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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 & THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002

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| **Case Reference:** | LON/00BA/LSC/2013/ 0021 |
| **Premises:** | 232 Brangwyn Crescent London SW19 2UF |
| **Applicant(s):** | Sinclair Gardens Investments (Kensington) Limited |
| **Representative:** | P Chevalier &Co Solicitors |
| **Respondent(s):** | Charles Lyn Clemo |
| **Representative:** | None |
| **Date of hearing:** | 20 March 2013 |
| **Appearance for Applicant(s):** | Asela Wijeyaratne ( Counsel)<br>Mark Kelly (Director of First Management Limited t/a Hurst Management and Cullenglow t/a Princess Insurance Agencies) |
| **Appearance for Respondent(s):** | In person |
| **Leasehold Valuation Tribunal:** | N Dhanani LLB ( Hons)<br>T Sennett |
| **Date of decision:** | |

## Decisions of the Tribunal

(1) The Tribunal determines that the sum of £446.77 is payable by the Respondent in respect of the service charges relating to insurance premiums for the period September 2011 to September 2012.

(2) The Tribunal determines the administration charges in the sum of £146.70 to be reasonable and payable by the Respondent to the Applicant.

(3) The Tribunal makes no order under section 20C of the Landlord and Tenant Act 1985 in relation to the landlord's costs of the Tribunal proceedings.

(4) Since the Tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Kingston Upon Thames County Court.

## The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and administration charges payable by the Respondent in respect of the service charge period September 2011 to September 2012.

2. Proceedings were originally issued in the Kingston Upon Thames County Court under claim no. 2YL80160. The claim was transferred to this Tribunal, by order of District Judge Gold on 12 December 2012.

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

## The hearing

4. The Applicant was represented at the hearing by Mr Wijeyaratne of Counsel and Mr Kelly. The Respondent appeared at the hearing in person.

5. Immediately prior to the hearing Counsel for the Applicant handed the Tribunal a skeleton argument and supporting documents.

## The background

6. The Property which is the subject of this application is one of twelve flats in the building known as 228-250 (Evens) Brangwyn Crescent London 2UF ("The Building"). The flats are all let on long leases. The Applicant owns the freehold reversion in the building. The building is managed by First Management Ltd on behalf of the Applicant.

7. 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.

8. The Respondent holds a long lease of the Property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

## The issues

9. At the start of the hearing the parties identified the relevant issues for determination as follows:

   (i) The liability to pay and/or reasonableness of service charges in respect insurance premiums for the period September 2011 to September 2012, and

   (ii) The liability to pay and/or reasonableness of the administration charges in the sum of £146.70 comprising:

      a. Section 153 Notice £0.75

      b. Section 153 Notice £0.75

      c. Letter before action £18.60

      d. Letter before action £18.60

      e. Cost of instructing solicitors £108 ( £90 plus VAT)

## The Applicant's Case

10. The Applicant relied on the witness statement of Mr Kelly and the skeleton argument produced by Counsel as well as the oral submissions made at the hearing in support of its case.

### Insurance Premium

11. Counsel for the Applicant stated that the service charge claim relates to the Respondent's share of the premium for buildings insurance and terrorism insurance in respect of the Property. The hearing bundle includes a copy of the certificate of insurance [17] which shows the premium for the buildings insurance as £4596.11 and the premium for terrorism insurance as £765.49 for a sum insured of £1,660,144.00.

12. The Applicant has covenanted under the provisions of clause 3(b) of the Lease as follows:

*"At all times during the term hereby granted to insure and keep insured the Development in the full rebuilding value thereof against loss or damage by fire and other risks normally incorporated in a comprehensive policy for such a development in some insurance office of repute and to pay all premiums necessary for that purpose ....."*

13. Counsel for the Applicant explained that the Applicant's covenant to insure under clause 3(b) of the Lease is separate from the Respondent covenants under clause 2(19) to pay the Managers towards the costs of the services. He stated that the Applicant freeholder is responsible for the placing of insurance but not for the management of the building. The Applicant relied on the Respondent's covenant under the demising clause and clause 2(1) of the Lease to pay the insurance premium by way of additional rent. Counsel stated that the Respondent is liable to pay 1/12$^{th}$ of the insurance premium.

