



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : LON/00AH/LSC/2014/0013

Property : Flat 4 Bishops Folly, 228 South
Norwood, London SE25 6AS

Applicant : Ms Rae-Anne John

Representative : In person

Respondent : Bishops Folly Limited

Representative : Mr Ken Moore, Director & Mr Tom
Mitchell – Property Manager of
Residential Block Management
Services Ltd (RBMS)

Type of Application : Payability of service charges and
administration charges

Tribunal Members : Judge Tagliavini
Mr Frank Coffey FRICS
Mr John Francis QPM

Date of hearing : 25 & 26 November 2014

Date of decision : 25 January 2015

DECISION

Decisions of the tribunal

- (1) The tribunal determines that all sum demanded by the Respondent in respect of service charges for years 2008 – 2014 are payable by the Applicant to the Respondent. This includes the sums attributable to both the major works carried out in 2008 and the annual service charge fees.
- (2) It is conceded by the Respondent that sums attributable to directors and officers' liability insurance and legal costs are not properly attributable to service charges and are not payable by the Applicant as service charges.
- (3) Demands for service charges for the relevant years have been properly made and service charge certified accounts have been provided to the tenant in accordance with the terms of the lease.
- (4) The tribunal determines that the Applicant is liable to pay to the Respondent all administration charges demanded for the service charge years 2008-2014.
- (5) 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.
- (6) The tribunal determines that the Applicant and the Respondent shall bear their own costs of this application and does not order any reimbursement of fees or costs of or associated with this application to either party.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act")] as to the amount of service charges and administration charges] payable by the Applicant in respect of the service charge years 2008 – 2014.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant appeared in person and was supported by Mr Michael Lincoln FRICS, FCI Arb who although had provided the Applicant with help and advice previously in a professional capacity was not appointed as a representative for the purposes of the full hearing. The Respondent was represented by Mr Moore of the managing agent company at the hearing with evidence also being provided by Mr Mitchell.
4. During the course of the hearing the Respondent handed in further documents, including documents relating to gardening documents and the management agency agreement. The applicant was given opportunities throughout the hearing to consider these or make any request for further time in which to consider and respond to these documents.

The background

5. The property, which is the subject of this application, is a detached house circa 1910 converted into 8 self-contained flats over three/four floors with a communal front and rear gardens.
6. The tribunal inspected the property before the hearing in the presence of Ms John, Mr Lincoln and Mr Moore.
7. The Applicant holds a long lease of the property, which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

The issues

8. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The payability and/or reasonableness of service charges for the years 2008 - 2014 in particular:
 - (ii) Gardening maintenance charges, electrical works, management fees and legal fees - 2011
 - (iii) Insurance premiums and insurance revaluation, directors and officers liability insurance, garden maintenance, general repairs, communal cleaning charges, legal costs, company secretarial fees, management fees – 2012

- (iv) Block insurance costs and management fees - 2013
 - (v) Insurance costs, management fees, interim service charge contribution, reserve payment – 2014
 - (vi) Payability of administration charges in connection with charges for the recovery of service charges.
 - (vii) The cost and standard of major works in 2008.
9. Having heard and considered the oral and written evidence and submissions from the parties and considered all of the voluminous documents in three lever arch files provided by the Applicant, the tribunal has made determinations on the various issues as follows. The tribunal also received written submissions from the Applicant after the close of the hearing which although uninvited have been considered by the tribunal. Helpfully the Applicant prepared a schedule of disputed annual service charges for the periods 2011 – 2014 in addition to other items in dispute.
10. The tribunal makes the following findings:
- (i) The lease (as surrendered and re-granted with effect from 28 June 2013 granting a term of 999 years from 25 March 1986), provides at clause 3(3)(a) for the payment of a proportionate part of all costs charges and expenses from time to incurred by the landlord as set out in the Fourth Schedule.
 - (ii) Clause 3(3) makes provision for anticipated service charges and a reserve fund.
 - (iii) Clause 3(3)(b) provided for “Advance Payment” of service charges.
 - (iv) The Fourth Schedule provides the definition of what are service charges and provides that the landlord may employ a managing agent.
 - (v) The Fourth Schedule provides that certified accounts of costs charges and expenses shall be prepared by a qualified accountant at the end of every service charge year and as soon as practicable serve on the tenant an account of the service charge and the proportion payable by him as certified in accordance with the accounts.

