

11941



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

Case reference : LON/00AJ/LSC/2016/0071

Property : 7 Fairlight Court, Oldfield Lane
South, Greenford, London UB6 9JR

Applicant : Mr M Rashid

Respondent : Fairlight Court (Greenford 1999)
Ltd

Representative : Mary Anne Bowring, Ringley
Chartered Surveyors

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

Tribunal members : Ruth Wayte (Tribunal Judge)
Andrew Lewicki FRICS

Venue : 10 Alfred Place, London WC1E 7LR

Date of decision : 8 July 2016

DECISION

Decisions of the tribunal

- (1) The service charge provisions in the Applicant's lease entitle the Respondent to claim service charges on account of costs, provided the demand complies with the lease.
- (2) The Respondent's demands for payment to the reserve fund are not payable, due to their failure to supply reasonably adequate particulars in accordance with the lease.
- (3) In relation to the disputed service charge items, the tribunal makes the determinations as set out under the various headings in this Decision and summarised in the table set out as Annex 1.
- (4) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and (where applicable) administration charges payable by the Applicant in respect of the service charge years 2011/12 to 2015/16.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant appeared in person at the hearing and the Respondent was represented by Mary-Anne Bowring of Ringleys Chartered Surveyors. Mr Harle, solicitor of Ringley Legal, was also in attendance.
4. Immediately prior to the hearing the Respondent handed in a skeleton argument and its own bundle of receipts which had been requested by the tribunal. The start of the hearing was delayed as the Applicant had been held up in traffic. Additional documents were requested by the tribunal for use during the hearing but these failed to arrive despite the Respondent confirming they had been emailed to the tribunal. The documents arrived the day after the hearing and in the circumstances, particularly in light of the direction requiring the parties to produce documents at an earlier stage, the tribunal refused to consider them.

The background

5. The property which is the subject of this application is a three bedroom flat in a purpose built block of fifteen flats with communal gardens and garages. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
6. The Applicant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate. The Respondent, a leasehold management company, is the owner of the block and the Applicant is a member of that company.
7. There had been previous proceedings between the parties in 2011 – Case ref: LON/00AJ/LSC/2011/0524. That dealt with the service charge years 2005/6 to 2010/11 for the period when the block was managed by Drayton Properties Ltd. Ringleys became the managing agents from 1 January 2012 and the Applicant issued these proceedings in February 2012. The Applicant had originally sought to challenge service charges from 2005/6 through to 2015/16 but in the light of the previous decision the scope of this challenge was limited by the directions given on 10 March 2016.

The issues

8. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The ability of the Respondent to request service charges on account and demand contributions towards a reserve fund;
 - (ii) The payability and/or reasonableness of certain service charges from 2011/12 to 2015/16;
 - (iii) Costs – the Applicant made an application under section 20C of the Landlord and Tenant Act 1985 and each party made an application for an order for costs against the other party pursuant to Rule 13 of The Tribunal Procedure(First-tier Tribunal)(Property Chamber) Rules 2013.
9. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

On account and reserve fund payments

10. The Applicant's lease dates back to 1963 and contains very limited provisions in respect of service charges. In particular under the leaseholder's covenants in Clause 2(b)(ii) the Applicant agreed to: "*Contribute and pay to the Lessor on demand one fifteenth part of the costs expenses outgoings and matters mentioned in the Third Schedule hereto (the Lessor supplying to the Lessee such particulars thereof as shall be reasonably adequate to satisfy the Lessee as to the correctness of the demand).*" The Third Schedule was headed: "*Works outgoings and other matters for which the Lessor is responsible subject to the due payment of contribution*". That was followed with a list of ten items covering standard descriptions of works to the building and grounds. There were no provisions for accounts, although in practice there was no dispute that service charge accounts were provided running from 30 September in each calendar year.
11. Ms Bowring argued that the lease therefore provided for all Third Schedule costs to be paid on demand and furthermore that the words "subject to the due payment of contribution" indicated that payment was to be made in advance of the works being carried out. The absence of provisions in respect of an accounting regime and the fact that the lease predated the Landlord and Tenant Act 1985 meant that the monies could be held until the works had been carried out, as opposed to having to be returned at the end of each service charge year.
12. The Applicant gave evidence that he had been paying approximately £250 per quarter for many years and he agreed that was reasonable as his contribution towards the service charge. His main concern was in relation to the demands for a reserve fund without any particulars at all as to what those monies were for. On the Respondent's case demands for the Applicant's contribution towards the reserve fund amounted to £1,845.46 for the period in question. The parties were both in agreement that the Applicant's service charge account was in balance in 2015, although since that date the amount outstanding (to either party) would depend on the tribunal's findings.

