FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AG/LSC/2020/0349**
HMCTS code (paper, video, audio)	**:**	**V: VIDEO**
Property	**:**	**Second Floor Flat 46 Belsize Road London NW6 4TG**
Applicant	**:**	**Denis Andreev**
Representative	**:**	**In person**
Respondent	**:**	**Assethold Limited**
Representative	**:**	**Mr Ronni Gurvits of Eagerstates Ltd, managing agents**
Type of Application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	**:**	**Tribunal Judge Prof R Percival** **Ms Fiona Macleod MCIEH**
Date and venue of Hearing	**:**	**Remote** **15 March 2021**
Date of Decision	**:**	**8 April 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been not objected to by the parties. The form of remote hearing was CVP. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that we were referred to are in a bundle of 391 pages, the contents of which we have noted.

The application

1. The Applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the service charge years from 24 June 2018, 24 June 2019, and 24 June 2020.

2. The relevant legal provisions are set out in the Appendix to this decision.

The property

3. 46 Belsize Road is a four storey end of terrace house converted into three flats. There is a maisonette comprising the basement and ground floors, and a flat on each of the first and second floors. The Applicant is the leaseholder of the top floor flat, which has two bedrooms.

The lease

4. The lease was first granted in June 2004, for a term of 125 years. The Applicant acquired the leasehold interest in 2013.

5. The service charge is regulated by clause 3.23 and the third schedule. The clause requires the tenant to pay the relevant proportion of the estimated service charge in advance on 24 June each year, for the following year (which is defined as "the accounting period"), subject to reconciliation of over- or under-payment in respect of the estimated charge for the previous year.

6. There is additional provision for payment on demand of sums required if the need for "substantial works to the building" arise during the course of an accounting period (clause 3.23(c)).

7. The third schedule requires the landlord to prepare the service charge estimate by 24 June. The charge encompasses the costs of the landlord's covenant to insure (clause 4.1)

8. The third schedule also makes provision for a reserve (paragraph 2.2). This is expressed as relating to "the contingency of unforeseen expenditures on matters mentioned in clause 4"; and future expenditure, beyond the relevant accounting year. The paragraph (2.2(b)) lists, "(without prejudice to the generality of the foregoing) the redecoration of the Common Parts and the painting and cleaning of the exterior the Building and the overhaul and replacement of any plant or machinery The said amount to be computed in such manner as to ensure so far as is reasonable foreseeable that the Service Charge Estimates shall not unduly fluctuate from year to year as a result of such annual reserve."

9. As soon as practicable after the end of the accounting period, the landlord must procure a qualified accountant to certify the sums actually incurred on ordinary expenditure (clause 4.1 and the fourth schedule). The provisions in relation to the reserve are somewhat obscure. The accountant must certify "the amount actually incurred and accrued by the Landlord in relation to items falling within clause 2.2 of this Schedule"(paragraph 3.2), and, further, the extent to which reserves built up in previous years have been used in the accounting year to which the certificate applies (3.3). It seems that 3.2 is intended to cover expenditure of the service charge relating to the reserve in the same year it was demanded in advance, but the drafting is somewhat unclear.

10. The landlord's insurance obligation is set out in clause 4.1. The obligation relates to a long list of specified risks.

11. The share of each flat is "a fair proportion". The current share is a third.

12. At clause 3.14, the tenant covenants to pay costs "incurred by the Landlord incidental to the preparation and service of any notice under Section 146 of the Law of Property Act 1925 and/or incurred in or in contemplation of" such proceedings.

The issues and the hearing

13. The Applicant represented himself. The Respondent was represented by Mr Ronni Gurvits of Eagerstates Ltd, the managing agents.

14. The relevant issues for determination, drawn from the Scott schedule, are the reasonableness of the service charge relating to the follows:

    (i) The insurance premiums;

    (ii) Common parts cleaning;

(iii) Window cleaning;

(iv) Fire precautions;

(v) Drain cleaning; and

(vi) The repairs fund

15. We have followed the drafting of the Scott schedule in calculating the total costs chargeable to the service charge, rather than also calculating the Applicant's share. It should be understood, however, that our decision is authoritative only in respect of the service charges demanded from the Applicant, not those of other leaseholders who are not parties.

