12361

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AC/LSC/2017/0069**
Property	:	**Winsford Court 11 Tenterden Grove London NW4 1SX**
Applicant	:	**Mr David Marks and Mrs Ann Marks**
In attendance	:	**Mr Paul Simon solicitor**
Respondent	:	**Winsford Court Hendon (Management) Limited**
Represented by	:	**Mr Carl Fain of counsel**
Type of application	:	**For the determination of the reasonableness of and the liability to pay service charges**
Tribunal members	:	**Mrs E Flint DMS FRICS** **Mr K M Cartwright JP FRICS** **Mrs R Turner JP BA**
Date and Venue of hearing	:	**5 & 6 July 2017** **10 Alfred Place, London WC1E 7LR**
Date of decision	:	**12 September 2017**

DECISION

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Decisions of the tribunal

(1) The Tribunal determines that the surplus plus £758.88 in respect of the letterboxes should be credited to the service charge account of the Applicants.

(2) Dispensation under section 20Za is granted in relation to the installation of the CCTV system.

(3) 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 lessee through the service charge account.

The application

1. The Applicants seek a determination under Section 27A of the Landlord and Tenant Act 1985 as to whether service charges for the years 2013–14, 2014–15, 2015-16 and 2016-17 are payable. The Applicants seek a determination under section 20C of the Landlord and Tenant Act 1985 in respect of the landlord's costs in relation to the tribunal proceedings.

2. The Respondents seek a determination under Section 20ZA that dispensation from the statutory consultation requirements should be granted in respect of the installation of CCTV.

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

The background

4. The Applicants are the lessees of Flat 5.

5. The Respondent Company acquired the freehold on 20 April 2016, all the lessees are shareholders and directors in the Respondent Company. Prior to that time the Respondent managed Winsford Court for the freeholder.

6. The Applicants asked the Tribunal, in addition to the matters at paragraph 1 above, to consider the role of the Respondent from its incorporation on 3 August 2012 to its acquisition of the freehold; their liability for the Respondent's costs as shareholders from 14 December 2015; the Respondents treatment of monies it holds or held which were not transferred to its managing agents, Moreland Estates Management upon the handover in November 2016 and the

Respondents use of purported service charge contributions to fund non-service charge items of expenditure (installation of CCTV and relocation of the letterboxes).

7. On 20 June 2017, the Applicants made an application to summons Mr Ben Camissar to give evidence at the hearing. This application was dealt with as a preliminary matter at the commencement of the hearing.

8. The main grounds for the application were that Mr and Mrs Camissar were the joint shareholders of the sole share in the Respondent until December 2015; Mr Camissar controls the Respondent's bank accounts, service charge demands were not issued during the relevant period and he is a member of the subcommittee of the board of directors set up to deal with these proceedings. As at 28 October 2016 there was £24,000 in the Respondent's bank account. The applicants requested to inspect the documents held by the managing agents in September 2016, inspection of the documents was completed on 19 June 2017. The applicant considers Mr Camissar the most appropriate person to give evidence to the Tribunal.

9. Mr Simon wished to investigate the role of the Respondent prior to its acquisition of the freehold in particular whether it had the authority to issue service charge demands.

10. The Respondents were represented by Mr C Fain of counsel who indicated that he would be calling upon Mr G Raivid, who had been a Director of the Respondent throughout, to give evidence on behalf of the Respondent; Mr Camissar had not provided a witness statement, the hearing should not be used as a fishing exercise. Mr Fain reminded everyone that the Tribunal's jurisdiction is limited by statute. He said that the Tribunal did not have jurisdiction to determine the Applicant's liability for the Respondent's costs as shareholders in the Respondent; the effect of the 2015-16 service charge accounts and the April 2017 Invoice; and the service charge demands for 2013-14, 2014-15 and 2015-16. He accepted that the purported use of service charge monies on non-service charge items was within the jurisdiction of the Tribunal but was of the opinion that the assertions were nonsense. In these circumstances, the Respondent objected to the application.

11. The Tribunal determined not to use its discretion to summons Mr Camissar to give evidence. He was present at the hearing but did not wish to give evidence. A director of the company throughout the period under consideration, Mr Raivid, had prepared a witness statement and was willing and able to give evidence regarding the matters for determination.

12. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

The Lease

13. The lease which is dated 19th July 2013 is for a term of 125 years from 1st December 2012 at an initial ground rent of £350pa.

14. By clause 3.10 the Lessee covenants *"to pay to the landlord .... the Service Charge referred to in the fifth schedule."*

15. The Fifth Schedule requires the lessees to pay 34% of the expenses included in the service charge account by payment of half yearly interim charges on the payment days. The year for service charge purposes is 1 August to 31 July or any other 12-month period the landlord nominates for the purposes of his accounts. By clause 7 of the 5th Schedule any excess must be credited against the next instalment of the interim charge. If the service charge is greater than the interim charge the balance must be paid within fourteen days of demand.

16. Under part Two of the schedule the Landlord must maintain, repair and decorate the structure and the common parts; provide the fuel for the boiler supplying the heating and hot water; insure the building; carpet; decorate and light the common parts; maintain the tv aerials, satellite dishes and door entryphone, the gardens, forecourts and paths.

17. The expenses include not only the annual costs but a sum the Landlord considers should reasonably be provided for any items of repair or maintenance which are not of a regular nature.

18. Paragraph 3 sets out the charges and costs which may be included in the service charge account. These include at sub paragraph 3.8 *"the cost of making representations against, contesting the incidence of or complying with the provisions of any legislation, orders or regulations affecting the Building and the Estate where it is reasonable to expect the tenants of it to meet the expense*; and at 3.14 *"the cost to the Landlord of providing such services for the benefit of the tenants of any part of the Estate as it shall determine in the interest of good management."*

19. The demised premises, which are situated on the Second and Third floors of the building. are defined in detail in the First Schedule.

The Issues

20. The relevant issues set out for determination are as follows:

21. The payability of the service charge demands.

22. The recoverability of costs relating to the installation of CCTV, relocation of the letterboxes and gardening.

23. The treatment of any surpluses at the end of each service charge year.

24. The correct dates for the service charge year.

25. The Applicant's liability as a shareholder of the Respondent is not within the jurisdiction of the Tribunal since such charges are not service charges or administration charges. Therefore, the evidence in relation to this liability has not been included in the decision.

26. Having heard the evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the issues as follows.

The Service Charge Demands

The Applicant's case

27. Mr Simon questioned the role of the Respondent before it acquired the freehold and whether it was authorised by Avocado Developments Limited, the then freeholder, to manage the property on its behalf. He referred to the Certificate of Incorporation dated 3 August 2012 which showed the directors as being Mr B Bentzien, Mrs A Camissar and Mr G Raivid. One share had been issued which was owned by Mr and Mrs Comissar.

28. He said that the Respondent claimed to have managed the property on behalf of the landlord (ADL) since August 2012. The Applicants believed that ADL had abandoned the management of the property although they did not believe that the Respondent was ADL's managing agent because there was no management agreement between the parties; the respondent was not a tenant's management company and on Mr Raivid's evidence the previous managing agents *"were not doing a very good job and, with the agreement of the landlord, the residents took over the day to day management"* ... Although the Respondent took over the management from August 2012 the Applicants believe that Defries & Associates were the managing agents until 31 January 2013.

29. During the pre-acquisition period no service charge budgets, demands or accounts were produced by or on behalf of the Respondent. The

landlord had invoiced the Respondent for ground rent which would not have been necessary if the Respondent had been acting as its managing agent. The TR1 showed that the Respondent indemnified ADL and Quintas Homes Limited "*against any claims*" because "*The Freehold Company has managed the Property since the date of incorporation on 3 August 2012*" this would have been unnecessary if the respondent had been the landlord's managing agent.

30. Mr Simon said that if in fact the Respondent was merely a private limited company owned by one of the leaseholders, collecting service charges without the authority to do so then it would have had no authority to demand any money and any money demanded would not be a service charge and the Tribunal would have no jurisdiction in the matter.

31. The Applicants believe that the Respondent had no authority to demand service charges during the pre-Acquisition period and that they are due a full refund for the period 19 July 2013 to 20 April 2016.