The tribunal's decision

13. Neither party relied on any authorities to support their position and in the circumstances the tribunal determines this issue on its construction of the limited service charge provisions in the lease. In particular, the tribunal determines that clause 2(b)(ii) set out in paragraph 10 above, read with the heading to the Third Schedule, is sufficiently broadly worded to entitle the Respondent to request service charges on account of expenditure as opposed to being limited to requesting payment following expenditure. That said, the lease requires that any demand must contain "*such particulars thereof as shall be reasonably adequate to satisfy the Lessee as to the correctness of the demand*". Whether the demands, including those for a reserve fund, complied

with the lease will be considered by the tribunal in the relevant service charge year, below.

Service charge year 2011/12

14. The paperwork provided by the Respondent included a service charge budget provided at the start of the year and approved by the members of the Respondent company. This had two headings: "management company", followed by a list of items such as audit and accountancy, repairs and maintenance, gardening etc with an estimated figure for each item and a separate heading "reserve fund", followed by the statement "structure and interior fund" and a figure. Ms Bowring claimed that more details of the service charges were on the reverse side to the budget but such evidence had not been provided in accordance with the directions and was not produced during the hearing. This year nothing was claimed for the reserve fund and the demands for payment on account had been superceded by the actual accounts. In relation to the final amount claimed, the Applicant challenged the accountancy, legal and professional fees, amounting to £1,180 and £3,732, making a total of £4,912.
15. The Applicant's challenge to the accountancy costs was on the basis that he agreed a fee of £550, the usual amount, but this year the fees were over double that amount. Ms Bowring gave evidence that the additional cost came from two bills passed on from the previous managing agents for which there was no documentation and a £75 fee for the accounts for Companies House.
16. In terms of the legal and professional fees, there was an amount of £1,500 for which no invoices were available, the explanation being that these related to the previous agent as before. There were also two invoices from Ringley Legal, one relating to LVT proceedings on 26/06/12 and the other which also appeared to relate to LVT proceedings that year. There was also a claim for £12 for office copy entries, which the Applicant agreed.
17. Ms Bowring was unable to identify any clauses in the lease providing for payment towards accountancy or legal and professional fees as part of the service charge. There was a clause in the leaseholder's covenants in relation to costs of or incidental to forfeiture proceedings but that was not relevant for the purpose of establishing liability under the general service charge.

The tribunal's decision

18. In the light of the limited service charge provisions in the lease the tribunal determines that the disputed amounts in respect of accountancy and legal fees for 2011/12 are not payable.

Service charge year 2012/13

19. Again, the challenge to the demands had been superceded by the actual accounts, save for the claim for £2,000 as a reserve fund payment for the "structure and interior fund". In terms of the actual service charges, the Applicant sought to challenge repairs and maintenance for which a total of £6,943.32 had been claimed and gardening claimed at £835. He offered £1,000 and £524 respectively. His main objection in his statement to the repairs was based on the lack of invoices, gardening costs he wished to limit to the amount sought for 2011/12.
20. The bulk of the monies claimed as repairs and maintenance appeared to be payments to Flat 14 amounting to £6,000 which Ms Bowring claimed were for works to the roof. No invoices were available to support this amount. Mr Rashid stated that in the circumstances he would accept the remaining £943.32.
21. The gardening costs were supported by three invoices and were in fact mainly in respect of clearing items from the external communal areas, which the Applicant agreed had been a problem in the past. Two of the invoices related to visits over two days which the Applicant queried as excessive. He maintained that £542 was a more reasonable amount.

The tribunal's decision

22. In the absence of an express provision providing for a contribution to a reserve fund, the lease requires "*such particulars as shall be reasonably adequate to satisfy the Lessee as to the correctness of the demand*". The tribunal considers that the particulars in the service charge budget are not reasonably adequate and in the circumstances determines that no valid demand was made for this sum against the Applicant, meaning no such payment is due.
23. As to the actual service charges, in the absence of any documentary evidence to support the payment of £6,000 as an item recoverable as part of the service charge, the tribunal determines that it is not payable, limiting the claim to the agreed sum of £943.32. On balance, the tribunal considers that the gardening costs were reasonable and supported by the evidence and are therefore payable in full.

