10939

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BJ/LSC/2015/0095**
Property	:	**Flat 11, 1-31 (odd) Norroy Road, London SW15 1PQ**
Applicant	:	**Abaris Limited**
Representative	:	**Mr P Sissons of counsel**
Respondent	:	**Mr C H Girvan**
Representative	:	**In person**
Type of Application	:	**Liability to pay a service charge**
Tribunal Members	:	**Tribunal Judge Richard Percival** **Mr H Geddes JP RIBA MRTPI** **Mr A Ring**
Date and venue of Hearing	:	**15 June 2015** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**6 July 2015**

DECISION

The application

1. The Applicant landlord seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Respondent leaseholder in 2013.

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

The hearing

3. The Applicant was represented by Mr P Sissons of counsel at the hearing. The Respondent appeared in person. Mr Sissons provided the Tribunal with a skeleton argument prior to the hearing.

The background

4. The property is one of sixteen flats in a row of converted period houses. Eleven of the flats are let on long leases. The freeholder has retained five. There was no need for an inspection.

5. The Respondent holds a long lease of the property, granted in 1979. In the lease, the lessee covenants to pay "on demand one sixteenth of the reasonable costs including the costs of surveyors' fees and legal costs and any other expenses reasonably incurred ... by the Lessor in carrying out its ... obligations" (clause 2(6)). The Lessor's obligations include a repairing obligation (clause 3(2)). The Lessee covenants to maintain the interior of the property, including "all additions thereto" (clause 2(4)).

The issues

6. At the start of the hearing the parties identified the relevant issues for determination as follows:

   (i) Whether the service charges claimed included the double-counting of expenditure incurred by the Applicant in a previous year that had been the subject of proceedings before a Leasehold Valuation Tribunal;

   (ii) Whether the major works consultation exercise conducted in 2012 was a sham, because two of the tenderers were connected to the Applicant;

   (iii) Whether a conservatory attached to the Respondent's flat was the responsibility of the Applicant or the Respondent to maintain; and

(iv) Whether the Tribunal should make an order under section 20C of the 1985 Act that the costs of these proceedings should not be recovered under the service charge.

At the conclusion of the hearing, the Applicant also made an application for costs under rule 13 of the Tribunal Procedure (First-Tier Tribunal)(Property Chamber) Rules 2013 ("the Rules").

Introduction

7. In 2011, the Applicant identified the need to carry out major works to the exterior of the building. The work included cleaning of the brickwork, re-pointing, repairs and redecoration. In July and August 2011, the Applicant undertook a consultation process, in attempted compliance with section 20 of the 1985 Act and the regulations made thereunder (Service Charges (Consultation Requirements)(England) Regulations 2003 ("the 2003 Regulations")). The contractor appointed as a result of that process was Belleville Decorators. At this point, Belleville were contracted to undertake the whole of the project identified by the Applicant.

8. Later in 2011, however, it was decided that the major part of the work would have to be postponed until spring 2012, a fact of which the leaseholders were informed by the then managing agent, Antlow Properties Limited, in a letter dated 11 October 2011. Certain work was to be done in advance of this, for safety reasons. Examples given in the letter are repairs to the front pillars, rails and entrances. That letter included an invoice for those works, and demanded a service charge in relation to them.

9. This work was referred to as "phase 1" by the Applicant before us, and the later work as "phase 2".

10. As a result of these events, the Respondent and two other leaseholders made an application to the Leasehold Valuation Tribunal. On 19 April 2012, the Tribunal found that the consultation process had not been conducted in accordance with section 20 of the 1985 Act and accordingly the Applicant was limited to recovering £250.00 from the each of the Applicants in that case, rather than the £1,713.58 demanded in the letter of 11 October (case number LON/00BJ/2012/0007).

11. Phase 2 was the subject of a further consultation process conducted in August to December 2012, and as a result another contractor, Maintaining London, was appointed.

