FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BK/LSC/2020/0368**
HMCTS code	**:**	**V: VIDEO**
Property	**:**	**Flat 6, 10 Hatherley Grove, London W2 5RB**
Applicant	**:**	**Mr and Mrs TJ Barling** **Mr R Gosrani**
Representative	**:**	**Mr Munn, of Rayners Managing Agents**
Respondent	**:**	**Mr Rudiger Lutz**
Representative	**:**	**Not represented or present**
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** **Mr S Johnson MRICS**
Date and venue of Hearing	**:**	**Remote** **30 March 2021**
Date of Decision	**:**	**7 April 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the Applicant. The Respondent has not engaged with the Tribunal office. 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 referred to are in a bundle of 235 pages, the contents of which have been 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 2015/16 to 2019/20.

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

The property

3. 10 Hatherley Grove is a Victorian terraced house converted into six flats. Flat 6 is a one bedroomed flat on the fourth floor. We were told that three of the flats were let on assured shortlhold tenancies, and the remainder were occupied by the leaseholders.

The lease

4. The lease was granted in 1981 for a term of 125 years, running from 1980. The freehold is now held by Applicants, who also hold the leasehold interest in two of the flats.

5. The landlord covenants to insure the building (clause 5.04), to keep the common parts lit, furnished, cleaned and decorated (clause 5.06), to repair, decorate etc the structure, drains and conduits, boundaries and common parts (clause 5.07).

6. The service charge ("service rent") is provided for in Part II of the third schedule. The service charge year ends on 29th September. The tenant is to pay a fair and reasonable proportion of the sums paid by the landlord in performance of the covenants under clauses 5.04, 5.06 and 5.07, auditor's fees, the fees of managing agents and what are expressed as further insurances and maintenance/improvements.

7. An estimated service charge is to be paid in advance half-yearly on 25 March and 29 September, and then, as and when demanded, any shortfall. Over payment is to be credited to future years. By the fifth schedule, the service charge percentage is fixed at 16.1%.

8. Interest is payable on unpaid service charge after 14 days, at the rate of 4% over bank minimum lending rate (clause 3.01.2).

The issues and the hearing

9. Mr Munns of Rayners, the managing agents, appeared and represented the Applicants. Mr Lutz did not appear in person or by a representative.

10. At the outset of the hearing, the Tribunal dealt with two preliminary issues.

Preliminary issue: hearing in the absence of the Respondent

11. Mr Munns applied for us to proceed with the hearing under the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 ("the Rules"), rule 34 in the absence of the Respondent.

12. By way of background, Mr Munns said that the Respondent had not paid his service charge demands for a considerable time. There had been a number of previous applications before the Tribunal (we had available the last three under the reference numbers LON/00BK/LSC/2008/0571; LON/00BK/2010/0783; and LON/00BK/LSC/2016/0163. There are references in these cases to other cases before the Tribunal and the County Court). The Respondent had attended the first two of those mentioned, but not the third.

13. Mr Munns said that the Applicants had sought to contact the Respondent, insofar as they were able. The Respondent had declined to provide a forwarding address. At one time, he had given the Applicants an email address at which he could be reached, but had subsequently said that it was no longer active. The Applicants had, nonetheless, also sought to contact the Respondent via this email address.

14. The Applicants had engaged an enquiry agent, who had questioned neighbours. The enquiry agent had established that the flat was unoccupied. The agent was told by one neighbour, Mr Getty at number 5, that the Respondent did regularly visit to pick up post.

15. We note that the Respondent has also not contacted the Tribunal in response to correspondence sent to the flat. In the previous proceedings, the Respondent had been barred from taking part in the proceedings (rule 9(7) of the Rules) as a result of not responding to

communications from the Tribunal or the Applicant, and in addition an order had been made under rule 34 at the hearing.

16. We adjourned to consider the application, and concluded that all reasonable steps had been taken to notify the Respondent of the hearing, and that it was in the interests of justice for us to proceed with the hearing. Accordingly, we allowed the application.

Preliminary issue: whether the service charge for 2015/16 was adjudicated in previous proceedings

17. In the decision dated 22 August 2016, the Tribunal determined that "the reasonable service charge due on account for the year ending 2016 is £1,300" (LON/00BK/LSC/2016/0163). Since this application also included a claim for service charge of that service charge year, the procedural Judge had, in the directions in the instant case, drawn attention to the issue of whether that matter had been dealt with in the earlier proceedings.

