10528

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BC/LSC/2014/0456**
Property	:	**14 Empress Avenue, Ilford, Essex IG1 3DD**
Applicants	:	**Mr R Ali (14C)** **Mr I Ahmed and Mrs S Patel (14B)** **Ms Y Korimbux (14D)**
Representative	:	**Mr R Ali**
Respondents	:	**Mr A Mattey and Mr S Mattey**
Representative	:	**Mr J Galliers** **of BLR Property Management Ltd**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	:	**Judge T Cowen** **Mrs E Flint FRICS** **Mrs J Hawkins MSc**
Date and venue of hearing	:	**10 Alfred Place, London WC1E 7LR**
Date of hearing and inspection	:	**5 January 2015**

DECISION

Decisions of the tribunal

(1) The tribunal determines that each of the Applicants is liable for their respective share of the sum of £8,733 plus VAT amounting to the total sum of **£10,479.60** being the sum determined by the tribunal as payable, by way of service charges for the year 2014, for the major works which were the subject of this application.

(2) 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 on to the lessees through any service charge.

(3) The tribunal has decided not to make an order for costs under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

(4) The reasons for the orders made above are set out in the remainder of this decision.

The application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of major works carried out in 2014.

2. The relevant statutory provisions are set out in full in the appendix to this decision. In this case, sections 19, 20 and 27A(1) of the 1985 Act are particularly relevant.

3. Section 20 of the 1985 provides for a statutory consultation process before major works are carried out. The question was raised at the Case Management Conference on 8 October 2014 as to whether the section 20 requirements had been satisfied in this case. But at the hearing before us on 5 January 2015, it was common ground between the parties that the Landlords had followed the procedural requirements and it seemed to us that this was correct.

The hearing

4. Of the Applicants, Mr & Mrs Ali and Mr Ahmed appeared in person at the hearing. For the main part, Mr Ali spoke on behalf of all the applicants with their agreement. The Respondent was represented by John Galliers of BLR Property Management Ltd.

5. We inspected the site on the morning of 5 January 2015. Unfortunately, none of the parties attended to give us access, so our inspection was restricted to the front exterior of the building.

The background

6. The property which is the subject of this application is a two-storey mid-terrace double-fronted house with a single-storey extension to the rear located in a residential street. The property has been converted into four self-contained flats. The conversion predated the grant of the leases in about 1978.

7. The Applicants hold long leases of their respective flats in the property. We have seen one of the leases which is dated 7 April 1978 for a term of 99 years. We have proceeded on the basis that all the leases of the subject flats are in the same or similar terms. The leases require the landlords to provide services and for the tenants to contribute towards their costs by way of a variable service charge. The proportions are fixed at 25% for each flat. There is no provision for an estimate to be payable in advance, so the landlords are entitled to invoice for the works in question only after they have incurred the costs. There is no dispute between the parties that the types of works to which the disputed service charges relate are within those which are recoverable under the terms of the leases. It seems to us that the disputed works are recoverable under the terms of the lease. It remains for us to determine whether they are recoverable under the relevant statutory provisions cited above.

8. The works in question in this application are external works of repair and redecoration. Major internal works were conducted in 2012. They are not the subject of these proceedings. The Respondents first raised the prospect of major external works by letter to the Applicants dated 14 November 2013. Thereafter a schedule of works was prepared by the Respondents' surveyor and that schedule was sent to two contractors for estimates – Emerald Building Services Limited ("Emerald") and C2 Maintenance Limited ("C2"). The estimates were sent to the Applicants by way of s20 notices on 16 July 2014. The Respondents had selected C2's lower quote of £29,001.89 as against Emerald's quote of £35,000.16. Both of these quotes were inclusive of surveyors' fees, management charges and VAT. The Applicants were invited to respond with their observations. The Applicants did not respond to any of the consultation documents. The work was due to commence on 1 September 2014. Three days before then, Mr Ali (one of the Applicants) emailed the Respondents' agents saying that the cost of the proposed works was disputed and that an application to this tribunal was being made. The application to this tribunal was dated 1 September 2014. Thereafter the Respondents agreed to postpone the start of the works pending discussion of the disputed costs. In the absence of further detail from the Applicants and acting on advice that

works to the ridge tiles of the main roof were urgent, the Respondents instructed C2 to commence the works. The works were completed by mid-November 2014.

9. The actual cost of the works was a little lower than the amount estimated by C2. The service charge now sought by the Respondents for the 2014 major works is the total sum of £27,389.09, which amounts to the sum of £6,847.27 in respect of each flat on a 25% share. Those figures include surveyors' fees, management fees and VAT.

