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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/29UM/LIS/2014/0074
Property	:	Flat B 301 High Street Sheerness Kent ME12 1UT
Applicant	:	Catherine Mary Willens
Representative	:	
Respondent	:	Influential Consultants Limited
Representative	:	John F Thompson, director
Type of Application	:	Liability to pay service charges and administration charges
Tribunal Member(s)	:	Judge Tildesley OBE Mr R Athow FRICS MIRPM Mrs L Farrier
Date and venue of hearing	:	11 June 2015, The Courthouse, The Brook, Chatham
Date of Decision	:	20 July 2015

DECISION

Decisions of the Tribunal

(1) The Tribunal, on balance, decides it has jurisdiction to determine the applications in respect of interest and legal costs.

(2) The Tribunal determines the service charge for the year ending 30 November 2014 at £2,658.50 comprising £427.17 (reserve) and £2,231.33 (services).

(3) The Tribunal determines the service charge for the year ending 30 November 2015 at £2,076.96 of which £275.66 will be met from reserves. The Tribunal decides not to order an additional contribution of £590.70 to the reserve fund.

(4) The Tribunal is satisfied that the terms of clause 8(3) (rate of interest) are reasonable, and that there are no grounds to vary the lease in accordance with paragraph 3(1) of schedule 11 of the 2002 Act.

(5) The Tribunal decides that the Applicant is liable to pay £510 (£425 plus £85 VAT) towards the legal costs in connection with the Notice dated 20 October 2014.

(6) The Tribunal decides that the Applicant is not liable to pay the legal costs of £107.50 legal costs and £21.50 VAT in connection with the Notice of Intention dated 4 December 2014.

(7) The Tribunal does not order the Respondent to refund any fees paid by the Applicant.

(8) The Tribunal makes no order for costs against the Applicant.

The Application

1. The Applicant seeks a determination under Section 27A of the Landlord and Tenant Act 1985 as to whether service charges are payable for the year ending 30 November 2014 and for the year ending 30 November 2015.

2. The Applicant also seeks a determination of liability to pay administration charges in respect of interest in the sum of £2,660.63 and legal fees in the sum of £865.10 (demanded on 20 October 2014) and £129 (demanded on 4 December 2014).

3. The hearing took place on 11 June 2015 which was attended by Mrs Willens and Mr and Mrs Thompson. The Tribunal admitted in evidence

an agreed bundle of documents[1]. The Tribunal inspected the property on the morning of the hearing.

4. Following the hearing, the Tribunal permitted the Applicant to make further representations in writing on the reasonableness of the charges incurred on the damp survey and the outline specification for external repairs. The Tribunal directed that the Applicant's representations be sent to the Tribunal by 18 June 2015 with the Respondent having a right of reply by 29 June 2015. The Tribunal received two sets of representations from the Applicant dated 16 and 25 June 2015, and one set from the Respondent dated 22 June 2015. The Applicant requested disclosure of additional information in connection with the damp survey conducted by Mr Baker. The Tribunal turned down the request[2].

5. The Tribunal identified the following issues to be determined:

   - Whether the Tribunal has jurisdiction to determine the reasonableness or otherwise of the administration charges in respect of interest and legal costs which were paid by the Applicant's lender in order to discharge a section 146 Notice?
   - The reasonableness of the actual charges incurred on services for the year ending 30 November 2014.
   - Whether the estimated charges for the year ending 30 November 2015 are of no greater amount than is reasonable?
   - Whether to make an order under paragraph 3 of schedule 11 of the 2002 Act varying the fixed administration charge for interest?
   - Whether the variable administration charges for legal costs are payable, and if so, the amount payable?
   - Whether an order for reimbursement of the application / hearing fees should be made?
   - Whether an order for costs under rule 13 of the Tribunal Procedure Rules should be made against Mrs Willens?

The Property

6. The property, 301 High Street Sheerness, was an end terrace two storey house having a frontage to High Street and a return frontage to Maple Street to which the house has vehicular access.

7. The property was built on marshland in the 1890's, a short mile from the sea, and about 50 yards from the old military canal. The property was converted in the mid-twentieth century to a vet's surgery with a residential flat on the first floor. On or around 1990 a further conversion of the property took place which created three one bedroom flats.

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[1] References to the bundle are identified by [*]

[2] Please see paragraph 72 below.

8. The construction of the property was traditional with solid brick walls, partially rendered and all colour washed, beneath a main pitched and gabled roof, and a mono-pitched roof over a rear two storey projection. The main roof was clad with historic profiled metal sheeting to resemble interlocking tiling. The rear roof over Flat C had recently been replaced. The Respondent had also carried out decoration of the exterior of the property.

9. The accommodation comprised two self contained flats (Flats A and B) and a self-contained maisonette (Flat C). There was a communal ground floor entrance hall with access to the rear garden and a staircase and landing to the first floor. There was a small front garden and a fenced rear garden with double vehicular gates to Maple Street. The subject property, Flat B, was on the first floor.

10. The Tribunal inspected the exterior of the property, the communal hallway and staircases, and the gardens. The Tribunal noted a bowing to the flank wall to Maple Street, and evidence of past movement to the front and rear elevations. The rendering at the base of the Maple Street elevation had been cut back to the brickwork. The exterior decorative condition was generally good.

11. The Tribunal considered the internal hallway and stair carpet grubby with no recent evidence of cleaning. Also the lights in the hall and staircase did not come on during the inspection. The Tribunal's attention was drawn to an area of damp in the rear lobby. The back garden was unkempt and overgrown, but had the benefit of a new wooden fence at the rear, and the side facing Maple Street.

The Lease

12. At the case management hearing on 26 January 2015 the Tribunal determined that it would rely on the Office copy of lease made between Daniel Gerarde O'Grady of the one part and Michael Anthony Freeley and Valerie Freeley of the other part and dated 23 February 1990 for a term of 99 years from 1 December 1989. The Office Copy had a missing page (page number 16).

13. The Tribunal with the assistance of the parties and the leases for flats A and C reconstructed the missing page which comprised:

- Clause 7: last word: posting.
- Clause 8: "In this lease where the context so admits: -

> (1) the expressions "the Landlord" and "the Tenant" include their respective successors in title and where the Tenant ....."

14. At the case management hearing the Applicant also produced the original plan affixed to the lease. The Tribunal was satisfied from perusal of the plan of the extent of the area delineated by red marking (the demise) and of the extent of the area delineated by blue marking (the Building). The Tribunal was unable to identify from the plan those areas referred to in the lease as delineated by green markings and by yellow markings. The Tribunal concluded that the green and yellow marked areas did not exist on the ground.