18. It is clear that the determination in 2016 constituted the estimated service charge provided for in Part II of the third schedule to the lease. Mr Munns made it clear that the claim in these proceedings was limited to the shortfall after the estimated service charge had been taken into account, for which provision is also made in the schedule (see above).

The reasonableness of the service charges

19. It was the Applicants application, and it fell to Mr Munns to satisfy us of the reasonableness, and where relevant, the payability under the lease, of the demands made.

20. Accordingly, Mr Munns took us through each item in the Scott schedule prepared by the Applicants, and referred us to each of the relevant invoices. Mr Munns also, realistically and helpfully, explained that certain items had been charged which he was satisfied, in the light of the previous determination made by the Tribunal, should not be charged. He accordingly indicated which items were not pursued as we went through. In this decision, we record our conclusions under each year considered. In doing so, we will indicate our general approach, where relevant, to each issue in turn, and otherwise only set out in detail those matters in relation to which we were not satisfied as to the reasonableness – or, in one case, the payability – of the charges made.

21. We have followed the drafting of the Scott schedule in calculating the total costs chargeable to the service charge (except the estimated charge for the year ending September 2020), rather than also calculating the Respondent's share. It should be understood, however, that our decision is authoritative only in respect of the service charges

demanded from the Respondent, not those of other leaseholders who are not parties.

2015/16

22. The cost of insurance in this year was £5,231. Mr Munns told us that the insurance was obtained on a credit basis. He explained this as being a result of problems financing the expenditure otherwise, at least in part attributable to the Respondent's failure to pay the service charge.

23. Each year, the broker tested the market to secure the most economical appropriate policy. Apart from issues relating to the calculation of the service charge, which we particularise when they occur, we were generally satisfied as the reasonableness of the expenditure on insurance.

24. Mr Munn took us through the charges for repairs and maintenance in this year, and we concluded that all of the £1,116 was reasonable incurred.

25. The charge for communal electricity at £183 was supported by electricity bills, as was the charge in each succeeding year. While it increased over time, we consider the changes explicable as a result of greater usage when a contract cleaner was engaged and in discrepancies between years as a result of meter reading.

26. A feature of the accounts for this property is that the managing agent charges a per unit sum, plus various amounts described as "surveyors' fees", or sometimes under other headings. These were in respect of surveyors working for the managing agents, not fees to an outside firm. The per unit sum is £225 per annum, plus VAT (the total for the house therefore being £1,620). Mr Munn accepted that in some cases, the surveyors' fees were not reasonably chargeable, and indicated those he did not pursue.

27. We said to Mr Munn that the Tribunal would apply its expertise in terms of general knowledge of leasehold management matters, including per unit charges by managing agents in London, in considering the reasonableness of these charges. This is general knowledge, not attributable to particular pieces of discloseable evidence. Mr Munn said that he was content for the Tribunal to do so.

28. Our general view of the management charges is that the per unit charge is on the low side for a property of this kind in London, but that in some cases the surveyors' fees were nonetheless charged in respect of work that we would expect to see included in the per unit fee. Given the level of the per unit fee, we allowed a certain latitude in relation to the surveyors' fees which we would have considered unreasonable if the per unit fee had been higher.

29. At one point, Mr Munns referred to certain matters not being on the "List A" which set out what was covered by the unit fee. We did not have the management contract before us, nor any summary of it. But in any event, the nature of the contractual relationship between the managing agent and the freeholder is not determinative of the reasonableness of management, and associated, costs.

30. In respect of 2015/16, £792 had been charged under the surveyors' fees category. Mr Munns did not pursue a number of items, which left only an invoice for £420 (inclusive of VAT) for surveyors fees in respect of works described as "external door repairs".

31. Mr Munns was hard put to particularise the work concerned. He suggested that it may have involved dealing with a complaint about the external door not closing properly. In the end, Mr Munns agreed that billing more than one hour for this work would not be reasonable. We allow £90, which is the standard hourly surveyor's charge used by Rayners, plus VAT (£108).