10. Another feature of the background of this case is that the Applicants have (since the commencement of this application) served an initial notice on the Respondents under the Leasehold Reform Housing and Urban Development Act 1993 claiming the right to collective enfranchisement.

The issues

11. The tribunal heard the evidence and submissions of the parties and considered all of the documents provided on each of the following categories of work:

    a. Scaffolding
    b. Main roof repairs
    c. Replacement of flat roof
    d. Repairs to front and rear elevation and subsequent redecoration of both.
    e. Works to front garden bin store
    f. General items listed as items 59-66 of the Respondents' Schedule of Works.

12. The issue in respect of each of those categories of work was:

    a) whether it was reasonable to carry out the work at all;

    b) whether the cost claimed by the Respondents was reasonable;

    c) whether the work was carried out at all;

    d) whether the work was carried out to a reasonable standard;

    e) in all the circumstances what, if anything would be a reasonable amount for the Applicants to pay.

The tribunal's decision and reasons

13. The tribunal has made the following decisions with respect to each item listed above.

Scaffolding

14. We have decided (see below) that it was reasonable for the Respondents to carry out works to the roof and exterior of the property. For that purpose, incurring the erection of scaffolding was also reasonable. Works were being carried out to the rear as well as the front of the property. The building is mid-terrace and so access to the rear is very limited. The Respondents opted to erect scaffolding at the rear by way of beams suspended over the top of the building. The Applicants submitted that it would have been possible to pass pieces of scaffolding and other equipment to the rear of the property through the interior of the property up to the first floor and out through a large window onto the surface of the flat roof. Although there are advantages and disadvantages to each method, we think that the method chosen by the Respondents was within the reasonable range of options.

15. The Respondents are seeking the sum of £2,360 plus VAT in respect of scaffolding costs incurred. The Emerald quote obtained by the Respondents provided for £3,200 plus VAT in respect of scaffolding. The Applicants have produced a number of quotes from various local scaffolding and building firms ranging from £850 plus VAT to £1,900 plus VAT. It is not clear from the documents what were the bases of these quotes. The Applicants said that they all viewed the scaffolding actually erected by C2's scaffolders and quoted on the basis that the scaffolding might be taken down and replaced.

16. In our judgment, it is not clear that the quotes obtained by the Applicant are properly comparable. In any event, although the sum sought by the Respondent is on the high side, we have decided that that figure is within the reasonable range of costs for scaffolding.

17. **The tribunal therefore has decided to allow the Respondents' claim for scaffolding in full in the sum of £2,360 plus VAT.**

Main roof repairs

18. The parties are agreed that some repairs were needed to the main roof. In particular there was cracked mortar and loose tiles. Ridge tiles were damaged and needed rebedding. The lead valley needed relaying. Repointing was needed to the parapet walls, which would need re-rendering thereafter.

19. The Respondents seek the sum of £2,936 plus VAT for those works. The Applicants obtained three other quotes ranging from £1,350 plus VAT to £3,200 plus VAT. All of these figures were based on the assumption that the works specified in the schedule of works would all be done to a reasonable standard.

20. The main dispute between the parties on this issue is the extent of works actually done and the nature and quality of the works.

21. The Applicants say that most of the work specified was not done. Broken tiles were not replaced, they were simply cemented down. Only two roof tiles were replaced overall. A badly damaged ridge tile was simply filled in with cement, which is inadequate to keep the roof in repair. The lead flashings were not overhauled and no sections were replaced. All of the above observations were contained in the Applicants' oral evidence before us and some of them were apparent from our limited site inspection. There were also photographs which confirmed the Applicants' evidence. Mr Galliers for the Respondents had not visited the property and was not able to give any evidence as to the condition of the building after the works. There were no other witnesses at the hearing for the Respondents.

22. The Applicants estimated (from observing the workmen on site) that the work done on the roof amounted to no more than 4 days work by one workman.

23. We agree with the Applicants. The amount sought by the Respondents is unreasonably excessive for the work which was actually done. Doing the best we can, we determine that the sum of £1,200 plus VAT is a reasonable charge for the work actually done, being the cost of four working days by one workman together with the cost of materials.

24. **The tribunal therefore has determined that a reasonable service charge in respect of main roof repairs is the sum of £1,200 plus VAT.**

25. For the avoidance of doubt, the Respondents no longer seek the sum of £500 plus VAT in respect of proposed works to the bay roof as these works proved unnecessary and were not done.

Rear Flat roof replacement

26. The Respondents seek the sum of £4,240 plus VAT for the replacement of the surface of the rear flat roof. This is lower than the £4,940 estimate provided by C2, because the initial proposal was to use asphalt but the Respondents decided in the end to use roofing felt.

