11862

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

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| **Case reference** | : | **LON/00BB/LSC/2016/0161** |
| **Property** | : | **392A Katherine Road, Forrest Gate, London E7 8NW** |
| **Applicant** | : | **Ms Fahmida Hoque and Mr Malik Awan (by Power of Attorney)** |
| **Representative** | : | **Ms Hoque and Mr Awan** |
| **Respondent** | : | **Raja Farook Usman and Nadeem Sajaid Ullah** |
| **Representative** | : | **Mr Qalab Ali, director, and Mr Shazad Hussain, caseworker of Hexagon Property Company Limited** |
| **Type of application** | : | **For the determination of the reasonableness of and the liability to pay a service charge** |
| **Tribunal members** | : | **Judge Hargreaves**<br>**J Barlow JP FRICS**<br>**S Coughlin MCIEH** |
| **Date and venue of hearing** | : | **10 Alfred Place, London WC1E 7LR**<br>**6th September 2016** |
| **Date of decision** | : | **15th September 2016** |

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**DECISION**

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## Decisions of the Tribunal

(1) The Tribunal determines that the following amounts are reasonable and payable by the Respondents:-

(a) 2010-2011: nothing is payable

(b) 24th June 2011-23rd June 2012: £335.62 is payable

(c) 24th June 2012-31st March 2013: £410.18 is payable

(d) 1st April 2013-31st March 2014: £374.50 is payable

(e) 1st April 2014-31st March 2015: £384.24 is payable

(f) 1st April 2015-31st March 2016: £389.71 is payable

(2) The Tribunal makes the determinations as set out under the various headings in this Decision.

(3) The Tribunal makes an order (if required and for the avoidance of doubt) under section 20C of the Landlord and Tenant Act 1985 so that none of the Respondent's costs of the Tribunal proceedings may be passed to the Applicant through any service charge.

## REASONS

## The application

1. References are to pages in the trial bundle[1].

2. The Applicant[2] seeks a determination (p13) pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Respondents in respect of the years 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015, 2015-2016. No charge was made for the year 2009-2010 and therefore no decision is required in respect of that year.

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[1] So far as most of the critical documents are concerned, contained in tab 6, it was unfortunate that they were set out in reverse chronological order, which was unhelpful, time consuming and unnecessary.

[2] Ms Hoque is the real Applicant; both she and Mr Awan, her husband made submissions and answered questions at the hearing

3. There is an unhappy history to this application. The property is a flat above commercial premises. The Applicant purchased the flat in circumstances not entirely clear to the Tribunal but which suggest a less than smooth conveyancing transaction which appears to have cost her dearly in the early years after 2007. That said, it appears to be the case that her response to that situation, which seems to have been not to pay service charges for reasons which were not clarified for the first few years, have cost her even more. The Respondents' managing agents, Hexagon Property Management Company Limited ("Hexagon"), have been efficient at obtaining the demanded charges from her mortgagee, Birmingham Midshires. The Respondents themselves are shareholders in Hexagon, together with Mr Ali, who appeared to represent the Respondents at the hearing. Consequently her mortgage has increased by those amounts, which include sums of money which the Tribunal has found to be, as explained below, not reasonable in amount or not reasonably incurred. It might be sensible for the Applicant to send a copy of this decision to her mortgage provider for information.

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

5. A case management conference was held on 5th May 2016 and directions were given (p29). Whilst both parties filed and served statements of case, the Respondents did not manage to disclose all relevant documents, and as will be seen, there were some significant omissions which have had an impact on our decision. As the Applicants had complained that they had not received documents they had been asking for, for many years, their contribution to the documentation was minor. We are grateful to Mr Hussain whose knowledge of the way round tab 6 in particular, made the hearing process more efficient than it otherwise would have been, and to those for the Respondents who provided the schedule (from p46), which again assisted greatly, though not for the year 2010-2011 which was unfortunately excluded, and which also omitted the demands in respect of major works, as well as including some standardised cut and paste sections which did not assist the Respondents.

6. The Applicant had instructed solicitors whose statement of case contains many allegations, not all of which are relevant or useful or within the Tribunal's jurisdiction, eg the question whether the Applicant had entered into the lease (she is the registered proprietor) or whether the Tribunal should apportion the charges fairly between the ground floor property and the Applicant's flat. There is nothing of use on the question of reasonableness, which was the Tribunal's focus at the hearing. The Respondents' statement of case (p39) did not add much by way of substance, though correctly identified the Applicant's misconceived points.

