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**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/00BJ/LSC/2011/0780

**Premises:** 169 and 177 The Warwick Buildings, 366  
Queenstown Road, London SW8 4PL

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**Applicant(s):** Mr Lee Phillips (leaseholder flat 169  
Ms Lala Dizon (leaseholder flat 177)

**Representative:** In person

**Respondent(s):** L & Q Housing Association

**Representative:** Prince Evans Solicitors LLP

**Date of hearing:** 25 and 26 September 2012

**Appearance for Applicant(s):** Mr Lee Phillips in person

**Appearance for Respondent(s):** Mr Richard Hayes, counsel

**Leasehold Valuation Tribunal:** Ms F Dickie, Chairman  
Mr H Geddes, Professional Member  
Mr O. Miller, Lay Member

**Date of decision:** 6 December 2012

### **Decisions of the Tribunal**

The Tribunal determines that the following sums are payable by the Applicants for service charges.

- **Years ending 31 March 2008, 2009, 2011 and 2012**

The tribunal allows the amount of £115.77 per month (£1389.24 per annum) as reasonable and payable in Estate Charges by Mr Phillips.(representing his 1.8538% share of expenditure). Service charges are payable by Ms Dizon in the sum of £595.10 per annum for the period of her liability as leaseholder, representing her proportionate share of expenditure being 0.7941.

- **Year ending 31 March 2010**

Service charges of £131.00 are reasonable and payable

- **Fees and Costs**

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 lessee Applicants through the service charge

The Tribunal makes no order for reimbursement of Tribunal fees paid by the Applicants.

### **The Application**

1. The Applicants seek 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 them in respect of the service charge years 2007 – 2012. The subject premises are two self contained flats within a purpose built block (also known as block E) comprising 242 flats situated on a development of eight blocks comprising some 1088 dwellings in total. The freeholder of the entire development is Berkeley Homes, which granted a lease of block E to London & Quadrant's predecessor in title, Threshold Key Homes Ltd., which in turn underlet the flats in block E on shared ownership leases. The Applicants' underleases were granted for a term of 125 years from 26 May 2006. The tribunal was provided with a copy of both underleases.
2. The relevant legal provisions are set out in the Appendix to this decision.

### **The hearing**

3. The Applicant Mr Phillips appeared in person at the hearing and the Respondent was represented by Mr Hayes of counsel.

### The background

4. Photographs of the estate were provided to the tribunal. The Tribunal did not consider that an inspection was necessary, nor would it have been proportionate to the issues in dispute.
5. Mr Phillips purchased his lease on in 2007. Ms Dizon purchased hers in April 2008. Clause 2 of the lease requires payment:

(c) by way of further rent the Service Charge calculated and payable in the manner specified in Clause 7 hereof and (d) a fair and reasonable proportion attributable to the Premises (to be determined by the Landlord absolutely) of the total costs incurred by the Landlord pursuant to the Superior Lease and the Underlease (“the Estate Charge”).
6. The Superior Lease is defined as a Lease of Block E4 dated 28 October 2004 and made between Berkeley Homes (Central London) Limited (1) and the Landlord (2). A copy of that Superior Lease was provided to the tribunal. It requires the Tenant under that Superior Lease to pay service charges to the freeholder in accordance with Schedule 7. It is not necessary to set out the terms of that Schedule in this decision.
7. It is only sums charged as Estate Charges – paid by London & Quadrant to Berkeley Homes under the Superior Lease - that are in issue in these proceedings.

### The Preliminary Issue

8. A pre trial review took place on 31 January 2012 at which directions were issued for the determination of a preliminary jurisdictional issue on 21 March 2012. At the hearing on that day the tribunal adjourned its preliminary determination to the full hearing of the application, and issued the directions, which were amended on 29 August 2012 at a further pre-trial review.
9. A previous Leasehold Valuation Tribunal (Case number LON/00BJ/LSC/2010/0028 – “the previous proceedings”) has determined an application under s.27A of the Act made by a number of leaseholders in the same block – block E – in respect of Estate Charges. The determination is dated 15 July 2011 and the tribunal found that the Estate Charges demanded in the service charge for the years ending March 2008, 2009, 2010, and estimated for the year ending March 2011 were not reasonable and not payable by the Applicants. London & Quadrant has given effect to that decision by adjusting the service charge accounts of the Applicants to those proceedings, but it has refused to apply the decision in that case to the two Applicants in these proceedings, Mr Phillips and Miss Dizon, since London & Quadrant did not consider that they had been parties to the previous proceedings or that they were otherwise bound to apply the decision to their service charges.

