FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

	:	**LON/00AN/LSC/2021/0218** **V:CVPREMOTE**
Property	:	**Epirus Mansions Epirus Road London SW6 7UJ**
Applicants	:	**Mr R Churcher (Flat 4)** **Mr D Churcher (Flat 1)** **Fiona and David Finch (Flat 3)**
Representative	:	**Mr R Churcher**
Respondents	:	**Mrs R Tompkins** **Mr T Gordon**
Representative	:	**Mrs R Tompkins**
Type of Application	:	**s27A and s20C Landlord and Tenant Act 1985**
Tribunal Members	:	**Judge F J Silverman MA LLM** **Ms S Phillips MRICS**
Date and venue of Hearing	:	**18 October 2021**
Date of Decision	:	**01 November 2021**

DECISION AND ORDER

1 The Tribunal determines that the following disputed items in the Scott Schedule dated 15 October 2021 are reasonable and are payable by the tenants of Flats 1-4 inclusive in each case in the proportions in which each separate flat pays their service charge:
Item 2018.1 (repairs) £1,080
Item 2016.5 (cleaning) £730
Item 2016.6 (electricity) £120
Item 2015.4 (sundries) £9
Item 2015.5 (cleaning) £480
Item 2015.6 (Electricity) £232
Total : £2651.

2 The following items from the Scott Schedule dated 15 October 2021 are determined by the Tribunal to be reasonable and payable by the tenants of flats 1,2,3,4,5 and 7 in each case in the proportions in which those separate tenants pay their service charge:
Item 2019.2 (Health and safety) £450
Item 2018.1 (Health and safety) £420
Item 2017.1 (Health and safety) £815.40
Item 2016.3 (Management fees)£2,640
Item 2015.3 (Management fees)£2,495
Total : £6,820.40.

3 The charges claimed by the Respondent in relation to roof repairs (Items 2021.2 and 2016.9) are not service charge items and are not recoverable by the Respondent under this application.

4 The Tribunal makes an unlimited order under s20C Landlord and Tenant Act 1985 in favour of the Applicants as named in this application and orders the Respondent to repay to the Applicants their application and hearing fees totalling £300.

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V:CVPREMOTE . A face to face hearing was not held because it was not practicable and all issues could be determined in a

remote hearing. The document which the Tribunal was referred to are contained in electronic bundles comprising approximately 2000 pages the contents of which are referred to below. The orders made in these proceedings are described above.

REASONS

1 The Applicants are the leaseholders of the Flats whose numbers are listed above against their names and jointly filed an application under s27A Landlord and Tenant Act 1985 against the Respondents who separately are the leaseholders of Flats 5 (Mr Gordon) and Flat 7 (Ms Wynne) and jointly are the reversioners and freehold owners of the property known as Epirus Mansions Epirus Rd London SW6 7UJ.

2 The Application was filed on 08 June 2021 and Directions were issued on 01 July 2021.

3 The Tribunal received and read over 2000 pages of electronic documentation, including the parties' respective statements of case, which are referred to below.

4 The hearing took place by way of a remote video (CVP) link to which the parties had previously consented.

5 Mr R Churcher spoke on behalf of the Applicants and Ms Wynne on behalf of both Respondents. No witness statements or comparative evidence had been provided by either party.

6 In accordance with current Practice Directions relating to Covid 19 the proceedings were recorded and the Tribunal did not make a physical inspection of the property but were able to obtain an overview of its exterior and location via GPS software.

7 The subject property comprises a turn of the 20th century end of terrace mansion building facing directly on to the pavement in a quiet side street in central London. Formerly commercial premises, the ground and basement floors of the building are now divided into two apartments each with its own street level entrance. Neither of these units has any access or connection to the internal parts of the upper floors of the building which are entered from a communal door at street level and divided into one flat on each floor including a penthouse on the roof. The penthouse itself and two ground floor extensions are later additions to the original building but pre-date the grant of the leases which are the subject of this application.