15. The Applicant's title to the leasehold was registered at the Land Registry on 9 January 1997.

16. The Respondent acquired the freehold of the property known as 301 High Street Sheerness around 1 June 2007, and was registered with absolute title at the Land Registry. Mr and Mrs Thompson, the Respondent's directors, held the leasehold to the rear maisonette (Flat C), whilst Featurekey Properties Limited, a company owned by Mr and Mrs Thompson, held the leasehold to the ground floor flat (Flat A).

17. Clause 1(2) of the lease sets out the Applicant's liability to pay a service charge as an amount by way of further or additional rent:

> "There shall also be paid by way of further or additional rent a fair and reasonable proportion (as hereinafter defined) of the amount which the landlord may from time to time expend and as may reasonably be required on account of anticipated expenditure:
>
> (a) in performing the landlord's obligations as to repair maintenance and insurance hereinafter contained.
> (b) in payment of the proper fees of the surveyor or agent appointed by the landlord in connection with the carrying out or prospective carrying out of any of the repairs and maintenance hereinafter referred and the apportionment of the costs of such repairs maintenance and collection between the several parties liable to reimburse the landlord for the same and such fees for collection of rents hereby reserved and any other payments to be paid by the tenant under this clause.
> (c) in payment of the rents rates taxes water gas electricity and other service charges or outgoings whatsoever in respect of any part of the building not included or intended to be included in this demise or in a demise of any part of the building but excluding all charges or outgoings whatsoever relating to the office on the ground floor of the building and the storage areas in the basement of the building (which are shown green on the plan).
> d) in providing such services facilities and amenities or in carrying out works or otherwise incurring expenditure as the landlord shall in the landlords absolute discretion deem necessary for the general benefit of the building excluding the area shown green on the plan and its tenants whether or not the landlord has covenanted to incur such expenditure or provide such services facilities and amenities or carry out such works.

e) in complying with any of the covenants entered into by the landlord or with any obligations imposed by the operation of law which are not covered by the preceding sub-clause.

(f) for the purpose of the clause a fair and reasonable proportion shall mean the proportion that the square footage of floor area within the flat hereby demised bears in relation to the total square footage of floor space within the building as a whole".

Provided that all sums shall from time to time be assessed by the surveyor or agent for the time being of the landlord and such sums shall be paid by the tenant within 28 days of being demanded".

18. The agreed proportion of the charge payable by each tenant of the three flats in the property was:

Flat A: 22.54 per cent
Flat B: 39.38 per cent
Flat C: 38.08 per cent

19. Clauses 3 (1) and 3(2) of the lease require the tenant to make payments without deduction, and if the payment is not made within 28 days of being demanded to be liable to pay interest on such sums with the accrual of interest until the payment is made. Clause 8(3) specifies the rate of interest which is five per cent above the base rate of Bank PLC from time to time or 12 per cent per annum whichever shall be the greater. The Respondent has applied the base rate for Barclays PLC, which is where the service charge accounts are held.

20. The landlord's covenants in respect of repair maintenance and insurance are set out in clause 4. The covenants are subject to the tenant making the required contribution to the charge.

21. Clause 4(1) provides that the landlord shall at all times during the said term to take reasonable care and to keep in good and substantial repair and in clean and proper order and condition the exterior roof and foundations and those parts and appurtenances of the building which are not included in this demise or in a demise of any part of the building but excluding those parts and appurtenances of the building shown edged yellow on the Plan.

22. Clause 4(2) states that the Landlord as often as reasonably necessary to decorate the external and internal communal parts of the building in a proper and workmanlike manner and to keep all internal communal parts of the building cleaned and lighted.

23. Clause 4(3) provides that the Landlord shall keep in good order the grounds of the building not included in this demise or in a demise of any part of building.

24. Clause 4(4)(a) requires the landlord to keep the building insured against loss or damage by fire storm tempest explosion and such other risks (subject to normal excesses) in the full replacement value including all professional fees debris removal and site clearance and the cost of any work which might be required by or by virtue of any Act of Parliament and three years loss of rent.

25. The lease contains no comprehensive definition of building. Recital (i) states that the building includes the grounds thereof and the extent of which is for identification only outlined in blue on the site plan drawn on the plan annexed to the lease.

26. Under clause 3 (13) the tenant is liable personally to pay all expenses including solicitors' costs and disbursements and surveyors' costs incurred by the landlord incidental to the preparation and service of a notice under section 146 of the Law of Property Act 1925 or incurred in or in contemplation of proceedings under sections 146 or 147 of that Act notwithstanding in any such case forfeiture is avoided otherwise than by relief granted by the Court.

Consideration

27. This is the eighth set of proceedings involving the same parties and the same property in a space of six years. The details of the previous Tribunal proceedings were set out at paragraphs 37 to 43 of the last decision (CHI/29UM/LSC/2013/0115). During the space of those six years the Tribunal has determined the service charges for each year starting 1 December 2007, and made rulings on the correct interpretation of the lease.

28. The Tribunal on the last occasion attempted to consolidate the various rulings on the construction of the lease and to provide a baseline in respect of the charges owed by the Applicant with the hope that the parties might move forward. The Applicant was granted permission by the Upper Tribunal to appeal the decision in respect of the administration charge in the sum of £2,427. There has been no appeal against the Tribunal's determination on the service charges.

29. On 29 June 2015 the Upper Tribunal dismissed the Applicant's appeal against the administration charge[3].

30. In this application, the Applicant questioned whether the lease allowed the Respondent to set up a reserve fund to pay for future expenditure on repairs and maintenance to the building. The Respondent, on the other hand, requested the Tribunal to reconsider previous decisions which said that the charges incurred on directors and officers liability insurance were not authorised by the lease. Although this Tribunal is

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[3] *Catherine Mary Willens v Influential Consultants Ltd* [2015] UKUT 0362(LC).

not bound by the decisions of previous Tribunals[4], this Tribunal is reluctant in view of the history of the proceedings between the parties to re-open past determinations unless they were manifestly wrong. In those circumstances the Tribunal agrees with the determination made by the Tribunal on 28 July 2010 that the wording of clause 1(2) of the lease permitted both an amount for the forthcoming year and contributions to a reserve fund.[5] The Tribunal confirms the previous Tribunal's determination on 1 February 2012 that the premium for directors' and officers' liability insurance was not recoverable under the terms of the lease[6].

