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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AU/LSC/2015/0167**
Property	:	**Flat 1, 114 Lady Margaret Road, London N19 5EX**
Applicant	:	**Orchidbase Limited**
Representative	:	**Ms A Campbell, of Michael Richards and Company**
Respondent	:	**Miss C Schwarz**
Representative	:	**Mr P Havey**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Tribunal Judge Richard Percival** **Mr M Cairns MCIEH**
Date and venue of Hearing	:	**20 July 2015** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**28 August 2015**

DECISION

The application

1. The Applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the service charge years 2013, 2014 and 2015.

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

The hearing

3. The Applicant appeared was represented by Ms A Campbell and Ms Rybak, the Applicant's managing agent's financial controller. The Respondent was represented by Mr P Havey. Mr Havey is Ms Schwarz's partner. As he explained in his witness statement, Mr Havey practiced at the bar from 1986 until 1999, and since has worked in private equity and as a consultant.

The background

4. The property which is the subject of this application is a one bedroom ground floor flat, one of four in a converted Victorian semi-detached house. There was no need for an inspection.

5. The Respondent holds a long lease of the property, and has done so apparently since the conversion, in 1982. The lease requires the lessor to maintain and repair the property, and to provide buildings insurance. By clause 3(4) and the fifth schedule, the lessee is obliged to pay 25% of the costs of the lessor, which are set out in the sixths and seventh schedules. There is provision for the payment of service charges on account (fifth schedule, paragraphs 6 and 7).

The issues

6. At the start of the hearing, Mr Havey raised the lack of evidence provided by the Applicant. At the case management conference, held on 28 April 2015, Tribunal Judge Hawkes gave directions for the statement of the parties' cases and for the filling in of a Scott Schedule. The Respondent produced a detailed witness statement (by Mr Havey) and a full Statement of Case, in addition to filling in the relevant columns of the Scott Schedule. The Applicant provided a witness statement, by Ms Campbell, but it consisted entirely of extracts from the lease (which was in any event provided in the bundle). There were a small number of assertions of fact in the Applicant's entries in the Scott Schedule. Mr Havey noted that Ms Campbell's witness statement was unsigned and did not include a statement of truth. This, he said, made

it difficult for him to understand the Applicant's case, and to cross-examine appropriately.

7. The Respondent did not go so far as to say that the Applicant had breached the directions given at the case management conference (although the Tribunal noted that the bundle was not, as required, provided with an index). However, we agreed that the way that the Applicant had gone about presenting its case was at best unhelpful. In particular, it was evident that Ms Campbell would need to give some oral evidence to the Tribunal, but that evidence was not properly foreshadowed by a witness statement. We said that we would allow Ms Campbell to give oral evidence, and that if the Respondent was prejudiced by the lack of a witness statement, we would accommodate Mr Havey, for instance by means of a short adjournment. In the event, it was not necessary to do so. Mr Havey proved himself well capable of dealing with all matters that arose and of representing the Respondent with skill. Nonetheless, the Tribunal was not assisted by the way in which the Applicant had documented their case; which naturally also did not assist the Applicant.

8. The parties then agreed that the relevant issues for determination were as follows:

   (i) The true interpretation of a settlement agreement dated 29 November 2013, entered into by the parties following a mediation made available by the Tribunal; and consequently whether it had been complied with by the Applicant;

   (ii) The payability and/or reasonableness of service charges for the years 2013, 2014 and 2015 (the Scott schedule);

   (iii) Whether an order under section 20C of the 1985 Act should be made; and

   (iv) Whether a costs order against the Applicant should be made.

The settlement agreement

9. In 2011, the Applicant undertook a consultation process pursuant to section 20 of the 1985 Act. The Respondent was not satisfied with the consultation process, and in addition questioned the payability or reasonableness of various elements of service charge. In March 2012, therefore (as advised by Mr Havey), the Respondent stopped paying service charge demands. As a result, the Applicant initiated proceedings in the county court, from whence the case was transferred to this Tribunal (case number LON/00AU/2013/0701). Following the Case Management Conference, the parties agreed to mediation.

