11245

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AC/LSC/2015/0354**
Property	:	**44A Woodside Park Road, London N12 8RP**
Applicant	:	**44 Woodside Park Road Ltd**
Representative	:	**Ms Patyna of counsel**
Respondent	:	**Ms Teresa Czerniewska**
Representative	:	**In person**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Tribunal Judge Richard Percival** **Mr M Cairns MCIEH**
Date and venue of Hearing	:	**15 December 2015** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**13 January 2016**

DECISION

The application

1. The Applicant seeks a determination pursuant to section 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 Applicant in respect of the service charge years from June 2010 to June 2015.

2. Proceedings were originally issued in the Northampton County Court under claim number B69YJ379. The claim was transferred to the County court at Barnet, and then Edmonton and then in turn transferred to this Tribunal by order of a District Judge on 30 July 2015.

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

The hearing

4. The Applicant was represented by Ms A Patyna of counsel at the hearing and the Respondent appeared in person. We heard evidence from the Respondent, and from Mr A Walton. Mr Walton is the company secretary of the Applicant, and the person primarily concerned in its administration. He is also the spouse of the leaseholder of flat C.

5. Immediately prior to the hearing, the Applicant handed up a skeleton argument, with supporting materials, including a full copy of the order of His Honour Judge Ansell in 2001, the judgment itself (19 October 2011; BT801340), a decision by the LVT of 15 July 2015, papers relating to an order in the Barnet County Court on 13 January 2004 refusing to set aside a default judgment (9HF301741), papers relating to an order dismissing an application for summary judgment in the same court on 10 January 2005 (4BT01300) and two authorities (*Freeholders of 69 Marina v Oram* [2011] EWCA Civ 1258 and *Chaplair Limited v Kumari* [2015] EWCA Civ 798).

The background

6. The property which is the subject of this application is a Victorian or Edwardian semi-detached house divided into three flats. The Respondent's flat is on the ground floor.

7. The Respondent acquired her leasehold interest in 1989. The flat is tenanted. The Applicant company acquired the freehold as the result of an order made by His Honour Judge Ansell in 2001 (see above). The

three shareholders are the leaseholders of the three flats. There was no need to inspect the property.

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 lease also makes provision for administration charges. The specific provisions of the lease and will be referred to below, where appropriate.

9. There was a substantial history of litigation between the parties.

Adjournment

10. Before the start of the hearing, the Tribunal heard an application for an adjournment by the Respondent in private and without the Applicant (Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Procedure Rules"), Rule 33(2) and (3)). The application was refused.

The issues

11. At the start of the hearing, it was agreed to deal with two matters as preliminary matters. Otherwise, the Scott Schedule prepared by the Respondent set out the substantive issues to be considered. In the event, the only matter of substance remaining on the Scott Schedule related to the payability and reasonableness of legal fees.

Preliminary matters: the proportion of the service charge payable

12. It appears that originally, the three leaseholders held the freehold directly between them, but that at some point that arrangement stopped working satisfactorily. The other leaseholders took action against the Respondent, the result of which was the judgment and order by Judge Ansell mentioned above. Judge Ansell ordered the freehold be transferred to the current Applicant, and that the Applicant company issue one share each to each leaseholder (under Trusts of Land and Appointment of Trustees Act 1996, section 14). That this was accomplished by the order was uncontroversial.

13. The Judge also dealt with the consequent variation of the leases. He clearly decided that, as a consequence of the transfer, it was desirable for the leases to be varied to require transfer of a leaseholder's share to the assignee on assignment of the leasehold interest. Associated with this was the re-organisation of the respective contributions of the three flats. Under the original leases, two of the flats (A and B) contributed two fifths each and the third, which is smaller, one fifth. By way of a concession to the Respondent, the other leaseholders, who were the claimants in that case, agreed to vary the contributions to one third for each flat.