31. The Tribunal now deals with each of the disputed issues in turn as identified in paragraph 5 above.

Whether the Tribunal had jurisdiction to entertain the Application for Administration Charges in respect of interest and legal charges?

32. On 20 October 2014 SLC solicitors for the Respondent wrote to the Applicant enclosing a Notice Pursuant to section 146 of the Law of Property Act 1925 [106-110]. The sum demanded by the Respondent under the section 146 Notice comprised £10,116.22 for unpaid service and administration charges on which contractual interest had accrued in the amount of £2,660.63, and £865.10 for legal costs incurred on the issue of the Notice.

33. On or around 3 November 2014, Swift, the Applicant's mortgage company, paid the total sum of £13,641.95 demanded under the section 146 Notice.

34. On 13 November 2014 SLC solicitors acknowledged receipt of the payment £13,641.95 in full and final settlement in respect of the service charges which had been determined by the Ft Property Tribunal [120].

35. The Respondent argued the Tribunal had no jurisdiction to hear the Applicant's application to determine liability to pay the interest of £2,660.63 and the legal costs of £865.10 as administration charges because the payment by Swift in full and final settlement constituted an admission on the part of the Applicant of liability to pay those charges.

36. The Respondent relied on paragraph 5(4)(a) of schedule 11 to the 2002 Act in support of its contention on jurisdiction. Essentially under paragraph 5(4)(a) no application may be made to determine whether

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[4] The UT in Garrick Estate Limited v Roger Henry Balchin [2014] UKUT 0407 decided that an LVT would be bound by a previous LVT's determination on the construction of a lease involving the same lease and the same parties (see paragraph 9).

[5] See paragraph 39 of the decision (CHI/29UM/LSC/2013/0115).

[6] See paragraph 40 of the decision (CHI/29UM/LSC/2013/0115).

an administration charge is payable if it is admitted or agreed by the tenant but the tenant is not to be taken to have agreed or admitted any matter by reason only of having made payment (paragraph 5(5)).

37. The Applicant said that she had not given permission to her mortgage company to discharge the debt in respect of the interest charges and the legal costs. The Applicant pointed out that the interest and legal charges had not been the subject of the previous Tribunal's determination. The Applicant submitted that payment of the debt in itself did not constitute an admission of liability on her part.

38. The Respondent countered by stating the words used "full and final settlement" in the letter of its solicitors dated 13 November 2014 clearly indicated that Swift had accepted liability on the Applicant's behalf to pay the charges. The Respondent asserted the Applicant was bound by the actions of its agent, Swift. Further, if Swift had not followed the Applicant's instructions, the Applicant should then sue Swift rather than contest the administration charges.

39. The Tribunal, on balance, decides it has jurisdiction to determine the applications in respect of interest and legal costs. The Tribunal is not satisfied the payment made by Swift constituted an admission of liability on the part of the Applicant. The Tribunal has no direct evidence of the basis upon which Swift made the payments. The Respondent relied on the letter from its solicitors dated 13 November 2014 for the terms upon which the payment was made. This, however, was not corroborated by documentation from Swift. The Tribunal observes the interest charges and the legal costs did not form part of the previous Tribunal's decision, which gives weight to the Applicant's case that she made no admission on those matters[7].

40. The Respondent conceded at the hearing that its argument on jurisdiction did not extend to the Applicant's application in respect of the service charges for the year ending 30 November 2014 because the Applicant had challenged the actual charges rather than the estimated ones which were considered by the previous Tribunal.

Actual Service Charge for year ending 30 November 2014

41. On 23 November 2013 the Respondent issued a demand for £610.39 in respect of a contribution on account to the reserve fund, and a further demand in the sum of £6,115.49 for payment on account of the service charge.

42. On 31 July 2014 the previous Tribunal determined that the Applicant was liable to pay on account the sum of £3,515.78 comprising £610

[7] The UT in *Catherine Mary Willens v Influential Consultants Ltd* [2015] UKUT 0362(LC) reached the same conclusion (see paragraph 17).

(reserve) and £2,905.78 (services) for the year ending on 30 November 2014.

43. On 30 November 2014 the Respondent issued a credit note [138] in the sum of £786.97 comprising £649.14 for services and £137.83 in respect of unused reserves for the rear fence.

44. The Applicant was unable to reconcile the service charge on account issued in November 2013 with the actual expenditure incurred in the year ending 30 November 2014. The Tribunal formed the view that it was unnecessary and confusing to carry out the reconciliation and that the correct means of determining the dispute was to focus solely on the reasonableness of the actual charges incurred [205, 206, 209 & 210].

45. The Applicant did not challenge the expenditure for buildings insurance (£476.91), accountancy (£141.77), common parts electrical (£70.88), postage (£16.61) and the fee for obtaining quotations for the work in connection with the replacement of the garden wall (£35.44).

46. The Applicant argued the sum incurred on the health and safety assessment was unreasonable. Office Test carried out the assessment on 23 October 2014 and charged £354 (£139.41) including VAT [113]. The Applicant considered the assessment inadequate because it was restricted to fire risks. Mr Thompson explained that he had sought quotations from four different persons to carry out the assessment, and received quotations from two of them. Mr Thompson said that Office Test supplied the cheapest tender, and that Office Test advised him not to carry out a full health and safety risk assessment because it would be a waste of money given the small size of the building. The Applicant adduced no evidence of charges for fire risk assessments from alternative suppliers.

47. The Tribunal is satisfied that the charges for the fire risk assessment were authorised by the lease and reasonably incurred.

48. The Applicant disputed the sums incurred on software and stationary which were: renewal of MS Office (£13.97), printer and cartridges purchased on 6 March 2014 (£71.55) [224], printer cartridges purchased on 5 May 2014 (£ 70.58) [223], QuickBooks purchased on 17 July 2004 (£ 25.31) [217], and PDF software purchased on 22 July 2014(£13.27) [216].

49. Mr Thompson informed the Tribunal that he used the software and stationary (printer cartridges) in order to perform his duties in connection with the management of the property. These duties included keeping expenditure records, inspecting the property, appointment of surveyors and contractors and supervision of their activities, undertaking the majority of the tasks involved in section 20 consultation, and looking after the legal side.

