10927

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BE/LSC/2014/0509** **LON/00BE/LSC/2014/0583**
Property	:	**15 Cronin Street, London SE15 6JJ**
Applicants	:	**London Borough of Southwark**
Representative	:	**Mr P Cremin**
Respondent	:	**Clarissa Yambasu**
Representative	:	**None**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	:	**Judge T Cowen** **Mr Jarero BSc FRICS** **Mrs Hart**
Venue of hearing	:	**10 Alfred Place, London WC1E 7LR**
Date of hearing	:	**30 April 2015**
Date of Decision	:	**17th July 2015**

DECISION

Decision of the tribunal

(1) The Tribunal determines that the amounts payable by the Respondent by way of service charges in respect of heating and hot water costs for the years ending 31 March of 2009 to 2014 are as set out in column "C" of the following table:

A	B	C
Year end 31 March	Heating and Hot Water costs charged by Applicant (£)	Reasonable Heating and Hot Water charges (£)
2009	1,179.03	1,025.22
2010	939.92	854.22
2011	1,231.43	1,076.57
2012	1,471.12	1,318.77
2013	1,884.31	1,642.83
2014	1,223.84	1,155.36
TOTAL	7,929.65	7,072.97

(2) The Tribunal further determines that a reasonable estimate for the services charges payable for the year ended 31 March 2015 is £1,155.36.

(3) For the avoidance of doubt, the Tribunal's decisions do not relate to the amounts set out in the section 20 notices which have been served by the Applicant (and which are referred to below) as these were not referred to the Tribunal for determination.

(4) Also for the avoidance of doubt, the Tribunal's decision does not relate to any years which are not included within this application and should not be taken as setting any principle or precedent for any future years' service charges.

(5) The Tribunal has decided to make an order under section 20C of the Landlord and Tenant Act 1985 so that the costs incurred by the Applicants in these proceedings are not to be regarded as relevant costs to be taken into account in determining any services charges.

(6) 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 ("the 2013 Rules").

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

The application

1. The Property is a two-bedroom maisonette in a purpose built block of flats. The Respondent ("the Lessee") is the long leaseholder of the Property. The Applicant ("the Council") is the Respondent's landlord.

2. The Council commenced proceedings (A65YJ277) in the County Court at Lambeth in March 2014 against the Lessee claiming arrears of service charges for the year ended 31 March 2013. District Judge Zimmels transferred the claim to this Tribunal on 23 September 2014. After the Lessee paid part of the amount claimed in the court proceedings, the balance outstanding on the claim is £763.43, which relates entirely to heating and hot water costs.

3. The Lessee made a separate application to this Tribunal on 11 November 2014 seeking 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 Lessee in respect of heating and hot water costs for the six service charges years shown in the table above.

4. The two matters have been heard together. The issues in this matter therefore concern only the issue of what was described in the application as heating and hot water costs for the relevant years.

5. 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.

The Leases and the Service Charge Covenants

6. By a lease of 30 January 2006, the Council demised the Property to the Lessee for a term of 125 years from the date of the lease. By clause 2(3)(a) of the Lease, the Lessee covenanted to pay the service charges set out in the Third Schedule to the Lease at the times and in the manner set out there. "Services" is defined by the Lease to include the provision of central heating and hot water supply. Clause 4(5) is a covenant by the Council to provide the "services" and:

> "to ensure that they are maintained at a reasonable level and to keep in repair any installation connected with the provision of those services"

The "Service Charge" is defined in paragraphs 6 and 7 of the Third Schedule to include "a fair proportion of the costs and expenses of ... providing the services hereinbefore defined". By paragraph 6(2) of the Third Schedule:

> "The Council may adopt any reasonable method of ascertaining the said proportion and may adopt different methods in relation to different items of costs and expenses."

