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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BE/LSC/2015/0019**
Property	:	**102 Cossall Walk, London SE15 2TN**
Applicant	:	**Adeyinka Olufodun**
Representative	:	**None**
Respondents	:	**London Borough of Southwark**
Representative	:	**Harsha Kara**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	:	**Judge T Cowen** **Mr I Thompson Bsc FRICS** **Mr P Clabburn**
Venue of hearing	:	**10 Alfred Place, London WC1E 7LR**
Date of hearing	:	**28 May 2015**

DECISION

Decision of the tribunal

(1) The Tribunal determines that the amount payable by the Applicant by way of service charge for the relevant years is the amount for actual service charges which have been invoiced by the Respondent and the amount for estimated service charges for those years in which actual service charge invoices are not yet available.

(2) The Tribunal makes no order as to costs under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules").

(3) The Tribunal orders, pursuant to section 20C of the Landlord and Tenant Act 1985 ("the 1985 Act") that the costs incurred by the Council in these proceedings are not to be treated as relevant costs for determining any service charges

(4) The reasons for the orders made above are set out in the remainder of this decision.

The application

1. The Property is a one-bedroom flat located in a purpose built block of flats known as 1-108 Cossall Walk ("the Building"). The Building is part of an estate known as "Cossall" ("the Estate") which comprises a total of about 540 flats. The flats in the Building and across the Estate are occupied by a mixture of council tenants and leaseholders and their subtenants.

2. The Applicant is the leaseholder of the Property under a lease for 125 years dated, and commencing on, 19 April 2004 ("the Lease"). The Applicant is the original lessee who purchased the Lease under the right to buy scheme. The Applicant does not occupy the Property and has not done so throughout the period which is relevant to these proceedings.

3. The Respondent ("the Council") is the Applicant's landlord under the Lease. The Lease provides for the payment of service charges by the Applicant to the Council.

4. The Applicant commenced the application to the Tribunal in January 2015 seeking a determination of the payability of service charges for the following service charge years:

2009/10
2010/11
2011/12
2012/13

2013/14
2014/15

5. The Applicant's challenges to the service charges for those years can be summarised as follows:

   a. The apportionment of the service charges among the leaseholders is not fair, because the council tenants use more of the services.

   b. The insurance premium is excessive

   c. The heating and hot water costs are excessive.

   d. The Applicant would like to disconnect from the district central heating system

   e. The £13,492.93 cost of installing double glazing in place of single glazing in 2012/2013 was excessive and the Council should have acceded to the Applicant's request to be exempted from the window replacement programme.

   f. The block cleaning costs are excessive

   g. The responsive repair costs are unfair to the leaseholders

   h. Costs of works to the door-entry system are too high.

6. The Applicant also made an application under section 20C of the 1985 Act for an order that the costs incurred by the Council in these proceedings are not to be treated as relevant costs for determining any service charges.

Previous Tribunal Proceedings

7. A dispute of the service charges under this Lease between these same two parties has come before this Tribunal on a previous occasion in case number LON/00AL/LSC/2008/0249. That case concerned service charges for the years 2006/07, 2007/08 and 2008/09.

8. The Applicant's challenges to the service charges were largely the same as the issues raised here. The Tribunal on that occasion (which comprised members who were different from this sitting in the present case) determined that the cost of works to the common grounds and the cleaning costs were too high. They also determined that the heating costs were too high because the heating system was faulty. The Tribunal rejected all the Applicant's other challenges to the service charges as well as his request to be disconnected from the communal heating system.

The Service Charge Covenants and Other Relevant Covenants

9. Under the terms of the Third Schedule to the Lease, service charges are payable by the Applicant to reimburse the Council for expenses it has incurred in providing the services defined in the Lease. The services are defined to include

    a. Central heating
    b. Hot water supply
    c. Maintenance of estate roads and paths
    d. Maintenance of gardens or landscaped areas
    e. Un-itemised repairs.

10. The Council also covenanted at clause 4 (a) to keep in repair the structure and exterior of Property and the common parts of the Building and (b) to provide the services as defined and (c) to insure the Building.

