10683

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AC/LSC/2014/0419**
Property	:	**Flats 3A and 3B, 3 Ashbourne Avenue, London NW11 0DP**
Applicant	:	**Darren and Talia Rose (Flat 3B)** **Oliver Futter (Flat 3A)**
Representative	:	**Nicola Muir instructed by Dorman Joseph Wachtel**
Respondent	:	**Ola Akintola**
Representative	:	**None**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	:	**Judge Hargreaves** **Susan Coughlin MCIEH**
Date and venue of hearing	:	**10 Alfred Place, London WC1E 7LR** **12th February 2015**
Date of decision	:	**12th March 2015**

DECISION

Decisions of the tribunal

(1) The tribunal determines that nothing is payable by the Applicants in respect of the service charges for the years referred to in this decision.

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

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

(4) The tribunal determines that the Respondent shall pay the Applicants £250 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

(5) By 4pm 4pm 27th March 2015 the Applicants should file and serve any application for costs pursuant to *Tribunal Rule 13*, together with a summary of costs claimed suitable for the purpose of a summary assessment. The Respondent should file and serve his submissions in reply by 4pm 8th April 2015, after which the tribunal will decide the question of costs.

The application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") (or otherwise) as to the amount of service charges payable by the Applicant in respect of service charge years 2005-2014.

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

3. All references are to the trial bundles unless otherwise made clear (page followed by file number if file 2).

The hearing

4. The Applicants were represented by Nicola Muir at the hearing (instructed by Dorman Joseph Wachtel) and the Respondent appeared in person, having instructed DWFM Beckman until just before the hearing.

5. The application to the tribunal was made on 11th August 2014 at [1]. The tribunal held a CMC on 4th September attended by Ms Muir and the Respondent's solicitor Mr Fendt, after which Judge Korn gave detailed

directions on 5th September [21]. By paragraph 9 of the directions the Judge listed numerous copy documents which the Respondent agreed to provide, and which Ms Muir had agreed would be acceptable. With the partial exception of one category of documents, the Respondent failed to observe most of paragraph 9, which had an impact on the directions contained in paragraphs 10 and 11, though he served numerous documents on 6th and 8th October, to which reference will be made. For various reasons Ms Muir demonstrated the unsatisfactory nature of much of the evidence relied upon by the Respondent, in a careful and lengthy cross examination. Time limits were extended by the tribunal on 12th November when the hearing was listed for 12th February [26]. The Respondent therefore had more than ample time to put his case together.

6. The Applicants produced a trial bundle with all relevant documents, and Ms Muir produced a chronology, skeleton argument, and a table comparing the Respondent's various and varying demands over the years in question, all of which were extremely helpful to the tribunal. The Applicants' statement of case is at [151] and the Respondent's is at [319].

The background

7. The property which is the subject of this application is a house converted into three flats in the late 80's. Flat 3A is a 2 bedroomed ground floor flat and Flat 3B is a one bedroom flat. Whereas the Applicants seek a determination as to the payability and reasonableness of the service charges for all three flats in the building, any difficulties which arise given that the third leaseholder is not a party to the application, and was not joined as a party to the proceedings, is in the tribunal's view dealt with by recording the Respondent's evidence that contrary to the Applicants' situation as far as he is concerned, the third leaseholder *"is up to date with payment of all that she owes"*. From the point of view of the Applicants, that deals with their practical and legal needs in relation to collective enfranchisement (in which the third leaseholder is not participating either) and the Respondent cannot challenge his own assertion that that is the case [563/2]. The tribunal would be reluctant to make findings dealing with the third flat without giving the leaseholder the opportunity to provide evidence or submissions or appear at the hearing, and had that been pursued by the Applicants, they should have canvassed the possible directions required at the CMC. In any event, the third leaseholder not having made an application, the tribunal has no *s27A* jurisdiction.

8. 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.

9. The Applicants hold long leases of the property which require the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.

10. The Roses were registered as proprietors of Flat 3B on 14th June 1999 [169]. Mr Futter co-owned Flat 3A from 7th July 2009 and became sole proprietor on 5th September 2013 [174]. The Respondent was registered as proprietor of the freehold on 8th February 2012 [179] and his address is said to be 9 Howden Road, London SE25 4AS. Prior to that the registered proprietor was Goldpoint Investments. That did not stop the Respondent from instructing solicitors and threatening forfeiture in 2011, see eg [181-184].

