FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BJ/LSC/2022/0214**
Property	**:**	**Flat 26 Hopwood Close, London SW17 0AG and 15 Barnfield Close, London SW17 0AU**
Applicants	**:**	**Garratt Green No. 2 Residents Company Ltd**
Representative	**:**	**Mr McKeer of Prior Estates Ltd**
Respondents	**:**	**Mr P and Mrs H Lee**
Representative	**:**	**None**
Type of Application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	**:**	**Judge Prof R Percival** **Mr S Mason BSc, FRICS** **Mr C Piarroux JP**
Date and venue of Hearing	**:**	**7 October 2022** **10 Alfred Place**
Date of Decision	**:**	**11 October 2022**

DECISION

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 payability of a service charge in respect of certain future works described below.

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

The property

3. The purpose-built flats are located in a number of buildings in a mixed development of flats and houses in a private estate. The buildings are three storey timber framed buildings with brickwork cladding. The estate was constructed in 1993 to 1994. The flats are of various sizes.

The leases

4. We were provided with a sample lease, which, we were told, was in substance the same for all the flats concerned. The lease grants a term of 125 years from 1992.

5. The lease is in tripartite form between the lessor, the lessee, and "the Company", which is defined as the Applicant. The Applicant now also owns the freehold. The Applicant company is owned by the lessees, in accordance with provisions in the leases.

6. In the definitions at the start of the lease, "The premises" in the sample lease is defined as "the Second Floor Flat and land described in Clause 1 and known as Plot …", with a postal address.

7. Similarly, "The Building"

> "means the building (being part of the Managed Buildings) consisting solely of the physically linked flats or of flats and garages and/or other non-residential areas and including the Premises and the Internal Common Areas within the Building".

The Managed Buildings is defined as, broadly, the buildings on the estate.

8. Clause 1 specifies the flat by reference to a lease plan, and then, in a series of sub-clauses, specifies what is included in the demise.

9. By clause 1(1), the demise includes

> "The structural and other parts of the Building separating such premises from the Other Units up to the median line

> PROVIDED THAT [first floor flats above parking spaces etc] this demise shall include the whole of the structure of the floor of such first floor premises"

10. Also included in the demise are, in respect of ground floor flats, the subsoil and foundations thereunder (clause 1(2)), and in respect of flats on the top floor, the roof and supporting structure "above such premises" (clause 1(3)).

11. Subclause 1(5) includes in the demise

> "The external and other walls doors windows window frames and fittings and other parts surrounding the said flat …"

12. Other sub-clauses appear (depending on the exact terms of the various lease plans) to include all of the communal areas in the demise of one or other of the flats.

13. The final part of this section of clause 1, after and governing the inclusive sub-clauses, states that they are

> "To the intent that the Premises and the Other Units shall (subject to the abovementioned exclusions) together comprise the entirety of the Building".

14. The extent of the repairing covenants differs from that of the demise. By clause 3(1), the tenant covenants with both the lessor and the Company,

> "To repair and keep in good and tenantable repair and condition:-
> (a) the Premises (other than the foundations floors floor slabs and other external and main structural load-bearing parts of the building …"

15. The repairing covenant falls on the Company (in a covenant with both the lessor and the lessee) in clause 5. It reads

> "(1)(a) To keep in a good and tenantable repair and condition and when necessary to rebuild and renew:-
> (i) the external and main structural load-bearing parts (including foundations and floors and floor slabs) roof and roof structure of the Managed Buildings …"

16. There is a clause allowing an administration charge in connection with the service of a notice under section 146 of the Law of Property Act 1925 (clause 2(3)).

The issues and the hearing

17. Mr McKeer, the director of the managing agents, Prior Estates Ltd, represented the Applicant. Mr Burbridge gave expert evidence for the Applicant. Mr Petrou, a director of the Applicant, also gave evidence. There was no appearance from the Respondent.