10. However, Mr Phillips and Ms Dizon believed that they were parties to those proceedings, having been added as Applicants by the tribunal during the course of the hearing on 14 March and 13 June 2011. The decision of the tribunal in that case names 25 leaseholders Applicants. Mr Phillips and Ms Dizon are not among them. The text of the tribunal decision makes no reference to any further persons having been made Applicants and no record of an application to be joined appears on the tribunal's file.
11. At the hearing of the present application Ms Jennings, a leaseholder and lead Applicant in the previous proceedings, gave evidence regarding the preliminary issue on behalf of Mr Phillips and Ms Dizon. She had attended the hearing and made oral submissions on behalf of the leaseholders. She gave evidence that during the course of that hearing she had given the names and flat numbers of Mr Phillips and Ms Dizon to the tribunal, and that they had been added to the list of Applicants, and their flat numbers read out in the list of Applicants towards the end of the second day of the hearing.
12. Mr Watts, another lead leaseholder Applicant in the previous proceedings also gave evidence on behalf of Mr Phillips and Ms Dizon, explaining that they had contacted him to become a part of the group of tenants taking the tribunal claim, but not until after it had been issued. As a result he said he rang the tribunal clerk and was told that he had to wait until the first directions hearing to add further Applicants. After the hearing, (which neither Mr Phillips nor Ms Dizon had attended), and on receipt of the directions, Mr Watts said he did not count the Applicants or contact the tribunal to say the heading in the directions (which did not include these two tenants numerically, by name or flat number), was wrong or incomplete. Mr Watts said that at the directions hearing in March only the flat numbers of all of the Applicants were read out, not their names. On receipt of the final decision of the tribunal, Mr Watts noticed that it recorded the incorrect number of Applicants, but did not recall contacting the tribunal clerk about a correction. Signed consent forms from all the leaseholders were apparently shown to counsel for Berkeley Homes at the pre trial review.
13. Mr Phillips said that Mr Watts had made that call to the tribunal, and confirmed that he had not played any active part in the proceedings other than by contributing a share of the application fee, though he was updated regularly on progress. He showed that he was in the e-mail group of tenants receiving updates.
14. On behalf of the Respondent, Mr Smith - Service Charge Analyst for London & Quadrant - gave evidence that he too had attended both days of the final hearing of the previous application, but had no recollection that any further leaseholders had been added as Applicants. He observed that Mr Watts did not mention in his witness statement that people were added as parties at the hearing itself, but instead had said that the two additional names were added by telephone, and that this contradicted his oral evidence to the tribunal.

15. Mr Smith said that he had no recollection that on either hearing date he was asked about parties being joined. He said that the Chair had asked if the list was complete and the Applicants had indicated that it was. He did not recall any tribunal member making any written additions to that list of Applicants. He said Mr Phillips had contacted him in September 2011, after issue of the tribunal's decision and said that he wanted the decision to apply to him.
16. Mr Hayes, making submissions for the Respondent, said that absent documentation from the tribunal the Respondent is firmly against any suggestion that any parties were added in the proceedings. He considered it unlikely given the number of directions and decisions of the tribunal that an application to join would have slipped out of the narrative or directions. He accepted it was intended by the Applicants that Mr Phillips and Ms Dizon would be part of the leaseholders' action, but said it was likely in the confusion of the hearing that the matter of joinder was simply missed.
17. Assuming the current Applicants were not parties in the previous proceedings, Mr Hayes made representations as to why there was no abuse of process by the Respondent in the current proceedings. Mr Hayes relied on the tribunal's limited powers by regulation in support of his argument that the Respondent was not bound by the decision as against these two new Applicants. He referred to Regulation 11 of the Leasehold Valuation Tribunals (Procedure)(Regulations) 2003, which does not confer a jurisdiction on the tribunal to strike out or bar a defence for abuse of process. Furthermore, he relied on the fact that Regulation 10 provides a specific procedure for representative applications, which was not applied in the present case. He acknowledged that if a direction had been made by the tribunal on the Regulation 10 point it might have been possible for other leaseholders on the block to mount an argument for abuse of process. Mr Hayes submitted that it was hard to see how the Respondents' contesting this application, with evidence they could not previously produce, could be an abuse of process. He referred the tribunal to leading case law on the issue.

