9282

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AR/LSC/2013/0185** **LON/00AR/LSC/2013/0162** **LON/00AR/LSC/2013/0161** **LON/00AR/LSC/2013/0155**
Property	:	**Flats 1, 17 & 55 Victor Walk and Flats 1, 13, 17 & 21 Victor Approach, Hornchurch, Essex RM12**
Applicant	:	**Mrs B Whitehead - Flat 1 Victor Walk** **Mr D Rooke - Flat 17 Victor Walk** **Mrs M Thurogood – Flat 55 Victor Walk** **Mrs S Taylor – Flat 1 Victor Approach** **Mr A Doubtfire – 13 Victor Approach Ms O Lucas-Afolau – Flat 17 Victor Approach** **Ms J Morrell – Flat 21 Victor Approach**
Representative	:	**In person**
Respondent	:	**Hastoe Housing Association Ltd.**
Representative	:	**Stephens Scown LLP, Solicitors**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge** **For dispensation from statutory consultation requirements in respect of major works**
Tribunal Members	:	**Judge F Dickie** **Mr I Thompson, FRICS** **Mr L Packer**
Date and venue of Hearing	:	**1 July 2013-07-3110 Alfred Place, London WC1E 7LR**

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Date of Decision : 21 August 2013

DECISION

Decisions of the tribunal

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

(2) The tribunal dispenses with the consultation requirements not met in relation to all major works that are the subject of this application.

(3) The landlord's costs in relation to the application under s.20ZA regarding the TV aerial may not be recovered through the service charge. No other order is made under s.20C or in relation to fees/

The applications

1. By four separate applications, the first four Applicants sought determinations 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 actual major works contributions demanded in the service charge year ending 31 March 2012 and estimated contributions in respect of the same works demanded in the year ending 31 March 2013. The tribunal issued directions to join the applications. Thereafter Applicants Ms O Lucas-Afolau, Ms J Morrell and Mr A Doubtfire applied and were by order of the tribunal joined in these proceedings.

2. The landlord has subsequently applied under s.20ZA of the 1985 Act for an order dispensing with statutory consultation in respect of those major works.

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

The hearing

4. Applicants Mrs Whitehead, Mr Rooke, Mrs Thurogood, and Mrs Taylor (accompanied and represented by Mr B Fleri) appeared in person at the hearing. Ms Lucas-Afolau, Ms Morrell and Mr Doubtfire were not represented and had not participated in the proceedings at all. The Respondent was represented by Mr Duckworth of counsel. With the agreement of all parties, the Respondent's case was presented first.

The background

5. The properties which are the subject of these applications are flats within three blocks – namely 1–23 Victor Walk, 31–57 Victor Walk and 1–31 Victor Approach. All of the blocks contain odd numbered flats only. The tribunal did not consider it necessary to carry out an inspection. A plan of the development was available to the tribunal.

6. The Applicants holds long leases of the flats which require the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The Respondent housing association is the landlord under the leases. The specific provisions of the leases will be referred to below, where appropriate. There is a recognised tenants' association ("RTA"), within the meaning of section 29 of the 1985 Act.

7. Estimated contributions towards the cost of roof replacement works were in the region of £8,500 - £10,500 per block, based on provisional costs of:

    1-23 Victor Walk £105435

    31- 57 Victor Walk £134190

    1-31 Victor Approach £153360

8. Actual expenditure was expected to be between 16-39% higher, including contingency, supervision and VAT, and depending on the block, but that expenditure had not yet been demanded, final figures were not known, and it was not before the tribunal for its determination.

The Qualifying Agreements and Qualifying Works

9. The principal issue in dispute was whether the landlord had complied with statutory consultation requirements under section 20 of the 1985 Act. The reasonableness of the cost of the works was also challenged on various grounds. It was the Respondent's case that it carried out consultation under section 20 of the 1985 Act on the following contracts:

(i) A qualifying long term agreement entered into between the Respondent and Trevor Benton Group Limited on 9 January 2013

a. For the provision of reactive planned maintenance works in respect of the Respondent's southern regional housing stock (which includes the subject properties) for a period of four to six years ("the TBGL Contract").

b. The consultation requirements for that contract are those set out in Schedule 1 to the Service Charges (Consultation Requirements) (England) Regulations 2003.

c. Notices of Intention were said to have been served on the tenants of the subject properties and on the RTA (on 17 September 2010). Notices of proposal were said to have been served on them on 1 September 2011.

d. Since TBGL submitted the lowest tender, no additional consultation was then required.