8 The leases of the two ground floor units are owned by the Respondents (Flat 5: Mr Gordon, Flat 7: Ms Tomkins) who are also the joint proprietors of the freehold of the building. The Applicants are the leaseholders of Flat 1 (first floor, registered as Flat 2, Mr D Churcher) Flat 3 (third floor, registered as Flat 6, Fiona and David Finch) and Flat 4 (fourth floor roof level, registered as Penthouse, Mr R Churcher). Flat 2 (second floor, registered as Flat 4) is leased to Northumberland and Durham Property Trust who have been informed of these proceedings but are not a party to them. The flat

numbers referred to in this document are those by which the apartments are commonly known; the flat numbers in parentheses above relate to the flat numbers as shown on the official registers of title. A previous flat 6 was subsumed into one of the current ground floor units and no longer exists as a separate unit.

9 In parallel with this application is an application by the Applicants (plus Northumberland and Durham Property Trust i.e. all four tenants of the upper floors) to enfranchise. Understandably, the Respondents are reluctant to proceed with the enfranchisement process until outstanding service charges have been resolved.

10 The leases of flats 1-4 inclusive are not identical but for the purpose of this application may be treated as broadly similar. The leases of flats 5 and 7 are similar to each other but differ from the leases of the upper floors in that they have no access to the internal common parts of the building and bear no responsibility for it. They do however contribute to the maintenance and upkeep of the common parts of the structure and exterior of the building.

11 Service charge provisions are contained in the tenants' leases as follows:

Clause 2(1)

To pay the rents hereby reserved on the days and in the manner aforesaid clear of all deductions and to pay the Interim Charge and the Service Charge at the times and in the manner provided in the Fourth Schedule hereto both such charges to be recoverable in default as rent in arrear

Clause 2(16)

To pay to the Lessor all costs charges and expenses including solicitor's Counsel's and Surveyor's costs and fees at any time during the said term incurred by the Lessor in or in contemplation of any proceedings in respect of this Lease under Sections 146 and 147 of the Law of Property Act 1925...notwithstanding that forfeiture is otherwise avoided otherwise than by relief granted by the Court

Clause 3(2)

[*The Landlord Covenants*] *Subject to and conditional upon payment being made by the Tenant of the Interim Charges and Service Charge as hereinbefore provided: -*

(a) To keep or procure the keeping of the main structure the external and structural walls drains foundations aerials (if any) gutters rainwater pipes water pipes electric cables wires and gas pipes in or under the Building or any adjoining land and generally all parts of the Building not for the time being demised in good and substantial repair

(b) As far as practicable light and to keep clean as and when the Lessor shall deem necessary (and at least once every five years) to redecorate the common entrance hall and staircase to re-carpet the same when reasonably considered necessary and to keep the same in good and substantial repair and if the Lessor considers it appropriate to install or maintain an entry-phone system

Clause 4

The Lessor may set aside (which setting aside shall be for the purposes of the Fourth Schedule hereto be deemed an item of expenditure incurred by the Lessor) such sums of money as the Lessor shall reasonably require to meet such

future costs as the Lessor shall reasonably expect to incur of replacing maintaining and renewing those items which the Lessor has herein covenanted to replace maintain or renew such sums set aside shall form a sinking fund which shall be held by the Lessor in trust and shall only be applied for the purposes hereinbefore mentioned

Fourth Schedule Paragraph 1

(2) "Total expenditure" means the total expenditure incurred by the Lessor in any Accounting Period in carrying out its obligations under Clauses 3(2) and 3(3) reasonably and properly incurred in connection with the Building including without prejudice to the generality of the foregoing (a) the cost of employing Managing Agents and
(b) the cost of any Accountant or Surveyor employed to determine the Total Expenditure and the amount payable by the Tenant hereunder...
(3) The proportionate part of the costs expenses and outgoings herein referred to shall be such proportion ... shall be the fair and rateable proportion as [the Tribunal] shall from time to time certify and shall be final and binding on the Lessor and Lessee
(4) the "Interim Charge" means such sum to be paid on account of the Service Charge in respect of each Accounting Period as the Lessor or its Managing Agents shall specify at their discretion to be a fair and reasonable interim payment

Paragraph 4

If the Interim Charge paid by the Tenant in respect of the any Accounting Period exceeds the Service Charge for that period the surplus of the Interim Charge so paid over and above the Service Charge shall be carried forward by the Lessor and credited to the account of the Tenant in computing the Service Charge in succeeding Accounting Periods as hereinafter provided.

