FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BJ/LSC/2021/0373**
Property	**:**	**Flat 25, Flotilla House, Juniper Drive, Wandsworth SW18 1FX (and Flats 18 21 28 32 36 38)**
Applicants	**:**	**Ms C. Barry Flat 25 (Leaseholder) (and Flats 18 21 28 32 36 38)**
Representative	**:**	**Ms C. Barry**
Respondents	**:**	**1. Notting Hill Home Ownership Ltd. (Head leaseholder)** **2. Battersea Reach Estate Company Ltd. (Freeholder)**
Representatives	**:**	**1. Mr S. Evans of Counsel** **2. Ms D. Doliveux of Counsel**
Determination.	**:**	**For the determination of the reasonableness of and the liability to pay a service charge S.19 & S.27A and orders under S.20C Landlord and Tenant Act 1985 AND Para 5 Schedule 11 CLARA 2002**
Tribunal members	**:**	**Mr N. Martindale FRICS** **Mr O. Fonke**
Date of Hearing and venue	**:**	**10 June 2022** **10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**17 June 2022**

DECISION

Background

(1) The Tribunal was asked to determine an application made under S.19 and S.27A of the Landlord and Tenant Act 1985 as amended. There was also a request to prevent the landlords administrative and other costs arising from this application being billed to the leaseholders.

(2) The initial challenge was of the charges made for provision of services to the internal areas of the Block, within which the subject Property was located. No challenges were made for other service charges for services provided at the Estate or the exterior of the Block. The completed application form asked specifically for *"...the Tribunal to rule that NHG as headline leaseholder and St George Development company are liable for all costs, including future costs, relating to the design flaw."*

(3) It was in the hearing bundle and at that the hearing that the applicant clarified that they sought determination of: 1. The alleged mis-selling to them, of their flats, by the seller (the first respondent) some years earlier, in and around 2014 in part, by misrepresentation of the true service charges to be expected. 2. The effects of a review of the design of the 'Flotilla and the adjoining Ensign House' blocks and lift provision there after the initial construction, sometime between 2014 and 2020, on charges for services internal to the block. 3. The alleged unreasonable behaviour of both respondents up to and beyond the making of the application. 4. The imposition of a cap on the respondents to prevent them recovering their costs arising from this application under S.20C (service charge) and/or under Para 5, Sch 11. (administration costs). 5. The refund of filing and hearing fees paid to the Tribunal, from the respondents.

Application

1. This application was made in October 2021. It was from Ms Barry on her own behalf, for her flat, No.25. As Ms Barry later confirmed several times in the hearing she possessed no technical skills or experience in making this challenge; that she lacked the time to research and find out how to do so; and that she lacked the finances to employ a lawyer, expert or other representative to act for her in making and pursuing the application. Despite these disadvantages as a lay person, she filed the application as she is entitled to do.

2. In 2022 underlessees from neighbouring flats in the block in which the Property is located, aware of her dealings with their common head

leaseholder and the estate freeholder, they sought to be joined by the Tribunal, to her application. These requests were granted by the Tribunal in the later Directions of March 2022. This decision therefore applies to these flats as well. They did not engage a lawyer or other representative to act for them.

3. The application form was extremely broadly drawn. It challenged service charges, for all years, from 2014 to 2020 (actual) and 2021 to 2026 (estimated), 13 years and even beyond that. It was made specifically against the service charges imposed on the 8 heads of costs from services provided to the internal common parts, within Flotilla House South. This implied that 13No. x 8No. or 104 items were challenged. However for the periods referred to this was Estate and external Block costs were not challenged for any year.

4. The case was considered by the applicant not to be urgent so it was set down for the standard track for a hearing. Mediation was considered but, was not pursued by the parties.