50. Mr Thompson pointed out that he took no fee for managing the property. The expenditure on MS Office, QuickBooks and PDF software was halved to reflect the use made of the software for Featurekey Properties Limited, a company owned by Mr and Mrs Thompson. Mr Thompson said the printer was for the sole use of the Respondent. The Tribunal noted the Respondent only claimed for the cost of the printer cartridges on 6 March 2014 [224]. The cost of the printer was recovered from a refund for the return of other printer cartridges. Contrary to the parties' submissions at the hearing, the Respondent had not claimed from the Applicant a contribution in respect of the expenditure on MS Office and PDF software ((£13.97 & £13.27). In respect of software, the Respondent's claim was restricted to the £25.31 on Quickbooks.

51. The Applicant argued the expenditure was not authorised by the terms of the lease, and was excessive and unnecessary.

52. The Tribunal notes that other Tribunals have decided expenditure on printer cartridges was recoverable under the service charge for previous years but not expenditure on generic software including Quickbooks. The Tribunal is satisfied, on balance, that Mr Thompson used the printer cartridges for the activities identified in paragraph 49. The Tribunal finds that clauses 1(2)(b) and 1(2)(d) of the lease authorised the recovery of the Respondent's costs incurred on those activities through the service charge. The Applicant adduced no persuasive evidence to support her contention that the costs on printer cartridges were excessive. The Tribunal disallows the expenditure on software in line with the decision of previous Tribunals.

53. The Tribunal is satisfied that the charges for printer cartridges (referred to as stationary) were authorised by the lease and reasonably incurred.

54. The Applicant challenged the sums incurred on the services provided by Mr Baker in the amounts of £360 and £500, of which the Applicant's contribution was £141.77 and £196.90 respectively.

55. The amount of £360 was for a dampness survey and supported by an invoice dated 20 May 2014 at [219]. The narrative of the invoice said that the fee was for "visiting site and carrying out an internal inspection of Flats 301A and 301C and an external inspection of the entire building. Preparing a report of findings for the Respondent's use".

56. The amount of £500 was in respect of the preparation of an outline specification of proposed external rendering works, and emergency roof and guttering repairs, and obtaining two builders' estimates. The expenditure was substantiated by an invoice dated 27 November 2014 at [212].

57. At the hearing Mr Thompson explained that he had not been satisfied with previous dampness surveys of the building because the firms which had carried out the surveys were more interested in selling their

solutions rather than identifying the causes of the damp problem. Mr Thompson, therefore, decided to instruct a surveyor to investigate the reasons for the water penetration. Mr Thompson stated that he had obtained three quotations for the survey. Mr Baker provided the cheapest quotation.

58. Mr Thompson said that Mr Baker spent a significant amount of time substantially in excess of three hours on inspection, discussion, provision of a brief report and further professional advice, which, according to Mr Thompson, more than justified his fee of £360.

59. Mr Thompson issued further instructions to Mr Baker which related to the proposed works to remedy the damp problem. Mr Baker was asked to provide a specification for the works, obtain tenders from at least two contractors, instruct the preferred contractor, and supervise and sign off the works.

60. Mr Thompson stated that Mr Baker conducted another survey of the property and prepared a specification for the remedial works which took account of the Applicant's concerns. The specification included repairs to the main roof, the eaves gutter and the brickwork, hacking off the old rendering and a provisional sum for a chemical damp course.

61. On 26 July 2014 Mr Thompson issued the initial letter in connection with the procedures for consultation under section 20 of the 1985 Act on the remedial works agreed with Mr Baker. The letter was sent to the Applicant together with a copy of the specification. Following which Mr Baker approached a number of suitable local builders to obtain estimates for the proposed works.

62. According to Mr Thompson, Mr Baker was only able to secure an estimate from one builder which was in the sum of £10,072 plus VAT. Mr Thompson decided that it was not practical to proceed with the intended works because of the absence of competitive quotations for the proposed works. Mr Thompson, therefore, agreed with Mr Baker to pay him for the works done which amounted to £500.

63. The Applicant originally objected to the costs incurred by Mr Baker on the grounds that the first survey appeared to be restricted to Flats A and C rather than the whole building whilst the second survey appeared to cover the work that had been previously done by other surveyors.

64. The Applicant developed her objection in the subsequent representations referred to in paragraph 4 above. Essentially the Applicant argued that she had not known until the Respondent's letter of 22 June 2015 that the section 20 process had been abandoned and that she was still unable to assess the overlap of Mr Baker's work with that done by previous surveyors, particularly the McClaren report of 2012.

65. The Applicant maintained that the monies spent on Mr Baker's services had been based on the false premise that water penetration to the property was new. This was contrary to the Applicant's understanding that the property especially Flat A had suffered from a longstanding problem with damp beginning not later than 1998.

66. The Applicant said that she required further time to investigate the costs incurred on the surveys carried out by Mr Baker, and in this respect asked the Tribunal to delay its decision on this matter.

67. The Tribunal finds the Applicant did not challenge that the work as described in the two invoices was carried out by Mr Baker. Further the Applicant had not questioned the reasonableness of Mr Baker's charges. Finally the Applicant did not dispute the Respondent's entitlement to recover the costs of the surveyor under clause 1(2)(b) of the lease.

68. The Tribunal considers the crux of the Applicant's objection was that the works done by Mr Baker duplicated previous surveys and was unnecessary. The Applicant, therefore, required additional time to substantiate her objection.

69. The Tribunal formed the view that Mr Thompson had provided a plausible explanation for instructing Mr Baker to carry out a dampness survey. The Tribunal accepted Mr Thompson's statements that the previous surveys had not adequately identified the causes of the problem, and that Mr Baker's survey applied to the whole building not just to Flats A and C.

70. The Tribunal was also satisfied with Mr Thompson's explanation for not carrying out the remedial works. The Tribunal considered Mr Thompson adopted a responsible stance with his insistence of the need for competitive quotations for the proposed works. The fact that the remedial works were not implemented did not as a matter of course render Mr Baker's subsequent services in respect of the specification and the obtaining of tenders otiose. In the Tribunal's view, Mr Baker's specification would be of use when the repairs were eventually carried out.

71. The Tribunal is to be satisfied of two matters in deciding whether the charges for Mr Baker's services were reasonably incurred, namely, whether the actions taken by the Respondent were reasonable and if so whether the costs were reasonable. In view of its findings above, the Tribunal is satisfied on both counts in respect of the charges incurred on Mr Baker's services. Finally the Tribunal would add the Applicant adduced no evidence to suggest that the services supplied by Mr Baker were not to a reasonable standard.

72. The Tribunal considered that it had reliable and sufficient evidence with which to make a decision on the reasonableness of the costs incurred on Mr Baker's services. In those circumstances the Tribunal

saw no merit in granting the Applicant's request for further time to investigate the charges for Mr Baker's services.