#### **Determination on the Preliminary Issue.**

18. Regulation 11 confers no jurisdiction on the tribunal to strike out or bar a Respondent for the broad concept of abuse of process. Regulation 10 provides a specific procedure for representative applications and this was not followed. In the present circumstances, the tribunal cannot conclude that it would be an abuse of process to contest this application on evidence which the Respondent had been unable to obtain in the previous proceedings. That previous application had been decided on its specific facts – namely the limited evidence produced by the Respondent. The additional evidence on expenditure now available had not been tested by the tribunal.
19. The tribunal concurs with the Respondent's submission that the applications of the leaseholders in question are to be treated individually. The landlord should be able to judge how much powder and shot to use depending on how many tenants make an application and what is at issue.

20. By his own admission, Mr Phillips took a back seat but contributed £20 to the cost of the application fee, by giving the money to Mr Watts and not directly to the tribunal.
21. The parties referred the tribunal to the decision in *Johnson v Gore Wood* [2001] 2 WLR. In the event that the tribunal has an inherent jurisdiction to bar a defendant for abuse of process, the conduct of London & Quadrant in seeking to bring forward its case now because of difficulties it had faced in producing evidence in relation to the previous case does not constitute such abuse. Regulation 5(3) specifically lays out a mechanism for treating later applications as an abuse of process, but the present application does not fall within that regulation.
22. The tribunal is satisfied that Mr Phillips and Ms Dizon were not Applicants in the previous tribunal proceedings. The contribution by Mr Phillips to the application fees is a matter between the leaseholders, but not one which affects their standing with the tribunal. Correspondence produced prior to the issue of proceedings to show Mr Phillips' involvement in this dispute did not relate to Ms Dizon and only concerned the inspection of invoices. It did not put the Respondent on notice that these Applicants intended to be joined as parties and does not assist their case.
23. No documentary support is in existence in support of the contention that Mr Phillips and Ms Dizon were added as Applicants. No written application that they be joined was made and the evidence that an oral application was so made is weak and in dispute. The question of who was and was not a party is a matter of record. The present tribunal finds no evidence on which it could conclude that Mr Phillips and Ms Dizon were made parties by the previous tribunal. No query was raised with any previous tribunal as to the completeness of the list or number of Applicants recorded on its directions or final determination. There is no evidence there was an accidental slip or omission by the tribunal that determined the previous application, and the present tribunal has, for the sake of fairness and completeness, satisfied itself as to this.
24. Accordingly, having determined that the decision of the previous tribunal does not bind the Respondent as against these two Applicants, it falls to the tribunal to determine on the evidence the service charges payable for all of the years specified in the application.

### **The Disputed Service Charges**

25. The years in dispute in the present application are the service charge years 2007 – 2012 inclusive. No challenge is made regarding the quality of services provided. All sums in issue are the Estate Charges paid by the Respondent to Berkeley Homes. The Respondent's management charge has not been disputed. The Estate Service Charge Percentage in the head lease is defined as:

"4.15% or such other fair and reasonable percentage as shall from time to time be properly allocated to the Premises by the Landlord".

The landlord had actually applied a percentage of 4.196%.

