9452

Case Reference	:	**CAM/OOME/LSC/2013/0065**
Property	:	**Ascot Towers, Block A, 9-19 Windsor Road, Ascot, Berkshire SL5 7LG**
Applicant	:	**Ascot Towers Block A Residents Association (1)** **Ascot Towers Limited (2)**
Representatives	:	**Mr D Fain Counsel** **Mrs S R Moncrief, Secretary of Applicant (1)** **Mr M Kettle, Chairman of Applicant (2)**
Respondents	:	**Mr & Mrs A Carr (1)** **Mr & Mrs Molyneux-Webb (2)**
Representatives	:	**Miss G Cullen of Counsel** **Mr J Khurana, Solicitor from Ascot Lawyers**
Type of Application	:	**Determination of the reasonableness of and liability to pay a service charge pursuant to Sections 27A and 19 of the Landlord and Tenant Act 1985 ("the Act") and Section 20C of the Act**
Tribunal Members	:	**Mr A A Dutton (Judge)** **Mrs J Oxlade (Judge)** **Mrs H Bowers MRICS**
Date and venue of Hearing	:	**9th September 2013** **De Vere Sunningdale Park Hotel, Ascot, Berkshire**
Date of Decision	:	**29th October 2013**

DECISION

DECISION

The Tribunal determines that the costs of installing the new safety barrier should be borne equally by all leaseholders of the block for the reasons set out below.

The Tribunal determines that it will not make an order under Section 20C of the Act for the reasons stated below.

The Tribunal makes no order in favour of the Respondents under the Commonhold Leasehold Reform Act 2002, schedule 12, paragraph 10 for the reasons set out below.

THE APPLICATION

1. The application under the Act is made by the two Applicants and relates to the liability to pay for the replacement of a glass and timber frame structure attached to a balustrade sited at the top of Ascot Towers, Block A. The question for the Tribunal to determine is whether the costs of works are payable as a service charge by all ten leaseholders in the building, or whether liability for the costs of works should be met only by the owners of Flats 18 and 19, the Respondents.

2. Ascot Towers consists of two blocks of purpose built flats; Block A containing ten flats and Block B eight flats. The buildings are owned by the second Applicant, which is made up exclusively of the 18 leaseholders of the flats in the buildings, that company having purchased the freehold in 2007. Although both blocks are owned by the second Applicant, the blocks are managed and run separately and, in respect of Block A, this service is carried out by Applicant (1).

3. Under the terms of their leases, to which we will return as necessary in due course, each leaseholder is required to pay one tenth of the costs of maintaining and repairing the building.

4. In Block A the Respondents own respectively Flats 18 and 19, which are at the very top of the building, each having a private roof terrace as part of its demise. The demise to these two flats specifically excludes the balustrade, which at the time of the original construction, was topped with a metal handrail.

5. It is said that in 1981 or thereabouts the then owners of Flat 19 a Mr and Mrs Veit, sought permission from the then head lessee (a Mr Rowbury) to construct additional protection to the perimeter of the roof both to provide some safety for their young children but also to act as a form of windbreak. It is said by the Applicants that this permission was granted verbally to Mr Veit on what was described during the course of the proceedings as 'a gentlemen's agreement'. The Applicants' case is that this gentlemen's agreement had been entered into on the condition that all costs and on-going maintenance remained the responsibility of the flat owner of Nos. 18 and 19.

6. It is said that the new glass and timber frame that surrounded the roof terraces of both Flats 18 and 19 was built by a contractor of Mr Veit's choice, the structure being bolted to the original steel handrail. Through the ensuing years some maintenance has been carried out, in particular by the first Respondent Mr and Mrs

Carr, but in early 2011 a health and safety review of the whole building highlighted the glass and timber frame as being a potential safety risk and it is now considered to be a risk under current health and safety regulations. As a result, the second Applicant has decided to replace the glass and wooden frame, such replacement being with the consent of the leaseholders in the block, including the first and second Respondents.

7. We are told that the costs of the removal of the current glass and timber frame and the construction of a new safety screen is, according to a quote from a Mr Steven Webbe, £29,000 plus VAT. There appears to be no dispute as to the need to replace the safety frame or the costs associated with same. The issue that we are requested to determine is who is liable to pay the costs of these works. The Applicants consider these costs are not payable by the leaseholders generally as a service charge for the reasons set out in their application and that the costs should be solely borne by the Respondents. The Respondents consider that the costs are properly recoverable as a service charge and should be borne by all leaseholders equally.