Directions

5. The first set of Directions was issued in December 2021 by Tribunal Judge S J Walker. These narrowed the years down to those of 2014 to 2022 (9 years). It appears to be because figures for future years, even estimates, were not available to anyone, and could not therefore be determined. They were therefore excluded in the Directions. However the Directions also widened the scope of to include 'repair works and reserve fund contributions as part of the Internal Block services, though neither heading appears as a head of charge in the lease. This narrowed the application to just 9 years x 10 heads of cost, or 90 items for determination.

6. It was unfortunate that a Directions hearing was not prescribed on receipt of the application, or was not apparently requested by one or both parties, either before or after the issue of Directions. Such a hearing could have served to clarify the issues actually at stake, and at a much earlier date to the benefit of both parties and this Tribunal in preparation for and at the hearing. It could have also extended the hearing from 1 to 2 or more days to deal with all the heads of costs challenged in the application. It appears that neither party was represented at this stage of the application.

7. These Directions required the applicant to complete standard but separate Scott schedules, one for each of the 9 years to be challenged. The applicant was to list each head of cost, with the individual charge allocated to the Property for that item and for each year, to state the reasons for the challenge and to propose their substitute figure for each item. If complied with, this would have generated 9No. Scott Schedules, referencing a total of up to 90No. items to be determined.

8. In the event and contrary to Directions, the applicant only provided one Scott Schedule (for 2014), despite having questioned many years and individual heads of charge in their original application. Unfortunately even that Schedule did not include specific reasons against heads and/or against the charges actually made. Nor did it include an alternative figure for each head.

9. The Tribunal issued supplementary Directions to include two additional flats on 10 January 2022. Supplementary Directions to join the remaining flats to a total of 7 including No.25, were later issued on 25 January 2022.

10. An early version of this Schedule simply set out generic reasons applied to every one of the 8 items listed as: Wages, water, CCTV, Carpet Cleaning, Lifts, Plant, Engineering Insurance, Management Fee. A simple statement was provided, as the reason for the challenge covering all heads of charge for every year as *follows*: *"Unreasonable in amount The internal block costs for shared ownership flats using Flotilla House entrance are 10 times higher than shared ownership Flotilla House using Ensign House entrance. All flats were marketed as having the same service charge i.e. c£300 pcm for a 2 bed flat"* This statement was added to later versions of these Scott Schedules, which were eventually received by the Tribunal.

11. The Respondents' replies to each Scott Schedule were added later still in preparation for the hearing. The wording was almost identical to that for 2014 original, save for a note of the year reference and the total service charge bill for the internal Block costs, for each year. This took the Tribunal only a little further forward.

12. The original Directions allocated 4 hours for the hearing, but invited parties to challenge their form and timetable and to request a pre-hearing to review how the case should proceed. Mediation was also offered, on request of both parties. It was not requested. However no changes to them nor was a pre-hearing sought to clarify and narrow the issues, prior to any listing of the hearing. The case was postponed on more than one occasion prior in any event, as it appeared that the respondents had not instructed Counsel until a relatively late stage, nor were they otherwise able to proceed to attend. It was re-listed for a hearing in early June 2022.

13. In each almost duplicate Scott Schedules later received by the Tribunal, there was then, a generic reference to and challenge of: 1. the alleged 'miss-selling' and/or misrepresentation of the estimated service charges prior to the lease grant; 2. the alleged later block design and construction variations not matched by changes to the underlease to match those of nearby otherwise comparable flats; 3 the 'need' in any event to reduce the annual charges to about 50% of those billed for the years in question, from 2014 onwards so that they paid similar rates on

a £/ft2/pa basis for similar flats nearby; 4. the general 'unfairness' of the existing total annual charges for all the items of service charges, said to be in contradiction of the lease provisions for these to be fair and reasonable.

14. Despite the continuing lack of clarity or detail in the challenge the trial bundle prepared by the applicant extended to nearly 1000 pages. There were no witness statements from the applicant. Instead she relied on oral representations based on many and various items of correspondence between the applicant and the parties over more than a year, which further added to the very extensive bundle.

