



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

**Case References** : **LON/00AZ/LSC/2021/0190**

**HMCTS Code (paper, video, audio)** : **P - Paper**

**Property** : **Flat 4 Eastdown Court, 1-11 Eastdown Park, London SE13 5HU**

**Applicant** : **Nathaniel Adojutelegan**

**Representative** : **Not represented**

**Respondent** : **Eastdown Court Ltd.**

**Representative** : **Packfords Property management**

**Type of Applications** : **For the determination of the reasonableness of and the liability to pay legal costs**

**Tribunal Members** : **Tribunal Judge S. J.Walker  
Tribunal member Mr. A. Fonka MCIEH, CEnvH, M.Sc.**

**Date of Decision** : **4 November 2021**

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**DECISION**

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**Decision of the Tribunal**

- (1) The Tribunal determines that for the service charge year ending on 31 August 2017 all the sums sought by the Respondent as set out in the service charge accounts for that year are both reasonable and payable by the Applicant save that no charge is reasonable and payable in respect of the £563 charged to the service charge account for company secretarial services and no charge is

reasonable in respect of the £900 charged to the service charge account in respect of legal and professional fees.

- (2) The Tribunal determines that for the service charge year ending on 31 August 2018 all the sums sought by the Respondent as set out in the service charge accounts for that year are both reasonable and payable by the Applicant save that no charge is reasonable and payable in respect of the £300 charged to the service charge account for company secretarial services.
- (3) The Tribunal determines that for the service charge year ending on 31 August 2019 all the sums sought by the Respondent as set out in the service charge accounts for that year are both reasonable and payable by the Applicant save that no charge is reasonable and payable in respect of the £300 charged to the service charge account for company secretarial services, no charge is reasonable and payable in respect of £250 of the sum charged to the service charge accounts for administration as this was also charged for in the following year, and no charge is reasonable and payable in respect of the £122 charged to the service charge accounts for director's insurance.
- (4) The Tribunal determines that for the service charge year ending on 31 August 2020 all the sums sought by the Respondent as set out in the service charge accounts for that year are both reasonable and payable by the Applicant save that no charge is reasonable and payable in respect of the £300 charged to the service charge account for company secretarial services and no charge is reasonable in respect of the £270 charged to the service charge account in respect of legal and professional fees.
- (5) The Tribunal determines that for the service charge year ending on 31 August 2021 a service charge of £620.56 is both reasonable and payable.
- (6) The application for 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 lessees through any service charge is refused.
- (7) The application for an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002, so that none of the landlord's litigation costs can be recovered as an administration fee is refused.

### **Reasons**

#### **The Application**

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service which are payable by them.
2. The Applicant also seeks an order for the limitation of the landlord's ability to recover their costs as a service charge under section 20C of the 1985 Act and an order to reduce or extinguish their liability to pay an administration charge

in respect of litigation costs under paragraph 5A of Schedule 11 of the 2002 Act.

3. The application was made on 27 May 2021 and it identifies disputes with the service charges for each of the service charge years ending in 2017 to 2021 inclusive.
4. Directions were issued on 16 June 2021, when the case was allocated to the paper track for determination in the week commencing 1 November 2021. By the directions, the parties were given until 12 July 2021 to request that a hearing should be held. No such request was made. Although there was a subsequent case management hearing on 27 July 2021 in the course of which the Respondent replaced the previous respondent, South London Ground Rents Ltd., the Respondent confirmed that they were content with the existing directions and no request for a hearing has been received since then. The Tribunal considered rules 3 and 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and was satisfied that it was appropriate to determine the application without a hearing.
5. The directions also provided for the preparation of bundles of documents. This direction was complied with, and the Tribunal had before it two bundles of documents. There was an indexed and numbered bundle from the Applicant comprising 191 pages and an indexed and numbered bundle from the Respondent comprising 343 pages. The contents of the former was largely reproduced in the latter. The page references which follow are to the handwritten page numbers of the Respondent's bundle unless otherwise stated. The Tribunal also had a number of documents described as "disclosure" in its correspondence file. It will be necessary to refer briefly to one of those documents in what follows. Finally, the Tribunal also had a supplementary reply from the Applicant which was not included in the bundles. This will be referred to as "the Reply".

