FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AN/LSC/2022/0181**
Property	**:**	**Ground Floor Flat, 60 Coningham Road, London W12 8BH**
Applicant	**:**	**Ms Karen Clarke**
Representative	**:**	**N/A**
Respondent	**:**	**Mr Christopher Hallett**
Representative	**:**	**N/A**
Type of application	**:**	**For the determination of the reasonableness of and the liability to pay service charges**
Tribunal members	**:**	**Judge N Rushton KC** **Mr O Dowty MRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of hearing	**:**	**30 January 2023**
Date of decision	**:**	**02 February 2023**

DECISION

Decisions of the tribunal

(1) The tribunal determines that:

a. 25% (being the Applicant's share under the lease) of the total service charges shown in the final accounts for the following years is payable by the Applicant to the Respondent under the terms of her lease, and is reasonable:

i. 2017 -2018;

ii. 2018-2019;

iii. 2019-2020;

iv. 2020-2021.

b. Save that insofar as any service charges for 2017 – 2018 were included in the order of the County Court made in about 2017/2018 (a copy of which was not before the tribunal), this tribunal makes no further decision for that year, it having no jurisdiction to do so. Furthermore the tribunal notes it has no jurisdiction to make any determination in respect of the payability of costs ordered by the County Court and it does not do so.

c. In any event, the roof works carried out in 2020/2021 were reasonably necessary, the total cost of £13,659.60 was reasonable and so 25% of this sum, or £3,414.90, is payable by the Applicant to the Respondent.

d. 25% of the interim service charges set out in the estimate for 2021-2022 are payable by the Applicant and are reasonable as interim charges. This determination does not prejudge the final calculation of service charges for that year, nor the Applicant's right to challenge the payability or reasonableness of any such final assessment.

(2) The tribunal makes the further determinations as set out under the various headings in this Decision.

(3) The Tribunal makes no order under section 20C of the Landlord and Tenant Act 1985.

(4) The Tribunal makes no order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

(5) The tribunal makes no order for the reimbursement of any application or hearing fees.

The application

1. The Applicant tenant ("**Ms Clarke**") issued an application on 1 June 2022 ("**the Application**") against the Respondent freeholder and landlord, Mr Christopher Hallett ("**Mr Hallett**") for a determination under s.27A of the Landlord and Tenant Act 1985 ("**the 1985 Act**") of the payability and reasonableness of service charges for each of the years 2017 – 2022. She said the value of the dispute was £6,503.07. She also sought to re-open the decisions as to service charges and costs ordered against her in earlier County Court proceedings, said to be £11,500 service charges and £200,000 costs.

2. In the Application Ms Clarke also applied for an order under s.20C of the 1985 Act limiting the costs in connection with the tribunal proceedings which could be included by Mr Hallett in any service charge. She also applied for an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("**the 2002 Act**") reducing or extinguishing any liability she might otherwise have to pay an administration charge in respect of litigation costs under her lease.

3. The Application relates to the Ground Floor Flat, 60 Coningham Road, London W12 8BH ("**the Flat**") of which Ms Clarke is the long-leaseholder. 60 Coningham Road ("**the House**") is a terraced house which has been converted into 4 self-contained flats. Mr Hallett used to be the leaseholder of one of the other flats, and he acquired the freehold in 2013. He sold his flat and moved out in September 2020, but retained the freehold.

4. There is a small communal entrance hall and stairs for the use of the flats, except the lower ground floor flat which has a separate entrance. The House has a small front garden, where the bins are located, with a path.

5. Ms Clarke sent a copy of her lease of the Flat ("**the Lease**") to the tribunal. Mr Hallett confirmed he also had a copy. The Lease is dated 11 March 2004 and is for a term of 125 years from 25 December 2002. It includes provisions requiring the landlord to provide services and the tenant to contribute to the cost of those services by way of a variable service charge. Ms Clarke is obliged to pay a service charge of 25% of the "Maintenance Expenses" under the Lease. The precise terms of the Lease are referred to in more detail below, as relevant.