14. The Applicant contended that terrorism cover has always been a part of comprehensive buildings insurance cover. The Applicant asserted that from 2003 onwards it has been necessary to itemise the premium for terrorism cover separately as the cover is now re-insured by a Government sponsored scheme. Accordingly, the Applicant contended that it is normal practice for landlords to include terrorism insurance cover and that it is entitled under the terms of the Lease to effect such cover. In addition Counsel for the Applicant pointed out that in this case as there is no restriction in the Lease on subletting the whole or part of the Property, the landlord has no control over who the Respondent permits to occupy the Property and this has an effect on the level of insurance premium.

15. Counsel for the Applicant stated that the Applicant relied on the test set out in the Court of Appeal case of Berrycroft Management Co. v Sinclair Gardens Investments (Kensington) Ltd [1997] 2 HLR 444 and stated that the starting point for this Tribunal is to assess whether the insurance has been arranged in the normal course of business and whether there have been any special circumstances. He referred the Tribunal to the guidance in Forcelux Limited v Sweetman LRX/14/2000 which affirmed the test set out in Berrycroft Management Co. v Sinclair Gardens Investments (Kensington) Ltd:

*" the language of s19 ....was not concerned with whether costs per se were reasonable but the broader question of whether those costs were reasonably incurred ... The question of whether costs were reasonably incurred was not interchangeable with the question of whether the relevant service could have been obtained more cheaply .. an inquiry as to whether costs had been reasonably incurred should focus on the reasons why the decision maker (the landlord in this case)elected to incur the costs in question, for example, why he chose a policy on the terms offered by a particular insurer.*

*If that decision was made on reasonable grounds, then it must follow that the costs thereby incurred will have been reasonably incurred for the purpose of s.19"*

16. Counsel for the Applicant submits that the insurance was arranged in the normal course of business within the meaning detailed in the Court of Appeal case of Berrycroft Management Co. v Sinclair Gardens Investments (Kensington) Ltd [1997] which found in respect of the landlord's insurance obligations that:

*"...the landlord cannot recover in excess of the premium he has paid and agreed to pay in the ordinary course of business as between himself and the insurer. If the transaction was arranged otherwise than in a normal course of business for whatever reason then it can be said that the premium was not properly paid having regard to the commercial nature of leases in question or equally it can be supposed that both parties would have agreed with the officious bystander that the tenant should not be liable for a premium which had not been arranged in that way.*

*If this test is correct, as in my judgment it is, then the fact that the landlord might have obtained a lower premium elsewhere does not prevent him from revering the premium which he has paid. Nor does it permit the tenant to defend the claim by showing what other insurers might have charged ... if he approaches one insurer, being one insurer of repute, and a premium is paid in the normal course of business as between them reflecting the insured's usual rate of business of that kind, then in my judgment the landlord is entitled to succeed".*

17. Mr Kelly stated that the Applicant has owned the freehold of the building for over 20 years and has always included terrorism cover in the insurance. Counsel for the Applicant stated that the Applicant had demonstrated that insurance had been effected in the ordinary course of business, and submitted that the costs had been reasonably incurred.

18. Counsel for the Applicant explained that insurance business is conducted by the Applicant through its agent Princess Insurance Agencies ("PIA") who instructs insurance brokers H W Wood, to present the Applicant's property portfolio in the market place to obtain cover. H W Wood in turn effect insurance in the market place by first approaching the current insurers and if they are unable to offer acceptable terms then they approach other similar insurers.