12. In July 2012, Feldgate were appointed as the managing agents responsible for the major works (although Antlow Properties Limited continued to conduct day to day administration until 2014). Feldgate

had been more informally involved before that date. Also in the summer, the original contract administrator, a Mr Lee, was replaced. Thereafter, a Mr King acted as contract administrator.

13. In 2013, five demands for service charge were made, based on the completion of "phase 2". They were as follows:

Date	Amount
10.05.13	£1918.87
03.10.13	£ 810.81
03.10.13	£2214.22
03.10.13	£ 945.45
22.11.13	£1929.18

Double counting

14. The Respondent asserted double counting on two bases. The first related to all, or nearly all of the work described as phase 1, which was the subject of the Leasehold Valuation Tribunal decision. The second was a specific argument that the contract administrator's fee had been double charged because of the way that credit for an element overcharged in the first phase was calculated.

15. It was not disputed between the parties that some of the work conducted by Belleville on phase 1 of the project later proved to be sub-standard. In the event, much, if not nearly all, of the work that should have been completed by Belleville was completed by the contractor for phase 2, Maintaining London. The amount invoiced by Belleville for phase 1 was £20,980 (page 24 of the bundle).

16. The Applicant's contention was that Maintaining London, the successful tenderer for phase 2, completed the work outstanding from phase 1 for free. The Respondent argues that this is not credible, and that the sums sought to be recovered for phase 2 in fact include the real costs of completing phase 1.

17. We heard evidence from Mr Berger, who is identified as the company secretary of Feldgate, and who was personally involved in managing the property on the Applicant's behalf, and from the Respondent.

18. The Respondent's argument in respect of this element of the double counting claim was, however, inextricably linked to his argument that the consultation was a sham. On his view, the sham was a means of disguising the recovery of the costs of phase 1 as the costs of phase 2. Indeed, that it is not credible that the phase 1 work would have been completed for free is a key argument put forward by the Respondent to justify his case that the consultation was sham. We accordingly deal

with the evidence and competing arguments in relation to this element below, where we deal with the sham issue.

19. The argument in respect of the surveyor's fees is different. Mr Lee, the surveyor who acted as contract administrator for phase 1, was entitled to a fee of 9.5% of the project costs. The total contract sum at that time was estimated at £84,095. At the time that the invoices covered by the managing agent's letter of 11 October 2011 were issued, as we have stated, it was envisaged that there would be a single contract. At that time, Mr Lee invoiced the managing agent for 51% of the fee for the whole project, and it was that invoice which contributed to the service charge demanded by the managing agents. There was accordingly an over-payment to Mr Lee, and the subsequent reconciliation was an attempt to limit the charge to the leaseholders to that which Mr Lee should have been paid.

20. In fact, Mr Lee (the parties agreed) should have only received 9.5% of the cost of phase 1, which was £17,440 (before VAT, the appropriate basis for the calculation).

21. Other leaseholders, who had paid the full contribution demanded for phase 1, were therefore credited with £151.10 each in respect of the overpayment to Mr Lee.

22. The Applicant, however, did not credit the Respondent with this sum. Mr Sissons argued that it was right not to do so. Because the Respondent was successful at the Leasehold Valuation Tribunal, and his contribution was thus limited to £250, he had not paid his share of the original sum in respect of Mr Lee's fees, and therefore was not entitled to the reimbursement of the overpayment.

23. The Respondent argued that this approach was inconsistent with the finding of the Leasehold Valuation Tribunal in 2012.

24. The effect of section 20 of the 1985 Act is that, in the absence of a valid consultation, a tenant's "relevant contribution" is limited (currently to £250). The "relevant contribution" is defined as "the amount which [a tenant] may be required under the terms of this lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works" to which the required consultation related.

25. "Relevant costs" are defined in section 18 of the Act as "the costs or estimated costs incurred or to be incurred by or on behalf of the landlord" chargeable in a service charge.