Service charge year 2013/14

24. Again, actual accounts had been provided for this year, although there was a claim for £2,802 in the service charge budget as a reserve fund contribution. As before, the particulars given were "structure and interior fund". The challenge to the accounts was limited to repairs and maintenance of £3,205.62, gardening of £1,490 and legal and professional fees of £809.20. In his statement of case the Applicant

offered £1,000 and £524 for the repairs and gardening and nothing for the legal and professional fees.

25. On sight of the invoices in support of the claim for repairs and maintenance the Applicant was able to withdraw his objections to a number of invoices. His remaining objections were mainly based on his claim that the Respondent could have used more local service providers at a lower cost but he had failed to provide any evidence to support that assertion. Ms Bowring maintained that invoices had been provided as evidence of the work carried out and were reasonable in terms of the cost claimed.
26. Gardening costs had increased this year due to the employment of a regular gardener at a cost of £90 per visit. In 2013/14 10 visits were claimed, together with a payment of £350 to flat 3 and £240 from Communal Ground Maintenance. No invoices were available to support the last two items. The Applicant slightly increased his offer to £560.
27. Legal and professional fees again appeared mainly to relate to claims against individual leaseholders, including an invoice for £300 in relation to an opinion relating to the Applicant. That invoice was dated 16 June 2014 and no evidence was provided to support an assertion from Ms Bowring that it must have been related to unpaid service charges and therefore be in contemplation of forfeiture. The balance of this item is a £60 claim for filing dormant accounts. The Applicant also disputed this item on the basis that it was a charge for the company members rather than the leaseholders.

The tribunal's decision

28. The claim for a contribution to the reserve fund fails on the same basis as before, inadequate particulars to satisfy the provision in the lease. In respect of the challenge to the actual service charges, in the light of the failure by the Applicant to provide any evidence that the repairs could have been effected at a lower cost and having regard to the actual invoices, the tribunal determines that the full amount claimed for repairs is payable by the Applicant.
29. In the absence of any invoices to support the additional gardening costs the tribunal limits the amount for gardening to £900, being the charge for the regular gardener.
30. As before, in the absence of a clause in the lease entitling the Respondent to claim legal or accountancy costs as part of the service charge this item is disallowed in its entirety. Any claim for costs against the applicant as an administration charge also fails for lack of

evidence that the costs were indeed in contemplation of forfeiture proceedings.

Service charge year 2014/15

31. There was some confusion as to the budgeted amount for a contribution to the "structure and interior fund" for 2014/15. The tribunal has assumed the claim was for a total of £22,880 as detailed in the Respondent's skeleton argument. This amounted to a claim for £1,525.33 from the Applicant, which was disputed in its entirety. The budget for service charges amounted to £13,811. Draft accounts were produced at the hearing in relation to this service charge year and both parties agreed to use those accounts as the basis for the determination of the Applicant's contribution. His objections were to repairs and maintenance, gardening, company secretary fees and the claim for the reserve fund.
32. Repairs and maintenance had increased from £3,200 in the budget (including the electrical compliance works) to £3,671.03 in the draft accounts. On consideration of the invoices, the Applicant accepted the amount claimed was due and reasonable with the exception of certain plumbing works and the cost of the electrical works. The plumbing works consisted of two invoices from London Drainage Facilities detailing an out of hours call on 21 January 2015 to clear a blockage and a further attendance on 27 January 2015 to descale the base of the pipe. The Applicant maintained the work could have been done as one visit saving £149 plus vat. He objected to a further claim for £720 for a full descale of all drainage and rain water runs on the basis that this was a duplication of the previous work. He also objected to the invoice for the electrical compliance works amounting to £1,560 on the basis that there was nothing to support an increase over and above the budget of £1,200.
33. Ms Bowring submitted that the works were undertaken as evidenced by the invoices and the cost was reasonable. Given that the first attendance for the blocked pipe was out of hours, it was reasonable for a further attendance for the non-emergency work, carried out during normal business hours. The subsequent invoice was for new works to avoid similar problems happening again.
34. Gardening costs were budgeted at £1,080 but had increased in the draft accounts to £1,810. Ms Bowring claimed that 26 visits a year was normal for properties with lawns, this amount was made up of 19 visits at £90 plus one visit at £100 to clear brambles and rubbish, all supported by invoices. The Applicant submitted that £524 was a more reasonable amount, although produced no alternative quotes to support that claim.

