11459

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BG/LAC/2015/0020**
Property	:	**Flat 1305 , No 1 West India Quay , 26 Hertsmere Road , London E14 4EF**
Applicant	:	**Mr A Boorman**
Representative	:	**In person**
Respondent	:	**No 1 West India Quay (Residential) Limited**
Representatives	:	**Mr L Hadjiioannou (Director) Jonathan Wills, Counsel**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Member	:	**C Norman FRICS (Valuer Chairman)**
Date of Decision	:	**24 November 2015**

Determination By Written Representations

DECISION

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Decisions of the Tribunal

(1) The Tribunal determines that it lacks jurisdiction to consider the reasonableness and payability of charges imposed by the landlord in respect of (i) registration of the sublease and (ii) the deed of direct covenant as they are not "administration charges" within the meaning of Schedule 11 Paragraph 1(1) of the Act.

(2) The Tribunal finds that the April 2014 charge of £175 for considering permission to underlet was reasonable.

(3) The Tribunal finds that the respondent was not entitled to charge a further fee in respect of an extension of the subtenancy in March 2015.

(4) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 that not more than two-thirds of the landlord's costs of the Tribunal proceedings may be passed to the lessee through any service charge.

(5) The Tribunal has no power to order repayment of administration fees previously paid by the applicant to the respondent.

The application

1. The applicant seeks a determination pursuant to Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of administration charges payable in respect of the following administration charges:

   April 2014: Permission to underlet £175 plus VAT

   April 2014: Registration Fee £95 plus VAT

   March 2015: Permission to underlet £95 plus VAT

   March 2015: Deed of covenant £100 plus VAT

   The applicant has also referred to four occasions since 2012 when subletting has been requested. These have not been particularised with amounts and dates, contrary to the Directions.

   In his further submission (see below) the applicant also sought an order requiring the respondent to repay administration charges previously paid.

A section 20C order was also sought in the application.

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

The background

3. The subject property is a flat in a large mixed residential and hotel building in Canary Wharf. 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 subject lease is held for 999 years (less 3 days) from 7 June 2005. The specific provisions of the lease and will be referred to below, where appropriate.

4. Directions were issued following a case management hearing on 14 August 2015 where the applicant appeared in person and the respondent was represented. The matter was set down for determination without a hearing. The matter was directed to be dealt with by submissions and no provision was made for witness statements to be served. The point in issue was described as "whether the fees charged by the landlords for under-letting are reasonable and payable". Reference was made to registration fees, underletting fees and a fee for a deed of covenant. Both parties have addressed all three species of fee in their written representations.

5. Neither party requested an inspection and the Tribunal did not consider that one was necessary.

6. Following consideration of the case, I caused a letter to be sent to the parties raising the effect of the recent decision of the Upper Tribunal in *Proxima GR properties v McGhee* [2014] UKUT 0059 (LC). In particular I raised the issue of whether this Tribunal has jurisdiction to consider fees in connection with registration of documents and deeds of direct covenant as well as the effect of *Proxima* generally.

7. In response, both parties provided further written submissions, referred to below.

The Law

8. Section 158 and Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") make provision for the regulation of administration charges. Schedule 11 defines the expressions "administration charge" in paragraph 1(1) as including:

"... 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."

The expression "variable administration charge" is also defined by paragraph 1(1) and 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. Paragraph 2 of Schedule 11 provides that a variable administration charge is payable only to the extent that the amount of the charge is reasonable.

The Applicant's Case

9. This may be summarised as follows. In April 2014 the lessee applied for permission to underlet. He supplied a copy of the proposed underletting agreement which was to be effective for 1 year from 31 May 2014 but contained a tenants option to renew for up to a further two years. The landlord required payment of the licence fee of £175 and registration fee of £95.

10. In March 2015 the subtenant exercised the option to extend the sub-tenancy. The lessee approached the landlord who required payment of a further licence fee of £175 and registration fee of £95. The lessee disputed this and the landlord required the tenancy agreement to be resubmitted. The lessee paid under protest. The charges sought by the landlord were unreasonably high. It was unreasonable for the landlord to impose further costs and require a fresh licence when a sitting tenant exercised his option to renew the sublease. The deed of covenant was unreasonable because the tenancy agreement obliged the tenant to comply with the superior lease. The case law suggests a figure of £40 for consent to underlet *(Holding and Management (Solitaire) Limited v Cherry Lilian Norton (2012) (Lands Tribunal)* and *Vanguard House v Proxima GR* (2011) (Leasehold Valuation Tribunal).