26. If we disregard the effect of section 20, it is clear that the service charge to which the 2012 Leasehold Valuation Tribunal decision related was one which the Respondent was required to pay by the terms of the lease

as a contribution to "relevant costs" *at the time it was demanded.* Subsequently, however, it became clear that, as an overpayment, it was not due from the leaseholders. The point of the reconciliation – any reconciliation – is to correct what has transpired to be an erroneous charge levied on the leaseholders. Thus, *at the time of the reconciliation*, it was apparent that the component of the service charge relating to the overpayment was not, in fact, a sum required to be paid by the lease.

27. If the Respondent were right that he should benefit from the repayment of the overcharged fees, the effect of section 20 would be not merely to limit the "relevant contribution" to £250, but rather to require us to pretend that he had in fact paid that which was demanded.

28. We do not think that can be right. In the first place, at the point of reconciliation, it had become apparent that the sum involved should never have been charged (albeit that it may have been reasonable to have charged it at the time, given the knowledge of the parties at that point). It therefore can be seen – at that point – not to be part of the "relevant contribution", and thus not that which is subject to the terms of section 20. Secondly, it would lead to absurdity. If the repayment on reconciliation were, say, £350, the landlord would be obliged not only to cover the additional costs it could not recover because of the flawed consultation, but also to give the leaseholders an additional £100 on the wholly artificial basis that they are deemed to have overpaid in the first place.

29. *Decision:* The Applicant was correct not to credit the Respondent for an overpayment of service charge which he did not in fact pay as a result of the decision of the Leasehold Valuation Tribunal in 2012.

Whether the consultation was a sham

30. Three contractors tendered for phase 2. One, Belleville, was nominated by one of the leaseholders. It tendered at £109,865 plus VAT. Maintaining London and another contractor, Palmer and Green Building Services Ltd, tendered at £81,007 and £83,370 plus VAT respectively (page 229 of the bundle).

31. The Respondent's claim was that the consultation was a sham. The two lower contractors and Feldgate were connected, and colluded to produce the relevant tender figures. As noted above, this contention is related to the Respondent's point about double counting, in that if he is right about the collusion, the point (or part of the point) was to covertly recover the cost of phase 1.

32. The Respondent's arguments for the collusion were as follows:

(i) In an email, Mr Berger referred to the representatives of both Maintaining London and Palmer and Green Building Services by their first names;

(ii) Both representatives inspected the property (including some of the flats) for the purpose of preparing their tenders at the same time;

(iii) It is suspicious that the tenders were close to one another in value; and

(iv) It was inherently unlikely that any contractor would agree to undertake work to a value of about £20,000 without charging for it.

33. Mr Sissons submitted that these considerations did not come close to establishing collusion. He said in respect of the first point that it is common for people to use first names in email and other communications these days. Secondly, it was clearly sensible organisationally for the two contractors to inspect at the same time, not least because it minimised the disruption to the leaseholders whose flats were inspected. Thirdly, we should not be at all surprised that two contractors working in the same market in the same area would come up with similar prices for the same work.

34. In relation to the Respondent's fourth point, the evidence of Mr Berger was that, at the time that Maintaining London were appointed as contractor, it appeared that the outstanding work from phase 1 was relatively minor, and so Maintaining London agreed to undertake the work for no further consideration than the phase 2 project. Mr Berger said that his belief was that Maintaining London saw the offer as a good will gesture that would assist it to secure the phase 2 contract. Even though the work proved to be much more extensive than was thought at the time, Maintaining London nevertheless undertook the relevant work essentially for free. As an example of how the extent of the work was initially unclear, Mr Berger cited the painting of doors and other woodwork. It appeared at first that it was only some additional painting that was necessary. On further inspection, however, it became clear that the woodwork had not been properly rubbed back and prepared, and thus required a great deal more work than initially anticipated.

35. Mr Sissons further submitted that, even if the contractors were connected to the Applicant, it would not have made any difference. If a contractor is so connected, then the 2003 Regulations require at least one other quotation, and there was a quotation from Belleville.

