

LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER [SECTIONS 27A & 20C OF THE LANDLORD AND TENANT ACT 1985] [& SCHEDULE 11 TO THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002]

Case Reference: LON/00AW/LSC/2011/0850

Premises: Flat 4C, 4 Queens Gate Place, London SW7 5NT

Applicant: 4 Queens Gate Place Ltd

Representative: Roshanian Payman International Solicitors

Respondent: Mr. Shahbaz K Yousaf

Representative: Mr. Shahbaz K Yousaf

Date of hearing: 10th April 2012

Appearance for Applicant: Ms. Fiona Marchitelli (Solicitor),
Ms. Shiva Mahmoodi (Legal Assistant),
Mr. Stuart Ogilvy of Kenniston & Associates,
Managing Agents for the Applicant

Appearance for Respondent: Mr. Shahbaz K Yousaf

Leasehold Valuation Tribunal: Mr. L Rahman (Barrister)
Mr. H Geddes JP RIBA MRTPI
Mr. P Clabburn

Date of decision: 27th April 2012

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £776.96 is payable by the Respondent in respect of the half yearly estimated service charge for the period September 2011 to March 2012.
- (2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the Tribunal proceedings may be passed to the Respondent through any service charge. The Tribunal makes no order for the Respondent to refund any fees paid by the Applicant. The Tribunal makes no order for costs.

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 charge payable by the Applicant in respect of the estimated service charge for the period 29th September 2011 to 24th March 2012.
2. An application was made to the Leasehold Valuation Tribunal on 7th December 2011.
3. The relevant legal provisions are set out in the Appendix to this decision.

The background

4. The property which is the subject of this application is a basement studio flat, in a building containing 13 flats in total, over 5 floors. The total floor space of the Respondent's flat is about 550 square feet. The Respondent purchased the lease 5 years ago. He has never lived in the property. In the first 3-4 years he visited the property once a year. He now visits the property every couple of weeks.
5. The Applicant purchased the freehold title of the building sometime in the middle part of 2011. The Applicant decided to appoint Kenniston & Associates as managing agents in around October 2011, replacing C A Daw & Son Ltd, the previous managing agents.
6. The Respondent holds a long lease of the property which requires the Applicant, as landlord, to provide services and the Respondent, as tenant, to contribute towards their costs by way of a variable service charge.
7. Clause 1 of the lease states as follows. The Respondent is liable to pay 5 % of the costs and expenses incurred by the Applicant during each year ending on 31st August. The expenses for each successive year shall be estimated by the Applicant. The Respondent is to pay his contribution, based upon the

estimate, by 2 equal instalments on the 25th day of March and the 29th day of September in that year.

8. So soon as possible after each year, the actual expenses for that year shall be calculated by the Applicant. In each year after the first year, the instalment payable on the 29th day of September, in respect of the Respondent's contribution, based upon the estimated expenses for that year, shall be increased or decreased (as the case may be) in proportion to the increase or decrease (as the case may be) of the actual expenses compared with the estimated expenses for the last preceding year.
9. The lease does not stipulate how the "estimate" is to be calculated by the Applicant. Mr. Ogilvy confirmed at the hearing the estimated figure for the last 3 years had been £38,000.00. The figure was based upon the estimated figure for 2009-2010 (page 80). It is unclear to the Tribunal how the estimated figure was arrived at as the actual expenditure for the year 2008-2009 was £36,970.06 (page 82). Mr. Ogilvy could not explain why the estimate was based upon the estimated figures for 2009-2010. He stated that was a decision made by the previous managing agents.
10. The way in which the amounts payable by each of the leaseholders is calculated is set out on page 80. According to the lease, each leaseholder pays a different percentage. As can be seen on page 80, the percentages paid by each of the leaseholders adds to a total of 103.66%. Mr. Ogilvy explained this was normalised back to 100%, giving a figure of £36,658.31. Five percent of which is £1,832.92, amounting to 2 equal payments of £916.46.
11. The Applicant has charged the Respondent £916.46 service charge for the period 29th September 2011 to 24th March 2012. When asked to show the Tribunal a copy of the service charge demand, Ms. Marchitelli and Mr. Ogilvy referred the Tribunal to page 3 of the bundle. The Tribunal pointed out that this was not a service charge demand but a copy of an invoice for the outstanding amount, dated 14th October 2011. The Applicant had not included a copy of the actual service charge demand in the bundle provided to the Tribunal. Ms. Marchitelli stated she did not practice in this area of the law. Mr. Ogilvy stated he was not a member of the Royal Institution of Chartered Surveyors or the Association of Residential Managing Agents. He did not know if anybody at the firm was a member of either organisation. He had not read the Royal Institution of Chartered Surveyors Code. He did not know what a service charge demand should contain. That was dealt with by the finance department. The Tribunal allowed the Applicant an opportunity to provide a copy of the actual service charge demand. This was provided later in the day.
12. It appears the actual service charge demand was issued on 12th September 2011 by the previous managing agent. The letter states "Please refer to the Service Charges Summary of Tenants' Rights and obligations overleaf". The Tribunal were only provided with one side of this letter. The Respondent was unable to recall whether the letter contained any further information. On

balance, the Tribunal were satisfied the letter contained the relevant information overleaf, as stated in the letter.

