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HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTIONS 27A & 20C OF THE LANDLORD AND TENANT ACT 1985

Case Reference:	LON/00BE/LSC/2011/0874
Premises:	Ground, First and Second Floor Flats 33 York Grove London SE15 2NY
Applicant(s):	(1) Mr Daryl Worbey : Ground Floor Flat (2) Mr Matthew Hart: First Floor Flat (3) Mr Martyn Stanbridge: Second Floor Flat
Representative:	None
Respondent(s):	Westleigh Properties Limited
Representative:	Mr Ben Day- Marr MIRPM of Gateway Property Management Ltd
Date of hearing:	14 June 2012
Appearance for Applicant(s):	Mr Martyn Stanbridge
Appearance for Respondent(s):	Mr Ben Day- Marr MIRPM
Leasehold Valuation Tribunal:	Mrs N Dhanani LLB(Hons) Mr A Lewicki Bsc(Hons) MRICS MB Eng Mr O Miller Bsc
Date of decision:	10 August 2012

Decisions of the Tribunal

(1) The Tribunal determines that the total sums are payable by the Applicants as part of the service charge in respect of the management fee are as follows:

a. £225 for the year 1st June 2009 to 31st May 2010, and

b. £225 for the year 1st June 2010 to 31st May 2011.

(2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge.

The application

1. The Applicant seeks a determination pursuant to s.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:

(i) 1st June 2009 to 31st May 2010, and

(ii) 1st June 2010 to 31st May 2011.

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

The hearing

3. The third Applicant Mr Stanbridge represented all the Applicants at the hearing and the Respondent was represented by Mr Day-Marr.

The background

4. The properties which are the subject of this application are the Ground, First and Second Floor Flats in a converted Victorian house.

5. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

6. The first Applicant hold a long lease of the Ground Floor Flat, the second Applicant holds a long lease of the 1st Floor Flat and the third Applicant holds a long lease of the 2nd Floor Flat situate in the property.

7. The parties confirmed the substantive provisions of the leases are in an identical form and the leases require the landlord to provide services and the

tenant to contribute towards their costs by way of a variable service charge. The parties produced a copy of the lease relating to the 2nd Floor Flat as a sample lease. The specific provisions of the leases and will be referred to below, where appropriate.

8. On the 26th May 2009 Gateway Property Management Limited was instructed by the Respondent to act as Managing Agents in respect of their property portfolio. The subject property forms part of the Respondent's property portfolio.

9. On the 20th November 2011 the Applicant's purchased the freehold interest in the property under the enfranchisement provisions of the Leasehold Reform Housing and Urban Development Act 1993 as amended by the Commonhold and leasehold Reform Act 2002 ("1993 Act").

The issues

10. At the start of the hearing the parties identified the relevant issue for determination as the payability and/or reasonableness of service charges for years 2009/10 and 2010/11 relating to management fees.

The Applicants case

11. The Applicants relied on their statement of case and written submissions as well as the oral submissions made by the Third Applicant Mr Stanbridge at the hearing.

12. The Applicants submitted that as there is no reference in their leases to a management fee, the Respondent cannot seek to recover the management fee as a service charge. The Applicants relied on the case of Embassy Court Residents Association Limited v Lipman [1984 271 EG 545 CA] from which they quoteJudge Cumming- Bruce LJ as stating *"It is perfectly clear that if an individual landlord wants to (employ managing agents) and to recover the costs from the lessee, he must include explicit provision in his lease."*

13. The Applicants referred to the Leasehold Valuation Tribunal (LVT) decision in Lobb v The Respondent CAM/00KF/LSC/2011/0020 in relation to a property at 15 Avenue Road Westcliff – on –Sea in which the Tribunal stated *"Mr Day-Marr told us that it was not his firm's practice to read the leases of the flats when they took on the management of a property ....We do not consider this acceptable practice. It results in the agents making demands on tenants when the agents cannot know whether the monies claimed are due or not."*

14. The Applicants commented on the cases referred to in Mr Day- Marr's submissions and in relation to the LVT decision in the case number CAM/00KF/LSC/2009/0100 Jude v BLR and Westleigh Properties Ltd relating to a property at 76A Pall Mall Leigh-on Sea Essex they stated that they did not

consider that this case addressed the issue of whether a management fee is payable if the lease does not provide for it in the first place.