11. The relevant provisions of the leases (which are identical in relation to the critical provisions at tabs 9 10 11 of file 2) are as follows. Clause 1 provides for the payment of ground rent and *"additional rent"* amounting to one third of the sum spent by the landlord on insuring the property. The landlord's obligation to insure is at clause 4(2) [579] and his repairing obligations are at clause 4(4) [580]. Clause 3(2) [578] provides that the tenant should pay *"an interim charge and service charge at the time and in the manner provided in the Seventh Schedule hereto both such charges to be payable on demand and be recoverable as rent in arrears."*

12. So the provisions of the Seventh Schedule are important. Before turning to those, the landlord's obligations are set out in clause 4(2)(3)(4)(5) [579-580] and the tenants' liability to pay for services/management etc are contained in the Fifth Schedule [591]. By virtue of the Seventh Schedule [592] paragraph 1(2), the *"service charge"* per flat is 25% of the *"total service cost"* which itself is defined in paragraph 1(1) as *"the aggregate amount in each year running from the First day of January or calendar year commencing with such base date as the Lessor shall appoint ("the accounting period") reasonably and properly expended by the Lessor carrying out its obligations under clause 4 ... and in respect of matters referred to in clause 2 and 3 of the Fifth Schedule ... and the amount of such reserves (if any) .... [which] without prejudice to the generality of the foregoing shall include costs of administration professional and management fees and the cost of supplying an Audited Statement of the total service cost to each tenant."* Paragraphs 4, 5 and 6 of the Seventh Schedule contain further charging provisions relating to the service of a certificate complying with paragraph 5 of the Seventh Schedule. As Ms Muir pointed out there is an apparent conflict between the charging provisions for respective shares of the insurance premium though in his latest demands the Respondent has adopted a 25% approach.

13. Before turning to particular issues which arise as a matter of the construction and application of the provisions in the relevant leases, the Applicants have a separate point which in the judgment of the tribunal

must be decided in their favour, arising out of *s19 Limitation Act 1980*. That provides that no action shall be brought to recover arrears of rent after the expiration of six years from the date on which the arrears became due. Under the terms of the leases, the service charges are reserved as rent, therefore *s19* applies. Ms Muir therefore submitted that any claims prior to 12th February 2009 (at the latest, taking the date of the hearing as a possible date for the respondent issuing proceedings) were statute barred at the date of the hearing, which must be right. At paragraph 29 of the Applicants' statement of case [159] Ms Muir pleaded that arrears for the years 2005-2007 would be statute barred: as she observes, the Respondent's defence at paragraph 23 of his statement of case is contradictory [323].

14. As a matter of construction of the leases Ms Muir submits that the basic charging provisions in clause 3(2) are refined by the Seventh Schedule. Where there is no interim service charge made (as in this case), then paragraphs 4 and 5 of the Seventh Schedule apply and the landlord has to certify what is due, together with supporting evidence (paragraph 6).

The issues

15. The relevant issues for determination were broadly identified in the application as follows: (i) for the years 2005-2008 (subject to the limitation point) in relation to Flat 3(B), amounts charged for insurance and management fees and a one off charge relating to a water leak; (ii) for the years 2009-2012 management fees and insurance contributions for Flat 3(A) and a determination in respect of Flat 3(B) in respect of which no demands were made; (iii) for the years 2013-2014 estimated service charges for Flat 3(A) and a determination in respect of Flat 3(B) in respect of which no demands were made.

16. A recap of the various versions of the demands made by the Respondent demonstrates the inconsistency in his approach. The background is set out in detail in Mr Rose's statement at [436/2] and Mr Futter's at [528/2]. Having heard them confirm the contents of their statements in the witness box, their statements are accepted by the tribunal. The Respondent had the opportunity of challenging their evidence but did not do so. The tribunal noted in particular that the Applicants produced convincing evidence that it was part of the Respondent's tactics to extract alleged arrears from mortgagees as the price of obtaining the landlord's consent to assignment of the leases. This occurred in 1999 on the assignment to the Roses [437/2] and on the assignment to Mr Futter and his former partner in 2009 [530/2]. In both cases the Respondent was successful in obtaining the alleged arrears. It was an attempt to use the same tactic which alerted Mr Rose to the current problems in 2011, when he and his wife received a letter from their mortgagee The Mortgage Works on 7th October [468/2 etc] when the Respondent made a demand for nearly £6000 arrears of ground rent and service charges. On this occasion the Respondent's

approach failed, but these three incidents provide strong support for the tribunal's conclusion that the Respondent's credibility is unreliable, which the tribunal is entitled to take into account when dealing with the application as a whole.