13. Mr. Ogilvy confirmed at the end of the hearing, after the matter was noted and raised by the Tribunal, that there was a credit of £2,790.01 at the end of the service charge year ended 31st August 2011 (page 79). This was not reflected in the service charge demand for 2011-2012 as per clause 1 of the lease. Mr. Ogilvy at first attempted to justify this by stating that whilst there was a surplus, the Applicant never had the cash as the service charges were not paid by all the other leaseholders. He then conceded that given this Respondent was not in arrears with his service charge payments, he should have been given a credit. Mr. Ogilvy stated it was an oversight. He assumed the previous managing agents had done the necessary calculation. He realised this mistake when he received the accounts in January or February 2012. Mr. Ogilvy accepts the Respondent should have been credited with 5% of £2,790.01. It follows therefore that the service charge demand should be £916.46 minus £139.50, giving a figure of £776.96.
14. The Tribunal noted the invoice dated 22nd February 2012 on page 15 of the bundle. It states the service charge for March 2012 to September 2012 is £916.46. However, it refers to arrears of £991.46. It is unclear why the service charge for September 2011 to March 2012 had increased by £75.00. Whatever additional cost may or may not have been incurred by the Applicant, according to the terms of the lease, this additional expenditure can only be considered when calculating the service charge payment to be made on 29th September 2012. The additional payment would only be payable if it is payable under the lease as a service charge and the amount was reasonably incurred.
15. The Tribunal further note the document on page 15 is an invoice, not a compliant service charge demand. It does not contain the name and address of the landlord or a summary of the rights and obligations of tenants. Therefore, the sum of £916.46, for March 2012 to September 2012, would only be payable if and when a compliant service charge demand is served on the Respondent.
16. The Applicant provided copies of the estimated service charge figures for 2009-2010 (page 80), the service charge annual accounts for the year ending 31st August 2010 (pages 81-85), the service charge annual accounts for the year ending 31st August 2011 (pages 77-79) and a breakdown, item by item, of the actual expenditure for the year ending 31st August 2011 (pages 86-89). However, the Applicant failed to provide any invoices, receipts, or bills in relation to any of the expenditure under the service charge accounts.

The issues

17. The Respondent stated at the start of the hearing that he had always paid his service charges. He stopped paying the service charge after the Applicant

decided to change the managing agent. The Respondent stated he and the tenants were happy with the previous managing agent. The Respondent confirmed the estimated service charge demand for 2011-2012 was the same as it was for the last few years. He was happy to pay the service charge for those earlier years. However, with the current service charge demand, he was concerned about the cost of 3 items: gas, boiler maintenance, and the cleaning of the common parts (as set out on page 78 under the figures for the service charge year ending August 2011).

18. The Respondent confirmed at the start of the hearing that he was happy with the other items listed under the service charge demand. Furthermore, the Respondent confirmed he was simply questioning the amounts payable, not whether they were payable under the lease. The Tribunal agreed the items listed under the service charge demand were payable under the lease.
19. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

Gas

20. The Applicant states the estimated cost of the gas for the whole year is £11,000.00 for the entire block. The actual cost of the gas for the year 2008-2009 was £15,505.60 (page 82), 2009-2010 was £5248.04 (page 82) and 2010-2011 was £10,859.13 (page 78). Mr. Ogilvy could not explain why there was such a large difference in the cost between these 3 years but stated the Tribunal must take into account that there may have been estimated and actual meter readings.
21. Mr. Ogilvy initially stated that he did not have copies of the actual bills that were paid. The figures in the bundle came from the previous managing agents. The information was provided by Chartered Accountants, therefore, the Accountants must have seen the relevant bills. When the Applicant was referred to the Direction given by the Tribunal at the Pre Trial Review, in particular paragraph 7, Ms. Marchitelli stated that they made efforts to get the necessary documents from the previous managing agent but did not get a response from them, therefore they were unable to comply with the Tribunal's Direction. However, Mr. Ogilvy stated that the Respondent only raised issues concerning the cost of gas in March 2012. He had "stacks of bills" but assumed the certified accounts would be adequate, based upon advice he took from the Solicitors. Mr. Ogilvy stated that since Kenniston had taken over management of the property, he had been taking meter readings and could provide copies of the actual gas bills since October 2011.
22. Mr. Ogilvy stated the cost of the gas was reasonable. The whole building was serviced by a central boiler, providing heating and hot water for all the flats and heating for the communal areas. The entrance hall door was constantly opened. At the request of the Tribunal, Mr. Ogilvy provided the Tribunal with

copies of the actual gas bills for 30 September 2011 (£1,644), 19th October 2011 (£669), 18th January 2012 (£1,723), 1st February 2012 (£571), and 6th March 2012 (£1,827).