## The lease

7. The parties are the original parties to the lease which is dated 21st August 2007, p78. The ground rent (in respect of which the Tribunal has no jurisdiction) is £300 pa for the first 33 years, and that is payable in advance in 2 instalments on 24th June and 25th December. The service charge, by contrast, is payable yearly on 24th June at one half of the costs covered by clause 2(3)(i). That includes the costs of employing a managing agent and a firm of chartered accountants to prepare a management account. The service charge is calculated and payable by reference to clause 2(3)(ii). It is calculated by reference to the year 1st April-31st March or such other period as the landlord determines (some flexibility being evident in this case). The charge is to be calculated as soon as possible after the year end and the amount to be certified by the Respondents' auditors or accountants or managing agents. The certificate is to contain a summary of the relevant charges. The charge can include a reasonable sum of money on account. Once the certificate is finalised the landlords should invoice the leaseholder, and the balance paid or credited as the case may be. Pursuant to clause 4, the leaseholder is liable to pay interest at the rate of 4% if the charge is unpaid for 14 days.

## 2009-2010

8. No service charge demands were made. There is nothing to determine for this year.

## 2010-2011

9. Hexagon was appointed on 10th May 2010, it is said by Mr Ali for a term of 12 months and then continued. There is no management agreement in the bundle. We doubt whether one was signed as Mr Ali said it was unnecessary given the relationship between the company and the Respondents. It is however undoubtedly the case that Hexagon manages the property (though see below) on behalf of the Respondents, and the property is one of around 600 which Mr Ali estimates it has on its books. Mr Ali's evidence about the professional qualifications of Hexagon staff (including his own) was on the lines of *"it is in the pipeline"* though he is a member of IRPM.

10. The first budget/estimated demand prepared by Hexagon for the year 24th June 2010-23rd June 2011 is at p350 which required the Applicant to pay £1299.25 (admittedly at the beneficial rate of 40% not 50%). It contains certain items which could never be chargeable to the Applicant. We accept that it was posted to the Applicant with the required information (p347). She objected (see p343-7). By July she

was told that chasing letters would cost £40 plus VAT. The amount due by 13th August was £1461.38 (p338-9). The Applicant objected (p336). She received a notice of intention to commence proceedings and a demand for £1570.09 (p327). By the end of September 2010 the Respondents had been paid £2190 by Birmingham Midshires (p326) in respect of an original demand for £1299.25.

11. There is no evidence that an **end of year certificate** was prepared or final account rendered to the Applicant. There is therefore nothing to establish that the Respondents completed the process required pursuant to the lease. In these circumstances, no service charge is payable by the Applicant for the year ending 23rd June 2011.

12. If we are wrong about that, there is no evidence that the charges[3] for a fire risk assessment (£140) health and safety survey (£80) or a site survey (£180) were actually incurred, there being no invoices or final reconciliation. There are no recoverable charges for communal cleaning or lighting or external lighting (£108) because those areas do not exist and Hexagon should have known that. Those amounts alone total over £500, nearly half of the first year's estimated budget. The fact that there is clear evidence of inaccurate overcharging and no evidence to support other charges, justifies our finding that a management fee of £350 plus VAT is unreasonable for that year, and we would substitute £150 for the year 2010-2011 if, contrary to our primary conclusion, the charge is recoverable at all. On the same basis we would allow £120 for insurance and £120 for accountancy (ie £390 plus VAT at the appropriate 2010 rate).

**2011-2012**

13. The fact that the estimated account for 2010-2011 was an overcharge is ably demonstrated by the fact that the service charge for the year from 24th June was put at £568.50 (May 2011 invoice at p315-7), though again the budgeted figure for some items is 40%[4]. (The Respondents could vary the budget period, though it appears to have been done through confusing the budget period with the payment scheme of the lease.)

14. The Applicant has no issue with the **building insurance charge** of £321.24 and her liability is therefore £160.62 (see p292).

15. **Accountancy fees** for this period are £240 (estimated £500 for both units). There are no accountancy fees in the reconciliation for the period ending June 2012 (p303) but they appear in the July 2012 reconciliation at p284. The only relevant direct evidence is at p301, the

[3] These are charges for the Applicant's property

[4] Eg the management charge of £480 is split 50:50.