10. Mediation took place on 29 November 2013, facilitated by Professor Driscoll. The result was a settlement agreement, drawn up by Professor Driscoll and signed by both parties.

11. The principal operative parts of the agreement, set out as sub-paragraphs of paragraph 5, were as follows:

> "d. The leaseholder no longer challenges the charges claimed for the two disputed years ending 2011 and 2012 respectively or any of the charges made for any earlier period.
>
> e. The managing agents will arrange for the leaseholder's service charge account to be credited with the sum of £1,436 no later than 15 December 2013.
>
> f. The landlord acknowledges that on the signing of this agreement by their managing agents that the leaseholder is not in arrears with any of the services charges as she is in credit with her service charge account."

12. The Respondent argued that paragraph 5f meant that, as of the date of the agreement, any arrears of service charge claimed by the Applicant were expunged. This included arrears in respect of interim payments or payments on account made during 2013 in respect of future years. This, Mr Havey said, was clear from the unambiguous language in which the settlement agreement was set out.

13. The respondent argued that the arrears to be written off did not include a series of demands for a "quarterly service charge in advance". The issue, as defined by the pleadings in the county court, did not include these demands, so they could not be the subject matter of the agreement. They were not before the Leasehold Valuation Tribunal.

14. We do not consider that a mediation, and hence an agreement arising out of a mediation, is confined to the matters which could from the subject matter of an order by the Tribunal. In this case, the Respondent abjured, as part of the agreement, all challenges relating to matters before 2012.

15. More generally, part of the point of mediation is to allow the parties to widen the matters under consideration to include matters that could otherwise not be adjudicated, in order to achieve a desirable settlement.

16. On the wording of the agreement, we can see no textual basis for excluding advance service charges demanded in advance. Had that been the intention of the parties, it would have been made clear.

17. In so concluding, we declined to go behind the clear words of the agreement to consider background material relating to the preceding

negotiations. The settlement agreement falls to be construed in its own terms, at least in the absence of serious ambiguity, which we do not find here.

18. *Decision*: The settlement agreement included demands made for advance service charge payments before 29 November 2013.

The Scott Schedule

19. In accordance with the directions, a Scott schedule had been prepared by the parties. The issues it raised fell into five categories, which we deal with in turn below. In some cases, some of the contested charges in fact relate to the period covered by the settlement (as set out above). We have generally found it convenient to consider each issue on its merits, apart from the position of the settlement.

Guttering and drainage

20. The Respondent contested the reasonableness of the service charge attributable to three invoices in 2013 and two in 2014 as follows:

Contractor	**Date**	**Sum**
Scarr	15.01.2013	£642
Theologitis	21.11.2013	£300
Theologitis	13.12.2013	£350
Perlus	26.02.2014	£660
Perlus	26.02.2014	£540

21. The guttering had failed on two occasions, and the invoices related to related to the repair of the guttering and consequential damage in flats 3 and 4.

22. In 2011, major works had been carried out that included repairing and renewing the rainwater guttering at the property (in fact, it appeared the works concluded in 2012). The Respondent's case was that the 2011 works cannot have been properly carried out if the defects occurred so soon afterwards. There was no evidence of any other possible cause, such as storm damage. Mr Havey argued that in consequence, the current charges were unreasonable. The applicant should have ensured that the original work in 2011 was carried out properly, and/or should have looked to the original contractor to make good inadequate work done in 2011. At the very least, the managing agent should have investigated the cause of the defects and explored whether the major works contractor was liable.

23. The Applicant argued that there was no reason to suppose that the original work was defective. She could only say, in respect of the 2014, that the contractor, Perlus, had said that the guttering had become detached from the building and had to be re-fixed. Ms Campbell did not

know why the guttering had become detached. She noted that the guttering at the property was complicated (presumably because of the configuration of the roofs). When defects such as this occurred, it was her practice to respond immediately and engage a contractor to rectify the fault, and that she had done.

24. As a secondary submission, Mr Havey said that the invoices should be considered together, and considered as such were of a value to require a consultation process under section 20 of the 1985 Act. He described this submission as a fall-back.