EVIDENCE

8. Prior to the Hearing we were provided with a substantial bundle of documents running to some 400 pages. Included within the bundle were the parties' statements of case, a number of witness statements on behalf of the Applicants and the Respondents, copies of the leases of the Respondents and Flat 14 together with Deeds of Variation relating to maintenance provisions entered into in 1988 and subsequent Deeds of Variation changing the terms of the lease following the acquisition of the freehold by Applicant (2).

9. In addition to these documents we were provided with a copy of the surveyors report by Mr C M Symonds MRICS of Campsie Property Consultants dated 10th October 2012 dealing with the state of the glass and wooden frame. Additionally there were a number of other documents comprising, for example, extracts from minutes of AGMs, correspondence between the parties and other associated letters which will be referred to insofar as they were relevant to the issues for us to determine.

10. In addition to the documents contained with the bundle, we were also provided at the Hearing with skeleton arguments on behalf of the Applicants and the Respondents. The skeleton argument for the Applicants was prepared by Mr Karl Fain of Counsel and had some eight documents annexed thereto. For the Respondents, Miss Grace Cullen of Counsel had prepared a skeleton argument and provided us with a number of authorities in support of her clients' position.

HEARING

11. A number of people attended, both as observers or parties to the application. The first issue, however, that we had to deal with was a preliminary point raised by Miss Cullen as to the inclusion in the Hearing bundle of a letter dated 5th August 2013 from Mrs Moncrief, which it was said, was inadmissible as it sought to change the basis upon which the Applicants' case was put. We heard that this letter although dated 5th August 2013 appears not to have been the subject of complaint until a letter dated 6th September 2013 was sent by Ascot Lawyers to the Tribunal.

Apparently the lawyer who had the conduct of the matter had left the firm in mid-August and it would seem little had been done in respect of the application until early September. The suggestion was that the letter from Mrs Moncrief was an attempt to advance the case on a different footing.

12. Mr Fain pointed out that the letter had been with Respondents for well over a month and that it had not changed the facts but merely highlighted the legal submissions to be made. Miss Cullen said that she did not seek an adjournment but merely restated the view that the document should not have appeared in the bundle.

13. Our view was that the parties' statement of case clearly set out their factual position and formed the basis of their submissions being made, which were not, in truth, affected by Mrs Moncrief's letter of 5th August 2013. We found no prejudice being caused to the Respondents by allowing that letter to remain in the bundle and decided that the Hearing would proceed.

14. It was then decided that to ensure the efficient running of the Hearing, only a limited number of those people who had made witness statements would give oral evidence. It was agreed that although certain persons may not be called to give oral evidence, the Tribunal would not infer that their witness statements contained agreed evidence. The Respondents indicated which witnesses should be tendered for cross-examination, namely Mrs Moncrief, Mrs Dawn Rowbury a Director of the second Applicant, Mr Jack Borritt a former resident of No 19 Ascot Towers and Mr Timothy Veit also a former resident of No 19 Ascot Towers. The other statements made, which are as set out on the index to the bundle, were noted by us and we accept that their contents are not agreed by the Respondents.

15. Insofar as the Applicants are concerned, there were witness statements from Mr and Mrs Carr and Mr and Mrs Molyneux-Webb but it was agreed that Mr Carr and Mr Molyneux-Webb would give evidence on the basis that their wives' witness statements merely supported that which they said.

16. We do not propose to go into detail in respect of matters contained within the written witness statement. Those are available for both sides and our decision is not assisted by recounting in any detail matters that are clearly set out in the statement itself.

17. In the Applicants' opening Mr Fain posed the question as to whether or not the glass and timber frame was a fixture and if it is, what would be the effect. It was not in dispute that the barrier is to be replaced. Section 20 procedures had been undertaken by the Second Applicants and money was being held by them to carry out the replacement work. The intention was, he said, to replace the barrier whatever the outcome of the Hearing. It was just a payability issue, the Applicants saying it is not their responsibility, but that of the Respondents. He referred to correspondence between the parties in which it appeared the Applicants had made an offer to be responsible for some £8,000 of the cost reflecting the works that would be required to the metal framework and that the cost of the removal had apparently been accepted as being £1,000, although who should pay this was not agreed.