27. The issue in respect of this item is whether it was reasonable to carry out this work at all. The Respondents have provided no evidence that the replacement of the flat roof surface was reasonably necessary. The Respondents' surveyor prepared a schedule of works which included this item, but the surveyor did not produce a report at the time or subsequently. He did not attend the tribunal hearing to give evidence. The Respondents simply relied upon their assertion that the existing flat roof surface was more than 20 years old and that it had reached the end of its life. Mr Galliers said that he had managed the property since 2006 and that he had previous service charge accounts going back to about 2000. He said that there was no record of the flat roof having been replaced in that time.

28. The Applicants produced a report from a Mr Syed based on an inspection on 8 October 2014. He said that the flat roof was watertight and did not need relaying. He noted that there was water pooling in some areas and accumulation of moss, lichen and rubbish which needed urgently clearing.

29. The Applicants also produced a report from a roofer, Lewis Pilling, who said that in order to remedy the pooling of water, repitching of the flat roof would be required in the next 24 months.

30. The Applicants stated (and Mr Galliers confirmed) that there had been no reports of leaking coming from the flat roof area.

31. The Respondents have replaced the flat roof surface (without repitching it) and the Applicants have reported (together with photographic evidence) that the water pooling problem has continued after the completion of the works. Mr Galliers was unable to provide any evidence to the contrary.

32. We accept the evidence and submissions of the Applicants. The flat roof works were not reasonably necessary. In addition, we have no idea how old the existing surface was – only that there are apparently documents (which we have not seen) to show that it was at least 14 years old. There was certainly no evidence to support Mr Galliers' assertion that it had not been replaced since the building was converted in 1978. In the experience of the tribunal, flat roof surfaces can last considerably longer than 20 years in the right conditions and there is no reasonable cause to replace them if they remain watertight.

33. In fact, the works done may prove to be a very expensive false economy if, as suggested by Lewis Pilling, the roof will need repitching in the next couple of years. In any event, it is also clear from the photographs and the Applicants' evidence that the lead flashings on the flat roof have not been properly replaced, but have been battered back into position in some places, with the risk that the flat roof (which was previously watertight) may now start to leak.

34. **The tribunal therefore has decided that the costs of works done on the flat roof were not reasonably incurred and so the Applicants may not be charged for this item at all by way of service charges.**

Front and rear elevation repairs and redecoration

35. The parties are agreed that some repairs were needed to the front and rear elevations.

36. The Respondents seek the total sum of £8,061 plus VAT for those works. The Applicants obtained three other quotes ranging from £1,350 plus VAT to £3,200 plus VAT. All of these figures were based on the assumption that the works specified in the schedule of works would all be done to a reasonable standard.

37. The main dispute between the parties on this issue is the amount being charged for these works. The Applicants say that the Respondents' schedule of works includes a number of duplicated or overlapping items and that C2 are charging excessive amounts for each of these items. They also complain about charges for items which should not be charged for at all, such as items providing for the contractors to clean up after themselves and tidy up rough surfaces. For example, items 28, 30, 49, 51 and 60 all relate to cleaning window frames and glass for a total of £955 which is an enormous sum for cleaning the windows of a property of that size. The Applicants contend that large sums such as these are the result of splitting the schedule of works into so many small items and asking the contractor to quote a separate sum for each item.

38. The Applicants also say that there should not be any amount charged for redecoration, as the amount of painting required on the exterior of the property is minimal and the cost should be included in the cost of the front/rear elevation repairs. They point to the fact that the front elevation is pebble dashed and is not painted and the rear elevation is unpainted brickwork. Most of the windows have either steel or UPVC frames and so there is very little woodwork to be painted – only the windows of one of the flats, the fascia boards and the damp course (from which parts are now coming away). No guttering or pipework was replaced.

39. The Applicants further argued that the work was done to a poor standard. Shoddy work was apparent from the photographs and from what we could see on our inspection. Rendering was not done properly and the damp course was already starting to come away from the wall.

40. Mr Galliers' response for the Respondents was to state that this was a contract which lasted for two months and that there were people on site

5 days a week throughout that period. The Applicants dispute that. They say that there was no-one on site for a week after the scaffolding was erected and thereafter, there were a couple of workmen on site for only about 3-4 hours a day. They spent about 3 days on the main roof, 4-5 days on the flat roof and then two of them spent about 5-6 days on the exterior elevations. He argued that the amount charged may not be the lowest, but it was within the reasonable range.