6. By paragraph 3 of the Sixth Schedule to the Lease, the service charge year runs from 1 October to 30 September. There is provision for the

payment of advance service charges, based on an estimate of the Maintenance Expenses for the coming year, by two 6-monthly payments, followed by a balancing charge or credit, after the end of year service charge account has been produced.

7. Extracts of relevant legislation are set out in an appendix to this decision.

8. The hearing of the Application took place on 30 January 2023 in person at 10 Alfred Place, London WC1E 7LR. It was attended by Mr Hallett, but the Applicant, Ms Clarke did not attend. No application for an adjournment was made by Ms Clarke. The tribunal being satisfied that she was aware of the hearing date and venue, it proceeded to hear and determine the Application in her absence, for the reasons set out more fully below.

Procedural matters

9. Directions were issued on 16 August 2022 by Tribunal Judge S J Walker following a case management hearing conducted remotely by video, and attended by both Ms Clarke and Mr Hallett.

10. Those directions required the parties to take a number of steps to prepare for the hearing of the Application, to enable the tribunal to consider it effectively, with the benefit of all the relevant information. However, as set out below, Ms Clarke has failed either to comply with any of those directions, or clearly to apply to withdraw her application (if she wished to do so), instead simply sending numerous emails to the tribunal's case officer. This has resulted in the Application having a confused and confusing history.

11. Paragraph 4 of the preamble to the Directions states as follows, which this tribunal takes as defining the scope of the dispute before it:

"(4) The Tribunal has identified that the issues to be determined include the following in relation to each of the service charge years from 2017/2018 to 2022/2023 inclusive, though these may be amplified by the parties in their statements of case:

- *whether the works/services are within the landlord's obligations under the lease/ whether the cost of works/services are payable by the leaseholder under the lease*
- *whether the costs of the works/services are reasonable, in particular in relation to their nature, their quality and the contract price*
- *whether the contributions to the reserve fund are payable under the terms of the lease and whether they are reasonable*

- *whether an order under section 20C of the 1985 Act and/or paragraph 5A of Schedule 11 to the 2002 Act should be made*

- *whether an order for reimbursement of application/ hearing fees should be made*"

12. Paragraphs 1 and 15 of the Directions provided that the Application would be determined at a face to face hearing at the tribunal in London, at 10am on 30 January 2023. Both parties were present at the case management hearing and had the opportunity to ask that the case be heard remotely by video if they had reason to do so, but the Judge on that occasion decided the final hearing would be in person. According to Mr Hallett, the judge said this was because this was the normal post-Covid procedure.

13. In compliance with paragraph 4 of the Directions, Mr Hallett sent Ms Clarke copies of the final service charge accounts for the years from 2016-2017 to 2020-2021, the estimated expenses for the years 2017-2018 to 2021-2022, and Ms Clarke's service charge account for the whole period from 1 April 2012 to 20 June 2022. He also sent a copy of the notice under s.20 of the 1985 Act dated 20 August 2019 relating to proposed roofing works, plus the 3 estimates referred to in it and final invoice dated 23 November 2021 from Brylane Construction for those works.

14. Paragraph 3 of the Directions required Ms Clarke by 25 October 2022 to send Mr Hallett (a) a schedule in the form attached to the Directions, with the columns completed, to set out for each year, each item in dispute, the reason why it was disputed and the amount she would be wiling to pay for that item; (b) copies of any alternative quotes on which she relied; (c) a statement of the relevant service charge provisions in the Lease and any legal submissions on her liability to pay, if in issue and (d) any signed witness statements on which she relied.

15. However, Ms Clarke has provided none of these things, as confirmed by Mr Hallett during the hearing. There was therefore no clarity as to which items of expense she was seeking to challenge. She did send a number of emails to the tribunal about points she disputed, or complaining about Mr Hallett's alleged conduct, some but not all of which were copied to Mr Hallett. Some of these emails related to a previous service charge dispute resolved by the County Court against Ms Clarke. It appears from the copy correspondence that that judgment was dated 24 October 2017, although the tribunal has not been provided with a copy of it. It seems likely therefore that it related to service charges for an earlier period than the current application, although Mr Hallett was not certain about this.