73. The Tribunal, therefore, decides that the charges for Mr Baker's services were authorised by the lease and reasonably incurred.

74. The last matter for consideration in respect of the actual charges for the year ending 30 November 2014 concerned the charges for the new fence to the rear garden. The Applicant withdrew her objection to the charges but asked for a lock to be fitted so that the gate could be opened from either side together with keys for each lessee. Also the Applicant requested the Respondent to ensure that the gates opened more easily.

75. Mr Thompson pointed out that the erection of the fencing had been carried out in accordance with the specification, and that Mr Baker had certified the works on completion [221].

76. The Tribunal has no grounds upon which to make a determination on this matter. The Tribunal asks Mr Thompson to give consideration to the Applicant's request, which on the face of it, appears reasonable.

77. The Tribunal determines the service charge for the year ending 30 November 2014 at £2,658.50 comprising £427.17 (reserve) and £2,231.33 (services).

78. The service charge is broken down as follows:

Expenditure Items	Charge (£)	Tribunal/Agreed
Agent's fee	35.44	Not disputed
Building insurance	476.91	Not disputed
Office supplies	71.55	Determined
Office supplies	70.58	Determined
Dampness survey	141.77	Determined
Common Parts electrical	70.88	Not disputed
Fire risk assessment	139.41	Determined
Accountancy fee	94.51	Not disputed
Specification for damp works	196.90	Determined
Postage	16.61	Not disputed
Replacement fence	739.56	Not disputed
Agent's fee and supervision	157.52	Not disputed
Gate fittings	19.69	Not disputed
Total	**2231.33**	

79. In order to reflect the Tribunal's determination, the credit given to the Applicant's service charge will be increased by £25.31 (the amount disallowed for Quickbooks) from £786.97 to £812.28.

The estimated charges for the year ending 30 November 2015

80. On 1 December 2014 the Respondent issued a demand for service charges on account in the sums of £2,272.86 (services) and £590.70 (reserve) totalling £2,863.56 for the year ending 30 November 2015 [140].

81. The breakdown of the charges for the services was set out at [105].

82. The Applicant did not challenge the estimated sums for insurance and light bulb replacement. The Applicant raised no objections to the charge of £700 (£275.66, Applicant's contribution) for specified works which were to be paid out of reserves.

83. The Applicant disputed the estimated charges for the fees in connection with the lateral restraint and loft survey, the fees for fire insurance re-instatement, the accountancy fee and the charges for common parts cleaning and gardening. The Applicant's objection which was common to the four expenditure items was that she had not received a credit for the estimated expenditure for these items which had not been incurred in the year ending 30 November 2014.

84. The Applicant contended that the elevation and damp survey had already been carried out, and in those circumstances there was no justification to demand further fees for this survey in the service charge estimate for the year ending 30 November 2015.

85. The Applicant considered she required more information on the estimated management charges. The Applicant also believed that Mr Thompson was increasingly delegating management tasks to paid professionals, in which case the estimated charges should be lower.

86. Finally, the Applicant queried the necessity to make a payment to the reserve fund, having regard to the balance of £12,000 currently held in reserves.

87. Under this heading the Tribunal is being asked to fix the amount of the service charge for the year ending 30 November 2015 before the relevant costs have been incurred. The amount determined by the Tribunal should be no greater amount than is reasonable. The Tribunal when answering this question should have regard to past expenditure as a guide to future expenditure.

88. In the year ending 30 November 2014 the Respondent did not spend monies on recurring expenditure items of accountancy and cleaning and gardening, and on the fees for the lateral and loft survey and on the fire insurance reinstatement. In this respect Mr Thompson issued the Applicant with a credit note for the under-spend against the estimated expenditure for the year ending 30 November 2014.

89. The Applicant's principal objection to the inclusion of these four items of expenditure in the estimated budget for year ending 30 November 2015 appeared to be that she did not get the full refund of the estimated amounts not spent in the previous year. The reason for not receiving the full refund was that Mr Thompson applied part of the estimated budget on other items of expenditure, the costs for which the Tribunal has found to be reasonably incurred (see the preceding section).

90. The Applicant did not put forward persuasive grounds undermining the reasonableness of the estimated costs for the revaluation of the fire insurance re-instatement, cleaning and gardening and accountancy.

91. The Tribunal on its own initiative expressed concerns about the Respondent's failure to expend monies in the previous year on cleaning and gardening, and to spend the full allocation on accountancy fees. The Respondent's reluctance to spend monies on these items was related to the uncertainty awaiting the outcome of the previous Tribunal's determination on the Applicant's dispute with the service charges for from 5 February 2011 to 30 November 2014. Mr Thompson also questioned the merit of engaging the services of an accountant because of the Applicant's predisposition to take proceedings which meant that the Tribunal was in effect rendering the accountant's role redundant with respect to certification of the service charge accounts.

92. The Tribunal is satisfied that the proposed expenditure for the revaluation of the fire insurance re-instatement and cleaning and gardening was necessary and reasonable.

93. The previous Tribunal considered the Respondent's budgeting for the services of an accountant would meet the Applicant's concerns about the transparency of the service charge accounts, and that it would be advisable for the accountant to take the role of assessor in place of Mr Thompson[8]. This Tribunal is of the same view and decides that the proposed expenditure on accountancy services was reasonable and necessary.

94. The Applicant argued additionally in respect of the fee for the lateral restraint and loft survey that no reason had been given for the increase in the estimate from the previous year. Mr Thompson responded by saying that the fee for this survey was likely to be twice the amount of the current estimate. The Tribunal is satisfied that it was necessary to carry out the survey and that the current estimated cost of £1,000 was reasonable.

95. The Tribunal finds the estimated charges of £500 for management was broadly in line with expenditure in previous years, and was, therefore, reasonable.

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[8] See paragraph 66 of CHI/29UM/LSC/2013/0115.

96. Mr Thompson indicated in his letter dated 22 June 2015 that the works to tackle the dampness problem had been put on hold. Given those circumstances the Tribunal decides there was no need for the estimated sum of £1,200 allocated to fees for the elevation and damp works to be included in the budget for the year ending 30 November 2015.

97. The Tribunal is not convinced of the reasonableness of the demand of £590.70 as a contribution towards the reserves. The reserve fund account [A47] currently showed the sum of £12,370.33 held in reserves. On 30 November 2014 Mr Thompson had issued a credit note which had returned to the Applicant the sum of £137.83 representing unused reserves which had been freed up following completion of the fencing works at the rear of the property.