(ii) A qualifying long term agreement entered into between the Respondent and Arcus Consulting LLP in April 2012

e. For the provision of consultancy services in respect of reactive and planned maintenance works in relation to the Respondent's southern regional housing stock for a period of four to six years ("the ACL Contract").

f. The consultation requirements are again those set out in Schedule 1 to the Regulations.

g. Notices of intention were said to have been served on the tenants and on the RTA on 17 September 2010 and notice of proposal was said to have been so served on 30 November 2011.

h. Since ACL submitted the lowest estimate, no additional consultation was then required.

(iii) A contract for qualifying works (Replacement roofs on each block) carried out by TBGL and ACL under the long term agreements

i. Carried out between August 2012 and January 2013. The project was still within its defects liability period as at the date of the hearing.

j. The applicable consultation requirements were those set out in Schedule 3 to the Regulations.

k. Notices of intention were said to have been served on the tenants and on the RTA on 28 June 2012 and the Respondent said it had considered and responded to those observations made.

(iv) A contract for qualifying works (installation of a new digital TV aerial to replace existing analogue aerial)

l. As the works were tendered, and not carried out under the long term agreements, the consultation requirements are those set out in Schedule 4 Part II of the Regulations.

m. Notices of Intention were said to have been served on the tenants and the RTA on 14 September 2010.

n. No further consultation took place as the Respondent was erroneously advised that the cost of the works would not exceed £250 per tenant, and that consultation was therefore not required. However, this advice proved to be wrong and the Respondent acknowledged that contributions were limited to £250 per tenant unless an order was made by the tribunal under s.20ZA of the 1985 Act dispensing with statutory consultation.

Evidence and Tribunal's Determinations

Section 20 Consultation

10. The tribunal heard evidence from Mr D Cruice, Investment Manager for Hastoe Housing Association, who said he had assisted Glynda Mortimer of the Respondent in the process of addressing and sending the consultation notices. He said on each occasion Glynda had merged the leaseholder database into a word template, printed the letters, and counted them to ensure the number of letters matched the number of leaseholders. He assisted her in putting the letters in envelopes. Internal contemporaneous email communications concerning the contents and issue of this correspondence were produced in evidence. Responses were received from other leaseholders in the same blocks, and the Chairman of the RTA confirmed receipt of the notices. A copy of all the statutory consultation notices, and the additional letters in informal consultation, were produced. In relation to any default in statutory consultation found by the tribunal, the Respondent sought dispensation under s.20ZA.

11. The Applicants argued that the section 20 notices had not been served on them, or indeed on a large number of leaseholders in their blocks, and that they had not received other, non-statutory, consultation letters. A copy of certain notices was sent to leaseholders in August 2012 once it became apparent that some claimed not to have received them.

12. The tribunal heard oral evidence from each of the tenants attending the hearing. Each of the letters in question was put to each witness. The case put by the Applicants in their statement of case amounted to a firm denial that any of them received any of the statutory consultation letters. However, the evidence from each heard by the tribunal was rather less robust.

13. Mr Rooke could not be sure which he had received and which he had not. He raised a number of concerns at the hearing that were not raised in the applications or statements of case.

14. There was no evidence before the tribunal that Ms Olufemi Lucas-Afolau and Ms Julie Morrell had not received the statutory consultation notices.

15. Mrs Thoroughgood was more emphatic, but said she did receive the notice in relation to the roof works. However she said she had "horrendous" problems with her mail and had complained to the Royal Mail about misdelivered letters.

16. Mrs Taylor said she opens her post and passes all letters to Mr Fleri, who said he didn't recall being passed any of the consultation letters. Mrs Taylor also confirmed problems with her mail, which had in the past been mixed up with that of an S Taylor who lives around the corner.

17. The Applicants further argued that the notices, supposedly sent by ordinary post, had not been served in a manner required by the lease. Clause 7.3 provides:

> "Any notice under this Lease shall be in writing and any notice to the Lessee shall be deemed to be sufficiently served if sent to the Flat either by registered post or by the recorded delivery service or left at the Flat ..."

Section 20 Consultation - Decision of the Tribunal

18. The tribunal agrees with the Respondent's submission that Clause 7.3 of the lease does not prescribe that service must be by one of the specified methods. If one of these methods is used, then notices under the lease are deemed served, but this does not mean that they cannot be served by another method (though in that case there will be no deemed service). The only mandatory requirement of that clause is that notices must be in writing. There is no need for the tribunal to determine whether these notices were "notices under the lease". In the present case, there is no deemed service, and it is for the tribunal to determine on the evidence whether the notices were sent and whether they were delivered by post to the flats. The standard of proof is the balance of probabilities.

19. The tribunal would have expected to see evidence of posting such as a copy of the database address list used for the mailout and a statement of service from Glynda Mortimer. However, various observations were made by leaseholders after service of these consultation notices, which is very good evidence that they were indeed sent. At least one tenant on the estate made observations at every stage of the statutory consultation process. This is persuasive evidence to demonstrate that the notices were issued to the leaseholders on the estate.