16. Sending lots of emails to the tribunal is not an acceptable substitute for complying with the tribunal's directions – the tribunal cannot extract

from a long series of emails the points which Ms Clarke wishes to raise or the evidence she is relying on in support. The tribunal has not therefore attempted to do so.

17. In the absence of any completed schedule, statement of case, witness statement or alternative quotes from Ms Clarke, Mr Hallett did not send to Ms Clarke any reply schedule, documents or statement in response, whether by the required date of 22 November 2022 or at all.

18. On 27 October 2022 Ms Clarke emailed the case officer and Mr Hallett saying "*I take it that the amount payment to Brylane construction is that which you have a copy and therefore I may be withdrawing"*. In other emails Ms Clarke also raised the possibility she might withdraw the Application. Mr Hallett therefore emailed the tribunal on 28 October 2022 asking whether, given these mentions of withdrawing, the case would now be closed.

19. On 6 December 2022 the case officer Ms Bhudia emailed Ms Clarke saying Ms Bhudia had received "*numerous correspondence*" from her by email and post and asking "*… please can you confirm are you withdrawing your Application to the Tribunal?"*

20. Ms Clarke's response by email on 22 December 2022 was as follows:

"*I don't know to be truthful. There's a lot wrong but I worry about mr hallett's deceitful nature and maybe myself I will be unwell or unavailable. This happened before so he won massive costs. I just couldn't make it to Wandsworth even though I got on well with the judge. My body just couldn't make it and I was on a training course for work. I did then as I am now requesting a paper hearing kind regards karen*."

21. On 22 December 2022 Mr Hallett asked for confirmation of the status of Ms Clarke's application, because he said he had seen a couple of emails where she had said she did not want to proceed, but further emails sent afterwards. (Ms Clarke continued to send emails to the tribunal disputing aspects of the repair works up to and including 21 January 2023.) Ms Bhudia replied that it looked like this needed to be referred to a judge to advise.

22. On 24 January 2023 the matter was referred to Judge Rushton KC, who was due to hear the matter, who concluded that it was unclear from Ms Clarke's emails whether or not she wished to withdraw her application, and so the hearing on 30 January 2023 would be proceeding. Given the lack of any clarity on the facts or issues still in dispute, Judge Rushton also considered the application could not be dealt with on paper and would require a hearing.

23. No bundle had been submitted for the hearing – paragraph 8 of the Directions had required Mr Hallett to do this, by 10 January 2023. Judge Rushton therefore directed Mr Hallett to provide an electronic bundle, prepared in accordance with the directions, by 2pm on Thursday 26 January 2023.

24. Mr Hallett submitted an electronic bundle, copied to Ms Clarke, by that revised date. Following receipt of the bundle, Judge Rushton asked the case officer to send an email to both parties confirming that the hearing would be proceeding, in person, on Monday 30 January 2023, which was sent on the afternoon of 26 January 2023.

25. The bundle submitted by Mr Hallett includes the Application, Ms Clarke's account statement, the service charge estimates and final accounts for all relevant years, the s.20 Notice, the quotes in support and the invoice from Brylane, and some of the emails from Ms Clarke concerning withdrawal of her application. It did not include the Directions or the Lease, but the tribunal had separate copies of these, and they were also available to the parties.

The hearing

26. As stated above, Mr Hallett attended the hearing but Ms Clarke did not attend. The tribunal waited until 10.30am before starting the hearing, in case she had been delayed. No communication was received from her on the day.