98. The Tribunal is of the view that the Respondent should put in train the remaining works for which the reserve fund had been allocated before demanding further sums of money to be added to the reserves. The Tribunal believes that the current fund was sufficient to carry out the outstanding major works, and that once those works were completed the Respondent would be then in a position to draw up a long term plan for expenditure on future major works and identify the required contribution from each lessee to the reserve fund.

99. The Tribunal determines the interim service charge for the year ending 30 November 2015 at £2,076.96 of which £275.66 will be met from reserves. The Tribunal decides not to order an additional contribution of £590.70 to the reserve fund.

100. The service charge is broken down as follows:

Expenditure Items	Charge (£)	Tribunal/Agreed
Building insurance	501.76	Not disputed
Lateral restraint & loft	393.80	Determined
Fire Insurance reinstatement	236.28	Determined
Accountancy	196.90	Determined
Cleaning & gardening	236.28	Determined
Light bulb replacement	39.38	Not disputed
Specified works	275.66	Not disputed
Management	196.90	Determined
Total	**2,076.96**	

Whether to make an order under paragraph 3 of schedule 11 of the 2002 Act varying the clause in the lease setting the rate of interest?

101. On 20 October 2014 the Respondent issued a Notice to forfeit the lease in accordance with section 146 of the Law of Property Act 1925 on the account of non-payment of overdue charges [108].

102. Paragraph 10 of the Notice referred to the Ft Tribunal decision of 31 July 2014 which determined that the Applicant was liable to pay

£10,116.22 in service and administration charges, and interest of £2,660.63 which had accrued at the contractual rate.

103. Mr Thompson in his witness statement of 27 March 2015 [155-177] confirmed the letter detailing the interest [199] was accompanied by the necessary statutory advice regarding administration charges.

104. The Applicant disputed the interest charge of £2,660.63. The Applicant applied for a variation of the clause which set out the rate of interest for sums unpaid under the lease. The Applicant also argued the Tribunal had jurisdiction to determine whether the interest was payable even though it was a fixed administration charge.

105. Clause 3(2) of the lease provides as follows:

> "If any rent properly due (whether demanded or not) or any other monetary payment due to the landlord is not paid within one month of the date on which such payment is due then to pay interest on such sum such interest to accrue from day to day commencing on the date when such payment is due until payment".

106. Clause 8(3) of the lease provides that

> "Interest payable by the tenant to the landlord shall mean interest at five per cent above the base rate of [Barclays] Bank PLC from time to time or twelve per cent per annum whichever shall be greater".

107. The first question for the Tribunal is whether the payment of interest for late payment of sums due under the terms of the lease is an administration charge. The Tribunal is satisfied that the payment of interest in this case meets the definition of administration charge in paragraph 1(1)(c) of schedule 11 of Commonhold and Leasehold Reform Act 2002:

> "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) Not applicable
> (b) Not applicable
> (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"

108. The second question for the Tribunal is whether the interest payment is a variable or fixed administration charge. Paragraph 1(3) of schedule 11 of 2002 Act defines a variable administration charge as one which is neither specified in the lease nor calculated in accordance with a formula specified in the lease. In this case the interest is a fixed administration charge because the amount payable is calculated in accordance with the formula in clause 8(3) of the lease.

109. The Tribunal's jurisdiction in respect of fixed administration charges is limited to considering an application to vary the term of the lease, and if granted the start date of such a variation.

110. Under paragraphs 3(1) and 3(2) of schedule 11 of the 2002 Act the Tribunal may order the lease to be varied if it is satisfied that the formula specifying the method of calculation of the administration charge is unreasonable.

111. The Applicant applied to vary clause 8(3) by replacing the rates of interest specified with an interest rate that conformed to the court rate of eight per cent simple interest.

112. The Applicant's reason for her application was that the rate specified in the lease would currently be seen as punitive and or profit-making. The Applicant said that section 146(1) of Law of Property Act 1925 required the tenant in such a case to make compensation rather than being punished. The Applicant, however, conceded that the specified rate of interest would not have been unusual when the lease was formed in 1990.

113. Mr Thompson disagreed with the Applicant's submission that the current rate specified in the lease was penal. In Mr Thompson's view, the 12 per cent rate was substantially below the prevailing market rate for unsecured borrowing, particularly the rates on credit cards. Mr Thompson, however, questioned whether the Application had substance in the light of the Applicant's concession that the specified rate was not unusual at the time the lease was made.

114. The Tribunal considers the purpose of an order varying the terms of the lease dealing with fixed administration charges is to rectify a patent defect in the lease. The Tribunal considers the question of reasonableness of the formula for calculating the charge has to be assessed at the time the lease was made which was in 1990. The Applicant accepted that the rate specified in the lease was not unusual in 1990. When she acquired the lease in 1997 the Applicant is deemed to have been aware of its terms. The Tribunal considers that the Applicant has put forward no compelling reason for variation of the lease. The Applicant essentially considers the rate to be too high.

115. The Tribunal is satisfied for the reasons given above that the terms of clause 8(3) are reasonable, and that there are no grounds to vary the lease in accordance with paragraph 3(1) of schedule 11 of the 2002 Act. The Application is, therefore, refused.

116. The Applicant suggests that the Tribunal's powers to consider whether an administration charge is payable extends to a fixed charge. The Tribunal disagrees. The Tribunal's jurisdiction under paragraph 5

of schedule 11 on liability to pay administration charges is restricted to variable charges.

117. If the Applicant wishes to dispute the amount of interest payable, it would be necessary for her to make application to a Court. The Tribunal, however, notes that SLC solicitors for the Respondent confirmed that the interest was calculated from the date the demand fell due at the contractual rate of 12 per cent under the terms of the lease [201].

Whether the variable administration charges for legal costs are payable, and if so, the amount payable?

118. The Applicant disputed her liability to pay legal costs of £865.10 connected with the issue of the section 146 Notice dated 20 October 2014 [110] and legal costs of £129 in relation to the letter giving notice of intention to bring legal proceedings dated 4 December 2015 [144].

119. The breakdown of the £865.10 comprised £85 for the first letter before action, £340 legal advice on the file (2 hours of Grade A at £170 per hour), £290 costs of the section 146 Notice, £7.10 disbursements and £143 VAT [201].