32. Further the service charge was not demanded properly from 19 July 2013 to 22 December 2016 because:

    a. The accounting year runs from 1 August to 31 July;

    b. The lease requires that "*the Landlord must determine the interim Charge and notify the tenant in writing of the amount due from him and the instalment to be paid on the payment Days in each accounting year*". The Applicant believes that the purported demands do not satisfy this requirement;

    c. The demands include ground rent;

    d. The purported demands do not meet the requirements of Sections 47 and 48 of the Landlord and Tenant Act 1987 and the Applicants believe that the Respondent was neither the landlord nor ADL's managing agent;

    e. The purported demands do not satisfy Section 153 of the Commonhold and Leasehold Reform Act 2002 because the Respondent did not attach the prescribed summary of the Tenant's rights and obligations; and

    f. The purported demand for 1 August 2016 to 31 January 2017 was not in accordance with the terms of the lease. It was superseded by a demand served by Moreland in December 2016.

33. In May 2017, the Respondent served demands for the periods 1 August 2013 to 31 January 2014, 1 February 2014 to 31 January 2015 and 1 February 2015 to 31 August 2015. Mr Simon considered that these later demands were not valid. He reiterated the point that the Respondent was not entitled to serve demands for the pre-Acquisition period. He suggested that alternatively the demands could only relate to costs incurred 18 months prior to 29 May 2017 or that the Respondent had already served the April 2017 Invoice when it produced the 2015-16 Service Charge Accounts which together amount to an admission by the Respondents that it cannot recover any costs incurred prior to 1 November 2015. The Applicants say this date should be 6 November 2015. Alternatively, the April 2017 invoice is an invoice for reconciled expenditure for 1 August 2015 to 31 July 2016 and must supersede those elements of the May 2017 demands which relate to that accounting year. Moreover, the second May 2017 demand does not correspond with any demands served previously and service charge demands cannot include ground rent.

34. No service charge budgets were produced from 19 July 2013 to 5 April 2016 therefore it was not possible to determine the actual expenditure for any accounting year and credit any surplus in accordance with paragraph 7 of Part One of the Fifth schedule.

The Respondent's case

35. Mr Fain said that the Respondent was clearly a managing agent. The previous managing agents had handed the management of the block to the lessees. An email from Quintas Homes to the Appellant in July 2017 confirmed that ADL had abandoned the management of the block at the request of the residents to allow them to self-manage. Mr Marks email asking for confirmation of the situation refers to the fact that Quintas made payments for "service charge" as if the company was the tenant of Flat 5. In the alternative, it could be argued that a landlord and tenant relationship had been created between ADL and the Respondent.

36. The Applicants had legal advice prior to the purchase of Flat 5; they had attended meetings where the accounts had been approved. The minutes of the 15 February 2015 meeting indicate that Mr Marks was actively involved in the management of the block.

37. Mr Raivin gave evidence that the residents had asked ADL if they could take over the management of the block from 2012 onwards. He had volunteered to send out the service charge demands, including one to ADL in respect of flat 5. He confirmed that he copied what Defries had done and the service charge remained unchanged for several years. He accepted that the service charge year in the lease commenced on 1 August and that the landlord could nominate an alternative start to the year. He said that the managing agents had decided to revert to the

service charge year in the lease. He agreed during cross examination that no budget had been set during the period of the Respondent's management; there was always a surplus which everyone had agreed should be put aside for future expenditure e.g. decorations at the end of the 5th year or emergencies. No one charged for their services. Mr Raivin said that the Respondent accepted that there were issues with the way in which the service charge account had been handled and that there was no need to call Mr Camissar.

38. Mr Fain referred to the provisions in the lease which require the Interim Service Charges to be paid on notification in writing by the Landlord of the amount of the instalment to be paid on the payment days (25 January and 25 July). The Interim Service Charge demands notified the Applicants of the instalments due and the payment dates, Mr and Mrs Marks were liable to and did pay the Interim Service Charges. He said that due to their contractual liability no demand was required and S21B of The Landlord Tenant Act 1985 and ss47 and 48 of The Landlord and Tenant Act 1987 did not apply.