25. Ms Campbell said that in each case, she was responding to separate and immediate emergencies, and the invoices could not properly be seen as a single item.

26. The Tribunal does not consider that we can conclude that it is more likely than not that the defects in the guttering were attributable to defects in the 2011 major works simply on the basis of the time at which the defects occurred, after those works were completed. Guttering can be damaged by any number of proximate causes, from the weather to wildlife, which cannot be excluded without more. On the state of the evidence before us, therefore, we are unable to accept Mr Havey's argument that we should infer, from no more than their occurrence at that time, that the major works had been defective and that therefore it was unreasonable for the cost of remedying them to be recovered via the service charge.

27. However, while no doubt Ms Campbell acted correctly in taking immediate action to secure the repair of the guttering (and thus limit damage to the flats concerned), it would have been appropriate thereafter to at least give consideration to the cause of the failure, and consider whether recourse should be had to the major works contractor. We conclude, however, that this consideration goes to the quality of the management of the property, not to the reasonableness of the service charge attributable to these particular invoices.

28. As to the section 20 point, we prefer Ms Campbell's submissions to Mr Havey's.

29. *Decision*: the service charge attributable to the invoices for repair of guttering, and consequential damage, were reasonably incurred, except insofar as they were covered by the settlement as outlined above.

The entry phone

30. The Respondent challenged all charges attributable to an entry phone agreement entered into by the landlord in 2003, for a period of 20 years. The agreement provided for the rental of an audio-only entry

phone system for the four flats at an initial annual rent of £140, subject to annual increases in accordance with the retail price index.

31. Mr Havey argued that this contract was so onerous that no reasonable business person could have reasonably entered into it, and accordingly service charges attributable to it could not be reasonable.

32. In support of this contention, Mr Havey set out in his witness statement the results of market research he had undertaken in early 2012, the results of which had been put to the Applicant. The Applicant had not responded.

33. Mr Havey's research indicated that, for the simple system concerned, it would have been far more economical to have purchased a system outright; and that a maintenance contract would not be necessary, given the reliability of such systems. Purchase prices (including installation) ranged from £380 to £600. As far as rental was concerned, the most expensive was £180 p.a., but that was for a seven year rental period. The contractors he contacted did not offer and were surprised by the existence of a 20 year rental term. If a 20 year term were to be offered, it would have been at about 40% of the figure for a seven year term. A rental price escalation was also unheard of.

34. Ms Campbell argued that the Applicant was contractually bound by the current arrangement until 2023, and that therefore the charges related to it were necessarily reasonable. She further argued that in any event, the charges were reasonable. She prayed in aid that the rental sum included repairs where necessary. The contractor had been called out on occasion, she said, although she conceded that it was rare. Ms Campbell was unable to say what market testing had occurred prior to the entry into the contract in 2003.

35. The Tribunal warned the parties that we may take into account our knowledge and expertise as to the simplicity of entry phone systems of this specification.

36. We reject the submission that the fact that the Applicant is contractually bound makes the service charge based thereon necessarily reasonable. In virtually all cases of service charge disputes, the underlying expenditure is based on a contractual obligation of the landlord. The reasonableness of the service charge depends on the reasonableness of the landlord entering into that particular contract. The fact that the contract is a long-term one makes no difference.

37. Mr Havey's evidence as to the market for entry phones was not contradicted by the Applicant, who, we also note, had not responded to Mr Havey when the same evidence was put to them in 2012. This is a simple system, and such systems are usually highly reliable. Mr Havey's

evidence that the providers with whom he spoke considered that the most sensible course would be to purchase a system and pay for repair or replacement as it become necessary accorded with our own view. However, the cheapest option is not necessarily the only reasonable one, and therefore we conclude that the appropriate course would be to limit the charge to that which Mr Havey's uncontested evidence suggested would be appropriate for a 20 year rental term.

38. Decision: the service charge for the entry phone should be limited to a fourth of 40% of £180 a year, that is £18 a year, for the period since the settlement.

