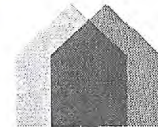


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HM Courts
& Tribunals
Service



Residential
Property
TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTIONS 27A & 20C OF THE LANDLORD AND
TENANT ACT 1985, SECTION 35 OF THE LANDLORD AND TENANT ACT 1987 &
SCHEDULE 11 TO THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002**

Case Reference: LON/00AU/LAC/2013/0006

Premises: Unit 3.2 York Central, York Way, London N1 9AG

Applicant(s): Mr Keith de Souza

Representative: In person

Respondent(s): York Central Residents Association Limited

Representative: HML Hawksworth (Managing Agent)

**Leasehold Valuation
Tribunal:** Mr J P Donegan (Chairman)
Mrs A Flynn MRICS (Valuer Member)

Date of decision: 20 June 2013

2098

Decisions of the Tribunal

The Tribunal makes the following determinations:

- (a) The legal fees of £156 are allowed in full;
- (b) The sum of £108 is allowed for management fees;
- (c) The unexplained charge/additional reserve fund contribution of £42 is allowed in full;
- (d) The Respondent is entitled to charge contractual interest on the service charge arrears in the manner set out at paragraphs 41- 44 of this decision;
- (e) The application to vary clause 7 (b) of the lease is refused;
- (f) The application for an order under section 20C of the Landlord and Tenant Act 1985 (“the 1985 Act”) is refused; and
- (g) The application for an order for reimbursement of application/hearing fees is refused.

The application

1. By an application dated 11 February 2012, the Applicant sought a determination under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) as to whether variable administration charges are reasonable and payable for his flat at Unit 3.2 York Central, York Way, London N1 9AG (“the Flat”).
2. The application also sought an order varying the lease of the Flat, a determination of service charges for the Flat and an order under section 20C of the Landlord and Tenant Act 1985 (“the 1985 Act”).
3. The application incorrectly named Ms Loralie Baker as the Respondent.
4. Directions were issued on 14 March 2013 when the application was formally varied to include an application under section 27A of the 1985 Act and to substitute York Central Residents Limited as the Respondent.
5. The directions provided that the application would be dealt with on paper, without an oral hearing. There was no objection from either party and statements of case were filed in accordance with the directions. The application was dealt with as a paper determination.

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

The background

7. The Applicant is the leaseholder of the Flat. The Respondent is the freeholder of the Flat, which forms part of 70-78 York Way, London N1 (“the Block”).
8. Neither party requested an inspection of the Flat or the Block. The Tribunal did not consider that an inspection was necessary, nor would it have been proportionate to the issues in dispute.

The lease

9. The Applicant holds a long lease of the Flat that was granted on 07 June 1996. The lease requires the Respondent to provide various services. The tenant is obliged to pay for those services by way of a variable service charge.

10. Clause 7 (b) of the lease provides:

If the rent or any additional rent or other payment reserved or due hereunder or any part thereof shall at any time be in arrear and unpaid for twenty-one days after becoming due (whether or not legally or formally demanded) such sum shall bear interest from the date upon which the same became due and payable until the date upon which the same shall actually be paid at a rate of four per centum (4%) per annum above the base rate for the time being of Barclays Bank plc with a minimum of ten per centum (10%) per annum such interest to be deemed to be additional rent due from the Tenant to the Landlord and to be recoverable as such

11. Paragraph 13 (a) of the fourth schedule to the lease provides:

To pay to the Landlord all costs charges and expenses (including legal costs and fees payable to a surveyor) which may be incurred by the Landlord in or in contemplation of any proceedings under Sections 146 and 147 of the Law of Property Act 1925 notwithstanding forfeiture may be avoided otherwise than by relief granted by the Court

The issues

12. The directions identified the following issues to be determined:

- 12.1 Legal fees of £150;

- 12.2 Management fees of £162;
 - 12.3 An unexplained charge of £42;
 - 12.4 Interest of £98.21;
 - 12.5 Whether the interest charges are unreasonable and whether the lease should be varied;
 - 12.6 The application under section 20C of the 1985 Act; and
 - 12.7 Whether an order for reimbursement of application/hearing fees should be made.
13. 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.

