £7,319 is reasonable or recoverable because (i) the Applicant's challenge was added to the Scott Schedule well after the application was made but is still premature because the claim was made in a letter before action (ii) the £7319 amounts to £6190.83 (which we have dealt with in this decision) plus costs plus interest and no service charge demand has been put in evidence relating to the latter two (iii) we have not heard evidence or any submissions on whether this is a recoverable

administration expense either. It is premature and unnecessary to express any opinion.

**29. Application under s.20C and refund of fees:** in view of our findings no s20C order will be made or a refund ordered of the Applicant's Tribunal fees by the Respondent.

Judge Hargreaves

Stephen Mason

5<sup>th</sup> January 2023

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

## **Appendix of relevant legislation**

### **Landlord and Tenant Act 1985 (as amended)**

#### **Section 18**

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
  - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
  - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
  - (a) "costs" includes overheads, and
  - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

#### **Section 19**

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
  - (a) only to the extent that they are reasonably incurred, and
  - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

#### **Section 27A**

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
  - (a) the person by whom it is payable,
  - (b) the person to whom it is payable,
  - (c) the amount which is payable,

- (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
  - (b) the person to whom it would be payable,
  - (c) the amount which would be payable,
  - (d) the date at or by which it would be payable, and
  - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

## **Section 20**

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
  - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
  - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

### **Section 20B**

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

### **Section 20C**

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are

not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

- (2) The application shall be made—
  - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
  - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
  - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
  - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

## **Commonhold and Leasehold Reform Act 2002**

### **Schedule 11, paragraph 1**

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
  - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
  - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
  - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
  - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
- (a) specified in his lease, nor
  - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

**Schedule 11, paragraph 2**

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

**Schedule 11, paragraph 5**

- (1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—
- (a) the person by whom it is payable,
  - (b) the person to whom it is payable,
  - (c) the amount which is payable,
  - (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) may be made in respect of a matter which—
- (a) has been agreed or admitted by the tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or



(b) on particular evidence,  
of any question which may be the subject matter of an application  
under sub-paragraph (1).