



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

**Case reference** : LON/00/BC/LSC/2015/0182  
LON/00/BC/LSC/2015/0357

**Property** : Flat 3, 51-53 The Drive, Ilford IG1  
3HD

**Applicant** : Worldbay Limited

**Representative** : John Orme instructed by Kaye  
Tesler & Co

**Respondent** : John Rajakulendram

**Representative** : Self

**Type of application** : For the determination of the  
reasonableness of and the liability  
to pay a service charge

**Tribunal members** : Judge Hargreaves  
Jayam Dalal  
Ian Thompson BSc FRICS

**Date and venue of  
hearing** : 10<sup>th</sup> December 2015  
10 Alfred Place, London WC1E 7LR

**Date of decision** : 6<sup>th</sup> January 2016

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**DECISION**

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## **Decisions of the tribunal**

- (1) The Tribunal determines that the sum of £4171.74 is payable by the Respondent in respect of the service charges for the years ending March 2010-2015 for the reasons set out below.
- (2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the Landlord's costs of the Tribunal proceedings may be passed to the Respondent through any service charge.
- (3) Since the Tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the appropriate County Court for resolution of any outstanding costs and fees issues.

## **The application**

1. References are to various bundles where it is possible to identify page references with facility, the standard of presentation being such as to make it difficult for the Tribunal to navigate the paperwork as presented on various occasions, with any ease and convenience. It follows that though page references are given, it might be difficult for the reader of this decision to identify which bundle is being used, several having been produced for each hearing referred to below, including repeat documents and versions of various bundles used in earlier county court proceedings.
2. On 17<sup>th</sup> December 2013 the Applicant issued proceedings in the county court (claim 3QZ72863) (p1) to recover the sum of £4541.92 plus £100 court costs from the Respondent, who filed an acknowledgment of service indicating an intention to defend the proceedings. The Respondent filed a defence (p10 and p114) which challenged the amount claimed on the grounds that it had not been particularised or the amounts claimed were unreasonable, and the standard of management was in any event inadequate. The county court claim was eventually transferred to the Tribunal after the parties had filed and served some evidence on the terms of an order made on 30<sup>th</sup> January 2015 (p142), and there is a case for saying, once the ground rent aspect of the claim had been dealt with by the county court, it should either have dealt with the claim or transferred it, instead of going to the trouble of making directions, listing it for a hearing, and then transferring it which would have saved time and reduced costs.
3. The case was listed for hearing by the Tribunal on 3<sup>rd</sup> August 2015. Directions were given on 5<sup>th</sup> May 2015. They were largely ignored, though the Respondent filed a statement of his position in June (p75-79). On 3<sup>rd</sup> August the Applicant applied for an adjournment, basically

on the grounds that it was ill-prepared to proceed. The adjournment was granted on terms that (1) the Applicant had to pay the Respondent his costs assessed at £280 and (2) the Applicant had to make a s27A LTA 1985 application by 2pm 1<sup>st</sup> September 2015 in respect of the years following the service charge periods claimed for in the county court proceedings, it being pointless to have a hearing which left the parties in dispute for the charges for another two years. The Applicant complied with the conditions. The order also provided that the Applicant was debarred from applying for any of the costs over which the tribunal had jurisdiction, up until 3<sup>rd</sup> August. The new application is at p257.

4. The Tribunal issued further directions on 8<sup>th</sup> September 2015. Again, the response of the parties was inadequate and the preparation of the trial bundle, which was the Applicant's responsibility, fell far short of any reasonably competent standard, being largely a repeat of the August bundle with various additional bundles none of which were identical, thrown in for good measure. It is not enough to complain to the Tribunal, in response to justified criticism about the presentation of a case, that there should be no sanctions because the Respondent (as in this case) had failed for several years to make any payments whatsoever, including payments on account. Where the Applicant's paperwork was in such a chaotic state it would be hard not to sympathise with the Respondent's repeated complaint that the service charges had never been clarified, even though, as it turns out, many of his complaints have been proved, after a somewhat tortuous process, to be unjustified.
5. A good example of the standard of preparation concerns the invoices for management fees. None were exhibited. Mr Gibber went into the witness box and indicated that he had them in a file in front of him. They had always been available. Mr Orme accepted that the Applicant had been directed to produce them and applied for permission to rely on them despite the fact that the application was made in the afternoon without prior reference or disclosure, possibly because Mr Orme was not aware they were available. The application was refused. It was then repeated with a request for permission to appeal the refusal or to review the decision. We refused the application, refused to grant permission to appeal it, and refused to adjourn the hearing for numerous reasons which were delivered orally.
6. At the root of it all, the Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and (where applicable) administration charges payable by the Applicant in respect of the service charge years 2010-2011-2012-2013-2014-15.