12 The service charge year is defined in the leases as mirroring the calendar year i.e. January 01 – December 31 in each year unless otherwise determined. No evidence was produced to indicate that these dates had been varied. Under their respective leases the tenants share the responsibility for payment of the service charge in the proportions in which the rateable values of their respective flats bear to each other. Rateable values were abolished many years ago and a revised formula for the division of the service charge between the leaseholders should have been established but no one was able to tell the Tribunal in which proportions each leaseholder actually paid their share.

13 Since the apportionment between the shareholders did not appear to be an issue between either the parties or the tenants the Tribunal did not pursue this further but recommends that the leases should be revised /varied to establish a valid legal basis for the apportionment of the service charge between the leaseholders. Other inconsistencies in the lease provisions which were noted by the Tribunal could also be corrected at the same time.

14 The Applicants' case spanned the service charge years 2013 -2021 inclusive. The Tribunal declined to consider years 2013 - 2014 as

these are in effect statute barred. The Tribunal explained to the Applicants that it did not normally entertain charges which were more than 6 years old because apart from statutory constraints the passage of time made it very difficult to establish sufficient evidence of comparative estimates or of the standard of work actually done at that time.

15 Not all the Applicants have owned their flats for all of the service charge years under consideration. The decisions in this document apply to each of the Applicants only in respect of their individual periods of ownership.

16 At the Tribunal's request the parties had prepared an updated Scott Schedule, delivered to the Tribunal on the afternoon of the working day preceding the hearing which was used as the basis of the issues discussed during the hearing.

17 The Applicants had prepared a set of 'revised' accounts which they said showed the correct allocation of items. The Tribunal declined to review these and said that it would work with the final Scott Schedule and actual accounts as supplied by the Respondents' accountants which contained the items in dispute. The Tribunal also declined to deal with items which appeared in the final Scott Schedule but which had not been mentioned in the Application and to which therefore the Respondent had not been given a chance to respond. Item references below refer to the numbering given in the final Scott Schedule received by the Tribunal on 15 October 2021.

18 In many cases the Applicants had compared the actual sums charged to them (as shown in the accounts) against the sum budgeted for the item. The Tribunal reminded the Applicants that a budget was merely an estimate of how much money it was thought might be needed to cover an item in the following accounting year. The actual expenditure could turn out to be more or less than that amount. The Applicants had based their complaint on a comparison between the budgeted figure and the actual figure. What they should have done was to consider what work the actual figure represented and whether the actual figure paid was reasonable value for the amount and standard of work carried out. In no case had they done this.

19 A number of the Applicants' complaints centred around the manner in which the service charge accounts were presented. The accounts were divided into two schedules, Schedule 1 pertaining to items payable by all leaseholders (including Flats 5 and 7) and Schedule 2 relating to those items specific to Flats 1-4 who had additional responsibilities for the upkeep of the internal common parts. The Tribunal notes that the service charge provisions of the lease do not divide the service charge into two separate sections or schedules and assumes that this has merely been adopted as a convenient device to convey the information by the accountants who prepared the accounts.

20 The Applicants asked the Tribunal to make an order specifying the manner in which future accounts should be prepared. This the Tribunal declined to do. The way in which the accounts are presented is a matter to be decided by the person(s) preparing them

and will in future, assuming the Applicants' enfranchisement application succeeds, be their choice in any event. The Tribunal's concern is to see that the correct items have been charged to the right people in an appropriate amount proportionate to the standard of work carried out.

21 In relation to the current year, 2021, not only has the year not yet concluded but the pending enfranchisement application may mean that final accounts for this year are drawn up before the calendar year's end. All that the Tribunal can do in this respect is to review the proposed budget for the year and such figures as are available and either approve or disapprove them as reasonable for the time being . This would not preclude the tenants from making a further challenge to the finalised 2021 accounts when they become available. Only one item is effectively in issue in the current year and that (labelled 2021.2) relates to legal fees incurred in connection with major roof repairs. With the exception of this item (dealt with below paragraph 32) the Tribunal approves the proposed budget and expenditure for 2021.