19. Mr Kelly stated that the Applicant instructs PIA to test the market every two years and PIA in turn instructs H W Wood or other similar brokers. Mr Kelly referred the Tribunal to the Post Code Rating Guide for PIA [36], the guide had been produced by Liberty Mutual Insurance Europe Limited at PIA's request and it showed that the usual Rate on Sum Insured for the SW19 post code is 3.2810% but for this Property the rate was 2.612%.

20. Mr Kelly stated that PIA is an independent insurance agent, he stated that it is independent of the Applicant who is the freeholder and independent of the management company First Management although all three companies are subsidiaries of Forbes Caroon, the holding company.

21. He reiterated the statement in his witness statement [14] that the commission paid to PIA is purely as remuneration for the claims handling service and it is not paid as a reward. He stated that the premium charged to the lessees is the actual paid by the landlord.

22. Mr Kelly rejected the comparable insurance schedules produced by the Respondent as they related to other properties owned by the Respondent and there was no evidence produced to show that the premiums for the Property fell within a reasonable market range. He contends that the comparable evidence produced by the Applicant is within a reasonable market range. The Leases of the flats in the building permit subletting of the whole or part and the Applicant has no control over the identity or status of the occupants, the comparables produced by the Applicant show that the premium payable is affected by the category of person occupying the building. So when quotes were obtained for *"private tenants"* the range of quotes were from £4,447.18 to £7,505.84[80] compared to quotes for *"local authority assured tenants"* which was £10,000.63[89]. The Applicant contends that this demonstrates that the building insurance premium paid in the sum of £4,596.11 falls within a reasonable market range.

Administration Charges

23. The sum claimed is particularised at paragraph 6.4 of Mr Kelly's statement and paragraph 9 above. The Applicant submitted that these are "administration charges" within the meaning of paragraph 1 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

24. The Applicant relied on clause 2(15) of the Lease which obliges the Respondent as follows:

*"To pay all expenses including Solicitors costs and surveyors fees incurred by the Lessor incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925..."*

25. The Applicant stated that the charges which are claimed are all incidental to the preparation and service of a s.146 notice. Counsel for the Applicant relied on the Court of Appeal decision in Freeholders of 69 Marina, St Leonards- on Sea V Outram [2012] L&TR 4, which considered a materially identical provision in a lease for support for the view that the charges to which the Applicant's claim relates and the service of a s. 146 notice, are cumulative conditions precedent to the enforcement of the Respondent's liability for service charge. Counsel contends that accordingly the administration charges claimed are recoverable under the provisions of clause 2(15) of the Lease.

**The Respondent's Case**

26. The Respondent relied on his defence filed in response to the County Court Claim and his witness statement as well as his oral submissions made at the hearing.

Insurance Premium

27. In relation to the Insurance premium the Respondent claimed that he had not received a certificate from the auditor, or any service charge account for the end of the year. The Respondent relied on the provisions of clause 19(b) of the Lease and submitted that the Applicant had failed to obtain a certificate from the auditor as to the amount payable. The Respondent pointed out that as a matter of good professional practice, accounts should be audited.

28. In addition the Respondent challenged the Applicant to prove that the insurance premium charged complies with the clause 19(b) which provides that the manager shall not operate at a profit but shall collect "....only such sums as are required for liabilities already incurred or shortly to be incurred".

29. The Respondent agreed that insurance premium is recoverable under the provisions of the Lease. He challenged the need for terrorism insurance on the basis that it is not normally included in a comprehensive insurance policy, the leaseholders had not been consulted on whether or not they required such cover and he was of the view that there is no justification for concluding that there was a risk of terrorism for which insurance cover was required. He stated "...this area is not one with a history of terrorism so it Is not a real risk".

30. The Respondent submitted that a commission of 20% of the terrorism insurance premium was too high and he implied that the receipt of a commission for such cover provided Mr Kelly with every reason to include the cover.