32. A charge of £234.00 was reasonably made for a fire risk assessment. Mr Munns told us that these assessments were undertaken on a five-yearly basis.

33. A figure of £802 was charged as "debt recovery". Mr Munns explained that this was, in fact, the costs order made against the Respondent at the 2016 hearing under rule 13 of the Rules.

34. An order for costs creates an obligation on the party subject to the order to pay that sum to the other party. It is not a matter falling under the lease in any way. As an order of the Tribunal, it is not claimable as such under the service charge.

35. Mr Munns suggested that the work undertaken might be recoverable under the service charge. He did not submit that the relevant costs were chargeable under the lease as an administration charge against the Respondent alone. He suggested that it fell under "reasonable remuneration of any managing agent employed", chargeable by virtue of paragraph C(3) of Part II of the third schedule.

36. We do not consider that this sum is payable under the service charge.

37. In the first place, it is artificial to reconceptualise what is clearly really a costs order made by the Tribunal against a party and in favour of another party as expenditure by a managing agent.

38. Secondly, we do not think it is reasonable for the Applicants to charge the leaseholders for the expenditure covered by a costs order. The

freeholder should look to enforcing the costs order rather than passing it on to the leaseholders as a body.

39. Finally, given that it was not originally presented as a service charge element, we are not persuaded that it was properly demanded in time. There is an invoice in the bundle from Mr Munns personally to Rayners for £802 dated 1.9.2016, referring to the relevant services. The first service charge demand of which we have evidence in which it *might* have been demanded was that dated 27 March 2018, the previous demands in the bundle either pre-dating the invoice or relating to estimated service charges. But even if it was encompassed by the 27 March 2018 demand, that would have been outwith the time limit imposed by section 20B(1) of the 1985 Act. There is no suggestion that a notice under section 20B(2) has ever been issued..

40. *Decision*: The reasonably incurred costs chargeable to the service charge (calculated on the basis showing the liability of all leaseholders) for 2015/16 amounted to £9,032 *[Simon – when we were discussing it, I noted down your addition as £9014, but this is what it seems to me to come to. Do say if I have missed something!!*] This sum represents the total actual service charge, to which the estimated charge must be credited.

2016/17

41. We concluded that the charges for insurance, repairs and maintenance, communal electricity, managing agents fees (ie the per unit fee) and accountancy were reasonably incurred. There was some inconsistency in relation to the calculation of the annual charge for the insurance, but if there was an error, it was to the Respondent's advantage, and Mr Munns did not seek to increase it.

42. Under the repair and maintenance category was an invoice for £1,620 for electrical works. We note that there were other invoices for professional fees related to these works, in addition to the contractors invoice. The Tribunal asked Mr Munns if a section 20 consultation process had been undertaken in respect of the works. Mr Munns had no direct personal knowledge of the matter, but said that he would expect that in such circumstances a statutory consultation would have been arranged. There was no evidence relating to it in the bundle, as it was not an issue that had been expected to be raised.

43. On the only evidence before us – Mr Munns evidence as to the general system of the managing agents – it is more likely than not that a section 20 exercise was conducted. However, even if it were not, there is – inevitably in the circumstances – no evidence at all as to the effects of the lack of a consultation (if lack there was). So we can only conclude that the "the extent, quality and cost of the works were in no way affected by the Landlord's failure to comply with the [consultation] requirements": *Daejan Investments Ltd v Benson and others* [2013]

UKSC 14; [2013] 1 WLR 854, [45]. Accordingly, it is appropriate without more to grant dispensation from the requirements of section 20 under section 20ZA, and we do so. If we are wrong to take that approach, then, there being no evidence at all of prejudice to the leaseholders, the evidential burden on a leaseholder to provide such evidence has not been discharged, and so a dispensation would in any event follow (see *Daejan*[67]).

44. There remain two categories, surveyor's fees and "risk assessment, alarms and extinguishers". The invoices in relation to both were from Rayners for, variously "management fees", "surveyors fees" or "professional charges" in relation to various briefly described matters. The division between the two categories was somewhat arbitrary.

45. In respect of the category described as surveyor's fees, we considered two invoices for fees associated with emergency lighting and the implementation of issues arising from the fire risk assessment to be reasonably incurred. They amount to £672. We did not consider an invoice for £108 for filling in a subsidence questionnaire for insurance purposes to be reasonable. Arranging insurance is a core management task, and this should have been covered by the unit fee.