*"accountant's report on the accounts to Hexagon"*. These were prepared by IQ Financial Accountants, which shares an address with Hexagon, has a telephone number which is identical apart from one digit, and appears to have no employees with recognised professional qualifications and neither is it a member of any recognised accountancy organisation. The lease provides that the Respondents can use *"chartered accountants"* to prepare year end accounts for the building, not for Hexagon. There is no invoice from the IQ to Hexagon for the service rendered. We are far from satisfied that the work was done by chartered accountants or charged for, and therefore this sum is not recoverable. It was not done reasonably either, being purported accounts for Hexagon (as a corporate entity), which according to Mr Ali was managing numerous units, whereas this document refers to the building only.

16. **Management fees** for this period are levied at £480, £240 for the Applicant's share. There is an invoice at p314. This was in part said to be justified by Mr Ali's account of the additional works carried out to the building, an activity he described as a *"tedious responsibility"*. We deal with the major works said to have been undertaken for this period, below. These fees are set at a level which might be acceptable for a unit in a well run block of flats. We have considered the evidence and the documents and conclude that no more than £175 is payable as reasonable in respect of the management fee chargeable to the Applicant. That is based on the fact that they did send out invoices and recover charges, if again (successfully) from Birmingham Midshires.

17. The most substantial charge for 2011-2012 (June) is said to be the Applicant's share exceeding £5000 of **major works**, amounting to £14,282.24. See tab 5 of the bundle. Superficially there is documentation (eg s20 notices and a letter dated 6th August 2013 – an odd date – from a chartered surveyor confirming that the works were done). But nothing in tab 5 or the rest of the bundle indicates what the schedule of works included, what the relevant builders' quotes covered, and what was actually done. We gave the Respondents' representatives a fair opportunity to seek to recall the relevant supporting evidence from archives, to no avail. The Applicant did not have a clue what the works consisted of and Mr Ali's account was at best vague. On the basis of the evidence before us, we could not be satisfied that *any* sum was reasonably incurred. Not one description of the building works was provided. There is no means of knowing whether the works were in fact the Applicant's responsibility. Granted she failed to help herself by responding to any of the notices, but given the absence of fundamental evidence (which could have been supplied for example in the form of a witness statement by the surveyor or the building firm Bishop & Baron Contractors Limited), we have concluded that any figure would be an unsupported and unsupportable stab in the dark. Given the lack of documentation we conclude that no part of the major works charge is attributable to reasonably incurred works, or can be described as reasonable in amount. A finding to the contrary would require evidence

justifying a conclusion on the balance of probabilities, and the evidential basis for that is absent.

18. The next issue is **administration charges and legal fees**. Mr Ali relies for contractual recoverability on *clause 2(18)* of the lease (p85) which provides for the tenant *"To pay to the Lessor all expenses (including Solicitor's costs and Surveyor's fees) incurred by the Lessor incidental to the preparation and service of a Notice under s146 LPA 1925 notwithstanding that forfeiture is avoided otherwise than by relief granted by the Court"*. He further submitted, inaccurately, that service charges are rent for the purpose of *s146* proceedings (see *clause 1, clause 2(1)(3)(i)*). *So* far as such charges are recoverable as part of the service charge, see *clause 2(3)(i)(e)* which provides for the employment of managing agents. See also however *clause 2(3)(f)* (p81) which provides *"It is hereby agreed and declared that the Lessor shall not be entitled to re-enter under the provision in that behalf hereinafter contained by reason only of non-payment by the Lessee of any such interim payment as aforesaid prior to the signature of The Certificate*[5] *but nothing in this clause or these presents contained shall disable the Lessor from maintaining an action against the Lessee in respect of any non-payment of any such interim payment as aforesaid notwithstanding that The Certificate had not been signed at the time of the proceedings subject nevertheless to proof in such proceedings by the Lessor that the interim rent demanded and unpaid is of a fair and reasonable amount having regard to the prospective service charge ultimately payable by the Lessee."* The fairly standard forfeiture clause is in *clause 4* at p87, which also provides for interest to be applied to arrears unpaid for 14 days after they become due. As a matter of construction of the lease, forfeiture for non-payment of service charges is not possible until the final amount due has either been certified by production of *the Certificate* or found to be *of a fair and reasonable amount* in court proceedings.

19. There is therefore a contractual bar to proceeding to forfeit the lease for non-payment of service charges until either (i) the Certificate is prepared or (ii) a court has found that the service charges are reasonable. In addition there is the statutory bar: a landlord who wishes to forfeit on the grounds of arrears of service or administration charges must first secure a determination of payability under *s27A Landlord and Tenant Act 1985/Schedule 11 Commonhold and Leasehold Reform Act 2002*. See also *s81 Housing Act 1996*.