7. Clause 2(8) of the Lease is a covenant by the Lessee in the following terms:

> "Not to disconnect the flat from the district central heating system if such system serves the flat without the previous consent in writing of the Council"

Service Charge Demands and Section 20 Notices

8. The Council have demanded service charges in accordance with the lease for the relevant years.

9. In addition, on 6 December 2013, the Council served a notice of proposed major works on the Lessee under section 20 of the 1985 Act. The proposed work is the replacement of two of the boilers in the communal boiler house. The notice states that the purpose of the replacement is to "eliminate service failure..., reduce overall running costs" and "improve system efficiency". It says that the existing boilers are about 45 years old and that one boiler was replaced 5 years ago as well as various underground works over the last few years. The estimated cost of the proposed works was £396,743 of which the Lessee's share would be £649.84 calculated on the basis of 1/730 properties (rather than bed-weighting) plus professional fees (8.7%) and administrations fee (10%).

10. On 15 September 2014, the Council served a further notice of proposed major works on the Lessee under section 20 of the 1985 Act. The proposed work is the renewal of part of the primary heating main pipework from the central boiler house to the plant rooms. The pipework in question needs replacing because of frequent leaks and escape of steam since it failed in Spring 2014. The intention was to reroute the pipework to make it more accessible (and therefore cheaper) for future repair and maintenance work. The estimated cost of the proposed works was £442,041 of which the Lessee's share would be £675.05 calculated on the basis of 6/4552 bed-weighting points plus professional fees (5.32%) and administrations fee (10%).

Evidence

11. The Tribunal heard evidence for the Council from Ms Diana Lupelesc and Mr Gulam Dudhia. Their case was presented by Mr Peter Cremin. The Lessee herself gave evidence in support of her application.

The Issues

12. The Lessee's case is as follows:

a. Heating / hot water costs of between £900 and £1,900 per year for a two bedroom flat are much too high:

   i. They are much higher than for the 12 years when the Lessee was a council tenant and before she purchased the leasehold in 2006 and they are also much higher than the amounts currently charged to non-leaseholder tenants.

   ii. They are much higher than the service charges levied on leaseholders for the years immediately before she purchased the leasehold.

   iii. A communal heating system should be less expensive than individual systems for each dwelling because of economies of scale and efficiency.

b. The Lessee ought to have been permitted to disconnect from the communal boiler house and install her own independent central heating system which would result in much lower costs for her.

c. The costs have not been allocated fairly because there are non-residential units (described by the Lessee in her witness statement as "government institutions, day care centres and commercial halls) attached to the boiler which are not paying their fair share

d. The Lessee has been denied access to the contract documentation which underlies the service charges in question. In particular, she wrote to the Council on 20 October 2013 requesting "copies of supplier invoices and annual contract costs for 2012-13, for the boiler supplying my property".

13. The Lessee's case overall was that the heating/hot-water element of her estimated service charges for the year 2014/15 should be determined as £800 and that all previous years should be adjusted downwards in line with energy price inflation.

14. The Council disputes all of the above points and so the areas of dispute between the parties are considered by the Tribunal as follows.

Costs of hot water and heating

15. When one looks at the service charge breakdowns for each year and sees the size of the figures allocated to heating and hot water, they are indeed very high. The Lessee produced some comparable service charge bills for other properties at the hearing. They were flats owned

by the Council, but not connected to the same communal boiler system. One was a service charge bill for a long lease of a 3 bedroom flat showing an annual heating cost of between £665.54 and £781.94 for the years 2010/2011 to 2012/2013. The other was a tenancy of a one bedroom flat showing an annual heating cost of £628.68.

16. The Council has provided detailed breakdowns of the heating and hot water elements of the Lessee's service charge bills in this case. It is clear from those documents (and from the Council's evidence given in support) that a large proportion of the heating/hot-water costs for the years in question are attributable to very substantial repairs and maintenance costs at the North Peckham Boiler House which serves the Property as well as 729 other properties belonging to the Council. The costs shown for heating and hot water on the Lessee's service charge bills for the relevant years therefore relate not only to the cost of the fuel and gas, but also to ongoing works on the boiler system. The costs are therefore not comparable to the heating/hot-water costs in other flats in the ownership of the Council, because they will not include comparable boiler works. We therefore did not find the Lessee's comparable evidence to be relevant.

17. The Lessee does not raise a substantial objection to the fuel and gas costs. She did suggest that it might be possible for the Council to obtain it more cheaply, but we were told by the Council that the fuel and gas is bulk purchased under a large contract and we have no evidence to suggest that the amount being incurred is not reasonable.