18. The first witness called was Mrs Moncrief, the Secretary of the Residents Association. She confirmed that she was aware that the demise for Flats 18 and 19 included the roof terrace and accepted that the barrier attached to the balustrade had safety issues for the building as a whole. She accepted that a limited number of people had access to the flat roof, but it could include landlord's workmen who may need to exercise rights of access to deal with the water tank and the lift machinery. There was, she said, a risk of items falling and the health and safety report had highlighted the position. She did accept that the metal handrail was part of the structure of the building. Asked whether she accepted that if the glass panel was not there that they, that is the Applicants, would have responsibility to put in a barrier which met safety standards, she said that she was not sure. She had contacted the Council concerning the parapet and handrail and had determined that Building Regulations could not be applied for retrospectively. She confirmed that she had read the terms of a health and safety report prepared by Lawes Marsh following a survey in September of 2009. It is not wholly clear whether this followed a letter written by the second Respondents on 21st January 2009 questioning the state of the "wood and glass safety railing." It was also put to her that at an AGM, held on 13th June 2011, attended by a number of people, including Mr Kim Thomas the Compliance Manager for the managing agents John Mortimer Property Management, the minutes, under the heading Any Other Business recorded as follows: *"KT stated that as the Residents Association Manager has the maintenance expenditure and collection of funds for the block, it was JMPM's understanding that the Residents Association would be responsible for the handrail/parapet wall structure and would be liable for any health and safety claim and obligations for repair ..."*

19. In questioning from the Tribunal she did confirm that the £8,000 offer made to the Respondents as a contribution towards the costs, reflected the fact that works may be needed to the brick parapet and that the metal handrail would have to be removed. She thought the proposed works would enhance the aesthetic appearance of the property.

20. Her evidence was followed by that of Mrs Rowbury, the husband of the late Mr Gilbert Rowbury, who together had purchased 8 Ascot Towers in October 1965 through a company wholly owned by her. It appears that Mr Rowbury was "friendly" with the original developers and in particular Mr Alfred Ford. As a result Mrs Rowbury and her husband acquired the head leases of both blocks. It was in this capacity that Mr Veit sometime in 1981 approached the late Mr Rowbury for permission to install some form of glass and timber structure, both it seems to provide some wind-proofing and security. In her evidence to us she confirmed that she worked in her late husband's practice of Rowbury Morris & Company but that he was the Principal. It does not appear that she has legal qualifications. She confirmed that no attempt had been made to vary the terms of the lease and could find no correspondence that purported to support the alleged gentlemen's agreement reached by Mr Veit and her husband. She was referred to a letter dated 30th January 2011 written on Ascot Towers notepaper by her on behalf of that company. She states *"In any event, in the first instance, and in accordance with the Leases and Deed of variation of maintenance provisions which was completed in September 1988, the responsibility for maintaining the building as set out in the original leases passed to Block A residents.*

It is not the end of the matter, however. The deeds make it clear that if the residents do not carry out their obligations then the freeholder must do so, but of course at the expense of the residents "... Her response to this letter was that she believed there was need to ensure that the building complied with health and safety issues for the purpose of insurance. Against this, however, in re-examination she was referred to a letter from Mr Kettle, the Chairman of the second Applicants dated 24th February 2011 which stated in the final paragraph on the first page of that letter as follows: *"... However, responsibility for repair and maintenance of the additional wood and glass structure erected at some later date by the owners at that time, would now be the responsibility of the existing owners ..."*

21. On questioning from the Tribunal she confirmed that Mr Veit wanted to use the roof terrace as a roof garden but that she was not aware that her husband had required Mr Veit to enter into a licence. She suspected that he had "just got on with it."

22. After the lunch adjournment Mr Veit was called to give evidence. His witness statement confirmed that a company he owned purchased 18 Ascot Towers in June of 1980. It was decided at that time that funds would be expended on a roof terrace to make it a roof garden, but that the terrace on the fourth floor of the building was open to the elements, particularly wind. In addition he had two small children and considered that the balustrade, as constructed by the developer, was not safe to allow his children to have access to the roof terrace.