14. On more than one occasion since 2003, the Applicant company sought to effectuate the variation by means of a deed, but in each case the Respondent declined to co-operate. No deed has therefore been executed.

15. The question before us was, therefore, whether the Respondent's contribution should be two fifths or one third. That in turn depended on a proper understanding of the order made by Judge Ansell in 2001.

16. The judge was exercising the jurisdiction in Landlord and Tenant Act 1987, section 37, which at that time was exercisable by the County Court (it was subsequently transferred to the Leasehold Valuation Tribunal by the Commonhold and Leasehold Reform Act 2002, section 163). A variation approved under that jurisdiction may either be effected directly by the order of the court (under section 38(3)); or the court may, in the alternative, make an order directing the parties to vary the lease (section 38(8)). If Judge Ansell's order was of the former kind, the variation has already been made as a matter of law. If it is the latter, then there has been a failure to act as directed, and the lease has not been varied.

17. The wording of the order was not determinative of the question, and the judge's full judgment did not canvass it. Ms Patyna argued, primarily, that the question had already been determined by previous county court and Leasehold Valuation Tribunal decisions; her secondary submission was that in any event, the wording of the order (and the judgment) was suggestive of a section 38(8) order rather than a section 38(3) order.

18. Understandably, as a litigant in person, the Respondent was not able to assist the Tribunal with submissions.

19. For her primary submission, Ms Patyna relied on two decisions of Barnet County Court. For convenience, in what follows we refer to the parties as Applicant and Respondent as they are in this application, regardless of the proper description in the previous proceedings under discussion. The first decision is an order of the county court on 19 February 2004 dismissing an application by the Respondent to set aside a default judgment in favour of the Applicant. Ms Patyna provided us with the order and with the Respondent's defence. The Defence specifically pleaded that she was only liable for a third of common expenses.

20. The second county court matter is an order dated 10 January 2005, dismissing the Applicant's application for summary judgment, but limiting the Respondent's defence to her allegation that the Applicant failed to comply with sections 19 and 20 of the Landlord and Tenant Act 1985. Again, the point about the proper proportion payable had featured in the Respondent's defence in that case.

21. She further relied on a decision of the Leasehold Valuation Tribunal dated 15 July 2004 (LON/00AC/LSC/2004/0063). That was a decision following a preliminary hearing on an application under section 27A (which was interwoven with county court litigation); and on an application by the Respondent to vary the leases. Insofar as the variation application related to the proper proportion of expenditure payable as service charge, the Tribunal said that the issue was "already the subject of agreement and another court order", and so struck out this element of her application as an abuse of process (and a waste of the Tribunal's time).

22. The extent to which a default judgment gives rise to an issue estoppel is strictly limited. The order made in 2004, however, was an order made refusing an application to set aside judgment, and so is immune from the weaknesses of a default judgment for these purposes, and the proportion point was prominent in the (short) defence submitted by the Respondent.

23. It is not altogether clear that the 2005 order did, in fact, exclude the Respondent from arguing the proportion point. The order specifies that the Respondent could only defend "on the basis of a failure by the [Applicant] to comply with sections 19 and 20". It is not impossible that the district judge would have considered that the proportion point could properly be said to arise in relation to section 19, and the defence did canvass a number of other points, including relating to the history of relations between the parties. As with the 2004 order, we had before us the order itself and the defence.

24. The Tribunal decision would not appear to assist the Applicant. The previous court order referred to is clearly that of Judge Ansell, and the Tribunal was relying on the fact that the substantive merits of the issue had been properly aired before a court. It does not assist with the question of what form of order was made on that occasion.

25. Ms Patyna's secondary submission relied on a passage in Judge Ansell's judgment and the terms of the order, as suggestive of an order directing variation, rather than an order varying the leases.