120. The charge of £129 comprised £107.50 legal costs and £21.50 VAT. The costs were incurred in the preparation of a letter dated 4 December 2014 headed Notice of Intention to Commence Legal Proceedings. The letter enclosed an arrears schedule which set out the full amount outstanding. The letter advised the Applicant that the Respondent was prepared to issue court proceedings if payment was not received. The arrears schedule referred to non-payment of the service charge in the sum of £2,126.59 for the year ending 30 November 2015.

121. The Respondent argued that it was entitled to recover the legal costs under clause 3(13) of the lease which stated that the tenant was liable:

> "to pay all expenses including solicitors' costs and disbursements and surveyors' fees incurred by the landlord incidental to the preparation and service of a notice under section 146 of the Law of Property Act 1925 or incurred in or in contemplation of proceedings under sections 146 or 147 of that Act notwithstanding in any such case forfeiture is avoided otherwise than by relief granted by the Court".

122. The Applicant contended that the charge of £865.10 was not payable under the terms of the lease because the section 146 Notice dated 20 October 2014 was invalid because it contained material errors of fact and did not comply with the relevant statutory requirements.

123. The errors of fact were first the arrears of service charges and administration charges of £10,116.22 recorded in the Notice included the sum of £2,427.00 for an administration charge which at the time

was subject to an application to permission to Appeal to the Upper Tribunal. On 3 November 2014 Martin Rodger QC, Deputy President of the Upper Tribunal, granted permission, and delivered his judgment on 29 June 2015. Second the contractual interest of £2,660.63 cited in the Notice had not been determined as payable by the previous Tribunal and had not been agreed by the Applicant.

124. The Applicant argued that the Respondent had not complied with the requirements of section 81 of Housing Act 1996 which provides that a landlord may not exercise a right of re-entry or forfeiture for failure by a tenant to pay a service charge or administration charge unless the charge has been determined by a Tribunal or Court or the tenant has admitted the charge is payable. The right of re-entry or forfeiture includes the service of a section 146 Notice. Thus, according to the Applicant, the section 146 Notice was issued prematurely before the administration charge of £2,427.00 had been finally determined.

125. The Applicant alerted the Respondent with her concerns about the validity of the section 146 Notice in a letter dated 31 October 2014 [114].

126. On 4 November 2014 Mr Thompson responded by stating that the section 146 Notice clearly set out details of the Applicant's liability to pay the charges[117]. Mr Thompson also pointed out that Swift, the Applicant's mortgage company, had in any event paid the outstanding sums.

127. The first question for the Tribunal is whether the Applicant was liable to pay the legal costs of £865 under the provisions of clause 3(13) of the lease.

128. In *Barrett v Robinson* [2014] UKUT 0322 (LC) the Upper Tribunal considered the circumstances in which costs would be recoverable under a covenant such as clause 3(13). The Tribunal said at paragraph 52:

> "Costs will only be incurred in contemplation of proceedings, or the service of a notice under section 146 if, at the time the expenditure is incurred, the landlord has such proceedings or notice in mind as part of the reason for the expenditure. A landlord which does not in fact contemplate the service of a statutory notice when expenditure is incurred, will not be able to rely on a clause such as clause 4(14) as providing a contractual right to recover its costs."

129. The Tribunal considers the fact that a section 146 Notice was served is determinative of the issue that the Respondent's legal costs fell within the terms of clause 3(13). In view of the long history of dispute between the parties there was clear evidence of the Respondent's settled

intention to take prompt legal action by way of a section 146 Notice in the event of non-payment[9].

130. The substantive dispute concerned the impact of the purported defect in the section 146 Notice on the Applicant's liability to pay the legal costs. The Respondent made no challenge to the Applicant's assertion that the Notice was invalid in that the breach was not specified correctly.

131. The section 146 Notice at paragraph (2) said:

> "Failed to pay the 'Service Charge' in accordance with Clauses 3(1) and 1(2) of the Lease in respect of the period 05/02/2011 to 23/11/2014 together with a reserve fund for period 05/02/2011 to 2014, and to pay legal costs and interest charges properly demanded".

132. The Tribunal agrees with the Applicant's assessment that the Respondent should not have referred to legal costs and interest charges in the specification of the breach because they had not been finally determined within the meaning of section 81 of the Housing Act 1996.

133. The Tribunal considers the defect in the Notice has no bearing on the costs incurred by the Respondent prior to the preparation of the section 146 Notice. The legal costs of £425 plus VAT (£85: letter before action, £340: legal advice on the file) were clearly incurred in contemplation of section 146 proceedings. The Applicant has adduced no evidence questioning the reasonableness of the amount charged.

134. The Tribunal finds that the defect is material in assessing the reasonableness of the costs incurred in the preparation of the notice (£290 plus VAT and disbursements of £7.10). The Tribunal is satisfied that it would be unreasonable for the Applicant to pay for the preparation of a defective notice, particularly as the Applicant was prompt in alerting the Respondent to her concerns about the Notice.

135. The Tribunal, therefore, decides the Applicant is liable to pay £510 (£425 plus £85 VAT) towards the legal costs in connection with the Notice dated 20 October 2014.

136. For completeness the Tribunal is satisfied that the Respondent did incur the above legal costs. This was evidenced by the invoice dated 11 May 2015 from SLC Solicitors to the Respondent which showed that the solicitors had deducted its costs from the payment made by Swift [235].

137. Turning now to the charge of £129 which comprised £107.50 legal costs and £21.50 VAT. These costs were incurred in the preparation of a

[9] See paragraph 14 of the UT decision *Catherine Mary Willens v Influential Consultants Ltd* [2015] UKUT 0362(LC). See [118] & [127] in which Mr Thompson states the Respondent's intention to take legal proceedings including forfeiture of the lease in the event of failure to pay service charges.

letter dated 4 December 2014 which stated that the Respondent intended to commence legal proceedings if the service charge arrears for the year ending 30 November 2015 were not paid before 2pm on 11 December 2014.

138. The Applicant maintained that the Respondent had been precipitous with the issue of its letter. On 4 November 2014 the Respondent sent the initial demand in the sum of £2,863.56 for the year ending 30 November 2015 [117]. On 21 November 2014 the Applicant queried the amount demanded [121]. On 30 November 2014 the Respondent sent a revised demand in the sum of £2,256.64 which took regard of the credit of £786.97 given for the year ending 30 November 2014 [127]. On 6 December 2014 the Applicant wrote to SLC solicitors pointing out that the letter of 4 December 2014 did not state the date of demand or the date on which the payment was allegedly due[148].