17. That unreliability is emphasised by the various different demands made by the Respondent or his agents which were analysed for the purposes of the hearing by Ms Muir, which even the Respondent admitted in part were wrong. It is worth starting with the letter to the Nationwide dated 8th March 2009 written to Goldpoint Investments explaining that arrears of service charge for Flat 3(A) for the years 2006, 2007, 2008 were £492.60, £841.91, and £2648.39 respectively [289]. In addition Goldpoint Investments extracted £195 from the Nationwide for supplying information, not to mention the sums demanded [292]. These sums are not in issue in these proceedings but as Mr Futter contends, would be a suitable case for a refund to the relevant mortgagor at the very least.

18. As Mr Rose's statement makes clear, these proceedings were generated by the landlord's letter to his mortgagee, The Mortgage Works, in September 2011 [181-2/184]. Leaving aside the claim for arrears of ground rent, the letter claimed service charges in the sum of £750 for each of the years 2005-2010 in respect of Flat 3(B) (version 1). The Respondent accepts in paragraph 9 of his statement of case that version 1 is wrong [320].

19. Pushed by Mr Rose to produce copy demands, the Respondent produced a set of demands for the years 2005-2010 seeking £100 management fees for each year and £645 for insurance for each year 2005-2007 and £690 for insurance for each year 2008-10 (version 2) [186-191]. None of the demands comply with the Seventh Schedule or *s47 LTA* 1987 as they do not contain the name and address of the landlord. A careful and detailed letter was sent by the Roses' solicitor to Goldpoint Investments Limited dated 11th November 2011 [192].

20. After a year, Attwells wrote to the Roses' solicitor (DJW) on 12th November 2012 with a different set of figures claiming arrears of service charge in the sum of £750 for each of the years 2006-2010 and £765 arrears for 2011 (version 3) [199-200]. Ms Muir contends that version 3 does not even amount to a demand, being merely another letter before action. If the schedule attached to the letter purported to be a proper demand, it would not comply with the Seventh Schedule in any event.

21. There then followed a further gap until 8th August 2013 when Attwells wrote to DJW with version 4 [201-209]. It is arguably implicit in that letter that Attwells concede as Ms Muir submitted that versions 2 and 3 do not comply with the statutory requirements for compliant service charges (not to mention the provisions of the Seventh Schedule of the

lease). Version 4 demands management charges of £300 for 2007-2008 and £350 for 2009-10, and insurance premiums based on a one third share of varying amounts from £490.31 to £495.96 for the years 2007-2010. All the demands are dated 21st June 2013 and are numbered sequentially. The figures are different again, they claim a one third share rather than 25%, the demands do not comply with the Seventh Schedule or *s47 LTA 1987* and the debate is in any event resolved by the Respondent's apparent admission at paragraph 13 of his statement of case, that the figures are incorrect [321].

22. Attwells produced version 5 under cover of their letter 7th February 2014 [210-241], claiming management charges of £300 per year 2005-2008 and then £350 for 2009-2010, and varying insurance premium contribution claims for 2005-2007 with the same figures for the years 2008-2010 as in version 4. It is notable that no attempt to bring arrears up to date was being attempted. As Ms Muir submitted, the demands are invalid for the same reasons as the version 4 demands were invalid, but in addition inconsistently identify the landlord as Goldpoint Investments as opposed to or as well as the Respondent.

23. However, version 5 differs from the previous versions in that it includes a series of documents [230-241] headed *Service Charge Certificates* for the years 2005-2010 which purport to be certified by the Respondent but which identify the landlord as Goldpoint Investments, also identified as managers of the property (which contradicts the information on the front of the demands themselves which state the Respondent is the landlord). The % charge is incorrect at one third rather than 25%. There is nothing to suggest that the invoices or certificates were historic or genuine as opposed to produced for the purposes of the letter as they had not been produced before and were inconsistent with earlier documents purporting to cover the same period.