15. In relation to Case Number CHI/00HH/LIS/2011/0026 in respect of Flat 2, 18 Winner Street, Paignton Devon between The Respondent v Mrs J S Grimes, the Applicant stated that the lease includes a specific annual contribution to the service charge which includes electricity. The Applicants argued that the Winner Street lease bears no resemblance to their leases where costs of repair etc can only be recoverable once the work had been carried out , not in advance and there is no provision to pay a management fee.

16. The Applicants made the general point that one LVT decision cannot bind another LVT although they accept that a LVT may be guided by another LVT decision.

17. In relation to the Lands Tribunal decision in London Borough of Brent V Nellie Hamilton LRX/51/2005, the Applicants argued that the property in that case formed part of a large council estate with a whole range of services and bears no resemblance to their property.

18. The Applicants acceptted that the Respondent is able to recover the costs of maintaining and repairing the building as a service charge as each lease requires the tenant to pay *"....one third of the amount which the Lessor may from time to time expend in complying with the covenants contained in Clause 3(iii) hereof..."*

19. The Applicants acceptted that Clause 3(iii) requires the Lessor to *"...repair maintain and renew the main structure of the building including the external walls roof roof timbers foundation and footings..."* but they submitted that the leases provide for the recovery of such costs as a service charge only once the works have been carried out, and as far as the Applicants are aware no such works had been undertaken during the years in question or evening the years prior to that since the grant of the leases.

20. The Applicants argued that the leases are silent on the matter of management fees as there was no need for such a fee. The Applicants produced a copy of the replies to pre- contract enquires issued by the original landlord Mr Kang prior to the grant of the lease in respect of the Top Floor Flat. Mr Kang in response to questions about the rent and service charge replied "*Rent is to be payable to the landlord and we advise that there is no maintenance charge and no large expenditure is anticipated*".

21. The Applicants claimed that they have not been charged any management fees since the leases were granted in 1992 until the Respondent's agent Gateway Property Management ("Gateway") charged a management fee as part of the service charge for the period ending 1st June 2009 to 31st May 2010. Mr Stanbridge stated that they do not understand the service charge

accounts produced or the explanation given by Mr Day- Marr in respect of these accounts.

22. The Applicants stated that the principle of caveat emptor should apply where a party purchases the freehold interest in a leasehold property for long term profit and wishes to charge a management fee the party should ensure the leases contain express provision enabling the Respondent to charge the fees.

23. The Applicants stated that Gateway was aware of that the Applicants disputed liability to pay the management fee but they were unwilling to enter into a dialogue with a view to resolving the dispute. They stated that Gateway as the Respondent's agent should have informed the Respondent. The Respondent should therefore have been aware of the outstanding dispute on completion of the sale of the freehold interest to the Applicants.

24. The Applicants stated that they purchased the freehold interest in the building on the 2nd November 2011 and the premium was amicably agreed by all parties. The Applicants stated that although disputed management fees in the sum of £943.20 were included in the amount paid, the Applicants had not accepted liability to pay the management fees. They stated that both parties in the negotiations had experienced professionals acting for them, and the management fees had been in dispute since March 2011, Mr Stanbridge reiterated that paying the sum was not an admission of the validity of the fees. The Applicants relied on s.27A(5) of the 1985 Act in support of the fact that a tenant is not to be taken to have agreed or admitted liability "*...by reason only of having made any payment...*".

25. In relation to the copy of the fee quote produced by Mr Day- Marr the Applicants stated that this is a one quote and it would have been better practice to produce three quotes and in any event they are of the view that the quote of £1000 + VAT as a minimum annual fee includes site inspections and also services which Gateway are not required to provide in respect of the subject property.

26. In summary the Applicant's argued that the Respondent cannot seek to charge a management fee as the leases do not include an express provision entitling the landlord to charge a management fee. In addition the Applicant's claim that during the period in question since no works were carried and no services provided a management fee is not reasonable.

The Respondent's Case:

27. The Respondent was represented at the hearing by Mr Day-Marr of Gateway. The Respondent relied on their written submission contained in their letter of the 27th January 2012 and Mr Day- Marr's witness statement as well as his oral submissions made at the hearing.

28. The Respondent stated that in their view a management fee *"...of £113.47 for the year ending 31/05/2010, and a fee of £180 for the year ending 31st May 2011 is perfectly fair and reasonable and well within the level of acceptable fees for managing agents for this type of property"*.