26. The passage in the judgment occurs at [35], in which the judge is discussing the proportion point. He says there "It seems to me that the leases should be amended by consent, again under section 37, to provide that each flat should bear one-third of the cost". The judge is clearly speaking somewhat loosely, as section 37 does not deal with variations by consent. His reference to "consent" should be understood, perhaps, in the context of his understanding that the variation here discussed was a concession to the Respondent, which he would no doubt have expected her to welcome. But he still had in mind an order under the section 37 jurisdiction, and the passage does not assist us in understanding which form of order was made.

27. The provision in the order relied on is paragraph 7, which states "the costs of varying the leases as ordered is borne by the lessees". We accept Ms Patyna's argument that such a clause is at least suggestive of an order to direct. If the order had been one effecting variation, there would either be no order relating to future costs, or, if the order related to incidental costs, it would have been in some other form. Nonetheless, the clause is suggestive, rather than determinative.

28. We find in favour of the Applicant on both submissions. The 2004 order is such that a clear determination of the issue has been made in the county court (although we doubt the force of the other county court order and the Tribunal decision). On balance, considering the Judge Ansell's judgment and order, we accept that it is more likely than not that he intended an order to direct variation rather than an order effecting variation.

29. *Decision*: The proportion of the relevant expenditure for which the Respondent is liable is two fifths, not one third.

30. We note that no attempt seems to have been made to enforce the order by the Applicants, nor, for instance, the taking of steps to seek a variation in the order to one effecting variation of the leases under secion 38(3). It is in the interests of the other lessees that the assignment variation is brought into effect. Otherwise, there will be no obligation on the Respondent to surrender her share in the Applicant company on assignment. It is also obviously in the Respondent's pecuniary interest that the proportion variation be made. However, the history suggests that the variations will not be made if the matter is left to the parties.

Preliminary matters: "company structure"

31. The Respondent repeated the submissions made in her Statement in Reply to the Applicant. Her points amount to criticism of the company structure created by Judge Ansell's order to hold the freehold. It is not necessary to rehearse her points in detail.

32. Judge Ansell's order was made and not appealed. To state the obvious, the Tribunal has no power to reconsider the issues.

Scott schedule: legal fees

33. Legal fees of £476.40 were claimed from the Respondent in 2011/12 (not £1,442.40 as appears on the Scott Schedule); and £913 in 2014/15. The Respondent questioned both whether the fees were payable in principle under the lease, and whether they were reasonable.

34. The fees were charged to the Respondent by way of an administration charge. By clause (xix) of part 3 of the lease, the tenant covenants

> "to pay the Landlord all costs charges and expenses (including costs and surveyors fees) incurred by the Landlord in or in contemplation of any proceedings under sections 146 and 147 of the Law of Property Act 1925 notwithstanding that forfeiture may be avoided otherwise than by relief granted by the Court."

35. Ms Patyna argued that the legal costs were recoverable under the lease, as the proceedings, which were for payment of unpaid service charge, were a condition precedent for forfeiture, relying on the construction of a similar clause in *Freeholders of 69 Marina, St Leonards-on-Sea v Oram and Ghorrun* [2011] EWCA Civ 1258.

36. Again understandably, the Respondent considered that she could not make meaningful submissions on the law.

37. We drew Ms Patyna's attention to the decision of the Upper Tribunal in *Barrett v Robinson* [2014] UKUT 0322 (LC), which she considered over the lunch-time adjournment. It concerned, at clause 4(14), an effectively identical clause to that in this case. The Deputy President said at [52] that costs under such a clause

> "will only be incurred in contemplation of proceedings, or the service of a notice under section 146, if, at the time the expenditure is incurred, the landlord has such proceedings or notice in mind as part of the reason for the expenditure. A landlord which does not *in fact* contemplate the service of a statutory notice when expenditure is incurred, will not be able to rely on a clause such as clause 4(14) as providing a contractual right to recover its costs."

38. Ms Patyna's principal submission was that *Barrett v Robinson* could be distinguished, or if not, could not stand with *Freeholders of 69 Marina*, and *Chaplair Limited v Kumari* [2015] EWCA Civ 798, a more recent decision of the Court of Appeal.