46. As to the "risk assessment, alarms and extinguishers" category, Mr Munns did not pursue two invoices, amounting to £168. The remaining charge was for £116 for "works: fire risk report". This, Mr Munns told us, related to considering the fire risk report, putting in place works and communicating with lessees in relation to it. We considered this to be a core task associated with the periodic requirement to secure a fire risk assessment, and similarly properly covered by the unit fee. The result is that none of the fees relating to this category were reasonably incurred.

47. *Decision*: The reasonably incurred costs chargeable to the service charge (calculated on the basis showing the liability of all leaseholders) for 2016/17 amounted to £11,625.

2017/18

48. We found that all elements of the service charge save the surveyor's fees for this service charge year reasonably incurred, following clarification of certain invoices by Mr Munns over the lunch adjournment. It was noted that a cleaning contract commenced during this year in relation to the communal area, the cleaning having previously been undertaken by one of the occupants.

49. Mr Munns withdraw all of the invoices making up the surveyor's charges.

50. *Decision*: The reasonably incurred costs chargeable to the service charge (calculated on the basis showing the liability of all leaseholders) for 2017/18 amounted to £9,096.

2018/19

51. The insurance charge was given in the Scott schedule as £5,749 for this service charge year. The valuer member put it to Mr Munns that the calculation of this sum (from the monthly instalments contained in the credit agreement in the bundle) appeared to be defective, and the proper charge should be £5,305. It appeared that an additional instalment at the rate charged in the previous year had been added, although all twelve instalments were accounted for in that year.

52. Mr Munns said that the figures as explained by the Tribunal were clear, and he could not account for the discrepancy.

53. In respect of the surveyor's fees, Mr Munns withdrew four invoices amounting to £492. We considered the remaining invoice, for £276 in relation to a health and safety and fire risk report, to be reasonably incurred. Another Rayners "professional charges" invoice in relation to a site visit to investigate a complaint of damp was itemised separately (as "Damp/Site inspection"), and was also reasonably incurred.

54. *Decision*: The reasonably incurred costs chargeable to the service charge (calculated on the basis showing the liability of all leaseholders) for 2018/19 amounted to £10,268.

2019/2020

55. The estimated service charge demanded was £1,300 for the year. This has been the estimated service charge for each year under consideration. In each year, the outturn has been higher than the estimate. We are satisfied that the estimated charge is reasonably incurred.

56. *Decision*: The reasonable estimated service charge for the respondent for 2019/20 was £1,300.

Application for costs

57. In the application, the Applicants indicated that they would make an application under rule 13(1)(b) of the Rules for costs on the basis that the Respondent had acted unreasonably in defending the proceedings, and Mr Winn duly did so orally at the conclusion of the hearing.

58. Relevantly, Mr Munns submitted that the Respondent's complete failure to participate in the proceedings was "negligent and reckless". In the circumstances, his failure to provide an address for service or an email address was unreasonable.

59. We accept Mr Munns' submissions. We consider that it is more likely than not, in the light of what Mr Munns told us in relation to the enquiry agent's findings, that the Respondent was aware of these proceedings. To ignore the proceedings, including communications from the Tribunal as well as the Applicants, falls considerably below the reasonable standard even for a litigant in person, and adopting *Ridehalgh v Horsefield* [1994] Ch 205 the approach to "unreasonable" (see *Willow Court Management v Alexander* [2016] UKUT 290 (LC), [2016] L&TR 34, [24], [28] and [32]. In all the circumstances, we think we should exercise our discretion to make an order.

60. The order that Mr Munns requested was for £650, plus VAT. That was made up of five hours of his time, charged at £90, for two hours preparation and three hours before us, plus £200 in respect of preparation of the papers and other preparatory costs. We consider that it is reasonable for the Respondent to pay all of these costs, which are themselves reasonable in amount.

61. *Decision*: In accordance with the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 rule 13(1)(b), the Tribunal hereby orders that the Respondent pay the Applicants the sum of £650 (six hundred and fifty pounds) within 14 days of the date of this decision.

Rights of appeal

62. 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.

63. 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.

64. 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.

65. 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:** 7 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).