Lightbulb

39. The Respondent objected to the charge attributable to an invoice from a contractor for £95.00 (dated 18 February 2014), which described the work undertaken as "repair light on half landing and re-lamp". Mr Havey claimed that either nothing at all had, in fact, been done in respect of this invoice, or alternatively that all that had happened was that a lightbulb had been changed, for which he said that £95 was excessive.

40. Ms Campbell had herself seen that the light was not working on an inspection. She said that the charge represented the standard call out charge for that company. It was a company the managing agent had a relationship with and trusted. She said that, had she been given a local company's name by a leaseholder, she would have been happy to have used it, but she would not expect to consult the leaseholders or search for a local company in such circumstances. The call out charge was in any event within the normal range.

41. Both Mr Havey and Ms Campbell gave evidence about whether an email from Ms Campbell to Ms Schwarz (on 7 February 2014), which referred to the repair or replacement of a security light at the entranced did, in fact, refer to this light or another. Whether it did or not, however, did not assist us in coming to a conclusion.

42. Although Ms Campbell said that she trusted the company to be truthful if its invoice referred to a repair, it may be that all that was necessary was to change the lightbulb. It may be unfortunate that it was necessary to call out a contractor simply to change a single light bulb, but if it was necessary, then we do not consider that the call out charge was outwith the reasonable range.

43. *Decision*: The expenditure in meeting the invoice of £95.00 from Merrett Electrical Services on 18 February 2014 was reasonably incurred.

Proceedings before the Tribunal in 2014

44. The Respondent challenged a charge of £190 dated 18 June 2014 and identified as "HMCT", which represented fees paid in respect of an application or applications to the Tribunal made by the Applicant, one of which (at least) is dated 18 June 2014.

45. Mr Havey's challenge was in two parts. First, he submitted that the terms of the lease did not allow for the reimbursement of expenses associated with legal proceedings in the service charge. Secondly, he argued that the proceedings themselves were so flawed in conception that it was not reasonable for the Applicant to have initiated them.

46. It appears that the two applications were made. One (for which we have the application form) was for a dispensation, under section 20ZA of the 1985 Act, of consultation requirements under section 20. The other, it appears, was for an application for determination of the reasonableness of a service charge under section 27A.

47. The background is set out in Mr Havey's witness statement (and was not contested by the Applicant). At some point, the Applicant procured a health and safety report, which recommended a new fire detection system be fitted. The Applicant duly started a section 20 consultation. After the stage one notice of intended works (dated 25 November 2013), the Applicant provided the Respondent with an estimate for the cost of the work, which was £3,681. As a result, there was further correspondence. It was clear at this point that (at least) the Respondent was objecting to the cost of the works (an objection which seems to have in part expressed itself as an objection to the extent of the work consulted on). However, in a stage two notice dated 23 June 2014, the Applicant stated that it would accept the lower of two (different) estimates, at £1,295. The Respondent was happy with that and did not indicate any further objection.

48. The Respondent was unaware of the applications until she (and Mr Havey) returned from holiday in early August, when they received correspondence from the Tribunal inviting her to a case management conference on 11 August. In an email dated 7 August, the Respondent stated that she had no objection to the works as set out in the notice of 23 June.

49. The Applicant, however, decided to persist with the applications. They were withdrawn at the case management conference, at which Mr Havey provided a further document confirming that the Respondent considered the works necessary and the proposed cost reasonable.

50. In respect of Mr Havey's first submission, in relation to what was allowable under the lease, the Applicant had made it plain in the Scott Schedule that they relied on paragraph 3 of the sixth schedule to the

lease. This required the landlord to "do all such acts matters and things as may in the Lessor's reasonable discretion be necessary or advisable for the proper maintenance or administration" of the flat or the building. The Respondent submitted that this clause was too general to apply to court or tribunal fees. For such fees to be included would require specific wording to that effect.

51. The Applicant argued that the applications were included within the concept of the "administration" of the building. It was part of completing the action necessary as a result of the health and safety report.