39. Further s21B was irrelevant since it only entitles a tenant to withhold payment and the failure to comply with ss47 and 48 and s21B notices had been rectified.

40. Section 20B has no effect where payments on account have been made and the actual expenditure does not exceed the interim payments on account such that no actual demand is made, as here, where there has been a surplus on account every year and therefore S20B does not apply (*Gilje v Charlegrove Securities Ltd [2004]*.

41. In respect of the years to 31 January 2014 and 2015 Mr and Mrs Marks had agreed the accounts at the annual general meeting of the tenants and had paid their service charges, and by doing so they had admitted that the sums were payable and so the Tribunal had no jurisdiction.

The Tribunal's decision

42. The Tribunal determines that the Respondent was managing the block and carrying out the functions usual for a managing agent including collecting the ground rent. It is admitted that the original demands did not include the summary rights and obligations however the omission had been remedied prior to the hearing and therefore the demands are payable subject to any other decisions of the Tribunal in respect of the matters which have been challenged. The Tribunal does not have jurisdiction in respect of the accounts for the years to 31 January 2014 and 2015.

Reasons for the Tribunal's decision

43. The landlord had allowed the Respondent to take on the management of the block. ADL had effectively abandoned the management but was fully cognisant of the situation and the Respondent was collecting the ground rent as well as the service charges from the lessees and from ADL in respect of Flat 5 until it was sold to the Applicants. The Applicants paid five service charge demands and only queried the demands after July 2015. The Tribunal finds as a matter of fact that the applicants had by their actions in attending the annual meetings, approving the accounts and paying the demands for the years ending 31 January 2014 and 2015 agreed that the amounts demanded were payable.

Installation of CCTV

The Applicant's case

44. Mr Simon said that historically it had been agreed that money spent on both the installation of CCTV cameras and the relocation of the letter boxes fell outside the definition of expenses chargeable to the service charge account.

45. The decision to spend money in relation to the CCTV was taken at the Respondent's AGM in February 2014 and the cost approved at the 2015 AGM. At that time, the sole shareholder was Mr and Mrs Camissar therefore theirs was the only vote which counted.

46. Mr Marks in his evidence confirmed that the cost was not in dispute and that the installation was of benefit to everyone but whether it was a service charge item was another matter. He accepted that the lessees could agree to pay for the installation but not necessarily in the same proportions as the service charge regime.

47. Mr Simon said that the Applicants consider that they should be reimbursed their share of the costs of installation and training which they calculate to be £1,004.19. Nevertheless, the Applicants do agree that the maintenance of the CCTV system is a bona fide service charge.

The Respondent's case

48. Mr Fain confirmed that the total cost was £2,858 in the year to 31 January 2015. The lessees are all in their later years and desired greater security. The cost falls within Part Two of the 5th schedule. There is no dispute that statutory consultation should have been undertaken owing to the contribution of £971.72 sought from the Applicants. The Respondent has made a s20ZA application seeking unconditional dispensation from the consultation requirements as per *Daejan Investments Ltd v Benson [2013].*

49. All the tenants, including Mr and Mrs Marks, had agreed at the annual meeting of the tenants on 15 February 2014 that CCTV should be installed. An estimate of the cost of installation had been provided at the meeting. The service charge accounts for the year ending 31 January 2015 had been considered at the annual meeting in 2015, which was attended by Mr and Mrs Marks. The accounts had been unanimously approved.

50. The cost was properly included within the service charge account as it falls within paragraph 3.14 of Part Two of Schedule 5

51. Informal consultation has been carried out. Mr and Mrs Marks had agreed the cost of the CCTV therefore there is no prejudice caused by the failure to follow the statutory consultation procedure. The Tribunal should dispense with the consultation requirements unconditionally.

The tribunal's decision

52. The Tribunal determines that dispensation should be granted from the statutory consultation procedure and that the cost of the installation should be included within the service charge accounts.

Reasons for the tribunal's decision

53. The Tribunal finds that although the statutory procedure had not been followed all the lessees had been involved in the decision to both install the CCTV and its cost. There was no evidence presented to show that there had been any prejudice on account of the procedure being informal rather than formal. In fact, Mr Marks had confirmed that there was no issue over the cost of the installation. There was a one-year delay between the decision in principle to install the system and the decision on the price.