The insurance premiums

16. The insurance premiums (for the house as a whole) in the relevant years were £3,988 for 2018/19, £4,392 for 2019/20 and £4,612 for 2020/21.

17. The Applicant submitted in general that the building insurance premiums had increased excessively over the period of his leasehold (that is, before the years covered by this application).

18. His specific challenge focussed on the insurance for the year 2020/21, in respect of which he had secured three alternative quotations. He proposed, in respect of that year, that we accept the highest of those three, from Allianz, at £3,529, as representing the costs that would reasonably have been incurred. In respect of the previous two years, he invited the Tribunal to make reductions based on that for 2020/21.

19. The Applicant invited us to consider the approach in *Cos Services Ltd v Nicholson* [2017] UKUT 382 (LC), [2018] L. & T.R. 5, and we have done so. The key point that we take from this authority is that the question of whether costs were reasonably incurred was not only a matter of the reasonableness of the process by which the landlord took its decisions on costs incurred, but was also a question of outcome – that is, a judgement must be made as to the reasonableness of the cost sought to be passed on in a service charge, aside from and in addition to the assessment of the landlord's process (applying *Waaler v Hounslow LBC* [2017] EWCA Civ 45, [2017] 1 WLR 2817).

20. Mr Gurvits said that the insurance was arranged by a broker called Kruskal, which market tested the insurance annually. For the first two years in issue (and previously), the insurer had been AXA. This year, the provider had changed to Arch Insurance as a result of the market testing exercise. The insurance company was engaged on a the basis of

a block policy covering all or most of the properties managed by Eagerstates, but the premiums were calculated on the basis of each individual property, taking into account reinstatement cost and claims history. Mr Gurvits said that the main increase in the past had occurred as a result of a revaluation of the reinstatement costs in 2016.

21. The property had a history of subsidence, with claims in 2009 and 2013. There had in addition been claims for other matters in 2013 and 2019. We did not understand the Applicant to contest that these claims had been made (although he did complain that the Respondent had been unresponsive when he had sought details of some claims).

22. Mr Gurvits argued that the alternative quotations secured by Mr Andreev were not truly like for like. In his statement, and before us, he drew attention to various features of all three of the quotations which, he said, meant that they did not provide an adequate guide to the reasonableness of the Arch Insurance policy.

23. Mr Gurvits relied on a series of differences he asserted between the insurance secured by the managing agents and the quotations.

24. We accept Mr Gurvits' submissions. We did not have the benefit of expert evidence as to the likely effect of differences between the policies. But we consider that there were features of the comparison between the policies that compelled us to conclude that they were insufficiently similar to amount to like for like comparisons.

25. Some of the differences Mr Gurvits identified were not, we considered, likely to be a great significance (such as relatively small differences in the general excess).

26. But in other respects there were significant difference, both in benefits and in the information disclosed to the insurance companies. In this category, we include lower cover for loss of rent, a higher considerably excess for subsidence (£2,500 for Allianz, rather than £1,000 for Arch Insurance) and (in respect of the Allianz quote) the representation that there had been no subsidence in the past at the property and that the quotation was, in effect, for a new, or wholly blemish free business.

27. We accept that the correspondence in the bundle tended to indicate that the Respondent had been less than helpful in the past in providing information about the insurance policies, and about the claims history. However, that does not undermine the lack of comparability we find in relation to the quotations and the insurance secured. We note also that much of this material also dates to earlier years.

28. Once we have concluded that we cannot be satisfied that the alternative quotations constitute like for like cover – or are, at least, in the

Applicant's phrase "akin to like for like" – we do not consider we are in a position to conclude that the outcome premium is unreasonable. This contrasts, by way of illustration, with the situation in *Cos Services Ltd*, in which, first, the differences between the insurance secured and the alternative quotations were out of all proportion, and, secondly, the Tribunal and the Upper Tribunal had the advantage of the evidence of a witness who, while not strictly speaking an expert witness, was a witness with a high level of knowledge of insurance matters.