### **The Background**

6. The property is a two bedroom flat in a block which contains 21 flats.
7. Although no evidence of title was produced, there was no dispute that the freehold of the property is owned by South London Ground Rents Ltd. The Applicant holds the property on a long lease dated 5 September 1983 made between Eastdown Properties Ltd, the predecessor in title of the current freeholder, the Respondent as the Management Company, and Carole Ann Doyle, the predecessor in title of the Applicant. The lease is for a term of 99 years from 24 June 1983 (see pages 322 to 323). There is also a management lease dated 13 October 1981 between Eastdown Properties Ltd. and the Respondent under which the structure of the property and the common parts are demised to the Respondent and under which the Respondent covenants to manage the property (see pages 314 to 320).

### **The Lease**

8. The Applicant's lease is at pages 321 to 342. By clause 3(i) of the lease (page 333) the lessee covenanted to pay to the management company;  
*“such sum as the management Company shall from time to time deem reasonable payable on the twenty-fifth day of March and the twenty ninth day of September in each year being four percent of the total costs incurred or to be incurred by the Management Company in the performance of its covenants herein contained or referred to the first proportionate payment calculated from the date hereof to be on the next following date for payment and in addition within one month after receipt of written notification from the Management Company to pay to it such amount as after giving credit for the said half yearly payment already made shall equal the aforementioned percentage of (a) the actual amount expended by the Management Company to the date of said notification and (b) any reasonable reserves the Management Company consider proper at the said date.”*
9. The lease makes no provision for when the service charge year is to begin and end. Historically it has run from 1 September to 31 August each year.
10. The management company's relevant covenant under this lease is as follows;  
*“The management Company shall keep the Reserved Property and all fixtures and fittings therein in good and substantial repair and condition including the removal and replacement of all worn and damaged parts and shall manage the rear garden and grounds according to approved methods of gardening (if applicable) and perform all such other covenants and obligations as are contained in the Management Lease on its part to be observed and performed so far as the same affect the demised premises or the Lessee”* (clause 4(ii) at page 334)
11. It follows from this that the Applicant is also liable for the Respondent's costs of observing its covenants under the management lease. The relevant obligations are in the Fourth Schedule of that lease and include the following;  
*“The Lessee shall to the full satisfaction in all respects of the Lessor's Surveyor for the time being manage the demised premises and keep the same in a clean and tidy condition.....”* para 3 at page 317  
  
*“The Lessee shall pay all costs charges and expenses relating to the management of the demised premises and the employment of such person or persons as the Lessee shall deem necessary for such purposes including the salary .....in respect of all agents servants and workmen employed by the Lessee in connection with the performance and observance of any of the covenants on its part herein contained and including the employment of solicitors auditor or other persons as may be requisite”* para 12 at page 318  
  
*“The Lessee shall pay all costs charges and expenses (including solicitor's costs and surveyor's fees) properly incurred by the Lessor for the purpose of or incidental to the preparation and service of a notice under section 146 and 147 of the Law of Property Act 1925*

*notwithstanding that forfeiture may be avoided otherwise than by relief granted by the Court.” Para 14 at page 318*

*“The Lessee shall insure and keep insured the demised premises at all times throughout the said term ....” Para 15 at page 318*

### **Matters in Dispute**

12. The matters in dispute are set out in Scott Schedules for each of the disputed service charge years. The completed schedules are at pages 75 to 88, though they must be considered in the light of the Reply. In what follows the Tribunal will consider the service charge years from that ending on 31 August 2017 to that ending on 31 August 2020 together, as the issues for each year are largely the same. The relevant parts of the service charge accounts for these years are at pages 263, 269, 275, and 281.

### **SERVICE CHARGE YEARS 2017 to 2020**

#### **Company Secretarial**

13. For each of these service charge years the Respondent has included a charge in the service charge accounts for company secretarial charges. The amounts are as follows;

2017	£563	Applicant’s share at 4%	£22.52
2018	£300	“	£12.00
2019	£300	“	£12.00
2020	£300	“	£12.00

14. The Applicant’s case is that these sums are not payable under the terms of the lease. The Respondent’s case is that all leaseholders are members of the management company and that they are obliged to pay towards the expenses of the Management Company under the terms of the Articles of Association. Whilst that may be the case, the question before the Tribunal is whether such costs are recoverable under the terms of the lease. The Respondent has not put forward any basis on which the company’s internal secretarial costs can be recovered under the terms of the lease. As a result, the Tribunal is not satisfied that these sums are recoverable and no charge should be made in respect of them.