31. The Respondent explained that he had difficulty in securing insurances quotes as he is not the landlord. He stated that as the owner of his own house and the owner of a two bedroom flat both in London SW20 he had effected insurance cover for these properties. He produced copies of the current insurance for both properties and he relied on this to illustrate that although his house is worth almost ten times as much as the subject property he is paying around double the premium for his house compared to the premium for the subject property, and although his flat is worth twice as much as the subject property the premium is half the premium paid for the subject property. Accordingly, he contended the insurance premium on the Property is excessive.

32. He stated that the structure for the management of the Property seems designed to confuse and lacks openness. He submitted that in addition to JJ Homes who manage the development for Aberdeen House Management Ltd there is Sinclair, Cullenglow, Princess Insurance, First Management and Hurst

Management who manage the 12 small and very modest flats. He submitted that they were ".....all rather too uncomfortably interwoven and nothing has the appearance of being at arm's length... The unavoidable conclusion to be drawn is that this development is treated by the Applicant and the related interested parties at every turn as a money spinning exercise and not management for reasonable reward."

Administration Charges

33. In relation to the administration charges the Respondent claimed that there is no provision in the Lease to charge an administration charge in respect of solicitors fees and in the alternative that such administration charges are not reasonable as the correspondence to which they relate have the appearance of templates produced by pressing a button on the computer. He submits that the present issue would not have arisen if all had been clear and reasonable and no charges would have been incurred.

## The Tribunal's decision

34. 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. The Tribunal considered the evidence in accordance with the guidance given in the case of Yorkbrook Investments Ltd v Batten [1985] 2EGLR 100. Accordingly in this case since the Applicant landlord is seeking a declaration that a service charge is payable the burden of proof is on the Applicant to show not only that the costs were incurred but also that they were reasonably incurred to provide services or works of a reasonable standard

## Insurance Premium £446.77

35. The Tribunal determines that the amount payable in respect of the service charge relating to the insurance premium is £446.77.

## Reasons for the Tribunal's decision

36. The Tribunal notes it is accepted by the parties that the Lease provides for the recovery of sums paid in respect of Insurance. The Tribunal having considered the Lease finds that the Applicant has covenanted to insure the Property under clause 3(b) of the Lease and the Respondent has covenanted under the demising clause and clause 2(1) of the Lease to pay the insurance premium by way of additional rent.

37. The Tribunal notes the explanation given by the Applicant as to the reason for the terrorism cover being itemised separately. The Tribunal is aware that Pool Re provides cover for losses resulting from an Act of Terrorism, as defined in the Reinsurance (Acts of Terrorism) Act 1993. This means "acts of persons acting on behalf of, or in connection with, any organisation which carries out

activities directed towards the overthrowing or influencing, by force or violence, of Her Majesty's government in the United Kingdom or any other government de jure or de facto." It should be noted that generally such cover excludes private residences except in certain limited circumstances such as where the insured is not a private individual. In this case the subject property is insured by the Applicant together with the all the other properties in the Applicant's portfolio.

38. The Tribunal notes that the RICS Service Charge Residential Management Code 2nd Edition ( " the Code") recommends in relation to Insurance at paragraph 15.12 ".... serious consideration should be given to the taking out of terrorism insurance.....". The Code has been prepared to " .....promote desirable practices in respect of the management of residential leasehold property..". The Code has been approved by the Secretary of State under Section 87(7) of the Leasehold Reform, Housing and Urban Development Act 1993. The odds of a terrorist attack are difficult to predict and the potential consequences of such an attack can be devastating. The Tribunal considers it prudent to include insurance cover for terrorism for properties situated in the Greater London area. The Tribunal took into account the recommendation of the RICS Code as it applies to residential leasehold properties in the whole of England not just in the City of London. If the RICS had intended that this recommendation should apply only to properties located in the City of London or properties situated in an area with a history of terrorism, this would have been made clear in the Code.