29. The Applicant's challenge to the service charge referable to the insurance premium was, in detail, directed at the charge for 2020/21, but he sought to use his contention that that charge was unreasonable to also argue for a reduction in the previous two years. By parity of reasoning, having rejected the challenge for 2020/21, we also reject those parasitic on it in relation to the other two years.

30. *Decision*: The cost of the insurance premium was reasonably incurred in each of the years under consideration.

Cleaning of the common parts

31. The common parts are limited. A photograph taken from the open front door was provided in the bundle, and the Applicant described what could not be seen in that photograph to us. The photograph shows a small hallway inside the front door, the flooring being matting. A carpeted staircase rises from the end of the hall. At the top of the stairs, we were told, there is an un-demised and unused lavatory on the right, and the entrance to both the first and second floor flats on the left. The stairs going up to the second floor are part of the demise of that flat.

32. The evidence was that cleaning originally took place once a fortnight, before the service charge year 2018/19. At the request of the leaseholders, this had been changed to once every four weeks. The charge for each visit was £27.40 plus VAT.

33. In addition, in 2018, the Respondent introduced a bi-annual deep clean of the carpet using a carpet cleaning machine at an annual cost of £180.

34. The Applicant argued, first, that the Respondent should allow the leaseholders themselves to undertake the regular cleaning. In the alternative, a clean once a quarter would be sufficient. The bi-annual deep clean was unnecessary. Mr Andreev suggested that a new carpet could be purchased every two years at this rate.

35. Mr Gurvits' position was that the landlord was required to clean the common parts under the lease, and it was appropriate for it to do so, to ensure standards. The deep clean was necessary to prolong the life of the carpet.

36. The Applicant produced some photographs of sign-in sheets used by the cleaners, and cross-examined Mr Gurvits on their use. To the extent that Mr Andreev was seeking to show that the cleaning did not take place as frequently as Mr Gurvits said it did, we found this evidence unpersuasive.

37. We accept Mr Gurvits' submissions in respect of the monthly cleaning. It is a responsibility of the landlord to clean the common parts under the lease, so we could not possibly find it unreasonable for it to do so. The frequency is within the reasonable range. We did not understand Mr Andreev to be challenging the per-visit cost, and in any event we consider it to be reasonable.

38. We accept Mr Andreev's submissions in respect of the deep clean. There is, in the ordinary way, no need for regular machine cleaning of a carpet, and we doubt the economic justification advanced by Mr Gurvits. His suggestion that maintenance should be "proactive rather than reactive" may be a useful guide in principle, but does not extend to this unusual and excessive service.

39. *Decision*: The costs of the regular four-weekly cleaning of the common parts were reasonable incurred in each year. The costs of the bi-annual cleaning with a carpet cleaning machine were not reasonably incurred in each year.

Window cleaning

40. From 2018/19, the Respondent externally cleaned the windows at the property quarterly, at a cost of £110 plus VAT per visit.

41. Initially, it appeared that the dispute was as to whether the Respondent was cleaning only the windows of the common parts, or all windows, and Mr Andreev provided photographic evidence that the windows of the flats were, in fact, cleaned. Before us, Mr Gurvits accepted that all of the windows were cleaned by the Respondent's contractor, and argued that this was – probably – required by the lease.

42. Mr Gurvits accepted, however, that the lease was not entirely clear. He agreed that, if the external surface of the windows was part of the demise, then it would be the responsibility of the leaseholders, not the Respondent, to clean them.

43. The fifth schedule, which, it would appear, contains further details as to the demise, had not been provided to us (we note that the Tribunal had had to request a copy of the lease before the hearing as there was no copy in the bundle). Both parties agreed that we should do the best that we could with the lease as it stood, absent that schedule. Unsatisfactory as this situation is, we attempt to do so here.