22 For the year 2020, items 2020.1 (decoration), 2020.2 (management fees), and 2020.3 (out of hours service) were all agreed by the parties in pre-hearing discussions and were thus not considered by the Tribunal.

23 Item 2020.4 (health and safety) was not included in the Applicant's application and was precluded from the discussion by the Tribunal.

24 Item 2019.1 (management fees) was agreed by the parties and did not fall to be considered by the Tribunal.

25 The second disputed item for 2019 (2019.2) relates to health and safety/fire assessments carried out by the Respondent. Apart from disputing the cost (£450 actual cost against a budgeted figure of £300) the Applicants argued that this cost should be shared between all tenants because all the tenants, including those on the ground floor benefitted from them. The assessments come within the scope of clause 10 of the second schedule to the lease (page 122 bundle A5). The Respondent argued that these assessments related to the common parts only and separate assessments were carried out of the ground floor and basement areas for an additional sum which was borne exclusively by Flats 5 and 7. The Respondents conceded that the fire exits to the ground floor flats did form part of the common parts assessment. This being so, it is clear that the ground floor flats do derive some benefit from the general common parts assessment and should contribute to its cost. The Tribunal finds that this sum is reasonable (£450 – no evidence to the contrary provided) and is payable by all tenants in the proportions in which they normally pay their service charge. It is recommended that in future a single comprehensive health and safety and fire assessment is commissioned for the entire building and the cost shared accordingly.

26 For the year 2018, item 2018.1 was entitled 'health and safety' and comprised a mixture of costs for both assessments and upgrade works. The Applicants accepted that £1,080 of the £1,500 spent was attributable to repairs and the balance related to assessments as

before. There was no challenge to the reasonableness of these sums. The Tribunal finds the sum of £1,080 to be payable by the Applicants in the proportions in which they normally pay their service charge and the balancing £450 to be shared between all 6 flats as in the preceding paragraph (and see p 381 bundle R1).

27 Item 2018.2 (fire equipment maintenance) had not formed part of the Applicants' application and was not discussed by the Tribunal.

28 The Applicants returned to health and safety issues with item 2017.1 where they compared expenditure of £975 against a budget figure of £400. The same arguments were raised here as previously. The figures when analysed (page 375) show two assessments at £180 (=£360) and one at £455.40, totalling £815.40 which the Applicants agreed was a reasonable sum. This sum is therefore payable by all the tenants (flats 1-7) in the proportions in which they normally pay their service charge as set out in paragraph 25 above.

29 The Tribunal had some difficulty in understanding the Applicants' challenges in items 2016.1(fire precautions), 2016.2 (health and safety) 2016.4 (sundry items), 2016.7 (entryphone) and 2016.8 (internal repairs) where in each case no part of the budgeted sum had been expended and the Applicants had not been charged anything for any of these items under their service charges for that year. A charge of £0 cannot be unreasonable. The Applicants then alleged that the money attributable to these items (i.e. the budgeted sums) had gone missing. This was a new allegation not made in the application. By way of explanation the Applicants said that they had paid these sums as part of their advance payment of service charge and the money did not appear in the accounts. The Tribunal suggested that the normal practice where a sum had come in under budget would be either to allocate the surplus to another item which had exceeded its budget or in the case of a true surplus to transfer the sum to a reserve account to meet future costs.

30 The Applicants' main challenge to item 2016.3 (management fees) appears to be an accounting issue i.e., an argument about how an item is displayed in the accounts rather than the actual amount which is only £240 over its budgeted figure of £2,400. This sum is payable by all tenants (including flats 5 and 7) in the proportions in which they normally pay their service charge.

31 Items 2016.5 (£730, cleaning) and 2016.6 (£120, electricity) were agreed by the Applicants and are therefore payable by them in the proportions in which they normally pay their service charge.