35. The company secretary fees amounted to £496.50. The Applicant agreed to pay £240.

The tribunal's decision

36. The claim for a contribution to the reserve fund fails as before, meaning no contribution is due in the absence of better particulars. The tribunal heard evidence that the Applicant had paid £1,259.36 to date in relation to previous demands, none of which have been upheld by the tribunal.
37. The tribunal determines that the full amount is payable for the plumbing costs disputed as part of the repairs and maintenance item. The Applicant's objections are not supported by the evidence on the invoices. The works related to a series of issues with soil stacks and pipes and there was no evident duplication. However, the invoice produced to support the claim for £1,560 for electrical works as opposed to £1,200 in the budget referred to an email in support of additional works, which was not made available to the tribunal. In the absence of such evidence the cost should be limited to the budgeted amount of £1,200, this produces a total for repairs and maintenance of £3,311.03.
38. The tribunal considers that the budgeted amount of £1,080 is more than sufficient for the limited communal grounds to the property. Whereas there may be good reasons to incur additional expenditure in relation to certain items, such as repairs and maintenance, the agreed budget should be maintained for regular items. There was no evidence that additional visits were necessary and the tribunal considers that a charge for gardening of £1,810 is excessive. This item is therefore reduced to £1,080 (or 12 visits at £90).
39. For the reasons given previously in respect of accountancy and other similar fees, the tribunal note the Applicant's agreement to £240 in respect of company secretary fees and makes no order in relation to any additional amount claimed.

Service charge year 2015/16

40. The claim is for monies on account for this year, based on the particulars contained in the budget statement which is for a total of £18,960 with no claim for a contribution to the reserve fund. A one-fifteenth share amounts to £1,264. The Applicant maintained that his main concern was to keep his service charges to £1,000 per annum, a total of £15,000 for the block which he submitted was more than sufficient to run a small block of fifteen flats. With that in mind he challenged the estimated costs for annual drain maintenance, painting and decoration, gardening, window cleaning and legal fees.

41. Ms Bowring stated that more detail had been provided in this budget statement meaning that drain maintenance at £600 had been separated out from the general repairs and maintenance budget of £2,000. The Applicant submitted that £2,000 was a reasonable budget including maintenance of the drains.
42. Ms Bowring stated that the painting and decoration item, estimated at £1,345 was intended to refresh the internal communal parts. Again, the Applicant's concern was to keep his service charge contribution to £1,000.
43. Gardening for this year had been estimated at £1,200, or just over 13 visits at £90. Again, the Applicant submitted £524 was a more reasonable figure.
44. Window cleaning, estimated at £300 related to windows in the common parts which included a glazed lobby area. The Applicant resisted this item on the basis that it was new in 2015 and had previously been covered by the cleaning costs which were reasonably substantial, with an estimate of £1,500 in the budget.
45. The legal fees of £750 were again mainly in relation to individual flats and appear to have been recharged to the appropriate leaseholder. The Applicant resisted the whole amount.
46. In addition to the service charges claimed on account, Ringleys had claimed additional legal fees as an administration charge under the lease. The total amounted to £442 and included a letter of claim, letter to the Applicant's lender, office copy entries and the opinion obtained in 2014. The Applicant stated that none of these charges were payable as there was no evidence of his being in arrears of service charge, particularly if no reserve fund contribution was due.

The tribunal's decision

47. The tribunal determines that the service charge budget contains sufficient particulars to satisfy the service charge clause in the lease, meaning that payment is due on demand and in advance of actual expenditure in respect of those items which have been sufficiently particularised. However, since the Applicant had applied to the tribunal for a determination in respect of the disputed service charges payable on account, any liability in respect of those disputed items will be limited to the amount considered reasonable by the tribunal.
48. Splitting out more heads of expenditure from the general category of repairs and maintenance, without reducing the budget for that item, has the obvious effect of increasing the total over and above previous years. This is particularly the case for 2016 as additional amounts have

been claimed for lift compliance works and painting and decorating. In the circumstances the tribunal agrees with the Applicant that the budget of £2,000 for repairs and maintenance should include any drainage works for 2015/16.

