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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AU/LSC/2016/0432**
Property	:	**Penthouse 2, 99 Pentonville Road, London N1 9LG**
Applicant	:	**Mr M Hill** **Ms L Kohler**
Representative	:	**In person**
Respondent	:	**91-99 Pentonville Road (Freehold) Limited**
Representative	:	**Ms K Gray of counsel**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Tribunal Judge Richard Percival** **Mr S F Mason BSc FRICS FCIArb**
Date and venue of Hearing	:	**23 February 2017** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**23 March 2017**

DECISION

The application

1. The Applicants 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 them. The application sought a determination in respect of the service charge due for 2016. For the reasons given below in paragraph 37, the application is to be taken to relate to the Applicants contribution in the service charge to the reserve fund in earlier years.

The property

2. The property is a flat in a five storey residential block containing 35 flats. Of pre-war build, the block is an industrial building converted to residential use in 1998. The property is one of two penthouse flats which were added to the building when it was converted.

The lease

3. The lease, which dates from 1999, is for 999 years. It has been varied to make provision for a peppercorn rent in 2014.

4. The freehold company comprises 20 of the leaseholders. The lease provides for the leaseholders' share to pass on transfer of the leasehold interest (clause 4(17)).

5. The lease provides for a service charge (clause 4(4) and the fourth schedule). The applicants' obligation in respect of the block costs – those relevant to this application – is to contribute 4.64% of the total expenditure (particulars, paragraph 8 and fourth schedule, clause 1(1)). The total expenditure is that spent on the freeholder's covenants, including its obligations to repair the structure of the building, to decorate the exterior and to maintain a reserve fund against future expenditure (clause 5(4)B, C and M). There is also a widely drawn sweeper clause to do such works etc as are necessary or advisable for the proper maintenance, safety and administration of the building (clause 5(4)(K)).

6. More detailed provisions are dealt with where necessary below.

The hearing and the issues

Representation and witnesses

7. The Applicants appeared in person. They represented themselves and gave evidence. Ms Gray represented the Respondent. Mr R Pegman, who supervised the relevant building works, gave evidence as to

matters of fact. In addition, Mr R Jason of the managing agents attended.

Factual background

8. It is convenient at the outset to establish the factual background to the application and set out the various reports to which the parties drew the Tribunal's attention.

9. In 2012, at a time when the Applicant Mr Hill was a director of the freehold company, it became necessary to consider external decoration and repair, and a consultation exercise was commenced in accordance with section 20 of the 1985 Act. At about this time, Cardoe Martin Burr Ltd, as they were then called ("CMB"), chartered surveyors, were engaged to administer the contract. Rendall and Ritter were, at that time, the managing agents.

10. In August 2013, a "feasibility report" was obtained from Build Base Consultancy, building surveyors.

11. A report was obtained by Trace Surveys on 1 October 2013, reporting the result of an investigation into water ingress using a smoke machine, and an electronic test of the roof membrane behind the parapet wall at the front elevation of the building.

12. The section 20 consultation was completed. After significant delay, a contractor, Tectum Limited, was appointed. Work started in November 2015 and finished on about 29 July 2016. A final certificate had, at the time of the hearing, yet to be issued. The work was originally scheduled to take 8 weeks.

13. The Applicants and the Respondent subsequently jointly instructed Hallas and Co, chartered surveyors, to assess various matters in relation to the works. They reported on 20 May 2016.

14. At some point thereafter, the Applicants procured a report from a Mr Peter Marsh. The version of this report in the bundle was an extract, and did not disclose Mr Marsh's qualifications, his instructions, or details of his inspection. It takes the form of a review of the other reports.

Preliminary issue

15. Ms Gray invited us to determine, as a preliminary issue, the question of whether the Tribunal had jurisdiction to determine the issues arising from the application.

16. Ms Gray argued that no service demand was being made on the Applicants in respect of the works because the cost was being met out of

the reserve fund, and, in reliance on *Solitaire Property Management Company and Another v Holden and Others* [2012] UKUT 86 (LC), that in such circumstances the Tribunal had no jurisdiction.