18. The most significant question under the issue is the reasonableness of the cost of the substantial works which have been carried out on the Boiler System. One point raised by the Lessee is that she would not have to pay a contribution of such high maintenance costs of the communal boiler if she was permitted to disconnect from the service. The disconnection issue is dealt with in a separate section of this decision below. In this section, we are concerned only with the reasonableness of the costs of the repairs and maintenance of the boiler system under the terms of the lease.

19. We were provided not only with the communal heating costs summary for each relevant year, but also all of the computerised repair logs for those years contained in more than 200 printed pages, showing every item of expenditure which made up the costs charged to the Lessee for boiler repairs. We have seen from those logs that some very large items of repair have been carried out over those years, costing hundreds of thousands of pounds. For example one of the boilers was replaced in 2008/09 at a cost of £102,120 and pipework was replaced in 2012/13 at a total cost of about £60,000.

20. We have also seen and heard evidence that the boilers and the pipework are over 40 years old and have reached the end of their serviceable life and that they have been subject to failures and leaks in the recent past.

21. Although this Tribunal has the general expertise and experience of a specialist Tribunal on which we rely when forming our judgment, we are not experts in heating engineering. It is not possible for us to interpret the technical language in the repair logs without assistance from a suitable expert. Neither party called any such expert. The Council did not call any witness who was able to explain how to interpret this data. We are therefore unable to make any judgment on the cost of repair of the system over the six years in question on an item-by-item basis.

22. Nevertheless, we are tasked with determining whether the amounts charged were reasonably incurred and whether the works were done to a reasonable standard. Despite the large volume of paperwork provided by the Council, it is the Council which has access to witnesses and documents which would help to explain how these various items work. They did not provide that evidence. The Tribunal draws adverse inferences from the Council's failure to do so. The inference is broadly that if the Council had witnesses or documents which would justify the reasonableness of the costs claimed, then they would have produced such evidence. The fact that they did not therefore inclines the Tribunal to the conclusion that the amounts charged were not reasonably incurred and that the works were not to a reasonable standard. The Tribunal is supported in that finding by the Lessee's evidence (which we accept) that there were numerous occasions during the relevant years when the heating system failed, particularly during the winter months, thereby disrupting her heating for several days and up to a week at a time. This indicates that the extensive and expensive repairs were not being carried out to a reasonable standard.

23. The Tribunal is also able to rely on its expertise and experience to consider the Council's general approach to its programme of works and does so in this decision.

24. The Lessee also asserted that the large cost of repair and maintenance works over the last few years was due to the lack of a long-term planning by the Council. There had been no consideration of carrying out a planned maintenance regime in a cost-effective way. Rather, the boilers had been subject to years of patch repairs at vast expense after they had reached the end of their serviceable life. If the system had been replaced and renewed earlier and in a phased programme (rather than waiting until it was leaking and no longer working), then a certain amount of the maintenance work done could have been avoided and the replacement costs may have been cheaper. The Lessee is effectively saying that the Council has not carried out its function in a reasonable

way and the ensuing costs were therefore not reasonably incurred and should not all be payable by the Lessee.

25. We agree. There is ample evidence in this matter of a boiler system which was beyond its serviceable life being repaired rather than renewed earlier, such that the repair costs were effectively wasted. There is no evidence of the Council having carried out long term planning for the system. It was mentioned that there had been inspection surveys, but no reports of these inspections were disclosed at the hearing. Because of the nature of a communal boiler house which serves 730 properties, it is our judgment that it is not possible for the Council to carry out its functions to a reasonable standard and at a reasonable cost without long term planning.

26. Ideally, in order to calculate the amount by which the heating/hot-water costs charged to the Lessee should be reduced, the Tribunal would need expert evidence as to the individual items. There is no such evidence, so we shall have to do the best we can with what we have. There is no evidence to indicate by how much the repair costs were increased, because it is impossible to separate out the replacement costs from the ongoing repair costs on the papers that we have been provided with.