26. The managing agents for Berkeley Homes had been Gross Fine until 1 January 2009, when Consort Property Management took over. Broadly speaking, the Berkeley Homes Estate Charges were calculated by Berkeley Homes and charged to London & Quadrant for each calendar year, and charged by London & Quadrant in the leaseholders' service charges for the year ending 31 March each year (though Berkeley Homes did not actually make a charge to London & Quadrant in every calendar year).
27. The reason the tribunal in the previous proceedings brought by 25 leaseholders had found no service charges payable was that London & Quadrant had failed to provide any meaningful evidence to show how the costs had been incurred by Berkeley Homes pursuant to the Superior Lease or how they had been apportioned. Berkeley and its agent had refused to play any active part in those proceedings.
28. The previous tribunal was very critical of the Respondent's lack of preparedness for the previous proceedings. No proper explanation had been given of the charges said to have been incurred and passed on to the Applicants. There was no transparency in the costs charged and the evidence of the Respondent lacked clarity and explanation. The percentage charged to the lessees was unexplained and some of the costs appeared to be unreasonably high without explanation. The tribunal found the whole arrangement of the first Respondent's collection of costs, without rigorous examination of the charges they themselves were required to pay before passing them on to the lessees, to be wholly unsatisfactory.
29. The tribunal had no doubt that some services had been provided, but could not determine that the costs had been reasonably incurred or properly apportioned. It is to be noted that the previous tribunal was "unable to even adopt a 'broad brush' approach to these charges, given the lack of evidence provided by the First Respondent and its inability to explain the costs incurred or the percentages used."
30. The thrust of the Respondent's case in the present proceedings was that it had now done as much as it could to provide justification for the expenditure by Berkeley Homes which it had paid under the terms of the superior lease and sought to pass on as service charges to the Applicants in the present case. The decision of the previous tribunal was made in the absence of evidence and that, said London & Quadrant, was no longer the case. Where evidence (or complete evidence) could not be made available in support of some periods of expenditure, it would be appropriate for the tribunal to use a "broad brush" approach to determine reasonable and payable service charges based on evidence of expenditure in other periods.

**Year end 31 March 2008**

31. During this year, Mr Phillips was charged 1.8623% of total expenditure. Expenditure for the block was £114,122.40 of the freeholder's total expenditure for the year end of 31 December 2007 (as operated by the freeholder).
32. Gross Fine's audited account for the freeholder's expenditure for the year ending 31 December 2007 were produced. This is the amount the tenant in his application form acknowledged having paid as an estimate upon demand for this year, and this figure in the application was not disputed by the Respondent as inaccurate, though that figure appeared to be an estimate of expenditure for 2010/11 and 2011/12 based a half year estimate which was applied in error over 12 months.
33. The landlord's schedule provided after the hearing stated that expenditure of £114,000 had been incurred in the year ending December 2007 by the freeholder, but no explanation was provided as to how this figure was supported by the accounts. In oral evidence Mr Smith had stated that expenditure for the year ending December 2007 by the freeholder was £88,649 – being the sum of the obligated services £63,804, the Internal Expenses of £17,325 and the Reserve Fund contribution of £7,500.
34. The tribunal accepts the interpretation on the accounts put forward by Mr Smith in preference to the higher figure now suggested. Accordingly the tribunal is satisfied that the freeholder incurred expenditure of £88,649 for that year.
35. Mr Smith gave evidence that a percentage of 1.8538% should be applied for Mr Phillips as per the lease (the equivalent figure for Ms Dizon is 0.7941%). Counsel asserted, and suggested in subsequent written submissions, that very slightly higher percentages had been applied in this year, but the tribunal found no documentary support for that assertion. Accordingly, it finds the proportions of actual expenditure to be £1643.38 and £703.96.
36. The tribunal however saw no invoices supporting this expenditure, or indeed any demands. Nevertheless, the issue of demands for estimated expenditure was not in issue. Mr Phillips acknowledged he had been paying estimated service charges throughout, and in his application he said he was paying £115.77 pcm – or £1389.24 for the year (a figure not challenged by the Respondent). Whether this precise amount was correct or not (it appeared to be derived from an estimate for a subsequent year), the tribunal is satisfied that estimated service charges were paid in response to demands.
37. The landlord's accounts being unsupported by invoices, the tribunal declines to allow that figure in total. The landlord invited the tribunal to take a broad brush view, and in the circumstances the tribunal considers this to be an appropriate approach. Mr Phillips sought a determination from the tribunal in



line with that in the previous proceedings, that no service charges were payable for this year. However, the significant feature differentiating the two applications is that the present tribunal has the benefit of good evidence supporting expenditure in future years, from which it is able to take the "broad brush view" suggested by the landlord. The tribunal considered carefully the appropriate figure to allow. It considers, not least because it reflects the allowable expenditure it finds in respect of some subsequent years, that a figure of £1389.24 per annum for Mr Phillips is the figure reasonable and payable for this year. Ms Dizon did not purchase until April 2008 and this year is therefore not relevant to her.