17. It was agreed that the cost of the work had been met from the reserve fund provided for in the lease.

18. In *Holden*, the Leasehold Valuation Tribunal ("LVT"), a predecessor to this Tribunal, had found that the landlord was obliged to repay to the manager of the building appointed in other LVT proceedings a sum representing a reserve fund misapplied, the LVT considered, by the landlord, which had expended it on current expenditure. They did so having concluded that the reserve fund in the hands of the landlord amounted to a service charge within the meaning of section 27A of the 1985 Act, and thus it was within the jurisdiction of the Tribunal to order that it (or rather, that which had been depleted from it) be paid by way of service charge from the landlord to the manager. They so found on the basis that the misapplication constituted a breach of trust.

19. The Upper Tribunal found that the LVT had no such jurisdiction.

20. Before us, Ms Gray relied not on this direct conclusion, which depended on the very particular facts of that case, but rather on passages in the Upper Tribunal's judgment along the way to setting out that conclusion. In particular, HHJ Huskinson expressed puzzlement as to why the LVT considered that it should examine the reserve funds in the way it did. The LVT was not doing so "for the purpose of deciding a question arising under section 27A as to how much was payable as a service charge ... in a particular year."

21. The Judge went on to consider a theoretical case in which how much was payable by way of service charge might be related to the "status" of reserve fund monies. He gave as an example a case where a tenant might argue that sums were not payable by way of service charge, because the expenditure should have been met from the reserve fund, and the landlord had improperly spent the reserve fund. In such a case, "the situation regarding the reserve fund is something which needs to be decided for the purpose of deciding a question expressly within the LVT's jurisdiction, namely how much is payable by way of service charge by a tenant in a particular year".

22. Ms Gray asked us to conclude from these passages that consideration of how a reserve fund was spent was outside our jurisdiction, unless it could be directly related in such a way to a demand for a service charge in a particular year.

23. At one point, it appeared that Ms Gray's argument was confined to the fact that the only service charge year specifically pleaded in the

application was 2016, whereas the reserve fund had been built up in the immediately previous years for the purpose of paying for these works. We therefore asked what prejudice she would face if we accepted an application to extend the ambit of this application to include previous years, insofar as the service charge demands had related to the reserve fund.

24. Ms Gray argued that the Respondent would be prejudiced, because it would be impossible without an adjournment to put the argument that the amount charged for the purpose of the reserve was, in each year under consideration, reasonable.

25. This consideration either led Ms Gray to set out her proposition in wider terms, or it led us to fully understand the breadth of that proposition. In this form, the proposition was that the Tribunal could only assess the reasonableness of an element in a service charge to build up the reserve fund by a forward looking enquiry as to whether that element constituted a reasonable step for a landlord to take, at the time that the service charge was demanded.

26. Ms Gray accepted that the inevitable corollary was that, however badly a landlord misspent a reserve fund, that would be irrelevant to the reasonableness of a previous service charge demand element to build up the fund. A tenant's remedy in such circumstances, she argued, lay elsewhere.

27. We reject this proposition.

28. In the first place, we do not consider that *Holden* is authority for this proposition. It derives from an example used by the Judge to illustrate a possible circumstance in which the "status", as he put it, of the reserve fund would be relevant to a particular year's service charge. While it is an example of that which would be true if Ms Gray's proposition was correct, it was nonetheless merely an example.

29. Were this consideration insufficient, and the proposition was indeed behind the passage discussed above, we would be forced to conclude that it was *obiter dicta*, that is, not necessary for the decision, and so not authoritative and binding on this Tribunal. The LVT in that case erred in (among other things) concluding that the reserve fund was misspent and that the reserve fund in the hands of the landlord constituted a service charge owed to the manager. Neither of those conclusions relied on the proposition advanced by Ms Gray. Indeed, the LVT was avowedly not considering the reasonableness of the service charge element relating to the reserve fund owed by the tenants to the landlord, because to do so was unnecessary once it concluded (erroneously) that it could apply its section 27A jurisdiction to the reserve fund in the hands of the landlord.

30. Finally, to accept Ms Gray's proposition would fundamentally undermine the section 27A jurisdiction in a way that Parliament cannot possibly have intended.