44. The definition of the "structure" reserved to the landlord includes the outer walls of the flat, excluding interior surfaces ("the plaster painting or other finishes of such walls which are internal to the flat or any doors nor any floorboards false floors or false ceilings of the flat or any other flat"), but does not mention the windows. This *suggests* that both surfaces of the windows are elsewhere (presumably, in the fifth schedule) included in the demise. Were it otherwise, the windows would be wholly un-demised (ie, both surfaces remain part of the outer walls defined as the structure), and their internal cleaning and "maintenance" would be the responsibility of the landlord. It is frequently the case that – unlike walls – both surfaces of a window are included in the demise of a flat. Contrariwise, an express reservation of both surfaces of the pane of glass in a window would be unusual.

45. Further, the tenant's repairing covenants in clause 3.3 includes an obligation to "clean the windows thereof at least every month". This provision does not draw a distinction between the inside and outside of the window panes, which is also suggestive of a demise of both surfaces. In any event, if the Respondent were correct that it had an obligation to clean the exterior of the windows, that would appear to duplicate this tenant's obligation.

46. The tenant's covenant to re-decorate every five years (clause 3.4), after requiring the painting etc of internal surfaces, includes an obligation "generally to decorate throughout the flat including the interior surface of the windows and window frames". This does draw a distinction between the interior and exterior surfaces, and allocates responsibility for the interior alone to the tenant. However, it is not immediately obvious what the content of an obligation to "decorate" the inside of a window can be; and it may be that the primary point of this obligation relates to the window frames.

47. Mr Gurvits drew our attention to clause 4.2, the landlord's repairing covenant, which relates to "the structure and the exterior of the building".

48. As we note above, it is unsatisfactory to have to decide this issue in the absence of the fifth schedule. Our conclusion from the provisions cited above is that the more likely interpretation is that the whole of the windows are demised, and that accordingly the obligation on the tenant to clean "the windows", without qualification, excludes an obligation on the landlord to clean the external surface of the windows. Accordingly, a service charge referable to cleaning the external surface is not payable under the lease.

49. The implication of our decision is that only the cost of cleaning the exterior of the windows of the communal area may be charged to the service charge. The Applicant's evidence was that there are two windows to the communal area. We did not receive evidence as to the

total number of windows which were being cleaned. However, the lease plan indicates that there are three windows in the flat, which appears to be consistent with the photographs of window cleaning in the bundle. On the assumption that the other flat also has three windows, the communal windows amount to 25% of the windows cleaned. Accordingly, and assuming that there is a direct relationship between the number of windows and the charge levied, 25% of the charge for window cleaning is payable.

50. We add that, to the extent that it is payable under the lease, the charge levied is within the reasonable range, and the frequency is reasonable.

51. We add two caveats. We accept that the question of interpretation of the lease is likely to be clarified by the fifth schedule to the lease. We also accept that our evidence in relation to the numbers of windows is incomplete. Should a party wish us to revise our decision in the light of the contents of the fifth schedule, or evidence as to the number of windows, it is open to that party or parties to apply to the Tribunal to revise our decision under Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, rule 55.

52. *Decision*: The costs incurred in external window cleaning are only payable insofar as they relate to the communal windows. We assess the proportion attributable to those windows as 25%, which is reasonably incurred.

Fire precautions

53. Under this heading, the Applicant objected to the cost of regular testing of the two fire alarms in the communal area, and the frequency of both the servicing of the fire equipment and the fire health and safety survey. The matters contested in the Scott schedule are summarised hereunder.

54. In 2018/19, the fire alarm testing was charged at £54. Mr Gurvits explained that they only introduced a requirement for monthly testing in the last quarter of that year, to which this charge relates. The testing was described by Mr Gurvits as a "bleep test"- a brief check that the smoke alarms were operational – and was carried out by the same contractor that undertook the cleaning of the communal area.

55. In the same year, the servicing of the fire equipment was billed at £342.96. The Applicant suggested that it was an unreasonable charge, given that the charge in the following year was £252.96.

56. Mr Gurvits submitted that the difference was that the charge in 2018/19 included the replacement of emergency lights.