39. The facts of *Barrett v Robinson*, she submitted, were such that forfeiture was as a matter of law impossible, and so could not have been in the contemplation of the landlord. It was therefore to be distinguished from the current case. Alternatively, the Deputy President's approach was inconsistent with the two Court of Appeal cases, and we should not follow it.

40. We reject these submissions. While it is true that, on the facts of the case, forfeiture was impossible in *Barrett v Robinson*, it is clear that the Deputy President was laying down a general rule to be followed in the construction of these common clauses. That rule is contained in [52], and requires evidence of factual contemplation, not merely that, in law,

the proceedings may act as a condition precedent to the service of a section 146 notice.

41. In *Barrett v Robinson*, the Deputy President considered *Freeholders of 69 Marina* at length. At [57], after noting that the case was authority for the proposition that where a service or administration charge was reserved as rent, a determination by the Tribunal was nonetheless a pre-condition for the service of a section 146 notice, the Deputy President said

> "But the decision does not require that whenever a lease includes such a clause the landlord will necessarily be entitled to recover its costs of any proceedings before the First-tier Tribunal to establish the amount of a service charge or administration charge. It is always necessary to consider the terms of the particular indemnity covenant and whether any relevant contemplation or anticipation existed in fact in the circumstances of an individual case."

42. In *Chaplair Limited v Kumari*, Ms Kumari's lease featured a similarly worded clause, but that case was concerned wholly with procedural questions relating to the power of the county court to order costs (in relation to related proceedings in the Tribunal, and under the terms of the lease when the case is allocated to the small claims track). Whether the costs were payable under the lease was not a question before the Court of Appeal (although we note that the narrative explaining the procedural history indicates that the landlord did, in fact, contemplate forfeiture: [9]). We do not consider that the case advances Ms Patyna's submission.

43. Ms Patyna's secondary submission was that, as a matter of fact, forfeiture was in the contemplation of the landlord. She adduced from Mr Walton evidence that in 2003 or 2004, when Mr Walton took over effective management of the property (on the resignation of a managing agent appointed under Judge Ansell's order), he had asked the solicitor acting for him if it was possible to forfeit the Respondent's lease, because, he said, he believed that the Respondent would never voluntarily pay the service charge. He had been advised that it was necessary to demonstrate the debt first (and that the mortgagee was likely to discharge the debt). The effect of his evidence was that, throughout the proceedings, forfeiture of the Respondent's lease had been in the mind of the landlord.

44. In cross-examination, the Respondent asked Mr Walton "are you saying you want to get me out?" He answered "yes, it would be in all of our interests."

45. We accept the evidence of Mr Walton. It was therefore, as a matter of fact, in the contemplation of the landlord that a section 146 notice

would be served, and that was a part of the reason for the proceedings (it need not be the sole reason – [52] of *Barratt v Robinson*).

46. As to the reasonableness of the legal costs, Ms Patyna took us to the relevant invoices. The invoice charged to the service charge in 2011/12 related to the costs of recovering service charge from the Respondent in the county court in 2011, taking account of the recovery of fixed costs, and costs awarded on a failed application to set aside judgment, which were paid by the mortgagee.

47. The invoice charged in the service charge for 2014/15 related to the issue fee and professional services attributable to the current proceedings.

48. In relation to the 2011/12 costs, we asked Ms Patyna if it was reasonable to recover costs not recovered in the proceedings. She submitted that it was, because clause (xix) specified that "all" costs were recoverable. It was therefore not limited to costs recoverable within the proceedings themselves. She went on to explain that some of the costs were incurred after the proceedings, for instance in chasing up payment. She was not, however, in a position to quantify that portion.

49. In the courts, the question of contractual costs is related to the courts' costs regime. In a cost-shifting jurisdiction, it would clearly be artificial to draw a strict line between the discretion of the court to award costs and the entitlement to contractual costs - *Chaplair Limited v Kumari* is an illustration of that.