27. As mentioned above, we are left only with our specialist expertise and experience of property management generally together with the inferences which we have drawn above. Doing the best we can with that and with the evidence we have heard, we have decided that 25% of the repair and maintenance cost of the boiler system is attributable to wasted costs resulting from the Council's failure to manage and repair the system to a reasonable standard over the years. It was not reasonable for the Council to incur those wasted costs and so they are not payable as service charges. We have set out in detail how we have calculated our determination in Appendix B to this decision. The total figures are as set out in the table at the beginning of this decision.

The right to disconnect

28. The Council submits that it has a policy not to accede to requests for disconnection by individual leaseholders as that would unfairly increase the burden of the communal boiler system on the rest of the leaseholders. If enough disconnections were permitted it would reach a point where the communal boiler system would be altogether uneconomical to run, leaving the Council with a landlord's obligation to supply a communal boiler service to those who have not opted to disconnect.

29. The Lessee made a request in September 2009 and again in August 2014 to be disconnected. A letter dated 8 August 2014 from the Council informed the Lessee that "it is not current council policy to grant disconnections" and giving reasons. Firstly, because disconnection by

individual properties unfairly increases the burden on those who remain and secondly, because the physical heat distribution throughout the buildings will be thrown off-balance causing adverse consequences to all the inhabitants of the block in question. The Council replied again (probably in a standard form letter) on 16 February 2015 to say that they were still considering it and that she was 78th in the waiting list for consideration of requests for alterations.

30. The Lease does not entitle the Lessee to request disconnection – it merely provides a prohibition on disconnection without permission.

31. The Lease does not provide for an automatic variation of service charges in the event of disconnection. This means that the Council could grant permission to disconnect and then could continue to charge the Lessee a proportion of maintenance of the communal boiler house by way of service charges. The Council said at the hearing that they would, in those circumstances, be likely to try to agree a deed of variation of the lease, but this demonstrates further that such a process is not a Lessee's right but a process of possible negotiation which the Council is not willing to enter into at present. They also said that they would charge any disconnecting leaseholder a capital sum to compensate the council for the losses described above. Ms Lupelesc, witness for the Council, stated that the estimated capital sum in a flat like the Lessee's would be about £20,000.

32. In any event, this is not within our jurisdiction and any speculative impact on past service charges would be irrelevant.

Apportionment

33. The Lease (as quoted above) allows the Council to adopt any reasonable method of apportionment and even to adopt different methods for different items. The Council in this case have adopted what they call a bed-weighting method. The system involves allocating four points to each dwelling unit on the estate and then adding one point for each bedroom in that unit. So a one bedroom flat would be 5 bed-weighting points and a 4 bedroom house would be 8 points. For heating and hot water costs, the number of points is then subject to a variable multiplier to reflect the fact that different dwellings are designed to obtain different levels of service from the communal boiler system. The total number of (multiplied) bed-weighting points across the entire estate is then calculated and each unit is allocated a proportion of costs based on its points as a proportion of the total number of bed-weighting points of all the units attached to the boiler house.

34. The Property is a two bedroom flat which therefore is 6 points and it receives a full hot water and heating supply from the communal boiler, giving it a maximum multiplier of 4.52. It is not clear how the seemingly arbitrary figure of 4.52 is arrived at, but the fact that it is consistently applied to all units which benefit from a full service (which

is almost all of them) means that it makes no significant difference to the apportionment. The multiplier for the few properties which have a partial heating service is 2.5. The bed-weighting for the Property has therefore been a total of 27.12 (6 x 4.52) throughout the years in question.

35. The only figure which has changed has been the total number of bed-weighting points for all of the properties attached to the boiler house. These have varied as follows:

Year ended 31 March	Total bed-weighting points for N. Peckham Boiler House
2009	20,840
2010	20,421
2011	20,575
2012	20,711
2013	20,711
2014	20,711

36. The large drop of 400 points between the first and second of those years and the subsequent fluctuations until the year ended 31 March 2012 are surprising. The total number of bed-weighting points for all the units attached to the boiler house should not change at all unless (a) properties are becoming connected or disconnected from the boiler house year-on-year or else (b) properties remain connected but are no longer being allocated a share of the costs.

37. Understandably, the Lessee in this case has formed the view that:

    a. Other properties have been allowed to disconnect from the boiler house, but she has been denied that opportunity. In particular, the drop of over 400 points between 2008/09 and 2009/10 would raise that suspicion.

    b. Non-residential units are being unfairly favoured at the expense of residential leaseholders such as the Lessee.