31. Section 27A exists to enforce the reasonableness standard set out in section 19 of the 1985 Act. Section 19 protects a tenant by limiting liability under a service charge to expenditure reasonably incurred, and, in respect of works and services, where they are carried out to a reasonable standard. In both cases, it is the actual expenditure by the landlord which is the locus for the assessment of reasonableness. If Ms Gray's proposition were to be correct, in the case of service charge demands relating to a reserve fund, expenditure would become irrelevant, to be replaced by an assessment confined wholly to the reasonableness of the decision of the landlord to make the charge (or at least, expenditure would be relevant only insofar as one could draw inferences from the expenditure to the motive for, or reasonableness of, the service charge demand).

32. The effect would be to remove from a full reasonableness assessment any actual expenditure which was laundered through a reserve fund, rather than charged directly to the service charge. In the nature of things, reserve fund expenditure will usually be on expensive major works. The effect would thus be to remove from adequate protection the highest level of spending chargeable to the service charge. It borders on the absurd to suggest that the Tribunal can subject expenditure on light bulbs or communal cleaning to the full rigours of the section 19 reasonableness test, but not major works worth hundreds of thousands or millions of pounds.

33. This approach appears to us to be consonant with the structure of this part of the Act. Section 19 proceeds by using the concept of a service charge, which in turn is defined in section 18. That definition includes "an amount payable by a tenant ... which is payable, directly *or indirectly*, for services, repairs, maintenance, improvements or insurance ...". In our view, contributions to a reserve fund are "amounts payable ... indirectly" for the relevant purposes, the *expenditure* of which is subject to the section 19 reasonableness test.

34. Accordingly, our conclusion is that the expenditure of a reserve fund is subject to the section 19 reasonableness test, and if such expenditure is found to be unreasonable, or to have been expended on works or services which are not to a reasonable standard, then the service charge from which the reserve fund is derived are likewise and to that extent unreasonable.

35. It follows from this conclusion that, if we allow that this application extends to previous years' service charge demands to the extent (and only to the extent) that they contributed to the reserve fund, on the basis that expenditure from the reserve fund was unreasonable, then

there is no prejudice to the Respondent. The focus for such an assessment is on the expenditure under consideration.

36. The assessment of reasonableness of expenditure under section 19 includes the assessment of the reasonableness of the process used by the landlord to make decisions as to that expenditure. Such process-reasonableness will apply to the landlord's decisions in respect of expenditure from a reserve fund. It may also apply to the decision of a landlord to require a contribution to a reserve fund in a given year's service charge demand. In the latter case, the landlord would be prejudiced by a lack of evidence in relation to the decisions taken in those years. Were that the case in respect of this application, Ms Gray's implied alternative application for an adjournment would have been made out. But that is not this case. The Applicants' reasonableness challenge is limited to the expenditure of the reserve fund.

37. Accordingly, we conclude that it is right for us to consider this application as if the Applicants had specified previous years during which the reserve fund was accumulated from service charge demands as well as, or rather, instead of, the year in which the reserve funds were expended.

The issues

38. The parties identified the following issues for determination:

(i) The reasonableness of decisions relating to lead work on the parapet of the building and associated structures and features;

(ii) Whether repairs to the window sills were payable, as relating to the Landlord's responsibilities under the lease;

(iii) Issues relation to the decoration of the window frames;

(iv) The lack of drip channels in the window lintels; and

(v) The conduct of the Respondent in respect of defects.

Two items initially identified by the parties proved not to be persisted with on further consideration. Those were the effects of delay in the completion of the work, and the failure to decorate the Applicants' windows.

39. The papers suggested that there may also be a challenge to further major works, described as phase 2. It transpired that a section 20 consultation process was currently in the process of being carried out in relation to those works. At the end of the hearing, the Applicants said that their challenge in relation to phase 2 was to the way in which the

consultation process was being carried out. However, the Applicants were unable to find any reference in their application or the papers submitted in accordance with the directions that they challenged the phase 2 consultation exercise. In the light of that, we declined to hear argument on the matter. It was accordingly not necessary to come to a conclusion on the Respondent's argument that such a challenge was premature. This conclusion does not prejudice the Applicants ability to challenge the payability or the reasonableness of any service charge demand in relation to phase 2 of the works once the work is undertaken.

The Lead Work

40. At issue was the decision to provide lead capping/cladding to various features of, and associated with, the parapet wall at the top of the front elevation of the building.