29. The Respondent relied on the statement in the counter notice issued under the enfranchisement process which stated as follows:

> *"The reversioner proposes that the price payable for the freehold interest in the specified premises should be £23,100 plus the aggregate amount of all arrears of rent, service charge, insurance premium and other sums or payments due under the leases (if any) which are due or owing by the various tenants and unpaid on completion."*

30. The Respondent submitted that in order to reach an agreement on the purchase price for the freehold interest without the necessity of a formal LVT hearing they agreed to accept a reduced sum of £22,350 plus costs and in addition the Applicant's also paid the sum of £1,548.43 owed to Gateway in accordance with the completion statement provided to their solicitors. The Respondent stated that the Applicant's solicitor did not suggest that there was any dispute in connection with the amount due to Gateway. They stated that if they had been aware that there was still an ongoing dispute they would not have agreed to complete the sale of the freehold until either the dispute was resolved or there was a formal determination of all matters (including the price payable for the freehold) by the LVT. The Respondent relied the statement in the counter notice which specifies that the price payable for the freehold includes all outstanding arrears.

31. The Respondent requested that the Tribunal overturn the legal completion of the sale of the freehold and treat the price as not having been determined. The Respondent argues that in the event the Tribunal decides that it can determine the reasonableness of the service charge the doctrine of estoppel and/or merger applies so the Applicants should not be entitled to seek recovery of the sum paid. Alternatively the Respondent argues that as they are no longer the freeholder, if any reimbursement is held to be payable the Applicants should seek to recover the sum from the current freeholders.

32. Mr Day- Marr explained that since the leases do not prescribe when the service charge is payable they have interpreted it as being payable when the costs are incurred and so they issue a demand after the end of 31st May in each year.

33. Gateway produced the accounts for the year ending 31st May 2010 and 31st May 2011, showing the only expenditure for those years was the management fees and insurance. Mr Day- Marr explained that the management fee had been charged at the end of the year in arrears. He explained that the fee is charged at £150 plus VAT per unit and so for the service charge year 2009/10

was £528.75, and for the year 2010/11 with an increased VAT of 20% this was £540.00.

34. Mr Day- Marr explained that Gateway took over the management of the Respondent's property portfolio of an excess of 400 properties in June 2009. They carried out major works under the s.20 consultation procedure as well as repairs to about 100 of the 400 properties. He stated that of the 400 properties about 140 have leases similar to the leases for the subject properties. He stated that in many cases they have had undertaken repairs to the roofs, chimneys and where the costs of the works has not been covered by insurance they had to organised the demand for money. He stated that if Gateway had charged a management fee at an hourly rate on an ad hoc basis this would have been more costly than the fixed fee. He stated that the landlord has various obligations under the leases and if a landlord chooses to appoint a managing agent to ensure the landlords obligations are complied with the agents fees should be recoverable as part of the service charge. He accepted that no works had been undertaken at the subject properties but he stated that it had been their intention to inspect the properties and deal with all the statutory requirements such as a health and safety assessment as well as undertake any works that may have been necessary. He stated that the Applicants acquired the freehold before they managed to inspect and survey the property.

35. He stated that it is the landlord's choice to have a managing agent in place to deal with any queries from the leaseholders and any reactive repairs as and when required. He stated that they wrote to the Applicant's on the 29th May 2009 informing them that they had been appointed as managing agents and that they would be available to deal with any repairs etc. He stated that the leaseholders had not reported the need for any repairs.

36. Mr Day- Marr submitted that the management fees were in his opinion reasonable in view of the increased liability for managing agents due to changes in legislation.

37. He referred to various LVT decisions in his statement but accepted that the decision of one LVT cannot bind another. He accepted that the lease in the Pall Mall case includes a sweeping up provision and so it is not similar to the leases of the subject properties. He stated that the Winner Street decision is a case in point, as the lease for the property is very similar to the leases of the subject properties, in that it does not include a specific provision for the recovery of a management fee and the lease does not have a sweeping up clause. The Lessee in the Winner Street lease covenants to *"....contribute annually or more frequently as the Lessor shall require when called upon to do so by the Lessor a one quarter share of the costs expenses and outgoings and matters mentioned in Clauses 3(a) and 3(b) hereof"*. Clauses 3(a) and 3(b) of the lease sets out the Lessors covenants to maintain repair and decorate the property and the building.

38. Mr Day- Marr referred the Tribunal to paragraph 33 of the Winner Street decision which states *"On management fees, the Tribunal accepts Mr Marr's point that costs which flow from the matters referred to at Paragraphs 3(a) and 3(b) of the lease are essential for the Landlord to uphold his covenants as and when required. This Tribunal also accepts that management fees and associated professional fees and costs are all an integral part of the requirement as one cannot exist without the other."*

39. He also referred to the Lands Tribunal decision in the case of London Borough of Brent V Nellie Hamilton LRX/51/2005 referred to in the Winner Street Decision in which the President of the Tribunal George Bartlett found that there was no justification for limiting clear terms of a lease.