57. In 2019/20, the testing (for a full year) was charged at £216.

58. For 2020/21, the estimated charge is £250 for testing, and £400 for the equipment service and £350 for a fire health and safety assessment. The previous such assessment was in the bundle. It was dated 11 January 2019.

59. Mr Andreev cross examined Mr Gurvits on record keeping in relation to the alarm checks. We were unable to conclude as a result that it was more likely than not that some or all of the checks had not been done.

60. We conclude that the monthly fire checks and the annual servicing were reasonably incurred. Both the frequency and cost of these services are, we accept, within the reasonable range for those years in which they have been incurred. We accept Mr Gurvits' explanation for the higher charge for servicing in 2018/19. Where the previous two years' expenditure on servicing were £342 and £252, we accept that an estimated charge of £400 is within the reasonable range, in that it may be that equipment is again required to be replaced or renewed.

61. Mr Gurvits told us that the managing agent typically required a new fire health and safety assessment between 16 and 24 months after the previous one. He expected to engage a consultant to carry out a survey in 2021, which was within that range. As Mr Gurvits acknowledged, the RICS Guidance states that such assessments should take place periodically, and that the period concerned should vary according to the extent and nature of the communal areas. The communal area here is limited and simple. We conclude that the minimum reasonable time limit between full assessments is two years. It appears that that is what it anticipated on this cycle, and accordingly we find the expenditure incurred or to be incurred, on the assessment to be reasonable. A period any shorter than 24 months would not be reasonable. The charge is, in amount, within the reasonable range.

62. *Decision*: The costs incurred for testing and servicing the fire precaution etc equipment, and for the fire health and safety assessment, were reasonably incurred.

Drain cleaning

63. In 2019/20, a charge of £153 was made in respect of drains cleaning. The estimate for 2020/21 is £300.

64. Mr Gurvits said that the service had been introduced in 2019/20. It comprised a bi-annual CCTV inspection of the drains at the property. In the first year, only one inspection had taken place, and accordingly about twice that was appropriate in 2020/21, which would be a full year. Mr Gurvits argued that it was an appropriate proactive step to take to undertake regular CCTV monitoring of drains, which could cause serious problems if they failed. He agreed that there was no particular issue at this property.

65. We do not consider that the regular and routine use of CCTV to monitor drains on an on-going basis is reasonable. Such services are appropriately used to diagnose problems once they occurred. It may be the case that it would be appropriate to monitor a drain if a clear defect in the drain had been observed or was apparent. However, routine CCTV monitoring of drains that raise no particular issue is unnecessary.

66. *Decision*: Costs incurred on routine CCTV monitoring of drains was not reasonably incurred. An estimated service charge based on such costs being incurred is not reasonable.

Repairs fund

67. The Applicant challenged the estimated charge for the repairs fund in 2020/21 of £1,250.

68. Mr Gurvits said that the managing agent maintained a fund in advance for repairs, as provided for under paragraph 2.2(a) of the third schedule to the lease, but not a reserve fund for future cyclical expenditure under paragraph 2.2(b). As Mr Andreev had said, that charge had gone up from £1,000 to £1,250, because, Mr Gurvits said, he anticipated rising costs for basic maintenance in the coming year.

69. We were provided with information on the extent of under payment and overpayment represented by the estimated service charge in recent years. The previous year, there had been a credit (of £257), then in the previous years a debit of £66, a credit of £500, a credit of £400 and a debit of £667.

70. The Respondent chooses to run an annual repair fund rather than to use a reserve fund to even out costs over a longer period, as provided for in the lease. In doing so, it is incumbent upon the Respondent to set the estimated service charge at a reasonable rate, in the light of recent history. During the three years at which the estimated charge was £1,000, there had been one occasion on which there had been a small debit, and two in which there had been large credits (as there had been in the year before that, when the estimate was £700). In the light of that history, we consider that increasing, rather than decreasing, the estimated service charge is unsupportable. There should have been a decrease.

71. *Decision*: The estimated service charge for 2020/21 is not reasonable. A charge of £900 would be reasonable.