23. He approached Mr Gilbert Rowbury to discuss the possibility of erecting an infill to the balustrade, which would not only cut out the problem with the wind but provide safety for his children. He said in his witness statement that it was made clear to him by Mr Rowbury that this was not maintenance work and could only be carried out if he were responsible for the installation and all future maintenance and repair. It seems that at the same time his then neighbours, Mr and Mrs Connaughton also installed the additional wood and glass panelling to the neighbouring flat; having sought permission and using the same contractors as Mr Veit. In 1984 the apartment was sold on and Mr Veit says that during negotiations it was made clear to those purchasers the terms relating to the glass and wood structure. Apparently Mr Rowbury acted on the sale and was therefore aware of the position.

24. In cross examination Mr Veit indicated that in his view the glass and wooden frame had been designed as much to keep out the wind from the area as providing safety for his children. He confirmed there had been no variation of the deeds nor written agreement.

25. In questions from the Tribunal he was of the view that the frame had been bolted on and could easily be unbolted. There had been no discussions between him and Mr Rowbury about decorating the frame and although he had made a search he could find no documents evidencing any agreement to the frame being installed. He accepted, however, that Mr Rowbury was a very particular person. It was, he said, made quite plain to them that they were to be responsible for the upkeep; however, he also said that as the structure was brand new, at that stage it did not cross his mind that there would be any maintenance obligations. Insofar as the frame itself was concerned, he had discussed that it should be glass and wooden but no gave no details to the contractor who was left to come up with a scheme that was thought appropriate. This concluded the evidence on behalf of the Applicants.

26. We then heard from Mr Carr and Mr Molyneux-Webb. Both had provided extensive witness statements containing much information which was not relevant to the issues before us. It is right to note that neither Mr Carr nor Mr Molyneux-Webb were the original owners and had not been parties to the original installation of the glass and wooden frames to the top floor of the building.

27. Mr Carr gave evidence first. He told us that he had made attempts to get his conveyancing file but apparently the lawyers that he had used now ceased to practice and he had not been able to recover any documentation of any use. He did think, however, that the roof and the barrier were a concern of his at the time of the purchase, as a premium had been paid for the protection offered by the glass and timber stucture. He said that he had not been provided with any documentation at the time of his purchase which indicated that he had any responsibility for on-going repairs. Asked whether it was possible that Mr Veit may have struck up a deal with Mr Rowbury he said that it could have been, as he was "a perfectly nice man." However, his position was that he had paid a premium for the terrace and the protection that was afforded by the panel. His lawyers had told him that he was not responsible for anything above the balustrade, although could not find anything in writing to that effect. He was not able to confirm whether there had been any differentiation between the phrase "balustrade" and "parapet" but was satisfied that the wooden and glass frame was an addition. Asked why he had carried out works to the balustrade costing him some £2,000, he said that this was for aesthetic purposes only and in any event he had had to remove some of the bamboo works on complaint from the residents. He accepted that he would be required to pay 10% of the costs of the replacement works envisaged, if the structure was determined to be within matters covered by the service charge regime. Asked by us when he had installed the plywood additions to the barrier, he said it was some three or four years ago and that that had been done without contacting the lessor, which he accepted he should have done. He was of the view that if the wooden frame and glass were removed, it would cause the property to fail on health and safety issues. He also thought that the existing wooden and glass structure did not comply with health and safety requirements.

28. Mr Molyneux-Webb then gave evidence relying on his witness statement which, as with Mr Carr's witness statement, contained matters that did not assist. He referred to copies of the Property Information form completed by the seller at the time of his purchase, which made no reference to any alterations. He confirmed that he viewed the wooden and glass structure as part of the structure of the building and not his responsibility. Asked whether Mr Borritt had been guilty of misrepresentation in the answers given to the property questionnaire, he said that he might have had a cause of action if Mr Borritt had misrepresented the repairing liability and had not told him, but in any event, whilst the barrier benefitted the flat it was part of the building and he had already paid for it.