11. Several flats within the block are owned by an entity known as ETAL and that owner is treated more favourably in relation administration charges. The landlord has made a correlation between the applicant's rental income and the price paid for the flat amount charged for relevant administration charges.

12. A section 20C order should be granted.

13. In his further written submission responding to my raising of *Proxima*, the applicant considered that each of the steps required by the lease consequent upon the underletting was linked. He disagreed with some of the reasoning of the Upper Tribunal as to jurisdiction but adopted

that part of *Proxima* where the Upper Tribunal held that, if the underletting fee was unreasonable, the tenant is released from compliance with the covenant so that no fee is payable. The applicant sought repayment of administration charges previously paid relying on Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Regulations 2013.

The Respondent's Case

14. The building is a large prestigious 33 storey tower block the lower part of which is used as a hotel. The upper parts provide 158 flats for which there is underground parking and a concierge service. Consent to sub-let is required in all cases. The terms of the lease oblige the applicant to pay the Landlord's legal costs of dealing with any such application. The applicant did not object to fees in 2012-2013.

15. The lease imposes the following obligations on the tenant: not to underlet without prior written consent (clause 3.12.2); not to underlet unless rents are fully paid up (clause 3.12.3); not to underlet for a term exceeding one year unless the subtenant enters into a deed of direct covenant with the landlord (clause 3.12.5). By clause 3.10.4 the tenant has provided an indemnity for the proper costs and charges (including legal and surveyors' fees) which may be incurred by the Landlord following an application for consent whether or not consent is granted. The tenant has provided an indemnity for proper costs and charges (including legal and surveyor's fees) which may be incurred by the landlord as a result of breach of covenant (clause 3.10.5). Clause 3.13 includes a covenant on the part of the tenant to pay a registration fee in respect of certain classes of document and specifies that a reasonable fee would not be less than £50.

16. The landlord is entitled to charge lower fees to other tenants but in any event the ETAL leases are differently drawn and consent is not required to lettings of less than three years. A discount was previously granted to ETAL for registration for a number of flats registered at once. This has been withdrawn. The respondent seeks to distinguish *Holding and Management* on the ground that in that case no information was provided to support the landlord's case. What is payable will depend on the terms of the particular consent and all the facts of a case taken as a whole.

17. In the present case, there are high class flats of considerable value. The applicant paid £1,000,000 on 18 May 2012 and is charging the sub-tenant £58,916 per annum. The sum of £175 plus VAT is not disproportionate.

18. The landlord has an in-house legal department staffed with experienced solicitors. All work in relation to consents is undertaken or supervised by a solicitor. The work was not insubstantial and comprised numerous

different steps. Exhibit 6 showed 23 separate items of work undertaken in respect of the application for consent to underlet. This was undertaken by a property executive supervised by a newly qualified solicitor and signed off by an in-house solicitor with more than 8 years' experience. The charges totalled £646.70. The landlord is entitled to rely on its indemnity to recoup the cost of actual work carried out. The matter has generated much email correspondence. Some of the work was retrospective.

19. The £175 plus VAT is not for permission to sublet but for the landlord's legal costs in considering the application.

20. In *Superspike v Rodrigues* [2013] EWCA Civ 669 the Court of Appeal held that even where an assured tenancy continues by statute it takes effect as a new tenancy. In *Re Saville Settled Estates* [1931] 2 Ch 210 it was held that the extension of the term of a lease operates as a surrender and re-grant. In any event, the Memorandum of Agreement stated that the tenancy was to commence from 31 May 2015 and was therefore a new tenancy. The applicant is entitled to grant longer tenancies if he obtains the necessary consents.

21. The tenancy agreement to Wai Kwas dated 31 May 2015 and the Memorandum of Agreement was dated 12 March 2015. Consent was not obtained prior to the underletting. The landlord did not take action in respect of this breach of the lease but could have done so. It granted retrospective consent but is entitled to rely on its costs indemnity in respect of costs occasioned by the breach.

22. The deed of covenant is required by clause 3.12.5 of the lease. The fee of £100 is a reasonable legal fee for the landlord to draft an effective and valid deed.

23. The fee of £95 plus VAT is reasonable for the registration fee. The minimum fee of £50 was made a decade ago. The parties are at liberty to agree what constitutes a minimum fee and the Tribunal should give effect to that agreement.