32 Item 2016.9 (roof repairs) is the largest sum in contention and the most keenly disputed. In 2012-13 a section 20 (major works) notice was issued which included work to the roof of the penthouse (Flat 4) which was at that time in the course of being purchased by Mr R Churcher.

33 The inclusion of the works to the roof in the s20 notice suggests that at this stage both the Respondents and the then leaseholder of the penthouse assumed that the roof was part of the main structure/ common parts and thus the costs of its repair fell to be divided between all tenants. The works were carried out. There is no argument about the extent, quality or overall cost of the works and

payment was invoiced to and paid by all tenants in their usual proportions.

34 In 2016 Mr R Churcher wished to establish a roof garden and knew that he could only proceed with this project if he obtained the Respondents' permission to do so. He accordingly applied for a licence which led to a review of the lease provisions at which point it became clear that the roof had in fact been demised as part of Flat 4 (lease clause 1 hearing bundle 1 page 122).

35 That being so, the Respondent realised that they had wrongly allocated the roof repair costs between all the tenants and repaid to Flats 1,2,3,5, and 7 the sums previously paid by them and then re-invoiced Flat 4 for the now outstanding 5/6th of the bill. The recovery of those costs is disputed by Mr R Churcher who says he had been assured during his purchase negotiations that he did not have liability for the roof repairs.

36 Whether or not a misrepresentation was made to Mr R Churcher at the pre-contract stage of his purchase is not a matter for this Tribunal. What is clear from Mr Churcher's lease is that the ownership of the roof area does lie with him and none of the other tenants should have been required to pay any part of the costs of the repairs to the roof.

37 The recovery of the balance of the repair cost from Mr Churcher is not a service charge issue because the repairs were not effected to part of the common parts and as such do not fall within the Tribunal's jurisdiction to resolve. Whether the Respondents are now able to recover the entire sum from Mr R Churcher or whether they would be estopped from doing so is similarly not a matter for this Tribunal.

38 Item 2021.2 (para 21 above) relates to legal costs incurred by the Respondents in connection with this disputed sum and since the sum itself is not a service charge item but a personal debt between Mr R Churcher and the Respondents it does not form part of the service charge, should not form part of the service charge accounts and is not a matter over which this Tribunal has jurisdiction either within s27A or s20C Landlord and Tenant Act 1985 or under Schedule 11 para 5 of Commonhold and Leasehold Reform Act 2002.

39 It is noted that schedules to the leases of flats 5 and 7 are ambiguous in that they contain a reference to 'roof' in the context of the upkeep of common parts. The Tribunal considers that the clear and express demise to Flat 4 of the penthouse roof area overrides the words of the ground floor lease schedules. This is a further example of an incongruity in the leases which the Tribunal recommends is dealt with by a formal variation at a later date.

40 In service charge year 2015, items 2015.1 (fire precautions) 2015.2 (health and safety) 2015.7 (entryphone) and 2015.8 (internal repairs) were all charged at £0 although a budget provision had been made for them. There can be no sustainable argument about a zero charge.

41 In relation to item 2015.3 (management services) the parties agreed that all six flats benefitted from the management services the costs

of which should be borne by all the flats in the proportions in which they pay their service charges. The charged costs were less than £100 in excess of the budgeted figure and no argument was presented against the reasonableness of this sum (£2,495)which is therefore payable by all six flats in the proportions in which they normally pay their service charge.

42 Items 2015.4 (sundries: £9) 2015.5 (cleaning: £480)and 2015.6 (Electricity: £232) were not challenged on the grounds of reasonableness and since all these items came in very close to their budgeted allocations the Tribunal finds them to be reasonable and payable in full by the Applicants.

43 The Applicants asked the Tribunal to make an order under s20C Landlord and Tenant Act 1985 and or under Schedule 11 para 5 Commonhold and Leasehold Reform Act 2002 restricting the Respondents from recovering litigation costs through the service charge. Having considered the representations made by both parties' representatives in their closing submissions the Tribunal determines that it will makes such an order in favour of the Applicants as named above and for an unlimited amount. Although some of the Applicants' arguments have been misconceived, there appears to have been a general lack of supervision of the property by the Respondent freeholders and the standard and presentation of the accounting in relation to service charges has been very poor. The major errors made by the Respondent in relation to the roof repairs alone justify the making of the application by the Applicants who are accordingly also entitled to the repayment of their application and hearing fees totalling £300.