29. We then invited submissions from Counsel. These were to an extent a repeat of the skeleton arguments that we had received from both. For the Respondents Miss Cullen said that this was really a simple issue. We should look at the lease, determine that the wooden glass frame was clearly a fixture as it was firmly and permanently affixed to the building and that that was in essence the end of the argument. The "gentlemen's agreement" did not override the lease and no weight

should be given to Mr Veit's evidence. The maintenance issues only crystallised as a result of these proceedings and although Mr Rowbury was a Solicitor, no written documentation had been produced suggesting it was the Respondents' liability. The lease has always been clear about the parapet and the provisions of Section 62 of the Law of Property Act 1925 do not really apply. If the Respondents had in fact an easement to erect the glass and wooden frame, they would be able to remove it, and instead there would be a rotting metal handrail which would provide no benefit to the owners of Flats 18 and 19 or the persons using the communal areas below or workmen having to come onto the roof terrace. If the screening is removed there remains a health and safety issue and in that regard she relied on the letter from Campsie Property Consultants, written by Mr Symonds on 10th October 2012, which was in the bundle. She was of the view that the lease did enable the recovery of the costs of the replacement safety structure to be dealt with as a service charge and that the lease required health and safety matters to be complied with. Her conclusion was that the wooden glass frame became part of the parapet, that at best the Respondents' liability is limited to the cost of the removal of the glass and wooden structure, but that the balance is payable by the Applicants and recoverable as a service charge from all leaseholders in the block. She also made an application for costs under schedule 12 paragraph 10 of the Commonhold and Leasehold Reform Act 2002, particularly relating to the late inclusion of the letter from Mrs Moncrieff in the bundle.

30. The submissions on behalf of the Applicants were put forward by Mr Fain and as with Miss Cullen he relied on his skeleton argument. He did ask how the Respondents could seek to challenge the case put forward by the Applicants when this occurred prior to their period of ownership. He referred to the definition of 'Building' in the lease and that this was the building as it stood and not any addition. The glass and timber frame was, he said, a chattel not a fixture and referred us to the text in "Woodfall" and in particular the annexation test. Objectively he said it had never been part of the structure and would always be owned by the tenant. If it was part of the structure then he said schedule 6 of the lease covered the position. If the head lessee had given the right with conditions, then section 62 of the Law of Property Act 1925 would apply. The Deed of Variation created the appropriate transfer for the Act to apply and there could have been exclusion in either deed of variation but that had not been done. The permission therefore he said had become a legal easement by virtue of the re-grant under the Deeds of Variation and accordingly the responsibility rested with the Respondents. It might be said, he indicated, that the freeholder had an obligation to repair the metal handrail. He said that if the Respondents wanted to keep the windbreak in place then they would have to pay for it. Even if it were a service charge item, because it is an easement the Applicants can seek the contribution entirely from the Respondents. If they did not, then it could be argued that this was not a reasonably incurred service charge under Section 19 of the Act. If the Applicants have a legal right to demand the costs from the Respondents then they would not need go through the service charge regime. Insofar as the claim for costs by the Respondents was concerned, he referred us to the provisions of schedule 12 of the 2002 Act and the Lands Tribunal case of *Halliard Property Company Limited and others LRX/130/2007 and LRA/85/2008* which set out the basis upon which a Tribunal should consider whether the provisions of schedule 12, paragraph 10 of the 2002 Act had been met.

31. He asked for the costs of the proceedings to be recoverable as a service charge and relied on the provisions of both paragraph 5 and 6 of schedule 6 and in a later email the Deed of Variation dated 28th September 1988 paragraph 3(vi) and paragraph 1 of the third schedule to that deed as well as paragraph 4.5 of schedule 2 to the Deed of Variation of 15th May 1988.

THE LAW

32. The law applicable to the provisions of Section 27A and Section 19 of the Act are set out in the schedule attached.

DECISION

33. The first question we believe we need to determine is whether or not the glass and wooden frame, now to be replaced, is a chattel or a fixture. The common law maxim is *"whatever was attached to the land becomes part of the land."* However, it seems to us that we need to consider the degree of annexation and the object of annexation. We found some assistance in the text of "Woodfall" at paragraph 13.134.4. Under the heading *'Articles secured by nails, screws or bolts'* the following wording is to be found: *"Where an article is securely fixed to the property by nails, screws or bolts, it is sufficiently annexed to be a fixture. The true rule in such circumstances is that an article which is affixed to the land even slightly is to be considered as part of the land, unless the circumstances are such to shew that it was intended all along to continue as a chattel, the onus lying on those who contend it is a chattel."* In such cases, therefore, the real question is the purpose of annexation. In that regard it seems to us the test is *"whether the article has been affixed to the property for a temporary purpose and the better enjoyment of it as a chattel, or with the view to effecting a permanent improvement to the property."* The test is an objective one and is not affected by the existence of an agreement between the owner of the chattel and its hirer, although the terms of such an agreement might affect the right to sever the fixture, as was set out in the case of *Melluish v BMI (3) Limited 1996 [AC454,HL].* A copy of that case had been provided to us by Miss Cullen. It seems to us the appropriate part is to be found on page 473 at paragraphs (e) and (f). Lord Browne-Wilkinson said *"The terms expressly or implicitly agreed between the fixer of the chattel and the owner of the land cannot affect the determination of the question whether, in law, the chattel has become a fixture and therefore belongs to the owner of the soil ..." The terms of such agreement will regulate the contractual rights to sever the chattel from the land as between the parties to that contract and, where inequitable right is conferred by the contract, as against certain third parties. But such agreement cannot prevent the chattel, once fixed, becoming in law part of the land and as such owned by the owner of the land so long as it remains fixed."*