27. Ms Bhudia confirmed to the tribunal that she (and the tribunal more generally) had received no further emails or other contact from Ms Clarke since 22 January 2023. On that date Ms Clarke had emailed Ms Bhudia saying "*I could only sign in to the meeting as I did on the first occasion phoning in.*"

28. Ms Clarke has not however made any application or even a clear request for the hearing to be held remotely by video, nor provided any explanation or evidence why she might require this. Since the confirmation from the tribunal on 26 January 2023 that the hearing was proceeding and would be in person, Ms Clarke has not requested any adjournment or remote hearing, or provided any reason (good or otherwise) for any such request. Nor has she contacted the tribunal to explain her non-attendance.

29. In those circumstances, the tribunal concluded that it was appropriate to proceed to hear and determine her Application, even though she was not present. The reasons the tribunal did so were as follows:

    (i) The tribunal was completely satisfied that Ms Clarke was aware of the hearing date and venue;

(ii) No application for an adjournment had been made; no clear application for a remote hearing had been made and no information or evidence had been supplied in support of such a request. Finally, no clear request to withdraw the application had been made (let alone one compliant with rule 22 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("**the 2013 Rules**"));

(iii) The tribunal had sufficient information before it to determine the Application, in the bundle and other documents, together with responses which Mr Hallett was able to provide orally to questions from the tribunal;

(iv) In the tribunal's view it was plainly in the interests of both parties that there should be a clear resolution and decision on the issues in the Application;

(v) It would have been unfair on Mr Hallett for a decision on those issues to be further delayed, in all these circumstances.

30. The tribunal considered the documents in the bundle, together with the Lease and Directions. It also asked Mr Hallett questions about the case management hearing; the nature of the property; the engagement of Willmott's, the property managers by him; the roof works and whether and why he was satisfied they had been carried out satisfactorily; the cleaning of common parts, and the expenses in the estimates and final accounts more generally. The tribunal has relied upon his answers as indicated further below.

31. The tribunal was satisfied that Mr Hallett was doing his best to assist the tribunal. He answered the tribunal's questions in an honest and straightforward way, consistent with the available documents, including making appropriate concessions. The tribunal is satisfied that his oral answers are reliable. It also notes that it has seen nothing whatever to support Ms Clarke's generalised and unsubstantiated assertion in her email to the tribunal that he was being "deceitful", which it rejects.

Determination of the tribunal

32. Ms Clarke has not disputed that she is under an obligation under the Lease to pay service charges. This is found in clause 3.1, which obliges her to perform the obligations in the Seventh Schedule; Part One, paragraph 3 of which obliges her to pay the Lessee's Proportion of the Maintenance Expenses. Paragraph 1 of the Sixth Schedule defines her proportion as 25%.

33. The Fifth Schedule defines "Maintenance Expenses" as including, among other things (a) repairing/improving every part of the structural parts of the House (para. 1), including the roof; (b) cleaning the common parts (para. 4); (c) keeping the external common parts tidy (para. 3); and (d) paying the fees of any managing agents engaged by Mr Hallett (para 14.1).

34. The largest recent service charge item was in respect of the roof works, where Ms Clarke's account was charged £3,414.90 on 11 August 2020.

35. Mr Hallett explained that after he bought the freehold in 2013, he engaged managing agents, Willmott's, to manage works required at the property, including building works and regular cleaning. The property management charges shown in the accounts are the sums charged by them (only). He said that while he was still living there, the other tenants would often approach him about issues, but since he had moved out, they dealt with Willmott's.

36. He said that while there had been some repairs to the roof over the years, in about 2019 there was a more serious problem with water coming into the top floor flat when it rained heavily. He therefore asked Willmott's to coordinate the necessary repair works, which they did, including serving the necessary s.20 notice. Willmott's obtained three quotes from building companies they were familiar with. The quote accepted, from Brylane for £8,562 plus VAT, was the cheapest. Their final invoice dated 23 November 2021 was for the same amount, which totalled £10,274.40 including VAT, as supplied to Ms Clarke. The s.20 Notice stated that with the addition of professional fees, the total anticipated for the roof works was £13,659.60, 25% of which is £3,414.90. This is exactly the sum which was charged to Ms Clarke's service charge account.