Legal fees £150 (£156)

14. The Respondent claims legal fees for a letter sent by its solicitors, Guillames LLP (“Guillames”), to the Applicant on 09 January 2013. That letter demanded payment of service charge arrears for the Flat plus managing agents’ fees and Guillames’ charges. The amount of their charges was actually £156, rather than £150, as stated in the application.
15. The Respondent says that the legal fees are recoverable under paragraph 13 (a) of the fourth schedule to the lease. The fees were incurred on 09 January 2013, at which point the Applicant’s service charge account showed a debit balance of £4,713.97, of which £1,867.10 had been in arrears for more than 21 days.
16. The Applicant says he is not liable to pay any sum for legal fees for the following reasons:
- 16.1 The “normal” method of paying service charges at the Block was by way of monthly instalments. At the time that the letter was sent, the December 2012 instalment was only 9 days late. The Applicant contends that the letter was premature.
 - 16.2 There has been a history of incorrect charging on the Applicant’s service charge account. The Applicant was in “limbo” not knowing how much he should pay, until the incorrect charges were removed in March 2012.

- 16.3 The Respondent unreasonably withdrew the Applicant's "rights" to pay his service charges by monthly instalments in an email from the managing agents dated 13 December 2012. That letter required payment of the arrears, in full, by 31 December 2012.
- 16.4 The Applicant made a number of payments between July and December 2012 and was acting reasonably in trying to clear the arrears for his Flat.
- 16.5 The Applicant raises a number of other points relating to the accuracy and reasonableness of correspondence and demands received from the managing agents, which goes to the payability of their fees (as opposed to the legal fees).
- 16.6 The Applicant admits that a sum of £1,771.10 was due for the Flat, as at December 2012, which is broken down as follows:

July 2012 interim service charge - £1,066.15

July 2012 reserve fund contribution - £470.00

July 2012 end of year deficit - £234.95

The figure of £1,066.15 represents the interim service charge due on 01 July 2012 (£2,036.15) less instalment payments made by the Applicant, totalling £970.

- 16.7 In the original application, the Applicant sought to argue that the legal fees were irrecoverable, as "*...s146 and forfeiture proceedings are only possible when service charges are overdue by 3+ years..*". This appears to be a reference to section 167 of the 2002 Act and Regulation 2 of the Rights of Re-entry and Forfeiture (Prescribed Sum and Period) (England) Regulations 2004 ("the 2004 Regulations"). The Applicant did not pursue this issue in his detailed statement of case.

The Tribunal's decision

17. The Tribunal determines that the Applicant is liable to pay the legal fees of £156, in full.
18. The letter from Guillames, dated 09 January 2013, demanded payment of service charges totalling £1,867.10. This represented the figure of £1,771.10 referred to at paragraph 16.6 above, management fees of £42 and an additional reserve fund contribution of £42 (see paragraphs 33-36 overleaf).

19. The Applicant admits that a figure of £1,771.10 was due for the Flat, as at December 2012.
20. The managing agents email of 13 December 2012 requested payment of the July 2012 charges, to avoid the need “..to take the legal route..”. The email also stated that the concession, allowing payment of the service charges by monthly standing order, would be withdrawn until the Applicant had paid the charges on time for a year. The agents had previously threatened to withdraw the concession in an email dated 12 October 2012.
21. The Applicant failed to pay the 01 July 2012 charges by 31 December 2012 and the Respondent acted reasonably in referring the matter to Guillames. The lease provides for payment of the interim service charges on the 1st of January and 1st of July in each year. There is no contractual entitlement to pay the charges monthly. Rather this was a concession made by the Respondent, which could be withdrawn at any time. The Respondent acted reasonably in withdrawing the concession on 13 December 2012, given that charges had been outstanding since July 2012.
22. The letter from Guillames made it clear that it was sent in contemplation of service of a Notice under section 146 of the Law of Property Act 1925. The amount of their charges (£125 plus VAT and a disbursement of £6) is reasonable, given that they would have needed to study the papers before preparing the letter.
23. For the avoidance of doubt, the Respondent was not precluded from taking forfeiture action by virtue of section 167 of the 2002 Act and Regulation 2 of the 2004 Regulations. As the Respondent pointed out in its statement of case, only one of the alternatives in section 167(1) of the 2002 Act needs to be satisfied. It follows that a landlord may not exercise a right of re-entry or forfeiture unless the arrears exceed £350 OR consists of or includes an amount that has been payable for more than 3 years. The sum claimed (£1,867.10) exceeded the prescribed sum of £350 and there was no additional requirement for the arrears to be outstanding for more than 3 years.