49. The tribunal upholds the estimate of £1,345 for internal redecoration. There does not appear to have been any such works for some time and the amount is reasonable.
50. It is not clear why the figure for gardening has increased from £1,080 to £1,200, an amount which does not appear to easily relate to £90 per visit. For the reasons previously expressed, the tribunal considers that a reasonable provision would be £1,080, amounting to 12 visits which could be arranged seasonally.
51. Given the estimated amount for cleaning and the fact that no window cleaning had been claimed in addition to general cleaning prior to 2014/15, the tribunal also agrees with the Applicant that the additional item for window cleaning is excessive as an on account payment and is not payable.
52. In the absence of any provision entitling the Respondent to claim legal costs as part of the service charge this amount is also not payable.
53. The claim for legal costs against the Applicant relies on clause 3(a)(vii) of the lease containing a covenant on the part of the leaseholder "*to pay all costs charges and expenses (including Solicitor's costs and Surveyor's fees) incurred by the Lessor for the purpose of or incidental to the preparation and service of a notice under section 146 of the Law of Property Act 1925 notwithstanding forfeiture may be avoided otherwise than by relief granted by the court.*" No evidence was provided of the reason for instructing solicitors and given the finding in relation to the reserve fund, there were no arrears capable of forming a basis for a claim for forfeiture. In any event, £300 relates to 2014 and has already been disallowed for lack of evidence. In the circumstances the tribunal determines that the £442 claimed against the Applicant as an administration charge in 2015/16 is not payable.

Application under s.20C and Rule 13

54. In the application form, the Applicant applied for an order under section 20C of the 1985 Act. As is stated in this decision, the tribunal has determined that there is no power in the lease to claim legal costs as part of the service charge. Having heard the submissions from the parties and taking into account the determinations above and for the avoidance of doubt, the tribunal nonetheless determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any

of its costs incurred in connection with the proceedings before the tribunal through the service charge.

55. Both parties each made an application for a costs order against the other, relying on Rule 13 of the Tribunal Procedure (First –tier Tribunal)(Property Chamber) Rules 2013 (“the Rules”). The Applicant relied on Ringley’s alleged failure to provide a budget in line with their demands until after he had issued these proceedings and failure to comply with the directions. The Respondent equally relied on the failure of the Applicant to comply with the directions.
56. Neither party has complied with the directions in full, although the hearing was able to take place on the documents available on the day of the hearing. The Rules are clear that the only basis for an order is if a party has acted unreasonably in bringing, defending or conducting proceedings. The tribunal does not consider that either party’s actions fall within this definition, although strongly recommends a more collegiate working relationship in future to avoid any similar disputes and in the interests of the management of the block as a whole.

Name: Ruth Wayte

Date: 8 July 2016

Rights of appeal

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

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

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

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

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

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

Annex 1: Summary of the Service/Administration Charge Decisions

| Service/administration charge in dispute | Amount claimed by Respondent | Amount agreed by Applicant | Tribunal's decision (if different) |
|---|-------------------------------------|-----------------------------------|---|
| Reserve fund contributions demanded to date | £1,845.46 | | Not payable |
| 2011/12: accountancy fees | £1,180 | £550 | |
| 2011/12: legal and professional fees | £3,732 | £12 | |
| 2012/13: repairs and maintenance | £6,943.32 | £943.32 | |
| 2012/13: gardening | £835 | | £835 |
| 2013/14: repairs and maintenance | £3,205.62 | | £3,205.62 |
| 2013/14: gardening | £1,490 | | £900 |
| 2013/14: legal and professional fees | £809.20 | | Not payable |
| 2014/15: repairs and maintenance | £3,671.03 | | £3,311.03 |
| 2014/15: gardening | £1,810 | | £1,080 |
| 2014/15: company secretary fees | £496.50 | £240 | |
| 2015/16: annual drain maintenance | £600 | | Not payable (include within £2,000 for repairs etc) |
| 2015/16: painting and decoration | £1,345 | | £1,345 |
| 2015/16: gardening | £1,200 | | £1,080 |
| 2015/16: window cleaning | £300 | | Not payable (include within £1,500 for cleaning) |
| 2015/16: legal fees | £750 | | Not payable |
| 2015/16: administration charge (legal costs) | £442 | | Not payable |

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 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).