23. The Respondent stated that the cost of the gas for the whole block should be £8284 for the year. He based his figure on the Department of Energy Gas Domestic Bill regional statistics (page 100), which suggested an average annual gas bill for London in 2011 at a unit cost of 3.97. The Respondent also stated he had done some online research, according to which a 1 bedroom property uses about 10,000kw per year. According to his calculation, the cost for a 1 bedroom property should be £397 per year. Taking into account 10% for rising costs, this equates to about £436 per year. The Respondent also stated at the hearing, according to figures from British Gas, an average household paid £768 per year (page 100).
24. The Respondent further stated that his property is only a studio flat with a single radiator, a towel radiator, and a small radiator in an unused storage area. He does not have any other gas appliance in his flat. The replacement boiler, which should be more efficient, should further reduce the cost of gas for the whole building.
25. The Tribunal finds the Applicant's estimated charge for gas for the year 2011-2012 to be reasonable. Reliance upon the estimated charge for 2009-2010 is not precluded under the lease. The average cost of the gas for the previous 3 years was approximately £10,500 a year. The actual payments made from 29th September 2011 to 6th March 2012, £4,790, for which the actual copies of the bills have been provided, are broadly consistent with the estimated figure.
26. According to the Respondent's own estimate, the cost to him for the whole year should be £436, therefore, £218 for half the year. Under the Applicant's estimate, the cost for half the year is £275 (5% of £11,000 is £550, divided by 2 equal amounts). Given that these are only estimates, the difference between the parties is not significant in the Tribunal's view. Both the estimates are broadly consistent.
27. The comparison made by the Respondent with the "average property" is meaningless. The comparison is not like for like so far as the age, build, size, and dimensions of the buildings are concerned. The Respondent confirmed his comparison was with the average "house" not a flat.
28. Under the lease the Respondent is required to pay 5% of the total cost, which includes heating of the communal areas. The Tribunal noted that the building has 5 floors in total.
29. The Tribunal noted that the overall estimated service charge, including the estimate for the cost of the gas, had been the same for the previous 3 years.

According to the Respondent's own evidence, he was happy to pay the service charges for those earlier years.

30. Based upon the Tribunal's own knowledge and experience of hearing cases of this type, the Tribunal finds the estimate for the cost of the gas does not appear to be excessive.

31. **Boiler Maintenance**

32. Mr. Ogilvy stated the information he could provide was based upon the accounts for the previous periods. He explained the previous managing agent had a contract for boiler repairs at £2000 and a separate boiler maintenance contract for an additional £1000, for the whole block, for the whole year, as set out on page 80. The previous managing agent had many problems with the boiler and eventually replaced it at a cost of approximately £6,500. The Respondent could not confirm the amount concerned but confirmed the boiler was replaced in October 2010, with their approval. Mr. Ogilvy confirmed the estimated charge for the boiler, for the whole building, for the current service charge year, was £1000 for maintenance and £2000 for repairs.

33. The Respondent had assumed the figure for boiler maintenance was £8,199.91, the actual figure for the year ended 31st August 2011. In his Response he had suggested a total expenditure of less than £3000. Once the matter was clarified by Mr. Ogilvy, the Respondent stated he was happy with the figure of £3000.

34. **Cleaning**

35. Mr. Ogilvy stated the estimated charge for cleaning was £2000 for the whole building for the whole year. He stated Kenniston inherited poor cleaning contractors from the previous managing agent. In October 2011 he received 3 complaints regarding the quality of the cleaning. Having investigated the matter, he was not satisfied with the level of service. He got 3 new quotes and gave the cleaning contract to ANG, in November 2011, whose price reflected the average price at the time.

36. Mr. Ogilvy confirmed the cleaning involved the usual cleaning, over 5 floors, as well as the cleaning of the railings on the stairs, the ornate features on the rails and banisters, the lantern lights, the brass on the door frame, the window ledges, and the mirrors inside the cage style lift. He stated the cleaners spend 4-5 hours per week. They are paid £10 per hour. He could not state whether that included the cost of materials also. The actual cost of cleaning was therefore likely to be higher than the estimated cost of £2000 being charged for the current service charge year.

37. The Respondent had initially stated the cost should be £729 a year based upon prices he had seen online (page 101-102) and his view that the cleaning could be done over 2-3 hours every fortnight. He stated he had spoken to

other tenants who agreed there was no need to clean on a weekly basis. The Respondent confirmed he did not get any actual quotes. Nobody came to view the building. He simply got prices online. He also confirmed he did not use much of the communal area's as his flat was in the basement. Having listened to the further evidence from Mr. Ogilvy, as set out at paragraph 36 above, the Respondent stated he was happy with the figure of £2000.