41. The parapet wall has two lower sections at each end, and a higher section in the middle. There is a cornice to the base of the wall, which projects somewhat from the elevation. Beneath the wall are decorative stone panels which sit proud of the wall.

42. Initially, a lead capping was fixed to the lower sections of the wall itself, the cornice beneath, and the top of the decorative panels. The Hallas report recommended that the capping be extended to cover the central section of the parapet wall, and that was subsequently carried out.

43. The core problem to which the capping was addressed was water ingress into flats 15 and 17, and into a communal staircase.

44. The Applicant argued that all of the capping/cladding was unnecessary, and in particular, even if the first set of cladding was justified, the capping of the upper wall was not. The Applicant argued that the drip channel cut immediately under the parapet coping stones was working (contrary to suggestions that it was worn and weathered in the reports), and proved effective to prevent damp falling onto the surface of the elevation, thereby penetrating the building.

45. The Respondent argued that the decision was within the reasonable range available to the landlord, was the most economic over the longer term and was to be preferred aesthetically.

46. The Applicants relied on direct testing by Mr Hill, which, he said, showed the that the drip feature was working effectively, and on the opinion of Mr Marsh that the capping was unnecessary. Mr Hill said that he had poured water onto the wall, or used a mister, to demonstrate that the drip feature was effective. Mr Marsh's report stated his opinion that all that was necessary was to rake out and renew the drip channels.

47. For the Respondent, Mr Pegman of CMB, a chartered building surveyor since 2005, gave evidence that the capping was the best solution to the problem of water ingress. The relevant features were all old, weathered and heavily stained. Patch repairing had clearly been tried in the past and had not worked. Options were put to the board of the Respondent company. While other options (such as felt or a monofilament membrane) would have been cheaper in the short term, lead would have a substantially longer life and be more economical in the longer term. It was also considered that lead would be more in keeping aesthetically with the building (although he acknowledged there was no other lead work).

48. The Applicant had sought (on the papers rather than in oral argument) to rely on clause 5(4)(L), by which the lessor covenanted to "use all reasonable endeavours to keep the Service Chare at the lowest reasonable figure consistent with the proper performance and observance of its obligations ... but the Lessee shall not be entitled to challenge or object to any expenditure ... on the grounds that the materials works ... in question might have been provided ... at a lower cost".

49. For the Respondent, Ms Gray submitted that this recognised, but did not narrow, the range of reasonable options that the Respondent should consider. That was made clear by the caveat in relation to cheaper costs, and by a reading of the lease generally, including the wide sweeper clause at clause 5(4)(K).

50. The Tribunal must determine whether the solution chosen by the Respondent was within the reasonable range open to it. The Tribunal indicated that we may take account of the Tribunal's expertise is assessing the evidence, such expertise being of a general nature rather than deriving from specific disclosable documents.

51. We are quite satisfied that lead capping of all the features was within the range of reasonable options available to the Respondent. It was clear that there was a problem to be solved, and that the lead capping solved – we were told in evidence that following the works, the damp had disappeared from the flats and the communal area.

52. Lead was certainly the most expensive option available in terms of initial outlay. However, the Respondent was entitled to take a long view, an approach to which the length of the leases is relevant. The expected useful life of the lead was (according to the evidence) twice, or possibly more than twice, that of the cheaper alternatives. On a long view, therefore, the use of lead was not to be seen as a "Rolls Royce" solution to the problem.

53. In so determining, we do not need to, and do not, come to a conclusion as to whether clause 5(4)(L) was effective to narrow the range of

reasonable options open to the Respondent, over and above the general test derived from section 19 of the 1985 Act.

54. *Decision*: Expenditure on lead capping of the parapet wall, the cornice beneath the parapet wall and the top of the decorative panels fixed to the front elevation was reasonable.

Repairs to the window frames

55. The extent of the demise in the lease is set out in the first schedule to the lease as including:

> "the internal plastering covering and plaster work of the walls bounding the Flat and the doors and door frames and window frames fitted to such walls (other than external surfaces of such doors door frames and window frames) and the glass fitted in such window frames ..."