Management fees £162

24. The Respondent seeks to recover two charges levied by the managing agents, namely:

12 October 2012 - £54 (£45 plus VAT)

08 January 2013 - £108 (£90 plus VAT)

The charges are for corresponding with the Applicant regarding the service charge arrears and for then referring the arrears to Guillames. The Respondent says that these charges are also recoverable under paragraph 13 (a) of the fourth schedule to the lease.

25. The Applicant contends that he is not liable to pay the management fees upon the basis that the agents have provided a “..very poor service..”. He refers to various concerns including errors in service charge statements, an issue with the window cleaner, indifference to his attempts to clarify the service charges and a failure to warn him of the £108 charge in January 2013. The Applicant contends that the management fees should be disallowed in full.

The Tribunal’s decision

26. The Tribunal determines that the Applicant is liable to pay management fees of £108 (£90 plus VAT).
27. The starting point is to establish whether the agents’ fees are recoverable under paragraph 13 (a) of the fourth schedule to the lease. If so, then the Tribunal needs to consider if the fees are reasonable. The Tribunal makes no finding as to whether the agents’ general level of service was “..very poor..”, as this does not go to any of the issues to be determined.
28. The charge of £54 dated 12 October 2012 is described in the service charge statement as “*HML Arrears Admin Fee*”. The agents’ email of 12 October, requested payment of the arrears within 14 days and stated that the matter would be put in the hands of the Respondent’s solicitors if payment was not received within that time
29. The charge of £108 dated 08 January 2013 is described in the service charge statement as “*Solicitors Referral Fee*”. Presumably this was the date on which the arrears were referred to the solicitors, as Guillames wrote to the Applicant on 09 January 2013.
30. The Tribunal is not satisfied that the agents’ email dated 12 October 2012 was sent in contemplation of service of a section 146 Notice or forfeiture action, as it was sent almost 3 months before Guillames were instructed and before the concession, to pay by monthly instalments, had been withdrawn. It follows that the charge for this email is not recoverable under paragraph 13 (a).
31. The Tribunal is satisfied that the agent’s email dated 13 December 2012 and their subsequent work, leading up to the instructions to Guillames, was undertaken in contemplation of service of a section 146 Notice or forfeiture action. It follows that the agents’ fees for this work are recoverable under paragraph 13 (a).

32. The work undertaken between 13 December 2012 and 08 January 2013 was entirely reasonable and justified, as the Applicant had failed to discharge the balance of the July 2012 charges. The amount charged of £90 plus VAT is reasonable for the work undertaken. This would have involved preparing the 13 December 2012 email, taking instructions from the Respondent once the 31 December deadline had passed, collating the papers to send to Guillames and preparing the letter of instruction.

Unexplained charge £42

33. In its statement of case the Respondent referred to a circular letter sent by the managing agents on 23 November 2012. The letter explained that the commercial units at the Block had been included when calculating the reserve fund contributions due on 01 July 2012. This was an error, as they do not contribute to the fund. As a consequence the reserve fund contributions had to be recalculated, resulting in each of the residential flats having to pay an addition sum to make up the shortfall. In the case of the Flat the additional sum was £42.
34. The Applicant denies receiving the letter dated 23 November 2012. In his statement of case he said that he would accept the charge “*..if it is confirmed that it has been received by all leaseholders in the building..*”.