11. The service charge year is defined in the Third Schedule to run from 1 April to 31 March each year. Service charge estimates are payable in equal quarterly instalments followed by a balancing charge or credit once the accounts are finalised after the end of the service charge year.

12. The service charge is defined in the Third Schedule as a "fair proportion" (determined by the Council using "any reasonable method") of the costs and expenses incurred by the Council in complying with its obligations to repair, insure and provide services, as outlined above, together with the cost of maintenance and management of the Estate and employment of managing agents. The Council is also entitled, under the Third Schedule to the Lease, to charge the Applicant for installation of double glazed windows, by way of improvement, and an entry-phone system, in the absolute discretion of the Council.

13. The Property is served by a district central heating system. At clause 2(9) of the Lease, the Applicant covenanted not to disconnect the Property from the district central heating system without the previous consent in writing of the Council. The Property remains connected to the system and no consent to disconnect has been given by the Council.

Jurisdiction

14. This decision concerns a determination pursuant to s.27A of the 1985 Act as to the amount of service charges payable by the Applicant. That section together with other relevant statutory provisions are set out in full in the appendix to this decision.

Reasoning of the Tribunal

15. Each of the Applicant's challenges, as listed above, are considered in turn, as follows.

Apportionment

16. The Applicant did not offer much by way of evidence or submissions on this point other than to say that he regarded the apportionment of service charges as unfair. The Council explained their method of "bed-weighting" by which each dwelling is allocated 4 units plus the number of its bedrooms and then the leaseholder is charged the percentage of the total relevant costs which is reached by working out that dwelling's number of bed-weighting units as a proportion of the total bed-weighting units of all of the dwellings in the Estate or Building, whichever is relevant. So the one-bedroom Property in this case is allocated 5 units. We have decided that this is a fair and reasonable method for apportioning the service charges within the meaning of the Lease.

Insurance Premium

17. The Applicant complains that the insurance premium (for which he has been charged between about £183 and £203 during the relevant period) is too high. He has supplied the Tribunal with evidence of comparable insurance premium quotes which, he says, demonstrate that the insurance premium for his Property should be no higher than about £120. He obtained the comparable quotes from insurance websites which offered online quotes by entering his postcode and the size of the Property.

18. In response, the Council say that the Applicant's comparables cannot be compared like for like. Firstly, the Council's obligation (for which the service charges are payable under the Lease) is to insure the entire Building and not just the Applicant's flat. The Applicant is required to pay a proportion of all of that. Secondly, the online quote takes no account of claims history for the Building. Thirdly, the online quote does not state whether there would be an excess payable on claims, and if so, how much. The size of any excess can make a big difference to

19. The Council's witness, Georgina Brown, explained that the insurance contract was renewed every 5 years, was subject to a section 20 consultation and that it complies with EU standards. They accepted the lowest bid in a tendering process carried out 3 years ago. The insurance contracts are based on the claims history for each block. Some blocks have a worse record than others. For example, higher rise blocks tend to suffer more from escape of water.

20. The Council did not know whether individual tailored insurance policies for each flat or each block would be cheaper, but they did say that the administration work-hours required to manage, renew and handle claims on such a large number of different policies would be a prohibitively expensive process which would need to be passed down to leaseholders as extra service charges. They therefore submitted that a single global insurance contract was the most cost-effective way of managing the insurance for the Estate as a whole.

21. We accept the submissions of the Council. There is no evidence that the insurance premiums are unreasonably high and the Applicant's comparable does not assist. We therefore determine that the insurance premiums charged for the relevant years are reasonable and payable.

Heating and Hot Water Costs

22. Heating and hot water to the Building, including the Property, is provides by a district communal boiler which serves a total of 350 dwellings.

23. The Applicant complains that the district communal heating system is uneconomic compared with the cost of running an individual boiler for each flat. He has been charged between about £800 and £990 per year during the relevant period.

24. The Applicant wants to disconnect from the communal system so that he can install his own boiler and run a cheaper heating system for his Property. He also complains that the cost of the fuel has not decreased, notwithstanding a fall in fuel prices during the relevant period.