56. The lease imposes repairing obligations on the Lessee in relation to the demised premises (clause 4(1)).

57. The evidence was that in some cases, the metal Crittall window frames had corroded, to a depth of up to 20mm from the external surface. So that the windows could be decorated, the Respondent had repaired those windows using a resin system.

58. The Applicants argued that the lease made it clear that responsibility for repair of the window frames up to but not including the external surface of the window frame lies with the leaseholders, not the Respondent, and accordingly there should be no claim on service charge derived funds to effect their repair.

59. We refused Ms Gray's application to deal with the construction of the lease by way of written submissions.

60. On the face of it, the Applicants' construction of the lease has force. However, even if they are correct that repair of the window frames is a leaseholder responsibility, to enforce those covenants would have been inconvenient in the extreme.

61. The corrosion became apparent as a result of the start of the work to decorate the window frames, an obligation on the Respondent. To have required the tenants to undertake separate repairs, if necessary invoking the covenants for repairs on notice (clause 3(5)) or on the right of entry on disrepair – that is, "entry" onto the relevant part of the frame – (clause 3(6)), would have inevitably have occasioned significant additional delay, and increased cost considerably. While leaseholders may have been prepared to accept the re-charging of the

repairs if undertaken as they were by the Respondent's contractor on a voluntary basis, the Respondent could not have been sure of that outcome in advance.

62. The lease, in clause 5(4)(K) provides a broad power to carry out works where necessary or advisable for proper maintenance. Given that the overwhelming balance of convenience was in favour of the Respondent acting as it did, we are quite satisfied that this broad power includes the repairs undertaken to facilitate the Respondent's obligation to decorate.

63. *Decision*: The cost of the repairs to the window frames was reasonably incurred by the Respondent.

Window decoration – failure to strip back to bare metal

64. It was agreed (a) that the original specification for the work provided for the existing paint on the Crittall windows to be stripped back to the base metal before repainting; and (b) that this had not happened. The window frames had been sanded, but not to base metal.

65. The Applicants contended that, as a result, the thickness of the paint was such that the windows would, at some time in the future, require further repair or replacement as a result of warping and the build up of paint would make it difficult to operate the windows. They further argued that the quality of the finish to the painting of the window frames was of an unacceptable quality.

66. The Respondent argued that it had not proved necessary to strip the windows to base metal. It proved possible to provide an adequate surface by sanding alone, such that the new paint adhered adequately. Given the rubbing down, the thickness of the paint was within the tolerance acceptable for windows of this design. The result was a saving of £3,830.

67. As to the thickness of the paint, we accept the evidence of Mr Pegman that it was unlikely to exceed the accepted technical limit, which was the equivalent of three to four coats. In terms of expertise, the Applicants were not able to contest this evidence. They did produce photographs (we allowed both parties to produce additional photographs during the course of the evidence) of the windows before painting, but we are not prepared to conclude from those photographs that, following priming and painting, the windows would have exceeded that limit.

68. We were shown photographs of the ground floor windows after the painting was completed. Initially, we understood Mr Pegman to be saying that the quality of the paintwork had been picked up during the snagging of the job, and was subject to correction as part of the resolution of ongoing defects. However, subsequently it became clear

that, while other matters in relation to this area were the subject of snagging, the quality of the painting was not.

69. It is apparent to us from the photographs that the quality of the painting was, indeed, poor, as the Applicants argued. The painted surface was in places visibly pitted and uneven, resulting in a sub-standard finish (although in other places, the finish, while not perfect, was acceptable).

70. We accept that it may not have been necessary to have stripped all of the window frames back to bare metal. But in some cases, it may have been, and elsewhere, if it were not necessary, then the underlying surface should have been more carefully feathered in the course of rubbing down to ensure that the final painted surface was reasonably smooth. It appears to us that the contractor took a broad approach to the preparation of the windows when it should have taken care to ensure an adequate surface to take the repainting in each case.

71. However, it is not clear to us that we can or should recognise this deficiency in the financial terms. Section 19(1)(b) of the 1985 Act provides that "relevant costs" are to be taken into account

> "(b) where they are incurred on the ... carrying out of works, only if the ... works are of a reasonable standard; and the amount payable shall be limited accordingly."