The Tribunal’s decision

35. The Tribunal determines that the Applicant is liable to pay the unexplained charge of £42, which should more properly be called an additional reserve contribution.
36. The Tribunal is satisfied that a mistake was made in calculating the reserve contributions due on 01 July 2012 and that the Respondent is entitled to demand additional contribution to correct this mistake. The Tribunal has no way of knowing if all leaseholders received the agents’ letter of 23 November 2012. However it is clear from the Applicant’s statement of case that he now accepts the basis for the additional contribution and the amount of the contribution. The amount of the additional contribution was reasonably incurred.

Interest of £98.21

37. The Respondent has charged interest on the service charge arrears pursuant to clause 7(b) of the lease. The Applicant contends that he should not have to pay interest on the arrears, as the Respondent has allowed leaseholders to pay their service charges by monthly instalments. He argues that this amounts to an “*..interest free loan..*” and that by allowing payment in this manner, the Respondent has effectively waived its contractual entitlement to interest.

38. The Respondent contends that the interest payable under clause 7(b) of the lease is a fixed, rather than variable, administration charge for the purposes of paragraph 1(3) of schedule 11 to the 2002 Act. If this is the case then the reasonableness of the interest charge is not in issue, as paragraph 2 of schedule 11 only applies to variable administration charges.

The Tribunal's decision

39. The Tribunal determines that the interest charge is a fixed, rather than variable, administration charge. Clause 7(b) of the lease specifies a formula for calculating interest, so the charge does not fall within the ambit of paragraph 1(3)(b) of schedule 11. It follows that there is no requirement that the interest is only payable to the extent that the amount of the charge is reasonable under paragraph 2 of schedule 11.
40. Interest is due in accordance with the formula in clause 7(b) of the lease. The Respondent has not waived its right to charge interest by allowing leaseholders to pay their service charges by monthly instalments. This concession does not amount to a variation of the lease.
41. The Applicant has agreed the interim service charge (£2,036.15) and reserve fund contribution (£470) due on 01 July 2012. He is liable to pay contractual interest on these sums from 22 July 2012 (21 days after payment became due) until the charges are paid in full but credit must be given for the instalment payments that he has made totalling £970, so that interest is only payable on the balance outstanding from time to time..
42. The Applicant has agreed the amount of the additional reserve fund contribution of £42, requested in the managing agents' letter dated 23 November 2012. He denies receiving the letter. An explanation of this item was given in the Respondent's statement of case, dated 05 April 2013. At the very latest, the Applicant should have paid this contribution by 26 April (21 days after the statement of case. He is liable to pay contractual interest on £42 until this sum is paid in full.
43. The Applicant is liable to pay contractual interest on the legal fees of £156 and the management fees of £108 from 30 January 2013 (21 days after Guillames' letter of 09 January) until these sums are paid in full.
44. The Applicant is liable to pay interest in accordance with paragraphs 40-42 at the rate of 10% per annum, pro rata, in accordance with clause 7(b) of the lease (see paragraph 47 overleaf0. It is for the Respondent to calculate the adjusted interest due.

Application to vary lease

45. The Applicant seeks to vary clause 7(b) of the lease pursuant to paragraph 3(1)(b) of schedule 11 to the 2002 Act. The Tribunal has the power to vary the lease if the formula for calculating interest specified at clause 7(b) of the lease is unreasonable. This clause provides for interest to be paid at 4% per annum above the base rate of Barclays Bank plc, with a minimum of 10%. The current base rate is 0.5% so the minimum rate of 10% applies.
46. The Applicant contends that the 10% minimum figure is too high given the current base rate and proposes that this should be replaced with 5% or removed altogether. He refers to the change in interest rates since the lease was granted in 1996 and suggests that there should be a 4% margin on current savings rates (which he says are 1%). The Applicant reiterates that the Respondent has effectively granted the leaseholders an interest free loan by allowing them to pay the service charges by monthly instalments.
47. The Respondent argues that the 10% minimum rate should remain and is not unreasonable. It points out that the Respondent is a lessee-owned company, with no assets save the freehold of the Block. It follows that the Respondent's borrowing options are limited. If service charges are not paid on time then the Respondent may be forced to borrow money at overdraft rates, which are significantly higher than 4% above the base rate at present. The Respondent says that the application to vary the lease fails to acknowledge the discrepancy between base lending rates and fails to acknowledge the cumulative impact of bank charges or other financial penalties.