36. We agree with Mr Sissons that there is nothing whatever in the Respondent's points (i) to (iii) in paragraph 32 above. While there was potentially more substance in his point (iv), we accept the evidence of Mr Berger as to how Maintaining London came to undertake extensive additional work. This undermines the initial implausibility relied on by the Respondent.

37. Our conclusion on the facts means we do not have to consider whether a genuine conspiracy to subvert a consultation process required by section 20 could be saved by compliance with the provisions in the 2003 Regulations dealing with connectedness between landlord and contractors.

38. *Decision*: The Respondent has not demonstrated that the consultation process in respect of phase 2 was undermined by collusion between contractors and the Applicant.

The conservatory

39. The Respondent's flat is on two floors, described in the lease as the second and third floors. Attached to the top floor is a conservatory, extending over the flat roof of the main part of the Respondent's flat below.

40. The conservatory is in a state of some disrepair. The Respondent has secured an estimate of £1,070 for its repair. The issue before us was the factual one of whether the conservatory was in existence at the time the lease was granted in 1979, or a later addition. To whom the repairing obligation fell was determined by this issue. If the former, it would be included in the Applicant's repairing obligation under clause 3(2)) of the lease. If the latter, it would be the responsibility of the Respondent (clause 2(4)).

41. The Applicant agreed that in principle the Respondent's estimate was a reasonable one for the repairs required.

42. The issue fell to be determined by the Tribunal on the basis outlined in *Continental Property Ventures Inc v White* [2007] L&TR 4, as in effect a claim for damages for breach of covenant that constituted a defence to a service charge in respect of which our jurisdiction under section 27A of the 1985 Act has been invoked. Mr Sissons' submission on the law was that, while the Tribunal in principle had jurisdiction to consider the issue, we should decline to exercise our discretion to do so. The Tribunal should exercise this jurisdiction with caution. In this case, although the value of the set-off was not in issue, there was very limited evidence on the factual issue. Neither party had put in evidence as to when the conservatory was built nor was there expert evidence on the

method of construction or similar matters that might assist the Tribunal. These were questions better suited to the County Court.

43. The Respondent noted that the issue had been identified as an active one at the case management conference. It would not have been, he said, proportionate to commission a full surveyor's report.

44. In terms of the evidence that *was* available, the Respondent asserted that the plan attached to his lease clearly indicated that the conservatory was in place at that time. The Applicant, on the contrary, said that the evidence from the plan was at most equivocal, and there was no other evidence upon which we could rely to find that the structure had been in place in 1979.

45. It is necessary to describe the plan of the third floor part of the flat. The plan is not to scale and is fairly rudimentary in nature. The plan can be divided into three sections. At the bottom of the plan the stair giving access is shown, going into a room which constitutes the first section. The walls of this room, at least at the top end of the room, are indicated by a thick double line. The line indicating the limit of the demise follows the side walls of the room. A doorway is shown giving on from this room to the second section. This comprises a square or rectangular room or space, the walls or margins of which are delineated by a thinner double line. The line indicating the demised premises follows the wall line on the left hand side, but includes a space outside the wall on the right. An opening is shown in the wall at the top of the second section. This opens, first, onto a space of similar width immediately beyond the wall, and then onto the third section of the plan. This section is bounded on the left hand side by a continuation of the line bordering both the first and second sections on that side. The third section is significantly narrower than the second section, however, on the right hand side. In this section there are no lines within the area marked as the demised premises.

46. Mr Sissons' case was that the conservatory was placed on the third section of the plan. The third section might be a conservatory, he said, but equally might have been the roof terrace upon which the conservatory was subsequently built. Mr Sissons, with our leave, explained that Mr Berger believed that the conservatory did not occupy all of the space, there being a section of roof terrace outside the conservatory itself. If that were the case, Mr Sissons maintained, the evidence of the plan was that the conservatory had not been constructed at that time, given the absence of any lines within section three.