38. The Council was unable to explain these anomalies at the hearing and they provided some further material to the Tribunal, pursuant to our request, some time later.

39. The Council's explanation for the fluctuation in total bed-weighting points from 2008/09 to 2011/12 was as follows:

a. Between 2008/09 and 2009/10, the Council conducted a review of the bed-weighting allocations and discovered that a three bedroom property, which had previously been included, was not in fact connected to the North Peckham Boiler House. It was therefore removed. In addition, anther property which was connected to the North Peckham Boiler House had been listed as a 9 bedroom property when it was in fact a 3 bedroom property. The reduction in total bed-weighting points between those two years is explained entirely by these two changes[1]

b. Between 2009/10 and 2010/11, the Council decided that 6 properties (which were classified as not receiving heating from the boiler house) should be included into the bed-weighting system for calculation. This change was to the advantage of all other paying leaseholders such as the Lessee.

c. Between 2011/12 and 2013/14, the Council brought a school within the bed-weighting system because it had become connected to the boiler house. The school was allocated a notional 25 bed-weighting units (before multiplier) for the purposes of the calculation.

40. It is notable (in relation to the disconnection issue discussed above) that none of the changes in bed-weighting over the relevant years have been caused by any leaseholder being given consent to disconnect from the heating service.

41. We accept the Council' explanation for the changes in the bed-weighting totals over the years. It does however lead us to the conclusion that, on the Council's own case, the bed-weighting totals were incorrect until 2011/12. We have decided that it is not reasonable for the Council to have charged the Lessee for the years prior to that on the basis of an inaccurate apportionment method. We have determined the service charges for those years on the basis of the total bed-weighting of 20,579.56. The calculation is as shown in Appendix B to this decision.

Service of Documentation

42. The Tribunal is satisfied that the Lessee has received the requisite summary of costs for the relevant years for the purposes of section 21 of the Landlord and Tenant Act 1985. The Lessee complains that she has not received copies of the underlying contracts. According to our reading of section 21, the Lessee is not entitled to receive those documents. She may have the right to inspect certain documents at the

[1] a reduction of a total of 13 points (4+3 and 6) to which the 4.52 multiplier is applied gives a total reduction of 58.76 points which is the difference between the total bed-weighting between those two years

Council's premises, but as far as we are aware, she has not been prevented from doing so.

Estimate for the Year end 31 March 2015

43. The heating and hot water costs in the services charges for the year 2014/15 are also part of the Lessee's application to the Tribunal. No actual service charge accounts had been prepared at the time of the application. The Council produced a schedule showing that they estimated those charges for 2014/15 to be £1,309.56. This demonstrated an increase of about £90 from that which was charged for the previous year. The additional amount is shown as being attributable to boiler repairs. This estimate is additional to and therefore separate to the major works planned under the section 20 notices referred to above. The Tribunal sees no reason why the boiler repair costs should be increasing when there are planned work for total replacement. In line with the reasoning applied to the calculation of actual service charges for the years 2008/2009 to 2013/14, the Tribunal determines that a reasonable estimate for the year 2014/2015 should be no higher than the amount we have determined as the reasonable payable service charge (in respect of heating/hot-water) for the previous year, namely the sum of £1,155.36. We remind the parties that this decision does not affect the amount of actual service charges for the year 2014/15, which the Council can invoice and which can, if necessary, be the subject of a separate challenge by the Lessee.

Application for costs

44. There is an application under section 20C of the 1985 Act. The Council indicated at the hearing that it was not proposing to pass on the costs of these proceedings as service charges and was not contesting the section 20C application. We therefore make the order under section 20C.

45. The Lessee made an application at the hearing for a costs order under rule 13 of the 2013 Procedural Rules. We refuse to make any such order because the Council has not behaved so unreasonably as to warrant such an order.

Conclusion

46. We have calculated the amounts payable as a result of the decisions made above and the resulting figures appear in the record of our decision at the beginning of this decision.

Dated this 17th day of July 2015

JUDGE T COWEN

Appendix A - 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).