24. There should be no order under section 20C because the application is misconceived.

25. In a further written representation in relation to the effect of *Proxima* the respondent made (in summary) the following points. First the Tribunal did lack jurisdiction to consider fees in relation to (i) registration of documents and (ii) deeds of direct covenant. This was based on the decision in *Proxima* which the respondent adopted in those respects. Secondly, the question of reasonableness regarding a subletting fee could be influenced by whether it was retrospective. Third, the approach by the Upper Tribunal in *Bradmoss* Limited

should be preferred to that in *Proxima.* In *Bradmoss*, the Tribunal found that an unreasonably high fee for subletting should be reduced, but did not find that those circumstances released the tenant from compliance with the covenant.

The Subject Lease

26. The lease which is dated 8 June 2005 grants a term of 999 days (less 3 days) from 24 June 2004. It is derived from a headlease dated 5 August 204 between West India Quay Development Company (Easter) Limited and No1 West India Quay (Residential) Limited.

27. By clause 2 the premium paid by the lessee is stated as being £1,159,000. By clause 2.4 as part of the rent reservation is included "any other sums due to the lessor under the terms hereof".

28. Clause 3.10 insofar as relevant is as follows:

"To pay the lessor on demand all proper costs charges and expenses (including legal costs and surveyors' fees) which may be incurred by the Lessor: -

3.10.1 under or in contemplation of any proceedings under sections 146 or 147 of the law of property Act 1925 by the Lessor in the preparation or service of any notice thereunder respectively and arising out of any default on the part of the Lessee notwithstanding that forfeiture is avoided otherwise than by relief granted by the court

[...]

3.10.4 as a result of the Lessee applying for the Lessor's consent or approval under the provisions of this Underlease whether or not that consent or approval is give; and

3.10.5 as a result of any default by the Lessee in performing or observing the Lessee's obligations in this Underlease.

Clause 3.12 is headed "Alienation". Insofar as relevant it is as follows:

3.12.2 Not to ...underlet the whole of the demised premises without the prior written consent of the Lessor (such consent not to be unreasonably withheld).

3.12.3 Not to...underlet the whole of the demised premises unless the rents hereby reserved are at that time fully paid up

3.12.4 Not to ...underlet the demised premises to a corporate body or individual not resident in the United Kingdom without first obtaining from the ...underlessee and delivering to the Lessor a guarantee in the terms contained in Schedule 6 ...for the performance by the ...underlessee of all the covenants and conditions herein contained from a corporate body or an individual resident in the United Kingdom first approved by the Lessor whose approval shall not be unreasonably withheld.

3.12.5 Not to underlet ...for a term exceeding one year unless the Lessee shall at the same time obtain and deliver to the Lessor a deed of covenant in its favour by which the underlessee covenants to observe and perform during the term of its lease the covenants ...on the part of the Lessee herein contained.

[...]

3.12.7 Not to ...underlet the demised premises separately from any car parking space that the Lessee has the right to use [in the adjoining car park].

Clause 3.13 headed "Registration" is as follows:

"To produce for the purpose of registration to the Lessor within twenty days after the document or instrument in question shall have been executed or shall operate to take effect a certified copy of every ...underlease of the demised premises ..and for such registration to pay the Lessor or its representatives a reasonable registration fee (being not less than £50) in respect of each such document or instrument...

Clause 3.21 headed "Indemnity" is in these terms:

To keep the lessor fully and effectively indemnified from and against all liabilities costs claims proceedings losses and expenses (whether in respect of physical or financial loss ...or the infringement...of any right or easement or otherwise) properly arising out of or in respect of :-

3.21.5 the exercise of any of the rights granted to the Lessee under this Underlease"

Discussion

29. Neither party made reference in their initial submissions to the recent decision of the Upper Tribunal (Lands Chamber) in *Proxima GR Properties Ltd v McGhee* [2014] UKUT 59 (LC) (Martin Rodger QC, Deputy President). In that Decision the learned Deputy President made important obiter dicta (remarks said in passing not forming binding

precedents on this Tribunal) concerning matters that arise in this case. Although the remarks are not binding on me I treat them as authoritative and follow them.

30. Firstly, the Deputy President considered, as a matter of law, that fees in respect of registration of documents were not administration charges within the meaning of Para 1(1)(a) of Schedule 11 of the 2002 Act. The Deputy President said at Paragraph 22 of his Decision:

> "A sum payable as a fee for registering a document is not, in my judgment, payable "directly or indirectly for or in connection with the grant of approvals under [a] lease or applications for such approvals" so as to come within paragraph 1(1)(a) of Schedule 11 to the 2002 Act. If a request was made for the landlord's approval of a proposed underletting, and that approval was granted but the underletting did not then proceed, there would be no question of a registration fee being payable under paragraph 28 because no transactions would have taken place. The written notice which the respondent was required to give under paragraph 27 of the eighth schedule to the lease was not a request for an approval of any sort, nor was the charge which the appellant is entitled to make for registering the transaction of which notice is given a charge for the grant of an approval or in connection with an application for approval. This conclusion is consistent with views expressed in the leading text books: Commercial and Residential Service Charges, Rosenthal and others (2013) at paragraph 29-54, and Service Charges and Management, Tanfield Chambers, (third edition) (2014) at paragraph 17-007)."