40. Mr Day- Marr relied on the definition of service charge under Section 18 of the 1985 Act, in particular Section 18(3) which provides that a service charge includes overheads. He produced a copy of quote of a minimum management fee of £1000 obtained from another management company for managing a property with 2 units in the Westcliff on Sea Essex postal area. He stated that on all new business Gateway currently charges £250 plus VAT per unit as a minimum charge but as the fees charged in respect of the subject property is only £150 plus VAT due to limited management activity. He stated that a management company should not be expected to be on standby, maintaining tenant records with the potential to react to requests from tenants on behalf of the landlord free of charge.

41. In summary the Respondent argued that management fees are recoverable under the leases and the sums charged are reasonable.

The Tribunal's decision

42. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

43. The issue before the Tribunal is to determine whether management fees are recoverable from the Applicants by the Respondent as part of the service charge payable under the leases.

44. The Respondent argues that the Applicants admitted liability for the management fee upon paying the sum demanded as part of the deal struck between the parties on completion of the sale and purchase of the freehold interest under the enfranchisement process. The Tribunal does not accept that this is the case. The Tribunal accepts that the Applicants had made Gateway aware that they disputed liability to pay the management fee. Gateway was acting on behalf of the Respondent, and the Respondent is deemed to have had notification of the dispute. The fact that the Applicants paid the management fee as part of the completion of the sale and purchase of the freehold does not mean that they accepted liability for the sum. The protection

afforded to leaseholders under the provisions of s. 27A(5) of the 1985 Act, which provides that the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment cannot save as provided for by s.27A(4) be ousted by a contractual agreement. The Applicants stated that they made the payment but relied on the protection afford by s.27A(5). Although the Applicants purchased the freehold interest in the building, they are also leaseholders and as such are entitled to the protection afforded by s.27A. The application before the Tribunal has been made by the Applicants as leaseholders under the provisions of s.27A of the 1985 Act. Regardless of the sale of the freehold and the amount paid, since none of the exclusions under s. 27A(4) apply, the Tribunal has jurisdiction to determine whether a service charge is payable. The Tribunal has no power to overturn the legal completion of the sale of the freehold.

45. The lessee under the provision of the lease is set out in Clause 1 of the sample lease agrees as follows:

> *"...paying by way of further or additional rent from time to time a sum or sums of money equal to one third of the amount which the Lessor may from time to time expend in complying with the covenants contained in Clause 3(iii) hereof such last mentioned rent to be paid within twenty one days after written notification to the lessee of such expenditure"*

46. Under Clause 3(iii) the Lessor covenants as follows:

> *"To repair maintain and renew the main structure of the building including the external walls roof roof timbers foundations and footings main timbers and all rainwater goods and all sewers drains gas pipes electric wires cables passageways and entrances and anything else used in common with the Lessor and other lessees in the building and external access areas"*

47. The Tribunal accepts the principle confirmed in the cases of Gilje and Embassy Court Resident's Association that if a landlord seeks to recover money from a tenant there must be clear contractual provisions entitling him to do so. In addition the Tribunal accepts that in the case of any ambiguity the contra proferentem rule of construction applies and so the lease having been drafted by the landlord falls to be construed against the landlord.

48. In the Embassy Court Resident's Association case Cumming Bruce LJ stated that *"No doubt in the case of leases entered into between a landlord and a tenant it is necessary for the landlord to spell out specifically in the terms of the lease, and in some detail, a sufficient description of every financial obligation imposed upon the tenant in addition to the tenant's obligation for rent ...."* . However having stated the basic principles of lease construction Cumming Bruce LJ accepted that under certain circumstances a term may be implied into a lease enabling a landlord to recover costs. The landlord in that case was a resident's association with no funds of its own and in order to give

business efficacy to the transaction it was held that a term should be implied into the leases to the effect that the resident's association could incur expenditure to carry out the functions imposed on it and could recover the costs (including the cost of employing a managing agent) and to recover these from service charge. The case also supports the view that for a proper understanding and construction of a lease account should be taken of the background and factual matrix surrounding the grant of a lease. The Tribunal appreciates that the case is not on all fours with the facts before the Tribunal but nevertheless it provides useful guidance as to the approach to be taken in the interpretation of leases.