20. Being satisfied generally that the notices were produced and sent by mailshot, the tribunal has considered the evidence and whether human error or postal failure led to a failure to serve any of the notices on any of

the individual tenants. It is not likely that human error would have led to the omission of dozens of addresses from the mailshots.

21. The tribunal did not consider any of the Applicants to have been untruthful in giving evidence. However, some recollections were very vague and therefore not persuasive. These are formulaic letters, and judging from the number of observations made simply asking what they were about, they were not easily understood. However, based on the evidence heard the tribunal is satisfied that one or more consultation notices were not received by Mrs Taylor and by Mrs Thoroughgood, both of whom had problems with their post.

22. There appeared to be confusion amongst the tenants as to the correct consultation procedure the landlord was required to follow in respect of a qualifying long term agreement and then later in respect of major works to be carried out under that agreement. The roof was recommended for replacement after the inspection of Hastoe's chartered building surveyor. There was dissatisfaction amongst the Applicants that they were not consulted as to the contractor who would carry out the roof works. However, the tribunal is satisfied that the Respondent was entitled to use the contractors in place under the qualifying long term agreement, and reasonably did so. The leaseholders were therefore not entitled to be consulted on the contractor to be used. The consultation process in such circumstances (which is set out in Schedule 3 to the Regulations) is shortened, and on 28 June 2012 the single consultation notice was sent to leaseholders, who could make observations on the works but did not have the opportunity to nominate a contractor.

Reasonableness of Cost of Roof Works

23. The Applicants argued that the cost of the roof works is unreasonable and the work was not carried out to a reasonable standard. However, the Applicants did not produce any evidence in support of these assertions, other than photographs to show the standard of workmanship. The roof covering appeared to have ridges in it. In answer to these concerns the roof covering manufacturer, Icopal, inspected and found the rippling within tolerance limits and that gaps around the soffits were necessary to prevent the fascia board being pushed by expansion.

24. The Applicants considered that the landlord had failed to take affordability into account, in that many of the leaseholders are in receipt of benefits. The roof work was carried out on the recommendation of the Respondent's surveyor, who reported in July 2010 that the roof coverings had reached the end of their life span and required replacement. The works were in fact subcontracted by TBGL, following a competitive tendering exercise. The cheapest contractor was used. Before proceeding with the roof works, the Respondent obtained confirmation from ACL that the TBGL estimate represented value for money. After completion the Respondent's surveyor

said the new roof covering in good condition. As part of its guarantee, Icopal would inspect every 5 years.

25. The landlord produced the Icopal 20 year guarantee certificates and Arcus Consulting had inspected and issued a certificate of practical completion on 14 June 2013. Mr Cruice said that the landlord would have considered tenant concerns regarding materials, but wanted to use a quality roof covering that would last a long time since in respect of rented properties it pays a contribution to service charges too. All tender documentation and tender analysis for the contracts was produced.

26. The figure in dispute for 2013 was a budget estimate, which was demonstrated to be an underestimate of the actual cost of the works, though the balance had not yet been demanded and did not therefore form the subject of these applications. Mr Cruice said he had based the estimate on roofing costs from another project and applied an uplift, a 10% contingency, 5.5% for professional fees, and VAT. That estimate was approximately £8700 per flat, but rose to a revised estimate of £12,800 including window repairs was notified to the leaseholders in June 2012.

27. The tenants' view was that the landlord had paid for a Rolls Royce job which had not been carried out to a good standard. Based on the photographs and other evidence the tribunal did not accept this argument.

28. The tenants wanted the works to be paid for from a reserve fund. The landlord's case was that reserves are built up to do external redecoration and not these exceptional works, and the tribunal finds this is not and improper approach.

Concrete works and guttering

29. The tenants considered that required consultation was not carried out in respect of certain works of repair to the concrete bollards in September 2011 and to the pipes and guttering of the sheds in October 2011, and these works were not in fact carried out. The Respondent's case was that estimated expenditure was to put bollards outside 1-46 Victor Court and to do some minor repairs around a handrail there. The tenants referred also to bollards removed to allow site access, and then reinstated, but this cost would only appear in the actual expenditure and was not before the tribunal in this application.

30. On the evidence the tribunal accepts the landlord's position that the contribution of any leaseholder to the cost of these works did not exceed £250 and that statutory consultation was not therefore required. The tribunal heard no evidence that the cost of the works was not reasonable and was not persuaded it was not payable as a service charge.