#### **Administration**

15. For each of the service charge years the Respondent has included in the service charge accounts sums in respect of administration.
16. The Applicant challenges these charges for each year apart from 2018. He argues that the sums are not reasonably incurred or are not recoverable under the lease. In his reply he argues that the charges in dispute are for items which do not amount to administration.
17. The Respondent’s case is as follows. For 2017 the charge was for the cost of obtaining copy leases which had not been provided by the previous agents – an invoice is provided at page 259 from the managing agents for this. For 2019 the charge is for the issuing of breach letters – invoices are at pages 124 to 128. These show charges from the managing agents for the costs of letters to tenants together with an invoice of £250 from Living Styles UK in connection with work concerning ongoing legal proceedings (page 124). For

2020 the invoices are at pages 92 to 95. They include charges for further letters to tenants. However, the invoice which is at page 94 appears to be identical to that at page 124 which was included in the previous year's accounts. This appears to be a case of double counting.

18. No further arguments have been put forward by the Applicant. The Tribunal is satisfied that the items for which charges have been made fall within the scope of the management functions of the Respondent as set out in paragraphs 3, 12 and/or 14 of the Fourth Schedule of the management lease. As such they are recoverable under the terms of the Applicant's lease. With the exception of the double counting identified above, the Tribunal is satisfied that these charges are reasonable and payable. The invoice which appears twice was marked as being paid in October 2019 so it should fall within the 2020 accounts. The Tribunal concludes that the Applicant's share of this invoice - £10 – has not been reasonably charged in the 2019 service charge year and this sum should not be charged for.

### **Legal/Professional Fees**

19. For the 2017 and 2020 service charge years the Respondent has made a charge which is identified as being for legal and professional fees. These are as follows;

2017	£900	Applicant's share at 4%	£36.00
2020	£270	"	£10.80

20. The Applicant's case in respect of these two charges is that they are not payable under the terms of the lease. His Scott Schedule and Reply contain an error as it is stated there that the charge in 2017 was £1,386. The statement of account (page 263) shows that the charge was £900 – the figure of £1,368 was in respect of cleaning.
21. As with the company secretarial costs, the Respondent's reply in the Scott Schedule relies not on the terms of the lease but on the agreement between the shareholders of the management company under its articles of association to pay for the company's expenses. No explanation has been provided as to how these costs are recoverable under the terms of the lease. (Also, the invoices referred to in respect of the charge in 2017 appear to be invoices in respect of cleaning services – the error of the Applicant appears to have been perpetuated.)
22. It follows that, for the same reasons as explained in respect of the company secretarial charges, the Tribunal is not satisfied that these charges are recoverable and no charge should be made for these as a service charge.

### **Electricity**

23. The Applicant originally challenged the charges for electricity in the service charge years ending 2017 and 2018. These challenges have been withdrawn (see paras 17 and 22 of the Reply).

### **Repairs and Maintenance**

24. The Applicant originally challenged a charge for repairs and maintenance in the 2017 service charge year. This challenge has been withdrawn (see para 23 of the Reply).

### **Insurance Claim**

25. In the service charge years 2018 to 2020 charges have been made under the heading “insurance claims”. The Applicant’s case in respect of these charges is that the charges are not reasonable or recoverable under the lease. In his Reply he states that the Respondent is now saying that the costs were incurred in investigating leaks and he puts them to proof of this. No other argument is put forward.
26. The Respondent’s case is that these are costs incurred in investigating leaks at the property and that these costs are recoverable as costs of the management company in the performance of its covenants. Invoices are provided for the costs as follows. For 2018 at pages 138 to 141, for 2019 at pages 129 to 131, and for 2020 at pages 97 to 99.
27. The Tribunal is satisfied that the invoices show that work was done and paid for and that the works fall within the scope of the Respondent’s obligations both in the Applicant’s own lease to keep the property in good and substantial repair (clause 4(ii)) and in the management lease. The Applicant has merely put the Respondent to proof and has not advanced any argument as to why these costs are not recoverable or not reasonable.
28. There is an additional item to consider with regard to the 2020 service charge year. In that year the invoices only cover £570 of the £1,570 charged. The remainder has been charged as an accrual to the service charge account – see the e-mail correspondence at page 99. However, although this is not a charge in respect of expenditure incurred, the Tribunal bears in mind that the terms of clause 3(i) of the Applicant’s lease allow the Respondent to make charges for costs not yet incurred and also for contributions to the reserves. Given that there has been a considerable history of problems with leaks at the property – as is made amply clear by much of the contents of the bundles – the Tribunal considers that it was reasonable for the Respondent to make a charge of £1,000 towards likely future expenditure in this regard.
29. It follows from what is said above that the Tribunal is satisfied that the charges made under this head are both reasonable and recoverable.