The Tribunal's decision

48. The Tribunal refuses the application to vary clause 7 (b) of the lease. The formula used to calculate the interest charges is of a type commonly seen in residential leases and is not unreasonable. It is important that the Respondent is able to charge interest on arrears at a rate that will at least cover any borrowing. It is very unlikely that the Respondent could borrow funds, either on an overdraft or via an unsecured loan, at 5% or anything like this figure. The Tribunal accepts the points made by the Respondent regarding its limited ability to borrow, the discrepancy between base and lending rates and the impact of bank charges and other financial penalties.

Section 20C and refund of fees

49. The Applicant seeks an order under section 20C of the 1985 Act. He also sought a refund of the fees paid to the Tribunal under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003. The Applicant contends that the Respondent has acted unreasonably and stated that the "*..current Board operates as*

dictatorship made up of 'friends'..". He refers to offers to make partial payment of the arrears and argues that the Respondent would not incur substantial legal fees in pursuing relatively modest arrears, if it was paying the fees itself. The Applicant refers to the dispute over the historic arrears and feels that "*..the current Board continues to be aggrieved by these past events and goes out of its way to ensure I am kept 'in line'..*". He asks the Tribunal to give guidance on the amount of the Respondent's costs.

50. The Respondent submits that the applications for a section 20C order and a refund of fees should be refused. It accepts that the outcome of the substantive application will be relevant to what order the Tribunal makes.

The Tribunal's decision

51. The Tribunal refuses the applications for a section 20c order and a refund of fees. It is not just and equitable to make either order, given that the Applicant has been largely unsuccessful in these proceedings. The Tribunal has allowed the additional reserve contribution and most of the disputed administration charges. It has refused the application to vary the lease. The only sum disallowed was the initial management fee of £54. In coming to this decision, the Tribunal bear in mind that the Applicant did not dispute the service charges due in July 2012 and failed to pay these charges by the 31 December 2012 deadline. The Respondent was entirely justified in taking action to recover these service charges.
52. The Tribunal is unable to give any guidance on the amount of costs that the Respondent might be able to recover from the service charge account, in respect of these proceedings. It is open to the Applicant to make a further application to the Tribunal to seek a determination of these costs pursuant to section 27A of the 1985 Act, as and when the costs are charged.

Chairman: Jeremy Donegan

Date: 20 June 2013

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.

Landlord and Tenant Act 1987

Section 47

- (1) Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely –
- (a) the name and address of the landlord, and
 - (b) if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by their tenant.
- (2) Where –
- (a) a tenant of any such premises is given such a demand, but
 - (b) it does not contain any information required to be contained in it by virtue of subsection (1),
- then (subject to subsection (3)) any part of the amount demanded which consists of a service charge or an administration charge (“the relevant amount”) shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.

- (3) The relevant amount shall not be so treated in relation to any time when, by virtue of an order of any court or tribunal, there is in force an appointment of a receiver or manager whose functions including the receiving service charges or (as the case may be) administration charges from the tenant.
- (4) In this section “demand” means a demand for rent or other sums payable to the landlord under the terms of the tenancy.

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 3 (1)

Any party to a lease of a dwelling may apply to a leasehold valuation tribunal for an order varying the lease in such manner as is specified in the application on the grounds that –

- (a) any administration charge specified in the lease is unreasonable, or
- (b) any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable.

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.