15. The second respondent represented by Counsel provided a skeleton argument just prior to the hearing. The first respondent also represented by Counsel did not, referencing instead some of the second respondent's material. Counsel for the two respondents (which held different interests in the Property at this estate), largely agreed on their approach. A witness statement from the estate manager for the freeholder was included which was particularly helpful to the Tribunal. It extended the materials by some 200 plus pages, supplemented by consideration of his oral evidence.

16. There are at least 3 levels of title to interests in the estate, blocks and Property. The relations between parties are governed by detailed and relatively complex leasehold arrangements here as is common among many recent developments. The terms of these leases may not be particularly easy to investigate or grasp for those not familiar with them.

Hearing

17. The Property is located in a Block of similar modern flats. There are several blocks nearby each of multiple levels. The blocks are divided by open space, roads, pathways and parking. Together these blocks form a large estate on a site fronting the River Thames in LB Wandsworth. The whole estate was developed post 2000. It still has a modern appearance. Costs arising from services provided to the estate and to the external parts of this Block were not challenged.

18. The freehold of the estate and of this Block within which the Property is located is owned by a private development company (the second respondent). There are commercial elements to the ground floor of some blocks. The majority of the floor area to each block is formed of residential flats on multiple floors above ground level. Some are sold on long leases, some wholly owned bye the under lessee, in others the leaseholders own part shares, continuing to rent the remainder.

19. Although much of the estate was sold off to private individuals or companies who bought leases of their flats from the developer directly, the first respondent also took a number of long leases from the second respondent, of some flats, in some blocks. One head lease and one sub-lease were created for each flat where a shared ownership scheme set up by the housing association, first respondent.

20. For at least some of these flats, the first respondent then granted shareholdings in underleases, anything from 25% or 33% upwards to 100% of their interest. These leaseholders held a mixed tenure. Leaseholders in occupation could buy more shares from time to time (staircasing). At 100% of shareholding the role of the intermediary landlord (first respondent) falls away. For the present it is understood that the applicant and the owners of leases of flats who joined her application, were all part shareholders of their underleases from the first respondents head lease of their respective flats.

21. This material was supplemented by a witness statement from Mr Mattocks estate manager of the firm Rendall and Rittner for the freeholder's service to the estate. This ran to well over 200 pages. These were then supplemented by additional documents including a skeleton argument from the freeholder. There were no written summary statements from either the first respondent or the applicant.

22. These very extensive materials which did not comply with Directions, were to be read and explored at the hearing, however as it was only set down for 4 hours consideration, this was not possible. In addition there were well over 100 other assorted documents in the file, some also included in the bundle, with several duplicates.

23. The hearing had been twice postponed already. The time of 4 hours had been set by the first Directions and had not been challenged since. The applicant, who had resisted the time extensions sought by and granted to the respondents, was keen to have the matter heard this time.

24. 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.

25. In view of these various considerable time constraints, the Tribunal had to depart from the conventional format of a typical hearing. Instead it invited short presentations from each party in turn, to clarify and focus on the current issues believed to be in dispute. (There was no statement of agreed facts or of matters in dispute).

26. The Tribunal found that at the morning of the date of the hearing there appeared to be no longer any specific challenges to any of the heads of

service charges levied on the Property under leases for any of the 7 past (2014 to 2020) nor future years (2021 to 2022). This was despite the fact that these multiple challenges had been made in the original application form, and re-iterated in large part by Directions (which remained unchallenged or changed), to consider all internal services to the Block and for all years.

27. Services to the entire estate are provided by the freeholder. These services are commissioned by the estate manager for the freeholder. There are 3 heads of service charge in the lease; estate, external block areas; internal block areas.

28. At the hearing the Tribunal found that the applicant was not challenging those prescribed costs for any particular item, nor collectively, nor the basis, nor method of ascribing those 8 costs listed in the lease for internal Block services, to each block.