34. We have come to the conclusion, based on the evidence that we have received and our consideration of the law as applying to fixtures and chattels, that the wooden and glass screen is a fixture. It was intended to provide both a windbreak and security for Mr Veit's young children. It was for the better enjoyment of the roof terrace and provided security for users, which could include landlord's contractors. It is bolted to the existing parapet which includes both the brick wall and the metal balustrade in the original construction. It is not easily removed. It has been there for in excess of 32 years. Insofar as the "gentlemen's agreement" is concerned, there

is nothing in writing and Mr Veit says, quite honestly, that he never considered the maintenance of the frame as it was new. Mrs Rowbury says that her husband would have "just wanted to get on with it." But in any event, this does not override the argument as to annexation.

35. In the alternative, if we had found that this was a chattel, it would seem to us that the tenants could remove it. We find that this would give rise to health and safety implications for owners, occupiers, and users of the building, and thus require the landlord to install a suitable safety barrier to comply with health and safety legislation. The practicalities, therefore, of this case are that even if we were to determine that the wooden frame and glass is a chattel, which as we have stated we do not, and thus removable by the Respondents, the onus then switches to the Applicants, presumably the second Applicant, who would recover the costs from the first Applicant, to install a suitable safety frame that met the requirements of the health and safety report. Failure to do so would expose both Applicants, it seems to us, to potential claims and the danger that the insurers would seek to avoid responsibility under any policy. In those circumstances, therefore, we conclude that the Respondents do not have the sole responsibility for paying the costs of the intended works but must contribute 1/10th of the total cost each.

36. Further we find that these costs are recoverable as a service charge. They fall within the landlord's repairing obligations, both in our findings, within the term of the original lease but also within the terms of the 1988 Deed of Variation which amended the maintenance obligation. At paragraph 3 of the deed dated 28th September 1988 it states as follows: *(iii) to undertake and pay for any additional works by way of maintenance, amendment or improvement of the building and of the gardens.* We are satisfied that the inclusion of the wooden and glass frame to the parapet has now become part of the structure of the building. The works now to be undertaken are possibly an improvement but more likely a repair by way of replacement. In either case the costs of same are a service charge and should, therefore, be paid by all ten leaseholders as provided for in the terms of their lease.

37. We are not prepared to make an order under Section 20C of the Act. It seems that there was a certain inevitability in the proceedings coming before us. There was an element of intransigence on both sides, although we understand attempts had been made to compromise. The issue needed to be clarified before funds were spent. It was reasonable, therefore, for the Applicants to seek a ruling from the Tribunal as to how the costs were to be apportioned and in our findings, therefore, this action was reasonable and properly brought. In those circumstances, therefore, we believe it is correct that the costs of these proceedings incurred on behalf of both Applicants should be recoverable as a service charge. We note also that by virtue of the Deeds of Variation, the leaseholders are to become members of the first Applicant and also the second Applicant with presumably the resultant potential personal liability as a member of those companies. Accordingly an order under Section 20C would not, we believe, assist.

38. Equally, however, we are not prepared to make an order under schedule 12, paragraph 10 of the 2002 Act. We do not consider that there has been any unreasonable behaviour on the part of the Applicants, such as would visit the implications of Schedule 12 upon them for cost purposes.

Andrew Dutton

Judge: _____

A A Dutton

Date:

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 a leasehold valuation 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 a leasehold valuation 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 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 12, paragraph 10

(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where—

(a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
(b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—

(a) £500, or

(b) such other amount as may be specified in procedure regulations.

(4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.