25. The Applicant produced a gas bill for another similar sized flat on another estate in the area to demonstrate that the heating costs were much lower. He said that this comparable flat used a combi-boiler and not a communal district heating system. The annual cost for gas was £439. The Applicant says that the cost of purchasing and installing a combi-boiler would be about £1,500 so that he would save money within 2 years at most if he disconnected from the communal system.

26. The Council responds that the district communal heating system was in place when the Applicant entered into his Lease and that the Council has properly maintained that system throughout the relevant period. The Council deny that the Applicant had requested to be disconnected, even though the Applicant produced a letter dated 20 February 2012 which showed him making such a request. But, in any event, the Council denied that they had any obligation to give consent for disconnection.

27. The communal system, they said, is not comparable to an individual combi-boiler. The communal system has a much longer life expectancy, for example, and the costs charged to the Applicant include all servicing and repairs (which would be an extra expense to the owner of an individual combi-boiler). It happens that this system was installed in 1982 and is now nearing the end of its life expectancy. The Council pointed out that they have an obligation to keep the communal boiler system in repair and the cost of those works are included in the heating costs within the service charges.

28. They further contended that the fuel price was negotiated over a fixed bulk long-term contract and did not necessarily respond to real-time fluctuations in the fuel price market. They contended that it was reasonable for them to purchase fuel in that way.

29. A major works notice, under section 20 of the 1985 Act, which was sent by the Council to the Applicant on 4 January 2011, noted that the district communal heating system had been installed in about 1977 and had not been replaced since then. It was said to be in "a very poor condition and requires urgent attention". There is no evidence that the heating system does not work. The only complaints which the Council had received related to the temperature being too hot. This was caused by the fact that the new heat-efficient windows, which had been installed (see below), had retained more of the heating than before. This meant that the heating system needed to be adjusted to take account of that. Once this is done, the fuel costs will presumably fall, as one would expect after the installation of heat-efficient windows.

30. In our judgment, there is no evidence that the costs of heating and hot water are unreasonable. It may be the case that there is a completely different method for heating the Property which would be cheaper in the short or long term, but that is not the appropriate test under this jurisdiction. The Council as landlord does not have an obligation to provide the cheapest possible service in any given year. The Claimant merely has to act reasonably within the circumstances as they are. The circumstances here are that the heating is operated on a communal boiler system. The Applicant knew that when he purchased the Lease. The Council have an obligation to maintain it and they do not have any reasonable opportunity to switch to a different system altogether, even if they wanted to. There is no obligation upon the Council to allow individual lessees to disconnect from the communal system. It is not feasible for that to be permitted. The communal system will still need to be maintained for those who remain in it and will become less and less economic to run for fewer users. It is reasonable (within the meaning of the 1985 Act) for the Council to refuse to permit changes to the system which would have a damaging effect on their management of the whole estate.

31. We accept the submissions of the Council on this issue. For all those reasons, we have decided that the service charges in the relevant years relating to hot water and heating costs are reasonable and payable.

32. We make no finding on the question whether the Applicant has validly requested permission to disconnect and whether the Council should or should not have granted such permission, if requested. Neither of those matters are within our jurisdiction, nor do they have any bearing on the question whether the service charges are payable for the years in question.

New Windows

33. The Applicant challenges the cost of double glazing charged to him as part of the major works sum of £13,492.93. That sum was charged to him originally as an estimate. The actual cost came to £12,850.28 and the Council has already given the Applicant credit for the difference. It is the latter, actual, cost which we shall consider here. The Applicant claims that the cost should be no more than £7,550.

34. The window replacement works were the subject of major works consultation notices under section 20 of the 1985 Act. The notice dated 22 January 2010 and sent to the Applicant gave notice of the Council's intention to spend £150,000 replacing the windows in the Block at a total estimated cost of £195,357.46. It was part of a wider scheme of works which involved general external repairs and decorations, as well as asbestos removal and renewal of some front entrance doors. The front entrance doors are dealt with under a separate heading in this decision. The main cost of the major works was the glazing work, which is the subject of this section of the decision. There are no challenges to the cost or quality of the general repair and redecoration works.