I therefore find that the First-tier Tribunal has no jurisdiction to consider the matter of document registration in the present case and I make no determination in respect of it. By parity of reasoning, I also find that a deed of direct covenant is not an "administration charge" within the Act for exactly the same reasons as articulated by the Deputy President. Consequently I find that the Tribunal equally lacks jurisdiction to determine that application.

31. I therefore find that this Tribunal's jurisdiction is limited to assessing charges for considering consents to underlet and the question of an Order under section 20C of the 1985 Act.

The Fees for Considering Permission to Underlet

32. In *Proxima* the Deputy President made the following observations:

> 29. [...] If consent is requested but unreasonably refused or delayed the consequence is that the tenant is released from the covenant in relation to the particular underletting to which the request related. That is because the need to obtain the landlord's consent is itself subject to the proviso or condition that consent will not be unreasonably refused; if the condition is broken, the need for consent goes with it. That conclusion is well supported by authority
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> 37. The burden of proving that a fee claimed by a landlord as a condition of granting consent was reasonable falls on the landlord by virtue of s.1(6)(b) of the 1988 Act. In *Bradmoss Ltd* [2012] UKUT 3 (LC) the Tribunal (George Bartlett QC, President) considered a landlord's claim that administrative work taking two hours and legal work taking one hour were required to process an application for consent and that a fee of £135 was justified. The Tribunal held that in the absence of any information as to what had actually been done, by whom and how long it took, it was not satisfied that a fee at that level was justified or that consent could reasonably have been refused in the event that the tenant had refused to pay it. The Tribunal substituted a fee of £40 plus VAT as the amount payable. For the reasons I have already given I would [respectfully] suggest that, an unreasonable fee having been demanded, the tenant had in fact become entitled to underlet without the need to obtain the landlord's consent at all and therefore without the need for the payment of any fee.
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> 38. When considering the reasonableness of a fee it is worth recalling the purpose of a covenant in a lease against underletting without consent. The purpose of such a covenant is the same as that of a covenant not to assign without consent, namely, to protect the landlord from having his premises occupied in an undesirable way or by an undesirable tenant. The covenant must be interpreted and applied in order to give effect to that purpose. It may not be used by a landlord for a different purpose, or to obtain an advantage over the tenant which it was not intended to secure. These principles are derived from the decision of the Court of

Appeal in *International Drilling Fluids Ltd v Louisville Investments (Uxbridge) Ltd* [1986] Ch 513, 520 and were subsequently approved by the House of Lords in *Ashworth Fraser Ltd v Gloucester City Council* [2001] 1 WLR 2180.

39. Given that the purpose of the covenant is to protect a landlord from having his premises occupied in an undesirable way or by an undesirable tenant, it may not be used as a source of profit for landlords or their managing agents. While it is reasonable for a landlord to grant consent to an underletting on condition that the tenant reimburse its reasonable expenses of considering whether to grant consent, including administrative expenses, it is not reasonable to treat the requirement to obtain consent as an opportunity to charge a fee unrelated to the costs of the routine enquiries or administrative tasks which are appropriate in most cases.

40. Nor do I consider it reasonable, where consent to underlet is requested, for the landlord to justify the fee it seeks by referring to the need to make enquiries to establish whether there are arrears of rent or service charges. Where it is proposed to *assign* a lease there may be circumstances in which a landlord may reasonably insist on breaches of covenant being satisfied as a condition of granting consent (because the direct relationship between the parties is being changed) but a landlord is in no different position in relation to arrears of rent or service charges if the demised premises are sublet than if they are not. In those circumstances the need for consent could not reasonably be used as an opportunity to require that arrears be discharged as a pre-condition.

41. Where a landlord has already approved an application for consent to underlet premises to a particular tenant, and a second application is then made to grant a further tenancy on the same terms to the same tenant, it is difficult to see what further investigations or advice a landlord could reasonably undertake for which the payment of more than a very modest fee would be appropriate. Unless something had occurred which demonstrated that the tenant was not a suitable person to be permitted to occupy the premises, one would expect the approval in such a case to be a purely administrative exercise.