139. Under the terms of the lease the Applicant is given 28 days in which to pay the service charge from the date of the demand. The Applicant argued that she was not in arrears when the letter with the Notice of Intention was sent on 4 December 2014.

140. The Respondent said that it was unaware of the pending Tribunal proceedings when the letter was sent on 4 December 2014. The Respondent believed the Applicant's requests for information were a delaying tactic in order to avoid payment. The Respondent argued the letter with Notice of Intention was timely and that it should be entitled to recover its costs in connection with the letter.

141. The Tribunal takes the view that the costs incurred in the production of the letter and arrears schedule on 4 December 2014 were not authorised by the wording of clause 3(13) of the lease. The Applicant at the time was not in arrears with the service charge for the year ending 30 November 2015. The Respondent had issued a revised demand on 30 November 2014 and the Applicant was entitled to a period of 28 days in which to pay it. Despite the Respondent's assertions to the contrary, the Tribunal is satisfied that the letter of 4 December 2014 was not issued in contemplation of section 146 proceedings because at the time the Applicant was not in arrears.

142. The Tribunal decides the Applicant is not liable to pay the legal costs of £107.50 legal costs and £21.50 VAT.

Re-imbursement of Fees

143. The Applicant made an application for a refund of fees that she had paid in respect of the application and hearing[10]. Having taking into account the determinations above, the Tribunal does not order the Respondent to refund any fees paid by the Applicant.

[10] The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

Costs

144. The Respondent requested an order for costs against the Applicant which was connected with its submission on jurisdiction. As the Tribunal found against the Respondent on this issue, the application for costs fell away. The Tribunal in any event would not have made an order for costs against the Applicant in this specific instance. The Tribunal's power to order costs is severely curtailed by legislation. An order can only be made if a party has acted unreasonably with the conduct of the proceedings. "Unreasonably" in this context is a high threshold to cross. The Tribunal on balance considers the Applicant was justified in bringing these proceedings. The Tribunal, however, may take a different view if the Applicant makes applications in the future which resurrect points previously determined.

Statement of Account and Concluding Comments

145. As a result of its determinations the Tribunal sets out the statement of account for the Applicant. The statement does not include any interest that may be due on late payments. The Tribunal determines the amount payable by the Applicant is £633.92 excluding interest.

Date	Transaction	Amount (£)	Balance (£)
20. 10.14	Section 146 Notice	13,641.95	13,641.95
3.11.2014	Payment by Swift	- 13,641.95	Nil
30.11.2014	Credit Note	-786.97	-786.97
30.11.2014	Service Charge ye 30.11.2015	2,863.56	2076.59
30.11.2014	Payment from Reserve	-275.66	1800.93
22.7.2015	Disallowing charge for Quickbooks	-25.31	1775.62
22.7.2015	Reduction of Service charge ye 30.11.2015	-786.60 (2,863.56 - 2076.96	989.02
22.7.2015	Reduction of Legal Charges	-355.10 (865.10 - 510)	633.92

146. The Tribunal has set out the statement of account to ensure there is no confusion about the sum owed by the Applicant as a result of the Tribunal's decisions on the disputed matters.

147. The Tribunal is satisfied that as a result of its various decisions the parties should be aware of what items of expenditure can be recovered

through the service charge and of the boundaries of reasonableness. The Tribunal may take a dim view if a party brings an application in the future which relates to a matter that has already been the subject of a previous determination by the Tribunal.

148. The Tribunal consider the parties should focus on the programme for the major works to the property and identify priorities. The Tribunal reminds the parties of its previous decision at paragraph 54 advising caution about whether the cost of improvements is recoverable through the service charge.

149. The Tribunal encourages the parties to use the legal process as a last resort. In this respect the Tribunal trust the parties can find a way of resolving their current dispute on breach of covenant without resort to the Tribunal or Court.

RIGHTS OF APPEAL

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

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

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

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

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.

Housing Act 1996

1) A landlord may not, in relation to premises let as a dwelling, exercise a right of re-entry or forfeiture for failure [by a tenant to pay a service charge or administration charge unless—

(a) it is finally determined by (or on appeal from) [the appropriate tribunal] or by a court, or by an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, that the amount of the service charge or administration charge is payable by him, or
(b) the tenant has admitted that it is so payable].

(2) The landlord may not exercise a right of re-entry or forfeiture by virtue of subsection (1)(a) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.

(3) For the purposes of this section it is finally determined that the amount of a service charge or administration charge is payable—

(a) if a decision that it is payable is not appealed against or otherwise challenged, at the end of the time for bringing an appeal or other challenge, or

(b) if such a decision is appealed against or otherwise challenged and not set aside in consequence of the appeal or other challenge, at the time specified in subsection (3A).

(3A) The time referred to in subsection (3)(b) is the time when the appeal or other challenge is disposed of—

(a) by the determination of the appeal or other challenge and the expiry of the time for bringing a subsequent appeal (if any), or

(b) by its being abandoned or otherwise ceasing to have effect.

(4) The reference in subsection (1) to premises let as a dwelling does not include premises let on—

(a) a tenancy to which Part II of the Landlord and Tenant Act 1954 applies (business tenancies),

(b) a tenancy of an agricultural holding within the meaning of the Agricultural Holdings Act 1986 in relation to which that Act applies, or

(c) a farm business tenancy within the meaning of the Agricultural Tenancies Act 1995.

(4A) References in this section to the exercise of a right of re-entry or forfeiture include the service of a notice under section 146(1) of the Law of Property Act 1925 (restriction on re-entry or forfeiture).

(5) In this section

(a) "administration charge" has the meaning given by Part 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002,

(b) "arbitration agreement" and "arbitral tribunal" have the same meaning as in Part 1 of the Arbitration Act 1996 (c 23) and "post-dispute arbitration agreement", in relation to any matter, means an arbitration agreement made after a dispute about the matter has arisen,

(c) "dwelling" has the same meaning as in the Landlord and Tenant Act 1985 (c 70), and

(d)] "service charge" means a service charge within the meaning of section 18(1) of the Landlord and Tenant Act 1985, other than one excluded from that section by section 27 of that Act (rent of dwelling registered and not entered as variable).

(5A) Any order of a court to give effect to a determination of [the appropriate tribunal] shall be treated as a determination by the court for the purposes of this section.

(6) Nothing in this section affects the exercise of a right of re-entry or forfeiture on other grounds.

(7) For the purposes of this section, "appropriate tribunal" means—

(a) in relation to premises in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and
(b) in relation to premises in Wales, a leasehold valuation tribunal.]

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).