35. The Applicant's main complaint under this heading is that he wanted to get the work done himself at a cheaper cost and asked the Council to exempt his Property from the window replacement scheme. He told the Tribunal that a number of other properties were excluded from the programme, including one of his neighbours who had installed his own windows shortly beforehand.

36. The Council, in response, agreed that the Applicant had requested in September 2010 to be excluded from the glazing works and that the Council had refused on the grounds that (a) the work needed doing and the Council would be in breach of its obligations not to do so and (b) the Applicant is responsible to pay a share of all the windows being renewed in the Building in any event. The way service charges work is that the Applicant was not being charged only for the replacement of his own windows, but for his share of the cost of replacing all of the windows which were being replaced in the Building.

37. As to the exemption granted to other leaseholders, the Council explained as follows. Leaseholders are not permitted under the terms of the leases to replace their own windows. It is a responsibility of the Council as landlord under the leases. The Council cannot be sure of the quality of works commissioned by individual leaseholders. However, some leaseholders go ahead and replace their windows despite the fact that it is prohibited under their lease. In such a case, the Council takes a pragmatic and cost-saving approach. If they reach the view that the work done by an individual leaseholder is of satisfactory quality, then they leave those windows out of the replacement scheme. This represents a saving of cost to all leaseholders as the flats which have been exempted from the Council's window replacement work are not exempted from having to pay their share of the cost of the replacement of all the other windows in the Building. This means that a leaseholder who wrongfully replaces their own windows has paid the cost of that and then also has to pay their share of the cost of replacing all the windows of the Building by way of service charges. We accept the Council's explanation.

38. The Applicant's other complaints about the window replacement are that (a) the works should not have been done during a recession, and (b) the scaffolding was up for too long. The Applicant said that the scaffolding was up for about 18 months for most of which time nothing was being done to the Building.

39. The timing of the works in relation to the economic cycle does not affect the reasonableness of these charges, in our judgment. If the Council reasonably and genuinely determined that the works needed doing under the Lease, then they are entitled to recover the reasonable cost of doing so without regard to the financial standing of the leaseholders.

40. On the question of scaffolding, the Council explained that they engaged a contractor to put up scaffolding at all the blocks while a variety of work was carried out at all of them. This was more cost-effective than erecting and dismantling scaffolding at different times at different buildings several times over the period. In this particular case, there was an extended delay because asbestos was unexpectedly found in the glazing of a stairwell. We accept this explanation. There is no evidence that this was an unreasonable way of carrying out the works nor was there any evidence that it cost more to the Applicant for the council to do so.

41. The Applicant also produced a comparable in the form of an estimate from a glazing company to replace his windows with double-glazing for £3,250 plus VAT. This comparison was not like for like, because the Applicant was required to pay a share of all the windows in the Building being replaced, not just those of his own Property. In any event, the Council gave evidence (which we accept) that the actual cost of just the

windows which they have charged to the Applicant was not much higher than his comparable quote.

42. In the circumstances, we determine that the actual service charges relating to the windows replacement programme are reasonable and payable by the Applicant.

Maintenance - cleaning

43. The Applicant complains that the cleaning costs are too high. He has been charged between £325 and £355 for this item for the relevant years.

44. The Applicant gave evidence that, over the last six months, he has been visiting the Property about once every two weeks, sometimes just by driving through the Estate and looking at it through the car window. He moved out in about 2005 and has rented it out ever since. He says that he only saw two men cleaning full-time and one part-time. He produced a comparable in the form of service charges for a different estate which showed lower charges for cleaning a smaller block. He says that the unit costs in respect of a larger block/estate like his should be lower, not higher. He suggested a payment of £107.39 would be appropriate. The Applicant conceded that the standard of cleaning on the Estate and the common parts of the Building was good.

45. In response, the Council provided evidence that the lessees are charged only for the time the cleaners spend cleaning the Estate. This is based on a timesheet supplied by the cleaning manager. It includes the cleaning of internal faces of windows, but the exterior of the windows is cleaned by a separate contractor twice a year. The cleaning is notionally charged at £21.64 per hour split across the 2 full time cleaners and 1 cleaner who works only part-time at this Estate. Management costs of supervising the cleaners are also included within that notional hourly rate. The Council charges to the lessees only 70% of the number of hours actually spent, to allow for any lack of productivity. The Council disputed the comparability of the comparable offered by the Applicant on the grounds that the service charges were itemised differently on that bill and it was not possible to see exactly what was being charged for cleaning.