37. Mr Hallett said he had received confirmation from Willmott's that the roof work had been completed.

38. On the basis of this evidence, the tribunal is satisfied that the roof works were reasonably necessary, that the cost was reasonable and so 25% of the total is payable by Ms Clarke.

39. The tribunal has also considered the annual estimates and final accounts produced by Mr Hallett, for the relevant service charge years. The items included are all ordinary expenses which the tribunal might expect to see in accounts for a property of this nature and size.

40. It notes Mr Hallett's confirmation that he has engaged Willmott's throughout and paid them management fees. There is no cap on such management fees in the Lease: paragraph 14.1 of the Fifth Schedule simply requires the payment of the fees charged by any managing agent

employed by Mr Hallett, although it does provide (paragraph 14.3) that where Mr Hallett employs managing agents, his own fees in connection with managing the property must not exceed 5% of the total expenditure for that service charge year. However no such fees have been charged by Mr Hallett, so none are allowed by the tribunal.

41. Mr Hallett also confirmed from his own knowledge when he lived at the property that cleaning of the common parts, including tidying of the garden (but not gardening) was carried out regularly. He said this was initially fortnightly but he reduced it to monthly to reduce costs (monthly costs are confirmed in the notes to the service charge estimates).

42. In the absence of any specific challenge from Ms Clarke to any item in those final accounts, the tribunal has concluded that all of these costs were reasonably incurred and are reasonable in amount, pursuant to section 19(1) and 27A of the 1985 Act.

43. This includes the provision for a reserve, there being provision for this in the Lease at paragraph 2 of the Sixth Schedule, and also at paragraph 3.3, where there is provision for the transfer at the end of the accounting year of any surplus to the reserve.

44. In relation to the 2021/2022 year, only an estimate for advance service charges has been issued, so far as the tribunal is aware. The tribunal accordingly determines that these are reasonable and payable by Ms Clarke as estimated service charges for the purposes of s.19(2) and s.27A of the 1985 Act. This determination does not prejudge the final calculation of service charges for that year, nor Ms Clarke's right to challenge the payability or reasonableness of any such final assessment.

Applications under s.20C/Schedule 11 and refund of fees

45. The tribunal has received no submissions on whether there is any power under this Lease to charge the costs of these proceedings to Ms Clarke by way of either service charge or administration charge and so it makes no findings in that regard.

46. In any event, in view of its conclusions as set out above, in which Mr Hallett has been the successful party, the tribunal refuses to make an order under section 20C of the 1985 Act that the costs incurred by Mr Hallett in connection with these proceedings are not to be regarded as relevant costs in determining the amount of any service charges to be paid by Ms Clarke, insofar as these might be payable under the Lease.

47. For similar reasons, the tribunal declines to make any order under paragraph 5A of Schedule 11 to the 2002 Act extinguishing any liability which Ms Clarke may have (as to which it makes no finding) to pay any

administration charges in respect of the litigation costs of this Application.

48. Further, the tribunal declines to make any order pursuant to rule 13(1)(b) of the 2013 Rules for the reimbursement of any application or hearing fees to Ms Clarke. This is for two reasons. First, Mr Hallett has essentially been successful. Second, it appears Ms Clarke was exempt from paying any such fees.

Name: Judge Nicola Rushton KC **Date:** 02 February 2023

Rights of appeal

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

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

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

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

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

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

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -

(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -

(a) the person by whom it would be payable,

(b) the person to whom it would be payable,

(c) the amount which would be payable,

(d) the date at or by which it would be payable, and

(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -

(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(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 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).

Schedule 11, paragraph 5A

(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

(3) In this paragraph—

(a) "litigation costs" means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and

(b) "the relevant court or tribunal" means the court or tribunal mentioned in the table in relation to those proceedings.

Proceedings to which costs relate	"The relevant court or tribunal"
Court proceedings	The court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, the county court
First-tier Tribunal proceedings	The First-tier Tribunal
Upper Tribunal proceedings	The Upper Tribunal
Arbitration proceedings	The arbitral tribunal or, if the application is made after the proceedings are concluded, the county court.