39. The Tribunal considers the explanation as to how the Applicant effects insurance cover through its agent PIA. The Respondent had implied that the transaction is not at arms length as the companies are connected and the structure for the management of the Property seemed designed to confuse and lacked openness. The Respondent produced no evidence to support his view and although PIA and the Applicant are both subsidiary companies of the same holding company, the Tribunal was not persuaded that it was inevitable that a transaction concluded under such circumstances was not one which was in the ordinary course of business. The Respondent produced no evidence to support his view. The Tribunal finds no grounds for concluding that the transaction was not in the ordinary course of business.

40. In respect of the amount of the premium, the Tribunal notes the evidence produced by the parties. The Tribunal was not persuaded that the premium payable by the Respondent as the owner of a house or a two bedroom flat albeit in the same locality as the subject Property was the best comparable evidence. The Tribunal noted that the Respondent had tried to extrapolate the premium paid for his house and a two bedroom flat owned by him and apply it to this Property, however this exercise did not take into account specific information as to the age, the condition, the claims history and any assumptions as to the owner/occupiers of the Property. The Tribunal did not consider the quotes produced by the Respondent to be quotes based on a "like for like" comparison. Whereas insurance quotes for the subject Property produced by the Applicant from comparison websites illustrated that an

Insurance premium of £4,596.11 is not excessive or unreasonable. The evidence showed that the quotes ranged from £4,447.18 to £7,505.84, in the case of flats within a block being let to "private tenants" compared to £10,000.63 for local authority assisted tenants. Accordingly the Tribunal finds the amount of the premium to be reasonable. The Applicant is obliged under the terms of the Lease to effect building insurance cover and so the Tribunal finds the costs incurred in obtaining such cover were reasonably incurred.

41. The Tribunal accepts the explanation given in the witness statement of Mr Kelly as to the commission, that the insurance premium charged to the Applicant by the Insurer are the actual premiums charged based on the Insurer's tariff rate and does not include any commission.

**Administration charge £146.70**

42. The Tribunal determines that the amount payable in respect of the administration charge is £146.70.

**Reasons for the Tribunal's decision**

43. The Tribunal finds that the charges are incidental to the preparation and service of a notice under s.146 of the Law of Property Act 1925 and as such they are recoverable under the provisions of clause 2(15) of the Lease which provides that the Respondent is obliged to:

*"....pay all expenses including Solicitors costs and surveyors fees incurred by the Lessor incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925..."*

44. The Tribunal is persuaded by the submissions made on behalf of the Applicant that the charges to which the claim relates and the s.146 Notice are all cumulative conditions precedents to the enforcement of the Respondent's liability for service charges. The provisions of s168 of the Commonhold And Leasehold Reform Act 2002 prohibits a landlord from serving a s.146 notice in respect of a breach by a tenant of a covenant or condition in a lease unless a leasehold valuation tribunal has determined that such a breach has occurred. The Tribunal accepts that the cost of preparation of notices and letters before action and the cost of instructing solicitors are all incidental costs within the meaning of clause 2(15) of the Lease and such costs are considered reasonable in quantum.

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

45. At the end of the hearing Counsel for the Applicant invited the Tribunal to not make an order under section 20C of the 1985. Counsel for the Applicant referred the Tribunal to the decision of His Honour Judge Rich QC in the Lands Tribunal case of The Tenants of Langford Court v Doren Limited

LRX/37/2000 in particular paragraphs 21, 22 and 28, in the event that the Tribunal was minded to make an order. The Respondent made no submissions on the matter. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal makes no order under section 20C of the 1985 Act, as the Proceedings were originally issued in the County Court and the Tribunal has no jurisdiction over County court costs the Tribunal was of the view that the issue of costs was best determined by the County Court.

**The next steps**

46. The Tribunal has no jurisdiction over county court costs. This matter should now be returned to the Kingston Upon Thames County Court.

Chairman: _____
[name]

Date:

## 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.