52. Although he did not quote the authority, it appears that Mr Havey's submission was based on the approach in *Sella House v Mears* [1989] 1 EGLR 65. We asked Mr Havey if he was aware of *Assethold Limited v Watts* [2014] UKUT 0537 (LC). He was not. However, he defended what is described in that case as the "magic words" approach to the question of whether a general provision allows for the recovery of the costs of legal proceedings. Ms Campbell was not able to assist us further as to the law.

53. In the event, therefore, we did not hear developed submissions on the difficult question of whether the clause, in the context of the lease as a whole, encompassed recovery of the costs of legal proceedings or not. In the light of our findings as to the reasonableness of the service charge based on these costs, however, it is not necessary for us to come to a view on the question, and we decline to do so.

54. Mr Havey's second submission was that on the (uncontested) background set out above, the section 20ZA application was wholly misconceived, and the section 27A application unnecessary.

55. Ms Campbell said, first, that the Tribunal office had told her that a section 20ZA application would be appropriate. Ms Campbell properly volunteered that the member of staff had made it clear that they did not give legal advice and should not be relied on as such. Secondly, she said that the section 27A application had been withdrawn on the basis of the Respondent's written confirmation at the case management conference, not because they recognised that it was doomed to fail. The context, Ms Campbell said, was that the Respondent had failed to pay any service charges for some time, and it was therefore appropriate to take pre-emptive action.

56. We accept Mr Havey's argument as to the reasonableness of the taking of the proceedings. The section 20ZA application was (as was apparent from the application form itself) really an attempt to request the Tribunal to approve the proposed expenditure in advance, and as such was indeed misconceived.

57. The section 27A application could have been technically sound, in the sense that it could have been understood as an application under section 27A(3) for advance approval. But even if it had been framed in that way (and Mr Havey's evidence was that it was not), in practice that too was clearly ill-advised. Quite apart from the propriety of such an application in the middle of a section 20 consultation process, the application was made three working days before the stage two notice referred to in paragraph 47 above was served. Mr Havey's uncontested evidence, and to the extent it is available, the correspondence between the parties, makes it clear that in that notice the Applicant was, essentially, giving the Respondent what she (through Mr Havey) had been asking for. In such circumstances, to initiate proceedings without at the very least communicating with the Respondent was clearly inappropriate. And if the Applicant's concern was with the general arrears owed by the Respondent, then those should have been the subject matter of the application, not proposed expenditure that was not contested (and which it could be seen was likely not to be contested).

58. *Decision*: The expenditure on Tribunal fees arising out of the Applicant's applications in June 2014 were not reasonably incurred.

59. As stated above, we make no decision as to whether Tribunal fees are properly recoverable under the lease.

Management costs

60. The Scott schedule set out charges of £1,128 in respect of the costs of managing the property for 2013 and 2014, and £1,152 in respect of 2015.

61. Mr Havey challenged the management costs claimed by the Applicant on two bases. First, he argued that before 2013, the contract between the managing agent and the freeholder was a qualifying long term agreement within the terms of section 20 of the 1985 Act, and accordingly the costs recoverable were limited to £100.

62. Secondly, he argued that the management fees were in any event excessive in the light of the quality of the management of the property.

63. We were provided with copies of the management contracts, each dated 25 December, for the years 2012, 2013 and 2014. The latter two were described on their face as being of 365 days' duration, and Mr Havey did not seek to challenge these. That for 2012 was, he said, of indefinite duration. While an accounting period was set out on page 9 of the contract as from 25th December to 24th December, there was no specified duration. An indefinite contract, he argued, was of infinite duration, unless its terms clearly implied otherwise. In fact, he argued that the terms of the agreement implied that the duration of the

contract was longer than a year, as it included at clause 1.13 provision for producing a statement of certain accounts after the end of the accounting year.

64. The Applicant said that all of the contracts were, as a matter of fact, annual contracts. The difference between that for 2012 and 2013 was merely a change in the standard form contract used, and did not indicate any difference in the practice nor the understanding of the parties. Before the change in wording, the contracts were in fact renewed annually, and that reflecting the understanding of both parties. Ms Campbell could not further assist us as to the proper construction of the contract.