Background and preliminary issue

18. As a result of reports of unusual and persistent cracking noises from several flats, Prior Estates, the managing agents, commissioned a report by Hughes, Jay and Panter (HJP), chartered surveyors, in March 2021. Relying on the report, and on their interpretation of the implications of a previous tribunal decision (BIR/00BJ/LBC/2014/0028; decision 23 January 2015; "the 2015 Decision"), the managing agents thereafter served a notice of proposed works to initiate a consultation under section 20 of the 1985 Act. Objections were received. A further report was commissioned from Mr ADG Burbridge, an experienced chartered surveyor and chartered structural engineer, and a meeting with leaseholders was arranged in September 2021. Following the meeting, a further report was commissioned from HJP (dated March 2022).

19. The Company thereafter resolved to make this application to determine the relevant responsibilities of the Company and the lessees.

20. Given the nature of the application, the directions (made on 22 July 2022) made provision for the Applicant to make appropriate information about the application available to all flat tenants, and to give the tenants the opportunity to make representations.

21. As a preliminary issue, the Tribunal raised with the Applicant the identity of a Respondent. We made it clear that the Tribunal considered that it was being asked to determine a real issue between parties as to the construction of the lease, and thus it was important to clearly identify the Respondent or Respondents. The original application had (properly) identified all of the leaseholders of flats on the estate as potential respondents, allowing appropriate directions to be made.

22. The Applicants had identified Mr N McGraw, Mr Walles and Mr and Mrs Lee as Respondents, on the basis that they had returned the forms asking for representations to be made.

23. However, it was not clear to the Tribunal that either Mr McGraw or Mr Walles had clearly indicated an intention to be a respondent, rather than merely having returned the form, which on its faced asked them if they wished to make representations concerning the application.

24. Mr and Mrs Lee had, however, taken additional steps. In the first place, they had written to the Applicant formally asking that material should be added to the bundle. Secondly, they had written to the tribunal

requesting that the hearing be postponed, citing what they considered to be procedural breaches or errors by the Applicants. That application was refused by a procedural Judge.

25. We consider both steps to be objective indications that Mr and Mrs Lee wished to be, and considered themselves to be, respondents to this application, and we have so identified them in this Decision.

26. In the light of the procedural Judge's decision on their application for a postponement, we make an order under Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, rule 34 that the hearing proceeds in the absence of the Respondents.

The parties' cases

27. The Applicant's case was that the works required to remedy the problem of the noises identified in the reports of tenants came within the Company's repairing covenant, and the cost thereof could accordingly be passed on in the service charge.

28. The Respondent's case it was the tenants' repairing obligation that was engaged, and the cost of remediation fell to them individually, and not the body of tenants in the service charge.

The expert evidence

29. It is unnecessary for us to extensively detail the contents of the experts' reports. The first HJP report referred to various possible defects in the worksmanship of the construction of the building that may contribute to noise problems. However, the report went on to state that it was "highly likely" that the fixing of the plasterboard directly to the joists had resulted in a phenomenon known as "microcracking". This, the report explained, occurred as a result of friction between the plasterboard and the timber joists.

30. For his report, Mr Burbridge had the advantage of being able to access the space above the plasterboard in Mr Petrou's flat (flat 23, Hopwood Close), as Mr Petrou had allowed a section of about a square metre in his sitting room to be removed for this purpose. The report usefully outlined the development of Building Regulations and recommended best practice in relation to the sort of ceiling found in the relevant buildings in, and since, the building of the property.

31. In his report, Mr Burbridge set out his primary conclusion as follows:

> "The investigation of both HJP in April 2021 and myself in September 2021 suggest that the most likely cause is flexing of the floor joists causing strain in the fixing nails giving rise to the 'Clicking' noise generally in the plasterboard ceiling".

32. HJP's second report had the benefit of both Mr Burbridge's report and the access afforded to him by the section cut in Mr Petrou's

33. The conclusions of the report are developed through consideration of "Wood Information Sheet WIS 1-36", produced by the Timber Research and Development Association. That made clear that very small movements (less than half a millimetre) could produce the distinctive noises (the nature of which were remarked in the information sheet), and explored various possible reasons. The movement of plasterboard against nails fixing it to the joist was implicated as the proximate cause of the noise. The conclusions emphasise the importance of the method of fixing of plasterboard to wooden joists, and notes that current practice is to use appropriate screws. The recommendation for remedying the problem was to strip the plasterboard and install resilient bar system, to which the plasterboard would be fixed. The resilient bar system comprises a flattened top hap shaped metal section fixed by its flanges on each side to a joist, so that the plasterboard is fixed to the mental section rather than directly onto the joist, and is therefore isolated from the joist. The implication of this recommendation is that it is the direct fixing of the plasterboard to the joists (by nails) that causes the microcracking noises.