- (vi) The Fourth Schedule provides the landlord may employ staff or agents for the performance of its obligations.

2011

Garden maintenance - £1,922

The tribunal's decision

11. The tribunal determines that the amount payable in respect of this service charge item is £1,922. This amount represent the total annual cost and is therefore payable by the Applicant in the proportion required by the lease.

Reasons for the tribunal's decision

12. The tribunal finds that a reasonable garden maintenance service was provided by the Respondent through Blades Gardening Services and Grounds Maintenance and replaced by Rectory Garden during this period as evidenced and supported by the invoices. The Applicant did not provide any diary or other evidence to support her assertions that the gardeners did not attend and work was not carried out in 2011. Therefore the tribunal preferred the Respondent's evidence on this point.
13. The tribunal also finds that the engagement of gardening services did not amount to a long term qualifying agreement but appeared to be on an oral agreement on a month to month basis until termination and therefore consultation pursuant to section 20 of the Landlord and Tenant Act 1985 was not required. Further, the tribunal determines that the Respondent is not required to choose the "best price" for these services, only one that is of a reasonable cost for the services provided. Although the services provided were not as extensive as provided by the previous gardener and did not extend to cleaning the dustbins, the tribunal is satisfied that these costs have been reasonably incurred and are therefore payable by the Applicant. Further, the tribunal accepts that there have been no other complaints from tenants in respect of this service, which might have gone some way to substantiating the Applicant's complaints. The tribunal also finds the Applicant's internet generated gardening "quotes" of limited assistance as there was little indication of the scope of works they were quoting for.

Electrical upgrade works -£2,435

The tribunal's decision

14. The tribunal determines that the amount payable in respect of this service charge item is £2,435.

Reasons for the tribunal's decision

15. The tribunal finds that these works are made up of distinct parts namely (i) installation of lighting and smoke detectors and (ii) maintenance and enhancement of external security lighting. The tribunal is not persuaded that these works form one separate contract as evidenced by the instructions for works and invoices dated in July 2011 and September 2011 to COBS electrical contractors, one of which resulted in the presentation of an invoice dated 28 September 2011 in the sum of £882.00. Therefore, the tribunal finds these works were not subject to section 20 consultation notices. Further, the tribunal notes that the applicant has not provided any comparable evidence to show that the work carried out is sub-standard or unreasonable in cost.

Legal fees - £2,793

The tribunal's decision

16. The tribunal finds that there is the fees are not properly payable by way of the service charge and disallows this sum in full.

Reasons for the tribunal's decision

17. These sums are referable to the duties of the Respondent Company in meetings its statutory obligations and advising Companies House of various changes as reflected in the invoices of Charles Lucas Marshall. The tribunal finds that these sums are not attributable to service charges under the terms of the lease as they do not fall within clause 6(a) of the Fourth Schedule which refers to the costs of forming a management company as a limited company for the purposes of managing the building. The tribunal finds that these costs relate to the freeholder's company affairs and therefore do not form part of the service charges.

Management Fees - £1,620

The tribunal's decision

18. The tribunal finds that these costs are reasonable and payable in full.

Reasons for the tribunal's decision

19. The tribunal finds that the standard of services provided is reasonable and is in line with costs incurred. Although the Applicant has made of a number of generalised assertions in her Schedule, of high costs and lack of service, she was not able to particularise these complaints or provide any alternative evidence to substantiate her assertion that the costs are too high or that the property is not maintained to a reasonable standard. The tribunal preferred the evidence of Mr Moore on this aspect. The tribunal is also satisfied that the managing agency agreement dated 1 April 2011 does not fall within the definition of a long-term qualifying agreement as the contract period is for an initial period of one year which can be terminated on 3 months notice.

2012

Insurance Premiums - £6,107

The tribunal's decision

20. The tribunal finds this sum is reasonable and payable in full.

Reasons for the tribunal's decision

21. The tribunal accepts the Respondent's evidence as contained in the witness statement of Mr Moore together with his oral evidence, that that the insurance is placed in an appropriate and professional manner as part of a portfolio held by the landlord. The tribunal notes the applicant's alternative quote but finds that is expressly provided on a like for like basis. Further, the landlord is not obliged to accept the cheapest quote only one that is reasonable in cost and makes proper provision for the building and any properly insurable event.