29. Instead the Tribunal found that the applicant had dropped their general challenges as they appeared in the application form. The challenge now focused on the percentage which should be correctly used by the freeholder when it divided up the sub-totals (for costs allocated to the Block by the freeholder) set down beforehand. The applicant maintained that the lease contained the wrong percentage was set out in their sublease and that this wrong number was being applied to block costs for internal services to this Block within which the Property was located when it should not have been. They referred to miss-selling and to design changes by the first respondent.

30. For this Property the percentage appeared to be about 4% of costs to internal areas, whereas for comparison the percentage for charges to flats of similar size in the adjacent block on internal costs were around 0.4%. According to the estate manager's evidence some, though not all of the percentages were calculated by reference to the internal floor areas of units.

31. Although part of the general challenge in the application form the apportionment of other heads of costs was not now challenged for other costs at the hearing. Instead the 4% was the apportionment of the next stage of recharge after the subtotal of costs for internal service to this Block, had already been decided by the freeholder.

32. It also emerged that there was no detailed challenge by the applicant to the leasehold obligation on the freeholder, liability for, the quality, quantity or allocation of service charges (for internal areas), carried out or to be carried out, over these 9 year periods at the Property.

33. Counsel for the (first respondent Head Leaseholder) confirmed that it generated no service charges to their underlessees including the

applicant. Indeed they had no involvement in service provision at all, nor its calculation, they simply automatically re-billed those service charge bills that they had received from the freeholder. If recipient residents had a challenge to these charges it to be had to made directly with the freeholder, the second respondent. Although they were later added to the original application form from the applicant did not include or even refer to the freeholder at the start.

34. It appeared to the Tribunal that there had been some earlier discussion or attempts at discussion of the service charges with the head leaseholder by the applicant but, this did not progress. The Tribunal received conflicting evidence between the parties as to the timing, extent, and willingness of such discussion to take place.

35. From reviewing the bundle it appeared to the Tribunal that there was a lot of discussion or attempts at discussion around the challenges or about matters over which the Tribunal has jurisdiction. It appears to the Tribunal that it was only at a fairly late stage of the application that the respondents took advice and engaged representation. The applicant did not appoint representation.

36. The first respondent confirmed that they did retain the ability to recharge administration fees to under leaseholders through their leases and these were part of the challenge. The costs associated with this application and hearing being an example of such a charge.

37. The first respondent confirmed that it agreed that these heads of cost could all be challenged by the residents, but only with the second respondent (Freeholder), not with the first but, that this had not been done in any detail. The Tribunal also noted that despite the challenges of some 90 items for the Property made in the 2021 application form they had not followed the Directions. Despite the applicant being further invited in subsequent Directions, to set out the details of these out with reasons for their challenge, evidence was not presented by the applicant to show that this had clearly been done to any extent.

38. The applicant instead focussed on the single percentage number (ascribed to internal block costs set out and fixed in, the lease), as to why this figure was wrong. The percentages in the flat leases in this block for the internal services, were set around 4% of the total whereas in the rest of the building they were charge at roughly one tenth of that percentage. However the fact that these different percentages were applied to very much larger total costs ascribed to the larger block adjacent to the Block containing the Property, had not been addressed at all by the applicant.

39. The application and in particular the Directions of 2021 invited the applicant to raise a full range of potential issues over the service charges. However apart from clearly challenging the apportionment of

service charges, information in support of these other potential challenges were not apparently explored with the respondents, and their general challenge to all service charge heads of cost and their amounts in the form, for each year, was not in general followed through by the applicant at the hearing or in their bundle.

40. The Tribunal heard from Mr Mattocks estate manager of the entire complex for the freeholder. In an attempt to follow the applicant's reasoning and their, by now, limited continuing grounds of challenge, some of the total costs for some items in the Block and the adjacent block, were compared.