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

### **The background**

8. The property which is the subject of this application is one of five flats in a purpose built block at 51-53 The Drive, Ilford, originally a block of four. Subsequently to the grant of the various long leases the freeholder added a fifth flat in a roof extension. None of the existing leases were varied to take account of this; instead there has been a practical re-allocation of service charges by dividing the charge into ninths, charging two-ninths to the original flats and one-ninth to the roof conversion. As two-ninths is less than the Respondent's contractual liability and there is no evidence that charges have been inflated unreasonably by the addition of the extra flat, the Tribunal proceeds on the basis that the contractual basis for the claims is on the face of it satisfactory on the evidence before it.
9. Some photographs of the building were provided in the hearing bundle. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
10. The Respondent holds a long lease of the property (p28) which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge, briefly as follows. The Respondent covenanted by clause 2(e)(1) to pay a quarter of the relevant expenditure in any relevant twelve month accounting period, including accounts and management fees. By clause 2(e)(2)(3) the Respondent covenanted to pay "*the basic maintenance charge*" to the Applicant in advance on 25<sup>th</sup> March and 29<sup>th</sup> September, with provision for the payment of any balance due ("*the annual maintenance charge*" / "*the excess contribution*") to be paid under the provisions of clause 2(e)(4) within fourteen days of service of a certificate of the amounts due. Clause 2(e)(4) also provides for the *basic maintenance charge* to be increased to a sum more likely to reflect the *annual maintenance charge*. Clause 2(e)(5) provides for the relevant financial year to be based on the Applicant's financial year. The Applicant's covenants are contained in clause 4(3); there is no dispute that the items claimed by the Applicant fall within the ambit of its covenants, as opposed to whether the work was done or the charges reasonable.

### **The issues**

11. The Respondent challenged every item claimed in the accounts produced to the Tribunal. The most efficient way to consider the claim is *first*, to take the second statement of Ronald Shuttleworth, one of the Applicant's managing agents for the period March 2009-September 2012, dated 9<sup>th</sup> September 2015, and to follow its exhibits (page

numbers following relate to those applicable to the format of the trial bundle prepared for the December hearing). For the year ending March 2010, see p56 and p68. For 2011, see p69. For 2012 see p85. For 2013 see p70 (and p387 in a different format). *Secondly*, for the remainder of the years, turn to the second statement of Anthony Gibber (undated) at p383 in the second trial bundle and for 2014, see p385. For 2015, see p384.

12. The Applicant called two witnesses. First, Ronald Shuttleworth, whose statements are at p50 and 314 of the second trial bundle. He was a former director Monocastle Limited, which managed the properties for the first part of the disputed period until September 2012. His exhibit RS1 contains a number of supporting documents including the last demand/statement sent to the Respondent by Monocastle in November 2012 (p54). He explained that he had been unable to print out any previous demands sent to the Respondent but we accept that demands were sent to the Respondent at the address he had supplied and that the fact that for part of the time the Respondent was living elsewhere, meant it was his responsibility if he did not receive demands as he had failed to update the Applicant as to his address for service. He was able to answer all questions put to him by the Tribunal and the Respondent, whose main contact with Monocastle, oral, not written, had been with Noel Fullerton. Mr Shuttleworth was a credible witness whose evidence was accepted by the Tribunal. He had done his best to produce supporting documentation where available. The nature of Monocastle's style of property management is probably best described as reactive rather than proactive, but as will be seen, it probably kept costs lower for the Respondent, who has sub-let the flat since.
13. The second witness called by the Applicant was Anthony Gibber (p182 and p383) a director of the current managers, Fresh Property Management Ltd ("Fresh"), which took over from Monocastle. With a different style of management, including more attention to compliance with statutory obligations, it is inevitable that the relevant charges increased once Fresh Property took over in 2012. Again Mr Gibber was a credible witness whose evidence and explanations can be accepted by the Tribunal as representing costs charged, even though he did not have personal day to day management of the property. It is clear from the documents he produced that there was far more contact with the Respondent in writing, and the parties could not close the gap between the demands of the Applicant and the criticisms of the Respondent.
14. The explanations and evidence of these witnesses did much to support the Applicant's case and fill in the gaps which could have been addressed by better attention to detail at the witness statement preparation stage.
15. The Respondent outlined his position on each item when he wished to do so, and was questioned by Mr Orme when he wished to do so.

16. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

**Service charge items & amount claimed: 2010**

17. See p317 for a demand, and also p56. For the supporting documents for the insurance renewal premium see p51, p57 and for the electricity bills see p59, 65-67.
18. The insurance renewal premium: the Respondent's challenge based on his researches into the market were based on a fundamental misconception ie that a proper comparison was what it would cost to insure his flat, as opposed to the building. This is wrong. The Tribunal is satisfied with the evidence of Mr Shuttleworth as to the relevant approach, use of broker, and nature of insurance premium. The insurance premium charges are reasonable.
19. Common parts electricity: the Respondent accepted at the hearing that he had no issue with the evidence produced by the Applicant; the charges are self-evidently reasonable.
20. Accounting fees: although no invoice was produced for the sum of £112.50 for the cost of producing the accounts for 2010, and the work was carried out "in house" by Monocastle, and the accounts as such are not strictly "certified", the amount per flat is entirely reasonable. Someone had to put the figures together and the cost is arguably minimal.
21. Management fees: Mr Shuttleworth said there was a management agreement with the Applicant though it was not in the bundle and it should have been. His evidence was that the amount charged was 15%, a standard and reasonable amount. The Respondent alleged that there was no management to speak of; on hearing Mr Shuttleworth's evidence on the point, the Tribunal is satisfied that Monocastle's management fee was reasonable for the activities undertaken by the managing agents.

**The Tribunal's decision**

22. The Tribunal determines that the amount payable in respect of service charges for 2010 is £362.38 as claimed by the Applicant (p56).

### **Service charge items & amount claimed: 2011**

23. See p69 and p317. For insurance premiums see p70, for electricity see p77-8, for gutter repairs p79, hallway redecoration p80, carpet replacement p81, external refurbishment p82 and p83 for the invoice relating to rebuilding front garden walls.
24. Insurance premiums and electricity for common parts: reasonable and recoverable on the grounds set out for 2010 above.
25. Gutter repairs: the Respondent accepted this figure as reasonable.
26. Hallway redecoration: the Respondent argued that this work had not been carried out. The Tribunal accepts Mr Shuttleworth's evidence that he paid for work which was carried out and attended the property at the relevant time. The sum invoiced is reasonable.
27. Carpet replacement: again the Respondent argued that the carpet had not been replaced. The Tribunal accepts Mr Shuttleworth's evidence (including the relevant invoice which he had exhibited) that it was replaced. The sum is reasonable.
28. External refurbishment: again the Respondent challenged the fact that the work had been done. In respect of these refurbishment challenges the Respondent produced photographs taken in 2013, but apart from preferring the evidence of Mr Shuttleworth (including the relevant invoice which he exhibited) that the work had been done and was necessarily done, photographs taken a couple of years after the event are not particularly useful given wear and tear. The Respondent also accepted that he had not objected in writing, and had only made oral complaints about the sums invoiced to Mr Fullerton who worked part-time. The work was done and the amount invoiced is reasonable.
29. Rebuilding the front garden wall: again, the Respondent's position on this charge was based on the fact that he had no recollection of the damage or repairs to the front wall. This is to be contrasted with Mr Shuttleworth's evidence that the front wall had been damaged and was rebuilt. The Tribunal accepts that evidence. The charge is reasonable.
30. Accounting and management fees: the same arguments and evidence were presented as for 2010 and the Tribunal has reached the same conclusions despite the lack of supporting evidence.

### **The Tribunal's decision**

31. The Tribunal determines that the amount payable in respect of service charges for 2011 is £1031.15.

### **Service charge items & amount claimed: 2012**

32. See p85, with p86 for the insurance premium renewal and p93-4 for the common parts electricity.
33. Insurance premium and common parts electricity: reasonable and recoverable as for 2010 and 2011, despite an increase in the former.
34. Bank charges: the Tribunal accepts the explanation that these were attributable to arrears of payments by the tenants of the property.
35. Accounting fees and management charges: although the management fees were not based on a strict 15% approach, both charges remain reasonable and recoverable as before.