20. With these points in mind we turn to the first administration charge for £48 sent on 29th June 2011, p311-313. It relates to the on account demand dated 24th May 2011 for the year 2011-2012 (p315). That was said to be due within 30 days, and was not paid. The letter dated 29th June required payment by 6th July. The second administration charge

[5] See p80 clause 2(3)(ii)(a)

also for £48 relates to the demand sent on 7th July, p309-310. A final letter dated 27th July was sent (p308).

21. The Respondents' submissions place liability to repay these amounts on their entitlement to forfeit. No such entitlement had arisen at the time of these demands by virtue of paragraph 19 above. At most these can be characterised as debt collecting letters by Hexagon as managing agents. We see no reason why such debt collection letters should be treated as additional to the functions ordinarily undertaken by managing agents, particularly where the chasing letters are based on the on account demand, not the amounts certified as due. Furthermore the amount demanded in May was not payable until 24th June plus 14 days (8th July), so the first demand was premature anyway. The second demand required payment by 14th July. Given the timescale and the incorrect analysis of the relevant lease provisions in these letters, the first and second administration charges (as described) are both unreasonable in amount and unreasonably incurred, and not payable.

22. The next item for 2011-2012 is described as **legal charges**, evidenced by an invoice from DH Law LLP dated 25th October 2011 for charges of £479.60 including £279.60 (including VAT) for recovery of the arrears of both ground rent (not a matter for the Tribunal) and service charges from Birmingham Midshires which according to this invoice paid DH law £1391.44, a sum which is not clarified. Mr Ali's explanation in the schedule is inaccurate so far as the service charge recoverable as rent point is concerned, and again, his explanation was based on the right to forfeit, which was not the case at the time. Therefore it appears that Hexagon and/or DH Law received payment prematurely and without proof as to how DH Law proceeded, we cannot accept that its charges were properly incurred. There is no evidence that Birmingham Midshires was informed that forfeiture was not imminent. Mr Ali agreed that much of his explanation in the schedule was a cut and paste job from other schedules. The Applicant says she never saw anything from DH Law.

**2012-2013**

23. This period starts with the demand dated 25th July 2012 which is for the period 24th June 2012-31st March 2013. The budget attached to the letter at p282 (which also contains a reconciliation for 2011-2012 at p291 though the Applicant said she had never seen it before, though on balance we consider she would have done in some format) is at p284. On a breakdown of actual charges our findings are as follows, again based on the schedule provided by the Respondents. The budget contains an estimated figure (for the first time) towards a reserve fund which is not payable under the lease. That wrongly inflates subsequent demands which are inaccurate. It also inflates, if it is the case, the amount paid by the Applicant's mortgagee prior to the year end statement.

24. Two estimates for **general maintenance and repairs** said to be required in January/February 2013 are at p249-250. Hexagon accepted the Khan estimate and after some consideration of what Mr Ali had to say about the works, we have concluded that they were reasonably required and the Applicant's share at £90 is reasonable.

25. The amount of £188.93 is payable in respect of the **buildings insurance** because this is not contested.

26. The amount charged for **accountancy** (in the sum of £450 ie £225) for the accounts prepared by IQ Financial Accountants on 31st July 2013 (p239) is rejected as unreasonably incurred and not payable for the same reasons as given for the year 2011-2012 (paragraph 15 above). The alleged supporting evidence does not in fact exist and we reject the submission that the charge was industry standard.

27. **Management fees** are charged at £360 for the 9 month period. We see no good reason to accept this sum as reasonable anymore than the £175 accepted for the previous year and that makes the 9 months pro rata amount £131.25. Again, Mr Ali sought to rely on major works to justify the amount, but they did not arise in this period (and of course, where they are said to have arisen, they are said to have been managed by a surveyor who was charging 10% in any event, as is clear from tab 5).

28. As to the **administration charges** (£48 plus £48 plus £90), our analysis is as follows. The first administration charge was levied by invoice dated 25th September 2012 for payment by 2nd October (p275-6). Again, this was based on the estimated budget for the period ending March 2013. It is correct that the Applicant was late but for the reasons given above, the demands as a precursor to forfeiture are premature: see paragraph 19. They can only be characterised as debt collecting, and we see no reason why this should not form part of the management fee. The same conclusion applies to the second administration fee (p267-268), and the third (p262-264). They are unreasonably incurred because misconceived on the basis that they are charged out for something which they cannot properly be. To that extent the charges are also unreasonably high.