24. The Respondent/Goldpoint Investments/Goldpoint Investments Limited then instructed DWFM Beckman, who spotted that whilst a dispute had been the subject of correspondence between DWJ for the Roses and Attwells, the landlord had failed to bring matters up to speed with Mr Futter. It made two attempts to do so, the fact that the demands being made against the Applicants were not simultaneous, supporting a conclusion that the Respondent's management skills remained haphazard after several years of correspondence.

25. On 29th April 2014 [242] DWFM wrote to Mr Futter enclosing demands in respect of service charges from July 2009. The same criticisms of the demands and service charge certificates made in paragraphs 22 and 23 above apply. The bottom line is that the amount claimed is not 25% and is therefore wrong. In a careful and detailed letter Mr Futter responded fully outlining his position in a letter dated 14th June 2014 [269] which, if written without professional assistance, is an impressive document.

26. Again, the problems with the demand at [242] were arguably conceded in DWFM's letter of 2nd July 2014 to Mr Futter, when a further revised demand based on 25% was made [275], but without any attempt to produce certificates.

27. The Applicants' statement of case pleads an update to the sequence of events set out above. In paragraph 21 [157] the Applicants plead that the Roses had not received any demands for the years 2011-2014 but that various documents were produced on disclosure which purportedly attempt to bring matters up to date to the end of December 2014. The relevant documents are at [336-344]. Similar demands were not served on Mr Futter. Ms Muir suggests that these documents were manufactured by the Respondent for the purpose of the proceedings and there are good grounds for this though the tribunal does not need to come to any firm conclusion on the point.

28. In respect of Mr Futter, paragraph 26 of the Applicants' statement of case refers to an interim charge of £1000 dated 7th April 2014 produced on disclosure by the Respondent.

29. The picture presented by the Applicants' pleadings, evidence, opening and skeleton argument, is one demonstrating an incoherent and inconsistent and unsupported approach by the Respondent so far as management of the property and levying service charges is concerned. Nothing in the Respondent's statement of case provides a clear or reasoned response to the Applicants' case and none of the documents attached or exhibited by the Respondent add anything to or contradict those produced by the Applicants. The detailed and careful witness statements produced by the Applicants were incapable of challenge by the Respondent, whose own witness statement [563] failed to address the detail of the case against him. On all accounts the tribunal prefers the Applicants' evidence, particularly where it is challenged by the Respondent.

30. The Respondent's failure to produce anything by way of a solid defence to the Applicants' complaints was emphasised by the evidence he gave in the course of cross-examination. He admitted that he has no relevant management qualifications, and used to be involved in selling insurance and financial services. He has no knowledge of residential property/landlord and tenant law and has never undergone any training in the management of residential property. He explained his failure to produce relevant documents after the CMC by saying he left the matter in the hands of his lawyers.

31. He had no invoices from Goldpoint Investments (or indeed Goldpoint Investments Limited for that matter) to prove that entity (which he used to manage) had ever invoiced him for management fees. There is no sign of a management agreement. The relationship between the two of them appeared fluid (ie the Respondent said he *was* Goldpoint prior

to becoming registered proprietor), and what is more, there was no evidence that any management had been carried out in any event. This was a historic state of affairs: see eg [453-459] and given the Applicants' evidence, one that has continued to date. As Ms Muir put to the Respondent, his practice was to do nothing until someone wanted to assign a lease or an interest, at which point he maximised the opportunity to extract payment, for which no credit was given subsequently. In the end he admitted to Ms Muir that for all the demands generated during recent years, he had written no chasing letters to anyone for 10 years, had made no demands until 2011 (Flat 3(B)), and had never met the Applicants until the day of the hearing. Apart from one allegation that he had been to the property to drop off a letter to Mr Futter, the Respondent could provide no other details of any other visits. The allegation that he assisted lessees by providing information to their mortgagees, in the context in which he did so, is unworthy. His attempt to explain his behaviour as a form of benign non-interference was equally incredible. His written evidence and statement of case were no more than assertion.