### **Year end 31 March 2009**

38. Total expenditure by the freeholder for the year ending 31 December 2008 was £102,192.75. Also accounted for was expenditure by the freeholder of £77,873.93 referable to the year ending 31 December 2006. The Respondent gave no evidence of this at the hearing and the 2006 charge was only referred to in its subsequent written submissions.
39. The tribunal was provided with a copy of a notice under section 20B dated 28 September 2007 notifying Mr Phillips of service charge expenditure for the year ending 31 March 2007 in the sum of £181,891. The accounts for that year were not produced and it was not made clear whether the Applicant(s) were responsible for this sum (which predated their purchases). On the case as advanced on the evidence at the hearing by the Respondent the tribunal finds no brought forward service charges from 2006 are payable by the Applicants.
40. Expenditure in the Gross Fine accounts for the year ending 31 December 2008 was not supported by any invoices, though the Respondent did produce a purported breakdown of that expenditure in a spreadsheet it had inherited from the previous managing agent. However, on analysis of this document at the hearing it was clear that this did not adequately support that expenditure – The Respondent could not demonstrate to the tribunal that the totals under each head added up to the same amounts as in the accounts.
41. Mr Phillips disputed a number of items of expenditure this year, such as the cost of a sign for the hotel that was located on the development. Taking into account his disputes, and on the evidence before it, the tribunal cannot do any better than apply the figure Mr Phillips states in his application he paid on demand for this year, namely £115.77 per month or £1389.24 per annum – being the figure the tribunal on better evidence in subsequent years finds is reasonable and payable.

### **Year ending 31 March 2010**

42. In respect of this year, the £131 management fee only was sought by the landlord, as conceded in written submissions by counsel, and the tenants had not disputed this sum.

#### **Year ending 31 March 2011**

43. The tribunal was advised in the latter stages of the hearing that the Respondent had reached a decision to charge the tenants only the amount of the estimated demand for that year – which had been in the sum of £115.77 per month. This was in spite of the actual expenditure shown in the accounts being substantially higher. It is understood that a mistake was made by the Respondent in estimating the annual expenditure, in that a figure for a 6 month estimated was applied as an annual estimate. Nevertheless, the Respondent decided to honour that figure by limiting the demand for actual expenditure to that amount.

44. The tribunal heard evidence of expenditure during this year, and supporting invoices were produced. Before the tribunal was informed of the landlord's concession, Mr Phillips challenged a number of items of expenditure, such as staff milk and training, general repairs, and bulk refuse collection. Notwithstanding that dispute had been raised in relation to those and other invoices, on any view the tribunal concludes that £115.77 per month was reasonable and payable as a service charge for that year, representing as it does a very substantial reduction on actual annual expenditure.

45. The service charge expenditure for the year ending 31 March 2011 also included a demand for the freeholder's expenditure for the year ending December 2009. It is understood that no demand for that expenditure was received by London & Quadrant from the freeholder in the service charge year ending March 2010. The decision to cap service charge demands for the service charge year ending 2011 effectively therefore applies to two years' expenditure by the freeholder during the years ending December 2009 and December 2010. However, the tribunal understood that to be London & Quadrant's concession, and if it was not intended to be so, that was not made clear in oral or written submissions.

46. Therefore, in respect of Mr Phillips' service charges the tribunal allows £115.77 per month for this year (£1389.24 per annum).

#### **Year ending 31 March 2012**

47. Again the landlord sought a determination that £115.77 per month was reasonable and payable by Mr Phillips, although the annual service charge and freeholder accounts, supported by invoices, showed much higher expenditure. Again, the wrong estimated amount had been demanded and again the landlord had decided to honour its mistake and cap service charges.

48. For the same reasons as apply to its decision in respect of the previous year, the tribunal allows the sum of £115.77 per month (£1389.24 per annum) as reasonable service charges payable by Mr Phillips.

**Application under s.20C and refund of fees**

49. The tribunal has power under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 to refund fees paid in respect of the application/ hearing. The tribunal takes into account the determinations above, and in particular that the Applicants' case failed in respect of the preliminary issue. They had issued fresh proceedings when they might previously have applied in writing to be joined as Applicants in the previous tribunal application made by their neighbours. In the circumstances, the Tribunal does not order the Respondent to refund any fees paid by the Applicants.

50. The Applicants 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 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:

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Ms F Dickie

Date:

6 December 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.