Directors and Officer's Liability Insurance - £194

The tribunal's decision

22. This sum is not payable as a service charge.

Reasons for the tribunal's decision

23. It was conceded by the Respondent that this sum is not payable as a service charge.

Insurance revaluation - £700

The tribunal's decision

24. This amount is reasonable and has been properly incurred and is payable in full.

Reasons for the tribunal's decision

25. The tribunal notes the surveyor's report from David Phillips BSc MRICS of Accord Chartered Surveyors on which this fee is based and accepts that is both reasonable and prudent for a landlord to ensure that his building is adequately and reasonably insured. The tribunal notes that the Applicant gives no reason for her objection to this sum other than that it is too expensive, but provides no evidence to substantiate this assertion.

Garden maintenance - £1,625

The tribunal's decision

26. The tribunal determines that the amount payable in respect of this service charge item is £1,922. This amount represents the total annual cost and is therefore payable by the Applicant in the proportion required by the lease.

Reasons for the tribunal's decision

27. Please refer to paragraph 12 above.

General repairs - £3,840

The tribunal's decision

28. This sum is payable in full as being reasonably incurred.

Reasons for the tribunal's decision

29. The tribunal finds that these costs are made up of a number of annual works of general repairs arising and carried out in 2012 as supported by the invoices. Further, the tribunal finds that these works are not related to the 2008 major works and that the costs have been reasonably incurred. The tribunal finds that section 20 consultation notices were not required having regard to the amount of the individual invoices and is satisfied that the works were both necessary and appropriate.

Communal cleaning - £780

The tribunal's decision

30. This sum is reasonable and payable in full.

Reasons for the tribunal's decision

31. The tribunal accepts the Respondent's evidence and invoices that communal cleaning has been carried out for a relatively modest charge. At the tribunal's own inspection of the subject premises, it was evident that cleaning (and gardening) had taken place as the premises were reasonably clean and tidy and the garden maintained, although the tribunal accepts that an inspection in November 2014 is not necessarily reflective of the situation in 2012. However, the Applicant was unable to provide any contemporaneous diary evidence of her complaints to substantiate her assertions that the cleaning was not carried out.

Legal costs - £1,609

The tribunal's decision

32. The tribunal finds that there is the fees are not properly payable by way of the service charge and disallows this sum in full

Reasons for the tribunal's decision

33. These sums are referable to the duties of the Respondent Company in meeting its statutory obligations and advising Companies House of various changes as reflected in the invoices of Charles Lucas Marshall. The tribunal finds that these sums are not attributable to service charges under the terms of the lease.

Company secretarial fees - £1,404

The tribunal's decision

34. The tribunal finds these are not payable as service charges.

Reasons for the tribunal's decision

35. The tribunal finds that these charges are not properly defined as service charges in accordance with the terms of the leases.

Management fees – £2,160

The tribunal's decision

36. The tribunal finds this sum is reasonable and payable in full by the Applicant.

Reasons for the tribunal's decision

37. See paragraph 19 above.

2013

Block insurance - £5,108

The tribunal's decision

38. The sum is reasonable and payable in full by the Applicant.

Reasons for the tribunal's decision

39. See paragraph 21 above.

Management fees - £2,208

The tribunal's decision

40. The tribunal finds this sum is reasonable and payable in full by the Applicant.

Reasons for the tribunal's decision

41. See paragraph 19 above.

2014

Block insurance -£5,000 (estimated)

The tribunal's decision

42. The tribunal finds that the sum is reasonable and payable in full.

Reasons for the tribunal's decision

43. See paragraph 21 above.

Management fees - £2,208

The tribunal's decision

44. The tribunal finds that the sum is reasonable and payable in full.

Reasons for the tribunal's decision

45. See paragraph 19 above.

Interim service charge contribution – £1,735 (per flat)

The tribunal's decision

46. The tribunal finds that this sum is reasonable and payable in full with exception of a legal, director's or company costs/insurance.