32. In the end he admitted to the tribunal that no work had been done on the property and it is not in a very good state of repair. His evidence that he visited the property once or twice a year is hard to reconcile with his admission that he had never met Mr Futter (the Roses do not live there) and the Applicants' evidence of neglect. There is no credible evidence that he attended the property.

33. His knowledge and understanding of the various versions of the demands sent out on his/the landlord's behalf was seriously lacking, and he failed to appreciate the detailed nature of the Applicants' case against him. He had no credible explanation for any of the figures he demanded or documentation to support them. He failed to understand why he might be required to produce supporting documentation or why the provisions of the lease should be followed in raising demands. Even now the tribunal cannot find any basis for the alleged management fees or insurance charges.

34. As for insurance premiums, bearing in mind the Applicants' evidence, which the tribunal accepts, that they insured the building themselves in the absence of any contact with a landlord or managing agent (see Mr Rose's witness statement [445-448] and the Respondent's evidence [109-150], [295-300]) together with a purported explanation at paragraph 48 of his statement of case which did not survive basic questioning by Ms Muir, it is hard to see why the tribunal should find any charges for insurance reasonable or payable. All the other documents are renewal invoices [109-150]. The basic evidence is none existent and the tribunal prefers the evidence of the Applicants that the purported charges are, on the basis of their hard evidence, high in any event. The Respondent's explanation that the premiums are high because he discovered a water leak affecting the structure of the building in 2004 for which Thames Water could not find a reason is

wholly at odds with Mr Rose's evidence that there was a complete lack of management over the relevant period, and is rejected as not credible. Further, as Mr Rose points out, the welter of conflicting figures produced by the Respondent makes it impossible to conclude even now what the situation is.

The tribunal's decision

35. None of the amounts claimed by the Respondent in any of the purported service charge demands are recoverable from the Applicants or payable by them.

Reasons for the tribunal's decision

36. Any alleged charges arising prior to 12th February 2009 are irrecoverable on the basis of *s19 Limitation Act 1980*.

37. Further or alternatively, none of the alleged insurance charges are payable because it cannot be said they are reasonable. The tribunal refers to the evidence and the analysis in the Applicants' skeleton argument at paragraphs 25-29, which is correct.

38. Further or alternatively, none of the alleged management charges are payable because it cannot be said they are reasonable. Again, the tribunal refers to the evidence and the analysis in the Applicants' skeleton argument at paragraphs 30-34, which is correct.

39. In addition the Applicants are entitled to rely on the defects already listed in relation to the Respondent's purported demands versions 1-5, and the defects in the purported demands served on Mr Futter in April and July 2014. None of the demands have, even if the sums claimed are reasonable (which they are not) been made in compliance with the terms of the lease, for the reasons already given above, or statute.

40. Further, if any valid demands had been made for reasonably incurred service charges (though they were not), the provisions of *s20B LTA 1985* would apply as follows, with the result that the Applicants would not be liable to pay the relevant service charges. The first demand served on Mr and Mrs Rose which might be valid is version 4 dated 8th August 2013 or alternatively version 5 (7th February 2014). But since both those demands cover periods ending (at the latest) the end of 2010, they fall foul of the 18 month time limit in *s20B*. The same provision would apply to relieve Mr Futter of liability to pay any service charges (assuming they were otherwise payable) falling due more than 18 months before 29th April 2014.

Application under s.20C and refund of fees

41. At the end of the hearing, the Applicants made an application for a refund of the fees that they had paid in respect of the application and hearing. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the Respondent to refund any fees paid by the Applicant within 28 days of the date of this decision. The Applicants were plainly justified in issuing the application.

42. In the application form, the Applicants applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that it is plainly just and equitable in this case for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge. The tribunal bears in mind in particular the Respondent's allegation in oral evidence that he has spent over £20,000 in relation to attempting to recover sums due from the Applicants, and it would be absurd to risk any attempt by him to recover such sums from the Applicants.

43. At the end of the hearing Ms Muir indicated on behalf of the Applicants that if they were successful, she would be minded to make an application for costs pursuant to *Tribunal Rule 13*. In view of the findings of the tribunal this is plainly a case in which the Applicants should be entitled to at least make an application, and appropriate directions have been given above.

Judge Hargreaves

12th March 2015

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).