34. However, in his oral evidence before us, Mr Burbridge said that he had not managed to observe any movement of the plasterboard against the nails when the helpful upstairs neighbour had been moving above Mr Petrou's flat, when he (Mr Burbridge) was looking through the square cut through the plasterboard. As a result, he thought the most likely cause of the microcracking noise was the movement of the nails in the brackets used to fix the joists themselves to the walls at each end, rather than the plasterboard moving against the nails fixing it to the joists.

35. Mr Burbridge expressed this as a slight difference of emphasis from the approach of HJP, and that recorded in his own report. We consider it to be a substantial change in his evidence.

36. In his report and his oral evidence, Mr Burbridge recommended that the plasterboard be removed from the ceiling of one flat and remedial work undertaken by way of an experiment, in order to clarify what work would be appropriate in other flats (and other rooms of the same flat, if necessary). In discussion, Mr Mason for the Tribunal suggested that a cheaper experimental approach would be to screw the existing plasterboard to the joists. If the microcracking noise was eliminated, that would clarify the work necessary. Mr Burbridge conceded that such an approach might be useful.

The construction of the lease

37. We have set out the key terms of the lease above. As is evident, the terms of the lease are somewhat unusual, in that the demise in respect of each flat is very broad, extending from the foundations and the

subsoil to the roof and including (apparently) all of the common parts outside what we can properly call the flats' front doors. The repairing covenants, however, carve out different parts of the building as the responsibilities of the Company and the lessees.

38. Mr McKeer submissions' proceeded by seeking to construe the terms of the lessee's covenant in clause 3(1)(ii) (mirrored, we note, in the Company's covenant at clause 5(1)(i)). The repairing obligation applies to the premises (ie as broadly defined in clause 1), with the exceptions set out in the parenthesis, which include the word "floors". In his primary submission, Mr McKeer argued that a ceiling was encompassed by the word "floors".

39. In pursuance of his submission, Mr McKeer prayed in aid the evidence of Mr Burbridge. In oral evidence, Mr Burbridge said that in his view, the floor and ceiling construction separating flats one from another vertically were properly considered as a single construction element, and so whatever applied to a "floor" necessarily also applied to the ceiling below it. We understood him to be arguing that the function of the floor/ceiling element was to create the distinction between the voids each side of it – the two flats – and so functionally it operated as a single element. A floor includes a ceiling.

40. Mr McKeer argued that this effect was reinforced by the fact that fire safety in flats relied on the fire retardant properties of plasterboard.

41. Mr McKeer referred to the 2015 Decision, in which, in one of the same leases, the Tribunal had found that the floor of a flat was subject to the Company's repairing covenant.

42. Mr McKeer's second submission was that the works necessary to remedy the problem would engage another category of exception to the tenant's covenant, "other external and main structural load-bearing parts". The joists, he argued, were a "load-bearing part" of the construction of the buildings, and so any repair which engaged with the joists would be covered by this exception. Since any remediating work would involve either the attachment of the joists to the walls, or of the plasterboard to the joists, those would be subject to the Company's repairing obligation.

43. We reject the Applicants primary submission. The word "floor" is a normal word in the English language. Any lessee (and, indeed, any normal freeholder) would understand it as a normal English word. A floor is the bottom surface of a room. A ceiling is the top surface of a room. The fact that some floors are also immediately adjacent and attached to the same structural part as ceilings to the storey below does not mean that a floor is a ceiling. We see no relevance for the fire safety consideration advanced by Mr McKeer. That the fire safety efficacy of

an element in a building might rely on an adjacent, or indeed distant, construction element does not mean that the two elements are one.