> 42. Where a tenant is simply permitted to remain in occupation following the expiry of an assured shorthold tenancy, without the grant of a new tenancy, no new underletting would be involved, there would be no need to seek the consent of the landlord and no occasion for any fee to be charged."

33. In my judgment, based on the evidence and submissions before me the first underletting fee sought of £175 was reasonable but the second was unreasonable. My reasons are as follows.

34. In the absence of witness statements I am limited to relying on the accuracy of a checklist of work dated 9 April 2015 which is exhibited to the respondent's statement of case. The document bears the date 9 April 2015 which means that it relates to the renewal licence said by the respondents to be required. However I consider that it illustrates generally the work carried out by the landlord in considering requests for licences to underlet in respect of this block.

35. The schedule contains twenty three categories of work of which four were not applicable in this case. Three levels of fee earner are included: a property executive charged at £95 per hour, a newly qualified solicitor charged at £226 per hour and a solicitor of 8 or more years' experience charged at £409 per hour. The total charges shown are 1.8 hours for the property executive, 1.2 hours for the newly qualified solicitor and 0.5 hour for the senior solicitor. This aggregates to £646.70.

36. I do not accept the schedule in its entirety. Firstly, the schedule contains two units of time attributable to checking rent arrears which the Upper Tribunal has found is disallowable (see above). Nor do I consider that the cost of time spent checking whether fees have been paid to the landlord is reasonable within the meaning of Schedule 11. These issues amount to three units of the property executive's time. I also see no reason why a senior solicitor need be involved in this matter and make no finding about the hourly rate. I accept the hourly rates for the property executive and newly qualified solicitor. Making these adjustments would reduce the schedule to £404.20.

37. Whilst I am also concerned that the respondent has sought to assert a relationship between the high values of the flats and the amount sought by the respondent for the subject licences, there is no evidence before me that the schedule of checklist work has been increased on this account.

38. I do not place weight on the issue of the differential amounts charged in respect of the ETAL leases. I accept that the circumstances pertaining to those leases was materially different.

39. For the above reasons I find that the April 2014 underletting fee of £175 was reasonable.

40. As to the renewal of the subtenancy, for the reasons given by the Upper Tribunal in *Proxima*, only a very modest fee would be payable. Following *Holding and Management* I would assess that as £40. However, for the reasons below, I find that that is not payable as a matter of law. Seeking a further fee of £175 was in my judgment unreasonable.

41. On the issue of the renewed licence, I accept the evidence of the applicant that he took reasonable steps to obtain such licences as he thought might be required prior to the second year of the tenancy commencing. I accept that delays were caused by statements from the managing agents and the requirement to pay an underletting licence fee that I have found was unreasonable. As a party is not entitled to take advantage of its own wrong, the fact that licence was retrospective cannot therefore assist the respondent in such circumstances.

42. I have considered *Superstrike v Rodigues* and agree that that case (which is concerned with assured tenancies) shows that an extended tenancy takes effect as a renewal that is, a new tenancy. However, that is not the issue here which is rather "*to what did the landlord give consent in 2014?*" The answer is "*the subtenancy agreement which contained the right for the tenant to extend for up to two further years*". From the evidence submitted, the landlord did not seek to impose any conditions in granting its licence in 2014 although it was provided with the tenancy agreement. In my judgment having given permission to sublet on that basis and in particular against the sublease as supplied, it was too late in 2015 for the landlord to seek to impose fresh conditions in relation to that licence. I find that the landlord is estopped from doing so. I therefore find that the initial licence covered the whole period of the subtenacy including any potential extensions referred to in its initial terms.

43. Furthermore, in light of my findings and the ruling of the Upper Tribunal in *Proxima*, I find that in respect of the 2015 renewal the lessee was released from compliance with the covenants against subletting and that accordingly no fees are payable or therefore reasonable.

44. The Tribunal does not have power to order repayment of administration fees previously paid and reliance on rule 13 of the Tribunal rules is misconceived. That rule is concerned with fees and costs incurred in the forum of the Tribunal, not administration fees paid under the provisions of a lease.

Application under s.20C

45. The Tribunal has found that it lacks jurisdiction in relation to two major matters raised by the applicant (registration of subletting and deeds of direct covenant) with the result that such claims failed in the Tribunal. Of the two licences to sublet for which the Tribunal has jurisdiction each party was equally successful and unsuccessful. It follows that overall the respondent has been more successful than the applicant. Having regard to that and the conduct of the parties I consider that it is just and equitable that an Order under Section 20C be made that the respondent may not pass more than two-thirds of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

Name: C Norman FRICS **Date:** 24 November 2015

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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).