46. The inclusion of overhead costs within the costs of cleaning services was something which the Upper Tribunal has held to be a reasonable way to calculate service charges – see *London Borough of Southwark v Paul & Benz* [2013] UKUT 0375 (LC) at paragraphs 37-38.

47. The Council demonstrated that they market tested the cleaning costs every 3-4 years. They last did so in 2014.

48. We accept the submissions of the Council. They have demonstrated that the cleaning has been done to a reasonable standard at a reasonable cost. The amount claimed by way of service charges in the relevant years for that item is reasonable and payable.

Maintenance – responsive repairs

49. The Applicant has been charged between about £135 and £210 per year for this item. He complains that the responsive repairs service is abused by council tenants who use the service unnecessarily and also because of those who cause wilful or reckless damage to property. He points out that the council tenants do not pay service charges and therefore the cost of their default is charged to leaseholders like him. His claim is that the system as he describes it is unfair to leaseholders and that the costs charged are therefore unreasonable.

50. The Applicant's evidence for his allegations is that (a) he had to pay £20 for a replacement key and (b) he has never used the responsive repair service himself, so he should not have to pay for it. He was not able to provide any direct evidence of his allegation that the responsive repair service was abused and overused by the council tenants, because he has not lived in the Property since about 2005/2006.

51. The Respondent pointed out in reply that the responsive repair service only related to the common parts, in other words, it is the Council responding to reports by residents of work needing to be done in the common parts. To that extent it does not make sense to consider what type of tenants are using the service. The service benefits everyone equally and is in compliance with the Council's obligation to keep the common parts in repair. The responsive repair service does not relate to repairs within flats. The Council denied that it charged individual lessees/tenants for replacement keys.

52. There is no evidence that the common parts needed repairing because any class of individuals set about deliberately or recklessly causing damage. There is also no challenge by the Applicant to the items of work done as being unreasonable or not to a reasonable standard. Nor does he challenge the cost of the works in terms of general value for money.

53. In those circumstances, we accept the submissions of the Council on this issue. The amounts claimed by them for responsive repairs in the relevant years in reasonable and payable.

Doors and Door Entry System

54. Some communal doors were replaced. The Applicant queried the cost of doing so. An apparent high cost stemmed from the fact that a large

provisional sum was set aside for replacement doors. In fact, only those doors which were found to be faulty were replaced.

55. The door entry system was also replaced during the works at a cost of about £2,000. The Applicant said that the work was unnecessary because the system was not faulty. He said that he visited the Property about once a month and that the entry phone system always worked. We doubt that he tried the system often, because he also gave evidence (recorded herein) that he mostly just viewed the Property by driving through the estate and looking out from his car.

56. In any event, the witnesses for the Council gave evidence that they had received a number of calls reporting that the entry phone system was not working and that it had reached the end of its useful life. We accept the evidence of the Council. The evidence of the Applicant may be true, but it does not amount to proof that the entry phone was working fully and did not require replacement.

57. We therefore determine that the service charges in relation to replacement of doors and the door entry phone system were reasonable and payable for the relevant years.

Costs

58. The Council conceded that they would not seek to recover the costs of these proceedings by way of service charges. The Tribunal therefore (with the consent of the Council) grants the Applicant's application for an order under section 20C of the 1985, for the avoidance of doubt.

59. The Applicant has not succeeded in any part of his claim. We therefore make no order for costs or for reimbursement of hearing fee under rule 13 of the 2013 Procedural Rules. The Council made no application for any order for costs or reimbursement.

Dated this 13th day of August 2015

JUDGE TIMOTHY COWEN

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

   and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

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

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

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

(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are

taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,

(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,

(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—

(a) specified in his lease, nor

(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

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

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject matter of an application under sub-paragraph (1).