41. With Mr Mattocks assistance, the small subject Block and larger neighbouring blocks, in the many schedules provided were considered by the Tribunal. This exercise during the hearing showed that the total costs of the larger adjacent block were often as much as ten times larger than those of the smaller subject block. For example they appeared to show in respect of the cost of management fee for 2020, that a very similar figure was charged to comparable flats in each block regardless of which block it was contained in. This was effectively balanced out by charging the leaseholders in the larger block about one tenth of the total.

42. The basis of the sub-division of the greater total costs for some of the internal services, among blocks on the estate was at the Tribunal's request, explained by Mr Mattocks. These bases differed considerably. They were not specified in the leases either. However it was evident from even this limited exercise at the hearing only, that these bases had also not been explored or their basis questioned by the applicant in any detail prior to or after the original application had been made. Even if the percentages to be later applied to these sub-totals were to be found to be correct there remained significant scope to explore and question these with the freeholder and indirectly with the head leaseholder. There was no evidence that this potentially significant element in building up the final service charge cost for each year for each flat had been undertaken or attempted to have been undertaken.

43. The applicant was still unrepresented at the time of the hearing. She was by now effectively acting for a number of other residents in that their disputes to the extent that the decision on her flat would bind their flats too.

44. In reply the applicant explained to the Tribunal again, that she lacked the time, expertise and resources to undertake this exercise and the finances to engage others to act for her. Instead the applicant re-iterated her now limited grounds of challenge.

45. The applicant maintained that the overall service charges to flats of a similar size on the greater estate were roughly twice that in this

stairwell and that this was sufficient to justify a change to their percentages.

46. Reference was made by the applicant to "fair and reasonable" charges in the lease from the first respondent. However as was pointed out by the first respondent, this limitation on the actions of the landlord related solely to the costs of 'Outgoings' (essentially a standard 'sweeping up clause' dealing principally with local, national and other forms of generic taxation and costs which might sometimes be levied by statutory undertakers and other public services provided outwith the intermediary or freehold interests at this estate). It did not relate to any of the service charges levied.

47. The second respondent helpfully referred the Tribunal to the case of Gater and Others v Wellington Real Estates Ltd. and Others: UKUT 0562. Judge Martin Rogers in his decision there stated: *"There are certainly cases where the parties have agreed that the service charges should be apportioned by a predetermined formula such as a fixed percentage, or by reference to relative floor area or by a rateable value. In such cases the Tribunal has no jurisdiction under s.19 or s27A of the 1985 Act to substitute a different apportionment."* This decision prevents the First Tier Tribunal, even if so minded, from exploring or making a change in such percentages from within a S.19 and S.27A application, as here. The Tribunal was in any case not so minded. The Tribunal in seeking to ensure that all live and relevant points had been raised at the hearing, invited all parties to submit any additional questions that they specifically wished it to determine.

48. In the event the first respondent (head leaseholder) raised the following through solicitors Devonshires: *In relation to the Applicants' sought order for limitation of costs pursuant to section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002, I write to clarify that the Tribunal has been asked to decide whether it is just and equitable to reduce or extinguish: (1) NHHO's costs of these proceedings in relation to the Applicants who are its lessees; and (2) NHHO's superior landlord's costs of these proceedings (as per paragraph 52 of NHHO's statement of case).* Answer: No, to 1. No, to 2. A S.20c and a para 5A Schedule 11 order will not be granted.

49. The applicant asked: *"1. Can the minutes of the meeting where the decision was made to change the design of Flotilla House, including the risk and cost impact assessment of this change be provided to me? 2. Can minutes of the meeting between NHHO and R&R where reapportionment of costs from 2016 were agreed be provided."* Answer: No. The time to request production of specific documents was before or at the latest just after the initial Directions were issued by the Tribunal on 1 December 2021 when it could have been considered for incorporation. *"3. Can the respondents explain, notwithstanding the*