65. It is clear that the management contract dated 25 December 2012 did, in fact, only last for a year. That it had that start date implies that, as Ms Campbell stated, the practice generally was to renew the contract on an annual basis.

66. Contrary to Mr Havey's submissions, we conclude that the contract, which is on RICS standard terms, is, impliedly, limited to the accounting period specified therein. It is true that clause 1.13 provides for accounts to be provided after the end of the accounting period, but in context, it is clear that this is an obligation that subsists after the duration of the services provided by the contract comes to an end. It arises in the alternative, after the termination of the contract; and the client's obligation, as set out in clause 4.2, is to pay remuneration "still due" at that point. The end of the accounting period and the termination of the contract by notice are treated equally in both clauses. The duration of a contract for the purposes of the definition of a "long term qualifying contract" in section 20ZA(2) must relate to the duration of the provision of services which are charged for, rather than including the time period within which some later, consequential or ancillary obligation may be discharged.

67. Accordingly, we reject the Respondent's submission that the agreement dated 25 December 2012 is a qualifying long term agreement. In any event, this service charge is covered by the settlement, as set out above.

68. Mr Havey agreed that his general reasonableness challenge to the service charge attributable to management costs in each of the three years was parasitic on our findings in relation to the other substantive issues before us.

69. Ms Campbell argued that the managing agent provided a flexible and efficient service. She stressed the importance that the managing agent put on the maintenance of a good relationship with the leaseholders, and their general approach to informal consultation.

70. We conclude that the management of the property *was* flawed. Management errors or misjudgements are clear in respect of three of the four matters which we have adjudicated above on the Scott schedule, including in respect of the guttering, in which we substantively found for the Applicant. In relation to the entry phone and the Tribunal proceedings, failures of management are the basis upon which we found in favour of the Respondent. A pattern emerges of management that is at best merely responsive, and at worst ill-advised.

71. We think it fair in all the circumstances to reduce the management fee for each year by 30%.

72. *Decision*: the reasonable management fee for 2014 is £790, and for 2015, £806 (taking account of the fact that the 2013 fee is covered by the settlement).

Section 20C of the 1985 Act

73. The Respondent applied for an order under section 20C that the costs of these proceedings should not be relevant costs for the purposes of calculation of a future service charge demand.

74. Mr Havey referred us to the argument in the Respondent's statement of case, in which he argued first that it did not appear that there was express provision for the collection of the costs of legal proceedings in the lease. Secondly, he argued that the Respondent's case was well founded, and that the Respondent's position had been set out to the Applicant well in advance of its application.

75. As stated above in connection with Tribunal fees in respect of the 2014 proceedings, we decline to come to a view on whether the lease provides for the recovery of legal costs.

76. Our discretion to make an order on section 20C is to be exercised on the basis of what is just and reasonable in all the circumstances. That includes the circumstances and conduct of all parties, and the outcome of the application. There is no necessary expectation of an order, even if a landlord is unsuccessful; and it requires some unusual circumstance to justify an order (*Tenants of Langford Court v Doren Limited* (LRX/37/2000); *Schilling v Canary Riverside Development Limited* (LRX/26/2005).

77. While both parties have enjoyed some success before us, the preponderance has clearly been with the Respondent. Nonetheless, we should be slow to shut a landlord out of a contractual right to charge legal costs unless it is fair and equitable in all the circumstances to do

so. While it has not been largely successful, we do not consider that it was improper or wrong for the Applicant to initiate these proceedings.

78. *Decision*: We make no order under section 20C of the 1985 Act.

Costs

79. The Applicant made an application for costs under rule 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 ("the Procedure Rules").

80. The Respondent had been unreasonable, the Applicant argued, for the same reasons as he set out in respect of the section 20C application. Rule 13 sets a high threshold for unreasonableness, amounting to conduct which is ill-motivated in some way. The Applicant's conduct does not come close to justifying a costs order.

81. *Decision*: We make no order under rule 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 ("the Procedure Rules").

Name: Tribunal Judge Richard Percival **Date:** 28 August 2015

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).