### **The Tribunal's decision**

36. The Tribunal determines that the amount payable in respect of service charges for 2012 is £469.86.

### **Service charge items & amount claimed: 2013**

37. The evidence for this period onwards was given by Mr Gibber after Monocastle's management ended in September 2012 and Fresh took over in November (p199, p204) when the Respondent was in arrears by over £2000 including some arrears of ground rent (see p200-1). By the time Fresh sent a demand to the Respondent in March 2013 (p206) the Respondent's arrears were £2,900.95, increasing to £2975.95 in July (p212). By August 2013 (p221) the Respondent was in arrears in the sum of £3,635.89. See p70 (for the Monocastle claim), p387 and for a certified version see p223, with the Respondent's written complaints at p225 (letter dated 9<sup>th</sup> October 2013) (he was invited to speak to Fresh at a meeting but he did not take up the invitation). The following analysis is taken from the document at p387 of the second trial bundle.
38. Insurance renewal premium and common parts electricity: recoverable and reasonable as for years 2010-2012.
39. Management fees of £675: Mr Gibber could not adequately explain to the satisfaction of the Tribunal how the sum of £675 was calculated in respect of six months' work after taking over from Monocastle, though he said Fresh's usual charges were on a sliding scale of £245-275 plus VAT per unit, higher than Monocastle's charges. He did not, for reasons explained, produce a copy of the management agreement with the Applicant. On balance, and considering submissions from both sides the Tribunal considers that the sum of £150 for the Respondent's unit was reasonable and is recoverable.



40. Accounting fees: reasonable and recoverable.

### **The Tribunal's decision**

41. The Tribunal determines that the amount payable in respect of service charges for 2013 is £490.

### **Service charge items & amount claimed: 2014**

42. The situation changed for the year ending 2014 as Fresh applied a more pro-active, statutorily compliant regime to the management of the property. See eg p399. The relevant documents are at p385, 388, 407.
43. Insurance renewal premium and electricity for common parts: reasonable and recoverable as for previous years for the same reasons.
44. General repairs (three relevant invoices available in one loose bundle): the parties indicated that they were agreeable to the Tribunal considering the evidence: the Tribunal concludes that the sum of £571.20 was reasonably incurred and reasonable.
45. Health and safety: the same facts apply as in paragraph 44 above (including the situation as to evidence) and the Tribunal has concluded that the sum of £514.86 to ensure the property was properly assessed in line with statutory requirements, to be reasonably incurred and reasonable.
46. Risk assessments and audits: the same situation applies as in paragraphs 44 and 45 (including evidence) and the Tribunal has concluded that the sum of £210 was properly and reasonably incurred.
47. Sundry expenses: as the sum of £610 was due to the costs of serving a s20 notice and postage (it transpired, after the Tribunal questioned Mr Gibber about this otherwise undocumented figure), the Tribunal has concluded that this sum was unreasonably incurred and unreasonable in amount, and that a reasonable figure is £125.
48. Management fees: at £1462.50, the approximate cost for the Respondent is £271 excluding VAT, at the higher end of Fresh's "per unit" charge. After some consideration, the Tribunal has concluded that the fees for 2014 were justified, given the extended range of activities carried out and necessary to bring the management of the property up to date.
49. Accountancy fees: reasonable at £200.

### **The Tribunal's decision**

50. The Tribunal determines that the amount due for service charges for 2014 is £993.37.

### **Service charge items & amount claimed: 2015**

51. The relevant documents are at p384, 386, 423. The Tribunal has considered the available evidence and applied much the same approach as it has to the year ending March 2014, insofar as the actual figures are listed on p384.
52. Insurance and electricity for common parts: accepted as reasonable (as for previous years).
53. General repairs: the Tribunal is prepared to accept Mr Gibber's oral evidence that the sum of £535.20 was reasonably spent.
54. Sundry expenses: in the absence of any probative evidence the Tribunal considers the sum it applied for 2014 to be a reasonable sum (£125), rather than the £760.90 claimed.
55. Management fees: on the evidence of Mr Gibber, the sum claimed for 2015 (£1545) is on the high side taking his general "per unit" cost. In the circumstances, given the other findings for 2015, the Tribunal considers that it is reasonable to apply the 2014 figure (£1462.50).
56. Accountancy fees: in the absence of evidence to justify a 20% increase, the Tribunal considers that the sum of £200 remains reasonable.

### **The Tribunal's decision**

57. The Tribunal determines that the amount due for service charges for 2015 is £824.98.

### **Application under s.20C and refund of fees**

58. Although the Applicant through Mr Orme accepted that various administration charges raised against the Respondent were not contractually recoverable under the terms of the lease (which is correct), there was no express indication that no costs would be passed through the service charge. For the avoidance of doubt, the Tribunal nonetheless determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Applicant may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge. It has been debarred in respect of costs incurred prior to

and up to 3<sup>rd</sup> August, and given the somewhat chaotic manner in which its case has been presented, the fact that the Respondent has gained little from his challenge, does not outweigh the Tribunal's conclusion on the s20c point. The paperwork (which contained documents which the Respondent had not seen prior to their service after September and was still incomplete in relation to various invoices) left much to be desired in terms of enabling him to understand or appreciate the hidden strengths of the Applicant's case where found to be reasonable.

**Judge Hargreaves**

**Ian Thompson BSc FRICS**

**Jayam Dalal**

**6th January 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).