44. We agree with the construction of the lease in the 2015 Decision. In that case, the Tribunal found that the Company was liable for repair of a floor, because the tenant's covenant excluded floors (and the corresponding Company's covenant included floors). It does nothing to advance the Applicant's case.

45. As to the Applicant's secondary submission, we consider that the question is whether work amounts to the repair of a structural load-bearing part of the building, or merely a repair to a non-load-bearing part which happens to involved attachment to or contact with a load-bearing part.

46. If work is done to change the method by which a joist is attached to the walls of the building, then we consider that that would, ordinarily at any rate, be a repair "to" a joist, or at least to the (load bearing) junction between a joist and a wall. We accept therefore that the refixing with screws of the brackets supporting the joists (that is, transferring the load imposed on the joists through the walls) so as to remedy microcracking would amount to a repair to load-bearing parts of the building. It is true that it is not a repair relating to the load bearing capacity of the two elements, but it is nonetheless "to" a load bearing part or parts, so that a malfunction of their original construction is corrected.

47. We do not consider that the same is true of the fixing of the plasterboard to the joist. Fixing plasterboard to a joist is not a repair "to" a joist. Were it otherwise, any fixing of a non-load bearing element to a load-bearing element would engage the Company's repairing obligation. If plasterboard were to be physically defective, and require replacing, the fact that the new plasterboard would have to be attached to the joists, or internal load bearing walls, would not make the repair of the plasterboard really a repair "to" a joist or a load bearing wall.

48. *Decisions*:

(1) In the lessee's and the Company's repairing covenants, the word "floor" does not encompass the ceiling of the flat below.

(2) A repair to the brackets by which floor joists are attached to the wall is a repair to a structural load-bearing part of the building for the purposes of the lessee's and the Company's repairing covenants.

(3) The affixing of plasterboard to a floor joist is not a repair to a structural load-bearing part of the building for the purposes of the lessee's and the Company's repairing covenants.

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

49. The Respondent was not present, and so could not ask for orders under section 20C of the 1985 Act that the costs of these proceedings may not be considered relevant costs for the purposes of determining a service charge; and/or an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 extinguishing any liability to pay an administration charge in respect of litigation cost in relation to the proceedings.

50. We considered that it would be appropriate in the circumstances nonetheless to consider whether we should make either or both orders.

51. We asked Mr McKeer what the Applicant's position on the costs of these proceedings was. He told us that he anticipated costs to his firm of £1,300 plus VAT. He said that it would have to be recovered through the service charge, as the Applicant had no other source of income as a lessee owned and managed company. The leases did not provide for the payment of substantive ground rent.

52. However, he said that the Applicant did not intend to seek to charge the Respondent for the costs through an administration charge. He agreed when we said we were minded to secure such an undertaking by making an order under paragraph 5A.

53. As to section 20C, we consider the application on the basis that the leases does provide for such costs to be passed on in the service charge, without deciding whether that is the case or not. Whether the lease does, in fact, make such provision is, accordingly, an open question should the matter be litigated in the future.

54. 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). Such orders are an interference with the landlord's contractual rights, and must never be made as a matter of course. We should take into account the effect of the order on others affected, including the landlord, a factor of particular importance when considering lessee-owned landlords: *Re SCMLLA (Freehold) Ltd* [2014] UKUT 58 (LC); *Conway v Jam Factory Freehold Ltd* [2013] UKUT 592 (LC); [2014] 1 EGLR 111

55. We note that if the costs cannot be recovered under the service charge, it is difficult to see where else they can be recovered from. The Company's only income is from the service charge.

56. As to the merits, both sides have been partially successful in respect of how we have construed the lease. Which outcome is actually put into

effect will depend on what repairs are in fact needed to remedy the microcracking noise, a matter we cannot speculate on.

57. In the result, we consider it just and equitable not to make an order under section 20C

58. *Decision*:

(1) The Tribunal orders 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

(2) The Tribunal makes no order under section 20C of the 1985 Act.

Rights of appeal

59. 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.

60. 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.

61. 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.

62. 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:** 11 October 2022

Appendix A: 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).