### **Cleaning**

30. The Applicant originally challenged the charges for cleaning in the 2018, 2019 and 2020 service charge years. These challenges have been withdrawn (see paras 7, 13 and 18 the Reply).

### **Insurance D&O**

31. In 2019 the service charge accounts include a charge of £122 for director’s insurance, of which the Applicant’s share is £4.88. The Applicant’s case is that this is not recoverable under the terms of the lease. This charge appears to be incorrectly referred to in the Reply as a charge of £1,122 (see para 12).

32. The Respondent's case as set out in the Scott Schedule is the same as that put forward in respect of the company secretarial costs dealt with above.
33. For the same reasons as those explained in relation to the company secretarial costs, the Tribunal is not satisfied that this charge is recoverable under the terms of the lease and so no charge should be made for it.

### **Insurance Revaluation**

34. In 2019 the service charge accounts also include a charge of £672 for obtaining an insurance revaluation. The Applicant argues that the cost is not recoverable under the lease and that the obligation to insure the property set out in his lease falls upon the freeholder and not the management company under clause 5(iv) of the lease – see para 14 of the Reply.
35. The Respondent relies on its obligations under paragraph 15 of the Fourth Schedule of the management lease (as set out above) to insure the property. A copy of the relevant invoice is at page 186.
36. The Tribunal is satisfied that paragraph 15 in the fourth schedule of the management lease places an obligation on the Respondent to insure the property and that, even if it did not do so, this charge is not in fact for insurance but for obtaining information to ensure that the property is properly insured. In its view this falls well within the scope of the Respondent's management functions in paragraphs 3 and 12 of the same schedule. It follows that the Tribunal is satisfied that this charge is both reasonable and recoverable.

### **Summary**

37. Summarising the Tribunal's findings above, it follows that all the service charges sought by the Respondent in the service charges years 2017 to 2020 inclusive are reasonable and recoverable save for the charges made as follows;
  - (a) The company secretarial costs for each year
  - (b) The £250 charged for administration which was charged for in both 2019 and 2020 – there should be no charge in 2019
  - (c) The legal and professional fees charged for in 2017 and 2020
  - (d) The charge for director's insurance in 2019

### **SERVICE CHARGE YEAR 2021**

38. The arguments in respect of the 2021 service charge year are somewhat different. To begin with the charges are in respect of budget items rather than actual expenditure. (As explained above the lease allows for the recovery of costs to be incurred).
39. The budget for 2021 does not appear in the bundle, but it has been supplied in the documents referred to as disclosure already mentioned. This budget shows a total predicted expenditure of £15,939 for the 2021 service charge year. The Applicant's 4% share of this sum amounts to £637.56.
40. The Applicant raises two challenges in respect of this charge. Firstly, he challenges the global sum of £637.56. In his Scott Schedule he simply states



that the sum is not payable under the terms of the lease (page 75). In his Reply he states that the real reason for the dispute is the Respondent's failure to carry out works. This argument can be more clearly understood by reference to the Applicant's original statement of case, which begins at page 27, and his reply, which begins at page 65 of the Applicant's bundle. From these – and from the numerous documents in the bundle – it appears that the Applicant's case is this. There has been a problem with leaks at the property for some time, which the Applicant has reported to the Respondent. His case is that the Respondent delayed in taking steps to investigate the problem and, when they did obtain a report which identified a number of defects which required attention, they only proposed to deal with some of them. His argument is that the Respondent should have done works which they have not done, and that the works which they have done have not in fact been completed or have not been done properly. He also seeks to rely on an allegation that the Respondent is in breach of its repairing obligations set out in clause 4(ii) of the lease.

41. The Respondent's case is simply that they have set a service charge budget for 2021 and that the Applicant is liable to pay his 4% share of that budget.
42. In approaching this dispute, the Tribunal bears in mind two things. Firstly, its only jurisdiction is to determine what service charges are reasonable and payable. It has no jurisdiction to deal with alleged breaches of repairing covenants by landlords. If the Applicant considers that the Respondent has not done works which they should have done that is a matter for them to resolve in another forum if they cannot resolve it between themselves. The second point is that the charges that the Respondent has made are in respect of budget items only. It follows that the question for the Tribunal is whether the budget projections are reasonable and whether it is reasonable to include those items in the budget. The questions of whether works have or have not been done or whether they have been done to a reasonable standard cannot be raised at this stage. That is a matter to be determined once the actual figures for the service charge year have been finalised and any balancing charges/credits have been made.
43. The Applicant has made no express challenge to any particular item in the budget. However, he has continued with his general challenge that the items for which a charge is made are not recoverable under the terms of the lease. Looking at the budget itself the Tribunal notes that it includes £125 for director's liability insurance and £300 for company secretarial work. These would appear to be charges of the same kind as those already identified by the Tribunal in respect of previous years which, whilst they may be recoverable from the Applicant by virtue of his being a shareholder in the management company, are not charges which can be recovered under the terms of the lease. Consequently, the Tribunal concludes that these are not reasonable items to include in the budget. Removing these items produces a figure of £15,514, of which the Applicant's share is £620.56.
44. The other challenge to the 2021 service charges is that the Applicant considers that he should be re-imbursed the sum of £327.60, which is the cost of a leak detection report which he, the Applicant, commissioned. This is referred to in