**2013-2014**

29. The usual information containing a budget for the period 1st April 2013-31st March 2014 (a full year) and a reconciliation for the previous period is contained in the documents at pages 227-234, a letter with enclosures dated 8th May 2013. It is said incorrectly that the lease permits payment in two instalments, which Mr Ali sought to defend by reference to commercial management rather than the actual terms of the lease. That suggest a failure to appreciate that the managing agent must apply the terms of the lease, at least until otherwise agreed or

varied. Again, we deal with the actual charges raised. The reconciliation for this period is at p197. The budget again includes a figure for the reserve fund which is not payable under the lease.

30. As the figure of £100 for **general maintenance and repairs** could not be identified or evidenced by reference to any document in the bundle or in the evidence, there is no evidence on which we can reasonably conclude on the balance of probabilities that it was reasonably incurred or reasonable in amount. It merely looks like 50% of an estimated figure of £200.

31. For the same reasons as given before, the Applicant is liable to pay £199.50 in respect of **insurance**.

32. The costs of producing a **certificate of actual expenditure,** said to amount to £180 (p197), is disallowed. First, although there is provision in the lease for *The Certificate*, none is actually produced for the year in question. Secondly, even if it had been, there is no way it would be worth charging £180. It is a management activity which comes within the £175 charge we consider reasonable. What is does is no more than confirm the reconciliation figure as correct. This is the job of a managing agent. It does not justify a further sum when the work was carried out in-house by a Hexagon employee. There is no management agreement to indicate that the Respondents agreed to pay an additional fee for such a certificate and such a payment would merit scrutiny given the Respondents' own relationship with Hexagon.

33. For reasons already given, we see no reason to allow for more than £175 for the Applicant's share of the **management fee**.

34. The last item to consider for 2013-2014 is the **administration charges.** The first letter is dated 8th July 2013 (wrongly dated 2012) at p222, the second letter is dated 7th August 2013 (p221), and the third demand (for £90) is dated 31st October 2013 at p213-217. Again, given that the Respondents seek to justify these on the grounds that they are necessary steps in forfeiture proceedings, they are premature (paragraph 19). As debt collecting letters they are unreasonably incurred and the charges are unreasonable for the reasons already given. If the Respondents seek to justify these charges for the reasons they give, then they have to show that the charges are justified under the lease (note that the reconciliation shows that the Applicant's account for the preceding year was in surplus, due to payment of the funds required by her mortgagee).

**2014-2015**

35. The standard documentation for the period 1st April 2014-31st March 2015 is at p192-197. Again, the Applicant was in surplus at the start of

the year (p197). The budget contains a reserve fund figure (£200) which is not properly recoverable under the lease, as before.

36. The figure for **insurance** is £209.24 (as agreed).

37. We reject the claim for £48 for a **certificate of actual expenditure** (paragraph 32) even though there is a certificate as such (p146): this forms part of the managing agent's functions, which, for the year in question (see p146) were minimal apart from chasing arrears and insuring the building, and therefore presumably took very little time to prepare.

38. As for the **managing agent's fees**, we have applied as reasonable the same rate of £175, noting that there is invoice, but being prepared to accept there was some management activity, including the preparation of the year end certificate.

39. We apply the same reasoning as previously to the **first and second administration charges**, even though reduced to £30 each (See p188-190, p185-6). They are not properly part of a forfeiture process as described. As part of a debt collecting process they are unreasonable in that they contain a demand for eg a reserve fund contribution, which is not payable. That shows lack of care apart from anything else.

**2015-2016**

40. The starting pack for the period 1st April 2015-31st March 2016 is at p165-7. By this time the Applicant was contesting the claims made against her. Proceedings were issued by the Respondents in April 2015 (p160) and compromised by the Respondents withdrawing on terms as to payment of the Applicant's costs: nothing seems to have been concluded by way of a substantive decision and we proceed on the basis that there is no decision on the facts or law which binds us (and certainly neither party made any submissions to this effect). The claim for a contribution to a reserve fund is not included this time. The final certificate has been produced at p125.

41. The **building insurance** figure which is payable is £214.71.

42. We apply paragraph 37 above to the claim for £48 for **book keeping and certificate of expenditure**.

43. As for **management fees**, again the invoice is missing, and we consider that £175 is reasonable.

## Application under s.20C

44. The Applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines for the avoidance of doubt, that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondents may not pass any of their costs incurred in connection with the proceedings before the Tribunal through the service charge.

Judge Hargreaves

J Barlow JP FRICS

S Coughlin MCIEH

15th September 2016

## 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).