Reasonableness of cost of TV works

31. The Applicants considered that the cost of the TV works was unreasonable because the works were unnecessary since some tenants already had their own Sky dishes and the old analogue system had not been properly maintained by the Respondent. The Applicants thought the old system could have been upgraded and used with a booster box and a new aerial dish, and did not need replacement. They said many of the new aerial connections in the flats were not working, but they produced no evidence of this. Photographs showed cables not connected to a new socket.

32. Mr Cruice explained that the landlord asked leaseholders to give access to fit outlet plates, but where they did not do so the cable was left coiled up on the exterior.

33. The tribunal does not agree with the tenants that the work was unnecessary. The analogue signal being withdrawn, the old system was obsolete. The best way of providing an aerial system for all properties was by installation by the landlord. The fact that some tenants had chosen to install their own dishes does not affect the landlord's entitlement to make provision of an aerial for the block (under clause 5.1.1.4 and 5.1.1.8 of the lease the landlord covenants include "erecting and maintaining a communal television aerial if it deems necessary" and "carrying out such additional works and providing such additional services as may be considered necessary by the Lessor in its absolute discretion from time to time"). The cost of installing a digital system falls squarely within one of those provisions. It is not sufficient to analyse the matter by saying that some tenants had their own aerials and did not want a communal one or should not pay for it. The landlord reasonably decided to provide a block digital aerial providing a free service to leaseholders, and the cost of its installation falls to all the leaseholders as a service charge under the terms of the lease.

34. There was insufficient evidence in support of an assertion by the Respondents that they new digital system was not working properly and was not installed to a reasonable standard. No evidence was produced that the cost of installation, which was competitively tendered, was unreasonably high.

Decision on the Applications under s.20ZA

35. The tribunal must follow the decision of the Supreme Court in *Daejan Investments v Benson* [2013] UKSC 14. The most important question for the tribunal is whether and to what extent the tenants have suffered prejudice as a result of the landlord's defective statutory consultation procedure. The tribunal has power in appropriate circumstances to grant dispensation subject to conditions.

36. In the present case the tenants failed to show that they would have made a reasonable point during the consultation which, if adopted, would have

been likely to have reduced the cost to them or been to their other advantage.

37. The tribunal could identify no prejudice to the tenants. The landlord had carried out informal consultation about the retendering of the repairs and maintenance long term contracts, of which they had been aware (in the form of a number of meetings before and during the statutory consultation and articles in the tenants' magazine @Home). Informal letters of explanation were also sent out. The tenants had no right to nominate a contractor to carry out the roof works, since they were carried out under a qualifying long term agreement. That contractor had already been chosen during pursuant to the statutory consultation on the qualifying long term agreement. Once such an agreement is in place, the landlord does not have to consult with tenants in choosing a contractor for major works – those works can be placed with the long term contractor and consulted upon under a shortened, single stage, process. In any event, the tenants produced no evidence as to any contractor they would have nominated during any statutory consultation process, and that the works could thereby have been carried out at lower cost.

38. Mr Fleri said he would have nominated Mansell Ltd as contractors, a company he used to work for. However, the tribunal had issued specific directions on the s.20ZA application for the leaseholders to give details of contractors they would have nominated, and none had been put forward. Furthermore, Mr Fleri had not asked Mansell Ltd. if they would have been willing to tender. The name of another contractor (Hookings) was also mentioned for the first time at the hearing.

39. The tribunal is satisfied that, even if all correspondence had been received by all tenants, it is unlikely that they would have said anything during consultation which would have altered the works significantly or at all. The lowest tender in an informal process by the long term contractor was chosen, and the tribunal considers it unlikely that full consultation on all leaseholders would have resulted in observations which would have enabled lower costs.

40. The Respondents have the opportunity to pay the cost of the roof works over three years. This, in the opinion of the tribunal, discharges any responsibility on the landlord to consider the affordability of the roof works for the tenants (pursuant to the decision in *Garside v RFYC Limited & B R Maunder Taylor* [2011] UKUT 367 (LC)).

Application under s.20C and refund of fees

41. The tribunal heard oral submissions from both parties in relation to the leaseholders' application for an order that the landlord be prohibited from adding the costs of these proceedings to the service charge. Owing to the landlord's error, the s.20ZA application in respect of the TV works was unavoidable, and the tenants were entitled to a hearing of their objections.

In spite of the fact that they did not all consent to the application, the tribunal determines that the Respondent may not pass through the service charge any of its costs, including costs of the hearing, incurred in connection with the proceedings before the tribunal for an order dispensing with consultation under s20ZA of the 1985 Act. The tribunal declines to make an order under s20C in relation to the costs of the other applications or any order for the reimbursement of fees.

Name: F Dickie **Date:** 21 August 2013

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 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) a leasehold valuation 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.

Section 20ZA

(1) Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

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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.