38. Application under s.20C and refund of fees

39. At the end of the hearing, the Applicant made an application under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for a refund of the fees that had been paid in respect of the application and hearing fees (£70 and £150 respectively). Having heard the submissions from the parties and taking into account the determinations above, the Tribunal does not order the Respondent to refund any fees paid by the Applicant.
40. At the hearing, the Respondent applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties the Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Applicant may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.
41. Overall, the Tribunal determine the Respondent's conduct to have been reasonable. The Respondent was up to date with the payment of his service charges until 31st August 2011. At the hearing, once the cost of the boiler maintenance was clarified, which was not clear from the Applicant's Statement of Case nor clarified by the Applicant previously, the Respondent agreed with the Applicant's estimated cost. Similarly, once the Applicant provided a full explanation for the cost of the cleaning, which appears not to have been explained before, the Respondent agreed with the Applicant's estimated cost. In the absence of the actual gas bills paid for the previous years, it was understandable that the Respondent was sceptical of the cost of the gas.
42. The Tribunal accepts that the Respondent told Mr. Ogilvy, in November 2011, that he would pay the service charge but wanted a breakdown of the costs. Instead of receiving a breakdown of the costs, the Respondent continued to receive letters from Kenniston and then the Applicant's Solicitors, threatening him with legal action.
43. At the hearing, Mr. Ogilvy accepted he had a telephone conversation with the Respondent in November 2011 but denied the Respondent had requested a breakdown of the costs. If any such request had been made, he states he would have provided the information. Overall, the Tribunal found the evidence from the Applicant on this point inconsistent. In its application form (page 29 of the bundle) and the Statement of Case (paragraphs 3, 4, and 5) the Applicant stated the Respondent failed to respond to the service charge demand and

that the Respondent did not dispute the amount of the service charge. However, in his statement dated 26th March 2012, Mr. Ogilvy refers to a telephone conversation with the Respondent when the Respondent told him that the Respondent did not intend to pay the service charge *until* he had spoken to other tenants regarding their views on the service charges (paragraph 10). Mr. Ogilvy goes on to state that he (Mr. Ogilvy) would pass on the Respondent's *response* to the freeholder.

44. Bearing in mind the Respondent's overall conduct, in particular being up to date with the payment of his service charges and the efforts he had gone to to provide information concerning the cost of gas and cleaning, the Tribunal find it likely, on the balance of probabilities, that the Respondent did not refuse to pay the service charge but wanted a breakdown of the costs. There is no evidence before the Tribunal of the Applicant providing a breakdown or an explanation of the costs prior to starting proceedings at the Leasehold Valuation Tribunal.
45. The Tribunal were unimpressed that Mr. Ogilvy knew, in January or February 2012, that the Respondent was owed a refund of £139.50. Yet despite this, the Respondent was sent another invoice for payment of service charge for March 2012 to September 2012 (page 15), dated 22nd February 2012, taking no account of the refund owed to the Respondent. Even in his statement dated 23rd March 2012, Mr. Ogilvy referred to arrears totalling £1,907.92, again, failing to mention the refund owed to the Respondent. It was only at the hearing, after the Tribunal noticed the surplus from the previous year, that Mr. Ogilvy conceded the Respondent was owed a reduction, after initially trying to justify the Applicant's position on the basis that other leaseholders had failed to pay their service charges.
46. Overall, the Tribunal found the Applicant's case was poorly presented at the hearing despite having legal representation. The Applicant's bundle lacked basic information such as a copy of the service charge demand for the relevant period. The Applicant's representatives at the hearing stated they were unaware what a service charge demand should contain. The Applicant failed to comply with the Tribunal's Direction to provide necessary information to show that the costs paid by the Applicant were reasonable. With respect to the issue of why the Applicant had failed to provide gas bills for the previous years, the Applicant's representatives at the hearing gave inconsistent evidence (see paragraph 21 above). Mr. Ogilvy's assumption, that the certified accounts would be adequate, based upon advice he took from the Solicitors, was unimpressive.
47. The Applicant made an application for costs. The Tribunal has power to award costs under Schedule 12, paragraph 10 of the Commonhold and Leasehold Reform Act 2002. Having heard the submissions from the parties the Tribunal makes no order for costs. The Tribunal find the Respondent has not acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

48.

Chairman:  _____

Date: 27th April 2012

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 a Leasehold valuation 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 a Leasehold valuation 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 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 leasehold valuation 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 a leasehold valuation tribunal;
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation 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.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

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 a leasehold valuation 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 a leasehold valuation 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 12, paragraph 10

- (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—
- (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
 - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
- (a) £500, or
 - (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.