the papers as the Aspect Detection Report. He argues that when he approached the Respondent about leaks at the property they asked him to undertake his own investigation to confirm that the problem was not simply condensation before they would undertake their own inspection (see page 44).

45. The problem with this challenge is that it again raises issues well outside the jurisdiction of the Tribunal. The only powers the Tribunal has are those set out in section 27A of the Act. They are to decide whether or not a service charge is payable and, if so, the person by whom and to whom it is payable and the amount which is payable.
46. The cost of the Aspect Detection Report is not being sought from the Applicant as a service charge. Indeed, it is not a cost that is being sought by the Respondent at all. Whether the Applicant has any legal claim to recover the cost of this report from the Respondent is not something which this Tribunal can decide.
47. It follows that the Tribunal is satisfied that a service charge of £620.56 for the service charge year 2021 based on the budget figures is reasonable and recoverable from the Applicant, subject only to the Applicant having the right to challenge the actual figures for that service charge year once the service charge accounts are finalised.

**Applications under s.20C of the 1985 Act and Para 5A of Schedule 11 of the 2002 Act**

48. In his application the Applicant applied for an order under section 20C of the 1985 Act and for an order under para 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.
49. The test for whether orders should be made under these provisions is whether or not the making of such an order is just and equitable. The Tribunal bears in mind the history of the proceedings. It also has regard to the relative success achieved by the parties. It concludes that the Respondent has largely shown that the costs it sought to recover were both reasonable and payable. In his original application the Applicant stated that the total sum in issue was £2,825.30 (see page 5). Taking all the Tribunal's conclusion above into account, the Applicant has shown that less than £150 of the charges sought are not recoverable. He has achieved a reduction of roughly 5% of the total sum in issue. In addition, he has raised arguments which are clearly outside the jurisdiction of the Tribunal and, having raised challenges – without any clear basis – in respect of such items as cleaning and electricity charges – and having put the Respondent to the expense of providing relevant invoices relating to those charges, he has late in the day withdrawn those challenges without explanation.
50. Bearing in mind all the circumstances the Tribunal therefore concludes that it would be neither just nor equitable to make an order under either provision.

**Name:** Tribunal Judge  
S.J. Walker

**Date:** 4 November 2021

## **ANNEX - RIGHTS OF APPEAL**

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.
- If a party wishes to appeal against this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
- The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

### **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.

### **Section 20ZA**

- (1) Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements

in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

- (2) In section 20 and this section –
  - “qualifying works” means works on a building or any other premises, and
  - “qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.
- (3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement –
  - (a) if it is an agreement of a description prescribed by the regulations, or
  - (b) in any circumstances so prescribed.
- (4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.
- (5) Regulations under subsection (4) may in particular include provision requiring the landlord
  - (a) to provide details of proposed works or agreements to tenants or the recognised tenants’ association representing them,
  - (b) to obtain estimates for proposed works or agreements,
  - (c) to invite tenants or the recognised tenants’ association to propose the names of persons from whom the landlord should try to obtain other estimates,
  - (d) to have regard to observations made by tenants or the recognised tenants’ association in relation to proposed works or agreements and estimates, and
  - (e) to give reasons in prescribed circumstances for carrying out works or entering into agreements
- (6) Regulations under section 20 or this section
  - (a) may make provision generally or only in relation to specific cases, and
  - (b) may make different provision for different purposes.
- (7) Regulations under section 20 or this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.



## **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).

**Schedule 11, paragraph 5A**

- 5A(1)A tenant of a dwelling in England may apply to the relevant court or Tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.
- (2)The relevant court or Tribunal may make whatever order on the application it considers to be just and equitable.
- (3)In this paragraph—
- (a)“litigation costs” means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and
  - (b)“the relevant court or Tribunal” means the court or Tribunal mentioned in the table in relation to those proceedings.