44 **The Law**

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).

Section 47 Landlord and Tenant Act 1987

(1)Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely—

(a)the name and address of the landlord, and

(b)if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.

(2)Where—

(a)a tenant of any such premises is given such a demand, but

(b)it does not contain any information required to be contained in it by virtue of subsection (1),

then (subject to subsection (3)) any part of the amount demanded which consists of a service charge [F1or an administration charge] ("the relevant

amount") shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.

(3)The relevant amount shall not be so treated in relation to any time when, by virtue of an order of any court [F2or tribunal], there is in force an appointment of a receiver or manager whose functions include the receiving of service charges [F3or (as the case may be) administration charges] from the tenant.

(4)In this section "demand" means a demand for rent or other sums payable to the landlord under the terms of the tenancy.

Withholding of service charges Landlord and Tenant Act 1985 s21

21 (1)A tenant may withhold payment of a service charge if—

(a)the landlord has not provided him with information or a report—

(i)at the time at which, or

(ii)(as the case may be) by the time by which,

he is required to provide it by virtue of section 21, or

(b)the form or content of information or a report which the landlord has provided him with by virtue of that section (at any time) does not conform exactly or substantially with the requirements prescribed by regulations under that section.

(2)The maximum amount which the tenant may withhold is an amount equal to the aggregate of—

(a)the service charges paid by him in the period to which the information or report concerned would or does relate, and

(b)amounts standing to the tenant's credit in relation to the service charges at the beginning of that period.

(3)An amount may not be withheld under this section—

(a)in a case within paragraph (a) of subsection (1), after the information or report concerned has been provided to the tenant by the landlord, or

(b)in a case within paragraph (b) of that subsection, after information or a report conforming exactly or substantially with requirements prescribed by regulations under section 21 has been provided to the tenant by the landlord by way of replacement of that previously provided.

(4)If, on an application made by the landlord to the appropriate tribunal, the tribunal determines that the landlord has a reasonable excuse for a

failure giving rise to the right of a tenant to withhold an amount under this section, the tenant may not withhold the amount after the determination is made.

(5)Where a tenant withholds a service charge under this section, any provisions of the tenancy relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

21B Notice to accompany demands for service charges

(1)A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2)The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3)A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4)Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

(5)Regulations under subsection (2) may make different provision for different purposes.

(6)Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

S22 Landlord and Tenant Act 1985

22 Request to inspect supporting accounts &c.
(1)This section applies where a tenant, or the secretary of a recognised tenants' association, has obtained such a summary as is referred to in section 21(1) (summary of relevant costs), whether in pursuance of that section or otherwise.

(2)The tenant, or the secretary with the consent of the tenant, may within six months of obtaining the summary require the landlord in writing to afford him reasonable facilities—

(a)for inspecting the accounts, receipts and other documents supporting the summary, and

(b)for taking copies or extracts from them.

(3)A request under this section is duly served on the landlord if it is served on—

(a)an agent of the landlord named as such in the rent book or similar document, or

(b)the person who receives the rent of behalf of the landlord;

and a person on whom a request is so served shall forward it as soon as may be to the landlord.

(4)The landlord shall make such facilities available to the tenant or secretary for a period of two months beginning not later than one month after the request is made.

(5)The landlord shall—

(a)where such facilities are for the inspection of any documents, make them so available free of charge;

(b)where such facilities are for the taking of copies or extracts, be entitled to make them so available on payment of such reasonable charge as he may determine.

(6)The requirement imposed on the landlord by subsection (5)(a) to make any facilities available to a person free of charge shall not be construed as precluding the landlord from treating as part of his costs of management any costs incurred by him in connection with making those facilities so available.

Judge F J Silverman as Chairman
Date 01 November 2021

Note:

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rplondon@justice.gov.uk.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.