49. The Tribunal noted the information given by the original landlord in the replies to pre contract enquires. Mr Kang's statement that "...*we advise that there is no maintenance charge and no large expenditure is anticipated* ..." , does not precludes the possibility of a service charge as clearly the lease provides for a service charge and it does not prevent the service charge including a managing agents fee. The Tribunal considers the provisions of the lease to be clear in that the landlord is entitled to be reimbursed a third of the amount expended by the landlord in complying with its repairing and maintenance obligations set out under Clause 3(iii). Since there are three flats and each lease requires a contribution of a third of the expenditure, the landlord is entitled to be reimbursed all its expenditure in carrying out the tasks set out in Clause 3(iii). The case of London Borough of Brent v Hamilton LRX/51/2005 supports the view that if repairs or decorations are to be carried out someone will have to be paid for doing the work, and someone will have to arrange the work to be done, supervise it, check that it has been done and arrange payment for the work. If a landlord incurs expenditure it is reasonable that the lessees pay a reasonable part of it.

50. The Applicants admit that if any of the tasks specified in Clause 3(iii) had been carried out and it had been necessary to employ a managing agent to undertake the tasks, they would have had no objection to paying the fees as part of the service charge (provided the amounts charged were reasonable). This admission reveals that under certain circumstances the Applicants consider the lease permits the recovery of a management fee. Where for example major works are proposed it would be sensible and reasonable to ensure that the consultation process and works are properly managed and a landlord may well consider it prudent to engage the services of a managing agent.

51. The question of whether or not a management fee is recoverable under the lease, depends on the provisions of the lease. The quality and level of service (if any) actually provided are factors to be taken into account in determining the reasonableness of the amount of the fee charged.

52. In this case it is admitted that in the year in question none of the tasks set out under Clause 3(iii) were carried out. Indeed the Applicants claim that the landlord has never carried out any of these tasks since the grant of the leases. The Respondent landlord has chosen to employ a managing agent to attend to

queries and deal with any ad hoc repairs and leaseholders requests and to ensure compliance with its obligations under Clause3(iii). However the Tribunal accepts the point made by Mr Day – Marr that a landlord is entitled to engage a managing agent on a retainer to be on stand –by and under such circumstances the managing agent is in principle entitled to a management fee even where there is very little if any actual management required.

53. The Tribunal notes that the previous landlords did not charge a management fee. There was no evidence before the Tribunal as to reason why such a fee was not charged. There could be a number of reasons for not charging a management fee, it may be that the property formed part of a small portfolio of properties owned by the landlord which he chose to manage himself. It is a matter for the landlord's discretion to decide how best to manage his property and whether or not to employ a managing agent. The provisions of the lease allows the landlord to recover the amount expended in complying with the covenants under Clause 3(iii), if the landlord chooses to employ a managing agent to ensure compliance with those covenants the costs of employing the managing agents must therefore fall within be the amount expended by the landlord in complying the covenants.

54. On the issue of the reasonableness of the fee charged, the Tribunal gave little weight to the quote produced by Mr Day-Marr as it was a one off quote. The Tribunal accepts that it is more cost effective for a managing agent to be employed on the basis of a set fee retainer than on a job by job basis. However given the fact that the block is a relatively small block and during the years in question the managing agents did not undertake any of the tasks under Clause 3(iii) of the lease the Tribunal considers a fee of £75 inclusive of VAT per unit to be reasonable and so allows the total sum of £225 in respect of the management fees for each service charge year. The Tribunal noted that the Applicants had already paid £1548.43 to the Respondent in respect of the total service charge for the years in question. However without a full statement apportioning the payments between the individual service charge items and each Applicant the Tribunal was not able to calculate the amounts if any remaining due.

55. The lease provides that the sum is due within 21 days of notification.

Application under s.20C and refund of fees

56. In the application form, the Applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines that although Mr Day- Marr on behalf of the Respondent indicated that no costs would be passed through the service charge, for the avoidance of doubt, the Tribunal nonetheless determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

Chairman: _____

Mrs N Dhanani

Date: 10 August 2012

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 a Leasehold valuation 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 a Leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the Tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

Section 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 leasehold valuation 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 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;
  (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.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

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 a leasehold valuation 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 a leasehold valuation 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 12, paragraph 10

(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where—
(a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
(b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
(a) £500, or
(b) such other amount as may be specified in procedure regulations.

(4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.