Reasons for the tribunal's decision

47. The tribunal finds that the sums demanded are reasonably based on previous annual service charge expenditure and are therefore reasonable and have been properly demanded by the Respondent. Any balancing payment should be credited or demanded at the end of the service charge year.

Reserve payments – 2008 £5,248; 2009 £11,704; 2010 £13,354; 2011 £10,503 and 2012 £3,726

The tribunal's decision

48. Reserve fund payments are chargeable under the terms of the lease.

Reasons for the tribunal's decision

49. The tribunal finds that the lease allows for the collection of a reserve fund as well as interim payments for anticipated expenditure. However, the Respondent should make it clear what is being collected as a reserve fund and "ring fence" and deal with these sums appropriately i.e. for use for major works expenditure and not for annual service charge items. Where the tenant is in credit this should be made clear on the service charge accounts and credits reflected on the tenant's account accordingly.

Administration charges – 2013 – £90 (RBM), £204.26 and £80 (solicitor)

The tribunal's decision

50. These costs are reasonable and payable in full.

Reasons for the tribunal's decision

51. The Applicant has consistently failed to pay service charges properly demanded and have incurred the Respondent in costs in seeking this payment. The tribunal finds these demands to be reasonable in cost

and payable by the Applicant who has been previously notified of the Respondent's "Arrears Policy".

Major works – £20,690, 2009 £349; 2010 £31,485 – Total £52,524

The tribunal's decision

52. The tribunal finds that the sum claimed is reasonable and payable in full by the Applicant.

Reasons for the tribunal's decision

53. The tribunal has found it difficult to reach its determination upon this issue, not least because of the amount of time that has passed between the period these works were carried and the Applicant's application to the tribunal. Further an evidential problem arose due to the former managing agents no longer being engaged and the lack of paperwork in respect of this issue being passed onto to RBMS. However, on the evidence provided to the tribunal, which included a Property Inspection Report dated May 2007 from Lamberts Chartered Surveyors, a Notice of Intention to Carry out Work dated April 2007 in respect of external and internal repair and redecoration to of the common parts, a Schedule of Works dated February 2008 prepared by Lamberts Chartered Surveyors and included a recommendation that the works should be carried out by M A Shepherd Builders Limited at a contract price of £40,051.25 plus £1,000 for additional roof works plus VAT and professional fees, and a letter dated 3 June 2010 in relation to the completion of snagging items on this major works project from Desmond Kelly, BSc Hons MRICS of Lamberts Chartered Surveyors. This letter indicated that Mr Kelly was satisfied that the works were carried out in accordance with the specification. The tribunal notes the Applicant's assertions of works not being completed or properly supervised and being of a poor standard, but finds that the Applicant has failed to substantiate her assertions with any persuasive independent evidence. The tribunal prefers the documentary evidence provided in support of the Respondent's assertions that the major works were properly carried out and completed at a reasonable cost and standard.
54. On inspection of the property, the tribunal noted that there was significant interior cracking to the Applicant's flat, which to date the Applicant had refused to have repaired due to her belief that the repairs as recommended by the Respondent would be ineffectual to remedy the cause of the cracking. The tribunal noted that there was some works of repair, maintenance and redecoration that were required to this property but given the passage of time since the major works project

was completed, it was not possible to determine whether these were as a result of sub-standard works or the failure to carry out works as per the 2008 Schedule of Works or were new items that had arisen since the completion of the 2008 major works project.

55. As stated above, the tribunal found the documentary evidence provided supported the Respondent's assertion that the major works had been carried out and completed to a reasonable standard and at a reasonable cost. Although the Applicant was clearly dissatisfied with the outcome of these works and the continued presence of cracking to the interior of her flat, although stated openly in the tribunal that she would allow repair work to be carried out in her flat by April 2015.

Application under s.20C and refund of fees

54. At the end of the hearing, the Applicant made an application for a refund of the fees that he had paid in respect of the application/hearing¹. Having heard the parties' oral submissions and the Applicant's additional written submissions and taking into account the determinations above, the tribunal does not order the Respondent to refund any fees paid by the Applicant.
55. In the application form the Applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines] that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

NB: As noted above the tribunal determines that the lease does not make provision for the recovery of these legal costs in any event.

Name: Judge Tagliavini

Date: 26 January 2015

¹ The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

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.

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.