actual percentages outlined in the headline and repeated in page 178 of tribunal bundle, how the actual costs per sq ft of flats in mine and Flotilla South are substantially higher than other flats in Battersea Reach." Answer: It appears that these details were not sought nor provided nor explained prior to the hearing. The Tribunal considered such explanation as was offered by the respondent at the hearing. *"4. Are NHHO as headline leaseholder, and social housing landlord, willing to represent me and other applicants to ensure that our total service charge is equitable on a sq foot basis with other flats in Battersea Reach."* Answer: that is a question for the head leaseholder. *"Finally I did not ask this question today but can the tribunal explain why meditation was not offered."* Answer: It was. Para 5 p3 to the 1 December 2021 Directions state: *"**Mediation**: This case may be suitable for video or telephone mediation. Forms can be obtained from the case officer. If both parties email signed agreements by 29 December 2021… the tribunal will try to offer mediation at a time and date to be notified."*

50. Finally, uninvited. the applicant included some additional material with the questions and offered to send more to the Tribunal at our request. None of this additional material was accepted or considered, nor was a request made by the Tribunal to send more.

Decision

51. The Tribunal lacked the jurisdiction to determine a challenge of mis-selling and/or misrepresentation of the estimated figures for service charges provided to the buyers, prior to a lease completion. Similarly it does not have the power to investigate or determine design changes or increased costs said to have arisen from them.

52. Following the decision in the "Gater" case at Upper Tribunal, this Tribunal also lacked the jurisdiction to change the percentage fixed under the head lease for contributions. This had been set at the start of the term, upon which the second respondent made an apportionment of its costs to the first respondent which they would pay and that the resident/ applicant would be recharged in turn.

53. The lease clause relating to Outgoings in general, did not relate to service charges and did not override the specified percentage of around 4% of costs for Internal services to the Block set for this Property and agreed by the parties to the lease at that time.

54. In any case the apparent disparity between 0.4% of the total cost to the adjacent block and the 4% of the total cost to this Block could in part be explained, for some of these 8 costs at least, by its application to a smaller starting bill for this considerably smaller Block with about a tenth of the number of units. The nature and basis of the allocation of

the particular total cost to this Block compared with others was not investigated or presented by the applicant.

55. Having raised challenge to all services and service charges to the Internal Block common parts, the Tribunal determines that all service charges sought by the respondents, for services to the Internal Block areas, for all years 2014 to 2021 and those estimated for 2022, are reasonable and payable by the applicant. The Tribunal makes no finding on the reasonableness of, or payability for services provided to the areas external to this Block or to the Estate, as they did not form part of the application.

56. The Tribunal found that the allegation of unreasonable behaviour by the respondent under Rule 13, would be a matter for a separate application and hearing to determine. The same would apply to claims from the first and/or second respondent against the applicant if they arose. Such applications should be made after receipt of this decision. Parties should bear in mind that the tests to be met for unreasonable behaviour by the other and for some or all of its costs to be awarded against the other party, are high.

57. The Tribunal found that cap sought on the respondents' costs arising, from the application and hearing would not be imposed under S.20C for recovery by means of a service charge or under Para 5 Schedule 11 for recovery by means of a lease clause as an administration charge. An application had been made to challenge service charges for services to the Internal parts of the Block on all heads of charge for years 2014 to 2022. Several of the grounds raised were found to be outwith this Tribunal's jurisdiction and could not have been found in their favour. The applicant's challenge to the fixed percentage in the lease failed and could not have been successful.

58. The Tribunal found that there should be no refund of the application and hearing fees paid by the applicant, from either respondent.

59. If the applicant seeks to challenge future service and/or administration charges again here, it is suggested that they seriously consider taking expert professional advice and at an early stage, especially if acting as a group of residents, as here. Taking this action should assist them, the respondents to resolve their differences and if required, for the Tribunal to eventually determine it, if a further application on new issues and service charge and/or administration costs, is filed.

Name: Neil Martindale Date: 18 June 2022

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal 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.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

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).