72. What is a "reasonable standard" in section 19(1)(b) must be determined relative to cost of those works – the amount payable is limited according to the standard of work. In this case, if the windows had indeed been taken back to bare metal, or, as we have suggested, if a case by case decision had been taken on how to properly prepare the windows had been taken, the savings we have set out above would not have accrued.

73. The Applicants did not contend, as we understood it, that the finish was of a lower standard than they were entitled to expect *for the reduced fee*. Rather, their point was that the job should have been done properly, and that would have implied a higher cost. While we have sympathy for this position, it is not one that can be reflected in a reduction in the sevice charge.

74. *Decision*: While the finish on the windows was, in part, poor, that standard of work was reflected in the reduced cost of the painting of the windows, and accordingly the costs were reasonably incurred.

Matching of render on stonework

75. The Applicants complained that render applied to the old stonework sections on the front elevation was a poor colour match, and had been applied in an unaesthetically pleasing manner. We were shown a photograph that, the Applicants contended, bore this out.

76. In evidence, Mr Pegman said that the photograph we had been shown did not show the position as it now was. In particular, the sections subject to render had been squared off to avoid the "smeared" look that was, indeed, apparent from the photograph. For the Applicants, Mr Hill did not contest this.

77. Further, Mr Pegman's evidence was that the Respondent (and its contractor) had gone to considerable lengths to secure the closest colour match. A sample of the relevant stonework had been sent to a specialist company and the render specially colour mixed. They had done the best they could, he said, and the only way to have a perfect match would have been to have rendered the whole of the stonework.

78. We accept the Respondent's evidence, and conclude that there approach to the task of matching the colour was reasonable, and the result cannot be considered to be unreasonable.

79. *Decision*: The expenditure on render to the stonework was reasonably incurred.

Drip channels in window lintels

80. Originally, the Applicants complained that a recommendation by Base Build that a metal L-shaped detail should be added to the window lintels to prevent water ingress had not been implemented. Mr Hill took the view that a passage in the Hallas report which indicated that this was not necessary was mistaken, in that the Hallas surveyor had not properly understood the proposal.

81. It became apparent in evidence that, while there was a recommendation to that effect in the Build Base report, that solution had not been carried forward into the specification for the works.

82. Rather, the existing drip channel had been tested and found (possibly, largely) to be functional, and no repair had been necessary. As a result, there was no relevant charge to the service charge.

83. In the light of this, the Applicants sought to redirect the complaint as evidence of inadequate contract administration, rather than a freestanding issue requiring recognition in a reduction in the service charge.

84. *Decision*: There were no costs associated with the complaint made by the Applicants in relation to the window lintels, and accordingly no basis for the Tribunal to make a finding that any expenditure was unreasonably incurred.

The snagging

85. The Applicants made a generalised complaint about the conduct of the snagging process.

86. The Respondent's evidence was that, while the defects period had elapsed, the snagging process was still in process, and items mentioned by the Applicant would be addressed.

87. We conclude that there is no basis for any claim that the conduct of the snagging exercise was such as to require a reduction in the service charge payable, and certainly not in advance of the end of the process.

88. *Decision*: No complaint as to the snagging process relating to the defects period is made out. There has accordingly been no related unreasonable expenditure attributable to the service charge.

Application under section 20 of the 1985 Act

89. At the end of the hearing, the Applicants made an application for an order under section 20C of the 1985 Act.

90. We heard argument from both parties.

91. While the degree of success before us is not determinative of the question of whether the Tribunal should make an order under section 20C, it is an important consideration for us to take into account. In particular, an order under section 20C deprives a landlord of what would otherwise be a contractual right against a tenant. Where a landlord has been successful, it requires some unusually and persuasive feature of the case to justify the making of an order.

92. In this case, the Respondent has been successful. There is no unusual and persuasive feature that would justify removing a contractual right to recovery of expenditure on proceedings.

93. However, we have not heard argument on, and have not come to any determination, on whether or not this particular lease makes provision for the costs of proceedings before the Tribunal to be recoverable under the service charge provisions. If the costs are passed on as a service charge, the Applicants will be entitled to contest whether they are

payable under the lease, and/or they are unreasonable, in future proceedings before the Tribunal or otherwise.

Name: Tribunal Judge Richard Percival **Date:** 23 March 2017

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).