47. It was not immediately clear to the Tribunal what the Respondent's case was in respect of the plan (apart from that it supported his argument). However, under questioning, chiefly by the Tribunal's professional member, it became clear that it was his case that the

conservatory was the space delineated by the narrower double line in the second section of the plan. The Respondent agreed with Mr Berger that there remained some open roof terrace, but explained that that was the third section of the plan. In other words, on the third floor, there was one internal room plus the conservatory and not, as Mr Sissons had assumed, two rooms plus the conservatory.

48. We asked Mr Berger about the layout of the third floor of the flat. He said he had not personally been inside the third floor of the Respondent's flat, but he had been in the corresponding part of the neighbouring flat, which was identical in layout save that that flat did not have a conservatory. He said that there was only one room on the third floor of that flat.

49. Once the Respondent's case in respect of the plan was understood, it was obvious that his contention was correct. There was no other explanation for the way in which section two was drawn, and that the structure shown there was the conservatory made sense of the difference thickness with which the walls were indicated as compared with section one. It also exactly matched the description that Mr Berger gave of the conservatory as occupying part (about half, he said) of the available roof terrace. Finally, it was the only explanation which made sense of both Mr Berger and the Respondent's evidence that there was only one room properly so called on the third floor of the flats.

50. We accordingly come to the clear view that the plan entirely supports the Respondent's case that the conservatory was in existence at the time of the original demise. It was uncontested that, in those circumstances, the conservatory fell within the Applicant's repairing obligation under the lease.

51. We agree with Mr Sissons' submissions as to the law. We should be cautious in allowing a reduction in a service charge in respect of a separate breach of covenant by a landlord. However, in this case, far from being equivocal, the evidence of the lease plan, once understood in the context of the evidence of both the Respondent and Mr Berger as to the layout of the flat, was clear. While it is true that we have no expert evidence in relation to date of construction of the conservatory before us, it is difficult to see how such evidence could displace that of the plan (rather than being evidence of subsequent maintenance or repair of the conservatory clearly shown in the plan).

52. *Decision*: The Applicant having breached its obligation to repair the conservatory, the liability of the Respondent is reduced by the value of that breach, that is fifteen sixteenths of £1,070, which is £1,003.12.

Application under section 20C of the 1985 Act

53. The Respondent made an application under section 20C that the Applicant's costs of the proceedings should not be regarded as relevant costs for the purposes of determining a future service charge demand.

54. The Applicant submitted that the Respondent had acted unreasonably in his conduct of the case and in relation to the service charge generally. His objections had been relatively trivial. He had not sought to say that the work had been defective, and nor did he criticise the costs incurred. But nonetheless he had failed to pay any contribution to the service charge. His "constructive conspiracy theory" was based on nothing. If he was otherwise successful, he would recover very little in comparison with the value of the service charge demanded.

55. The respondent, said Mr Sissons, had offered settlement, but only in the sum of £250. The Respondent replied that he had offered £3,000, in response to which the Applicant had counter-offered £6,974, a figure he said was based on merely extending to him the reduction in management charges given to prompt payers.

56. The success or otherwise of a party is not determinative of the question whether we should make an order under section 20C. It is, however, an important part of the circumstances which we should take into account. It is the Applicant who has been more successful before us. We should exercise caution before making an order which would interfere with a landlord's ability to avail itself of contractual rights. There is nothing in the conduct of the Applicant in this case which would justify making such an order.

57. *Decision*: we decline to make an order under section 20C of the 1985 Act.

Costs

58. The Applicant applied for costs under rule 13 of the Rules. He relied on the conduct of the Respondent described above as constituting "unreasonable" conduct for the purposes of the rule.

59. In this context, the threshold of what constitutes "unreasonable conduct" is a high one. Put shortly, the conduct must proceed from an improper motive, rather than merely not being what another, more prudent or expert party would have done. A necessary implication of this test is that conduct that would imply an improper motive in a professionally advised party may not carry a similar implication in respect of a litigant in person.

60. We are satisfied that the conduct of the Respondent does not come near to satisfying the threshold set in rule 13 and decline to make an order for costs.

Name: Tribunal Judge Richard Percival **Date:** 6 July 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).