Application for orders under Section 20C of the 1985 Act/Commonhold and Leasehold Reform Act 2002, schedule 11, paragraph 5A

72. The Applicant applies for orders under section 20C of the 1985 Act that the costs incurred by the landlord in proceedings before the Tribunal

are not to be taken into account in determining the amount of any service charge payable by the Applicant and under paragraph 5A of schedule 11 to the 2002 Act that any obligation to pay as an administration charge the litigation costs – that is, the costs of these proceedings to the landlord – should be extinguished

73. An application under section 20C is to be determined on the basis of what is just and equitable in all the circumstances (*Tenants of Langford Court v Doren Ltd* (LRX/37/2000). The approach must be the same under paragraph 5A, which was enacted to ensure that a parallel jurisdiction existed in relation to administration charges to that conferred by section 20C.

74. Such orders are an interference with the landlord's contractual rights, and must never be made as a matter of course.

75. We should take into account the effect of the order on others affected, including the landlord: *Re SCMLLA (Freehold) Ltd* [2014] UKUT 58 (LC); *Conway v Jam Factory Freehold Ltd* [2013] UKUT 592 (LC); [2014] 1 EGLR 111.

76. The success or failure of a party to the proceedings is not determinative. Comparative success is, however, a significant matter in weighing up what is just and equitable in the circumstances.

77. Neither party has been wholly successful before us. The fact that the Respondent was successful in relation to the insurance premium means that in financial terms, the Respondent has the balance of advantage. However, it is also the case that the Applicant was wholly or partially successful in relation to every other category of costs challenged.

78. We do not consider that there is any special factor pertaining to the effect of the order on the landlord, over and above the point made in paragraph 74 above. The landlord is a commercial freeholder with a substantial portfolio, far from the circumstances of a freeholder with no resources other than the service charge in relation to a single property.

79. We also note that the Applicant's point in his submissions that he had genuine difficulties over the years in getting information from the Respondent; and that the Respondent wrote to the Applicant on 23 August 2020 asserting that it would "apply to the court for 'possession judgement' on your flat". A property manager of Mr Gurvits' experience must have known that this was wholly misconceived. Mr Gurvits told us that he did not intend to seek to recover the cost of doing so. While no doubt of background significance, neither of these points are of substantial importance to our decision.

80. We conclude that it would be just and equitable in all the circumstances to make the orders sought.

81. Finally, although the matter was briefly discussed, we have not heard developed argument as to whether the costs of these proceedings are recoverable, under either route, under the lease, and we make no determination as to that question, which remains open should it be litigated.

82. *Decision*: We order (1) under section 20C of the 1985 Act that the costs incurred by the Respondent in proceedings before the Tribunal are not to be taken into account in determining the amount of any service charge payable by the Applicant; and (2) under Commonhold and Leasehold Reform Act 2002, schedule 11, paragraph 5A that any liability of the Applicant to pay litigation costs as defined in that paragraph be extinguished.

Rights of appeal

83. 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 London regional office.

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

85. If the application is not made within the 28 day time limit, the 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 these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

86. The application for permission to appeal must identify the decision of the Tribunal to which it relates, 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.

Name: Tribunal Judge Professor Richard Percival **Date:** 8 April 2021

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 provision 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.

(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 of an application under subsection (1) or (3).

(7) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

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 20ZA

(1) Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

(2) In section 20 and this section—

"qualifying works" means works on a building or any other premises, and

"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

(a) if it is an agreement of a description prescribed by the regulations, or

(b) in any circumstances so prescribed.

(4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord—

(a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,

(b) to obtain estimates for proposed works or agreements,

(c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,

(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and

(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6) Regulations under section 20 or this section—

(a) may make provision generally or only in relation to specific cases, and

(b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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 tribunal2 or leasehold valuation tribunal or the First-tier Tribunal3 , or the Upper Tribunal4 , 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 the county court ;

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

(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

(ba) in the case of proceedings before the First-tier Tribunal, to the tribunal;

(c) in the case of proceedings before the Upper Tribunal4 , 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 the 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]1 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).