41. We accept the evidence and submissions of the Applicants. The amount quoted is excessive for the works specified and not all of the works were carried out. In addition, a charge of more than £3,000 for repainting in the circumstances described above is excessive and should be included in the general cost of works to the front and rear elevations.

42. The Applicants have provided two alternative estimates for the external elevation works. Palace Windows and Doors estimated £4,200 plus VAT for these works. Finefair quoted £2,000 plus VAT. The Respondents contended that these firms had not produced comparable quotes. They were not building companies: Palace dealt with windows and doors while Finefair was a letting agent. It also transpired during the hearing that Finefair was a maintenance company used by Mr Ali for a number of other unconnected properties he owned, so it was not an arms-length estimate. Mr Galliers submitted that neither of them was a like-for-like quote as they were not genuinely pitching for work with a view to actually being hired. It also transpired, however, that C2 was one of BLR's own companies.

43. The tribunal accepts that we do not have perfect comparables, but we have to do the best we can with what we have got. We have decided to take the more expensive of the two quotes obtained by the Applicants (Palace's quote for £4,200) as being a reasonable amount for the work reasonably required and deduct 25% of it to reflect the poor standard of the work done as set out above.

44. **The tribunal therefore has determined the service charge in respect of front and rear elevation repairs and exterior redecoration in the total sum of £3,150 plus VAT.**

Bin store

45. The Respondents' Schedule of Works provided for works to the brick bin store in the front garden area / driveway of the property – namely to increase its capacity from two to three bins. £420 plus VAT was quoted and charged for this work. An additional £210 plus VAT was quoted and charged for repointing an area of brickwork.

46. The Applicants complained that the bin store was in a poor location and should have been moved nearer to the highway so that the refuse

collectors could access it. We disagree. It is not unusual for domestic residents to have to take their bins out to the highway before collection day. It is reasonable for the landlord in this case to extend the existing bin store. We are not sure why the bin store was not extended to four bins for the four flats, but the existing work was not unreasonable. We propose to allow the amount sought by the Respondents for the extension, but not for the repointing, because we saw no evidence that any repointing had been done.

47. **The tribunal therefore has determined the service charge in respect of the front bin store in the sum of £420 plus VAT.**

General items

48. Items 59-66 on the schedule of works consist of a number of miscellaneous pieces of work for which c2 are charging a total of £1,750.

49. The Applicants argue that these items are duplicated elsewhere in the schedule or involve overlapping work or are items which should not be charged at all. The Respondents simply say that they are standard items in any building contract of this nature.

50. In the judgment of the tribunal;

    a. Item 59 – cutting free windows – should be included in the cost of redecoration. The builders should not be charging for correcting their own errors. In any event, there were no windows which needed cutting free according to the Applicants.

    b. Items 61, 62 and 63 all relate to removing and replacing various fixtures in order to decorate or repair behind them. The Applicants say that this was not done and in any event should have been included in the cost of redecoration. We agree with the Applicants. These charges were not reasonable incurred.

    c. Item 65 – removing water stains. There was no evidence that there were any water stains, or that they were removed or how they were removed. This item was not reasonably incurred.

    d. Item 66 – clearing up – is not something for which the contractor should charge separately It should reasonably be included within the cost of the works.

e. We shall allow item 60 (a reasonable cost of £100 for window cleaning) and item 64 (power jetting of drains after works at a cost of £300) as these items were reasonably incurred in a reasonable amount in the circumstances.

51. **The tribunal therefore has determined the service charge in respect of general items in the sum of £400 plus VAT.**

52. **This means that the total contractor's cost of works which we have determined to be reasonable service charges is the sum of £7,530 plus VAT.**

Surveyor's fees and management charges

53. The Respondents seek to charge in addition a surveyor's fee amounting to 12% of the cost of the works plus VAT. Mr Galliers told the tribunal that the reasonable range was 10-15%. He also told us that the surveyor in this case had prepared the original schedule of works for estimates, inspected the works after completion and prepared a costed schedule of work done. He did not produce a report nor did he supervise the works on an ongoing basis.

54. In the judgment of the tribunal, 10% of the cost of works as we have found them to be would be a reasonable surveyor's fee.

55. Management fees are reasonable in the fixed sum of £450.

56. **The tribunal therefore has determined the service charge in respect of surveyor's fees in the sum of £753 plus VAT and management fees in the sum of £450 plus VAT.**

Application under s.20C

57. 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 just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondents may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

58. The tribunal has decided not to make any costs order under rule 13 of the 2013 Procedural Rules because no party has behaved so unreasonably as to warrant such an order.

Dated this 14th day of January 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).