50. Our jurisdiction is different. Notwithstanding the slightly more expansive costs powers of the Tribunal under the Procedure Rule, Rule 13, the Tribunal is a cost-neutral jurisdiction. Our jurisdiction under section 27A of the 1985 Act and schedule 11 of the 2002 Act is based on the assessment of the reasonableness (and payability) of expenditure applied to the service charge or administration charge in question.

51. That concept of reasonableness is a general one, applying to all types of expenditure reflected in a service charge. There is in our jurisdiction no special rule defining a distinct concept of reasonableness that applies to legal costs. While the extent to which costs were recoverable within the proceedings will be a factual element in assessing reasonableness according to the general approach, it is not in any determinative.

52. Thus, while we reject Ms Patyna's submission that the characterisation of the legal costs recoverable in the service charge as "all costs" escapes that test of reasonableness, we accept her submission that the invoiced costs are well within the range of reasonable costs for the work undertaken. The Respondent claimed that the costs were unreasonable, but her submission was unparticularised, and amounted to no more

than an assertion. It provides no basis for a challenge to costs, at least where they were paid on an invoice and appear to the Tribunal to be reasonable on their face.

53. The position in relation to the fees charged in 2014/15 in respect of the present proceeding is different. The case will return to the county court for the determination of costs generally, and it is right that the contractual right to costs should be considered alongside the court's discretion at that point, on the basis set out in *Chaplair Limited v Kumari.*

54. *Decision*: The legal costs charged in the service charge for 2011/12 are payable and reasonable. We make no determination as to the reasonableness of the legal costs charged in 2014/15, which will be considered by the county court.

Scott schedule: major works

55. We heard considerable evidence in relation to two sets of major works, on two different roofs of the building. At the close of the evidence, the Respondent confirmed that the service charge in relation to this expenditure was no longer in issue.

Interest

56. The lease provides at part 5, clause (ii) for a fixed rate of interest of 16% to be payable on arrears of service charge (and ground rent).

57. A contractual right to interest is an administration charge (schedule 11, paragraph 1(1)(c) of the 2002 Act). The Tribunal's jurisdiction is, however, limited to variable administration charges, and a charge specified in the lease is not variable (paragraphs 1(3), 2 and 3).

58. The Tribunal does not, therefore, have jurisdiction to consider this claim.

59. *Decision*: The Tribunal makes no determination in relation to the claim for interest on arrears, as the claim is not within the Tribunal's jurisdiction.

Application in relation to publication of the decision

60. At the close of the hearing, the Respondent made an application that this decision should not be published on the Tribunal's website.

61. The basis for the application was that, on a previous occasion she had been contacted by people after publication, and she therefore did not want the case to be publicly known.

62. In general, the Tribunal sits in public (Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, Rule 33(1). This is an expression of the general principle that the administration of justice should be conducted in public. In practice, the public nature of the Tribunal's proceedings is nowadays guaranteed by publication of our decisions on the internet. The Respondent's submission amounted to an expression of distaste with public justice. We reject the application.

The next steps

63. The tribunal has no jurisdiction over the claim for interest nor county court costs, and we have declined to determine contractual costs in respect of these proceeding. This matter should now be returned to the County Court.

Name: Tribunal Judge Richard Percival **Date:** **13 January 2016**

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

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

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

   and the amount payable shall be limited accordingly.

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

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
   (a) the person by whom it is payable,
   (b) the person to whom it is payable,
   (c) the amount which is payable,

(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

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

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

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

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

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are

not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
- (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
- (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
- (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
- (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
- (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
- (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
  (a) specified in his lease, nor
  (b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—
  (a) the person by whom it is payable,
  (b) the person to whom it is payable,
  (c) the amount which is payable,
  (d) the date at or by which it is payable, and
  (e) the manner in which it is payable.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

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

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

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
  (a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).