Relocation of the letterboxes

The Applicant's case

54. Mr Simon said that the Applicants believe that they have been charged twice for the cost of the scheme because it was paid for as part of the purchase price of the freehold it had also been added to the service charge account for 2015-16 and the April 2017 Invoice.

The Respondent's case

55. Following a discovery by Mrs Marks that the letterboxes were being tampered with and some letters stolen, which was confirmed by the CCTV, the tenants decided to relocate the letter boxes. ADL incurred

the cost of £1,860 plus VAT. The Respondent had agreed to pay £40,000 for the freehold. It was agreed that the purchase price would be increased by £1,860 to reflect this expenditure. The cost was not a service charge. The VAT element of the bill was not passed on. If the cost had been a service charge then Mr and Mrs Marks would have contributed 34% rather than the 20% cost as shareholders.

56. The reference to Door Glass Panels costing £2,232.00 (£1,860 + VAT) in Annex 2 of Mr and Mrs Marks Statement of Case should not have been included in the service charge account for the year ending 31 July 2016 and a credit will be applied.

The Tribunal's decision

57. The charge of £2,232.00 in the service charge account should be removed and the Applicants' account should be credited with that sum.

Reasons for the Tribunal's decision

58. The cost of the letterboxes had been paid for as part of the purchase price of the freehold. The item was wrongly identified in the service charge account as Door Glass Panels and ought not to have been included.

The gardening costs

The Applicant's case

59. Mr Simon explained that certain invoices relating to the gardening include amounts which ought to have been charged to individual lessees. The lessee of Flat 1 at paragraph 3.44of the lease covenants to maintain the private garden using the same contractor as maintains the communal garden and the cost of the work will be added to the service charge. Mr Simon contends that this refers to the service charge for Flat 1.

60. The Applicants believe they owe £50 to the service charge account which should be reflected in the determination of the tribunal. Further there is no mechanism in place to monitor the time spent by the gardener on the private gardens of Flats 1 and 2 where the lessees have covenanted to use the Respondent's contractor.

61. Mr Marks considered that all the lessees should be responsible for the cost of maintaining their private gardens. He now understood that £50 had been set aside to cover cost of work to his garden (balcony) which he intends to pay back.

The Respondent's case

62. It is said that the cost of the gardening is unreasonable because it includes the cost of cutting the grass of Flats 1 and 2. Mr Fain contended that the gardens are gardens on the estate and fall within 2.8 and 3.1 of the Fifth Schedule Part Two of the Applicants' lease.

63. The leases of Flats 1 and 2 both contain covenants for the tenants "*to maintain the private garden demised to the flat utilising the same contractors as for the Communal Landscaped Area so as not to disturb the aesthetics of the Communal Landscaped Area and the appropriate proportion thereof shall form part of the service charge*". The service charge provisions therefore allow for the cost of gardening to Flats 1 and 2's private gardens providing the gardening is carried out by the Landlord's gardener.

The Tribunal's decision

64. The cost of maintaining the private gardens should be borne by the individual lessees and added to their own service charge account.

Reasons for the Tribunal's decision

65. The lessees covenant to maintain their private gardens. The lease sets out the mechanism for doing so. The lease does not state that the cost of the lessees obligation to maintain should be met by the other lessees.

The Surplus

The applicant's case

66. In December 2016 Mr Camissar wrote to the Leaseholders to advise that he anticipated that there would be c£20,000 in the sinking fund by 31 January 2017. The Respondents have not supplied the Applicants with any financial information regarding the accounts for the last financial year. The Reserve should be itemised within the service charge budget since to merely accrue the surplus would be in contravention of paragraph 7 of Part One of the Fifth Schedule.

67. Notwithstanding the above and without prejudice to the Applicants" belief that the surplus ought to have been transferred to Moreland, the current managers, the Applicants believe that the surplus held by the Respondent wholly or substantially equates to the amounts paid by the applicants which they are entitled to have refunded.

68. Mr Marks agreed that they had been offered the surplus but that they had refused to accept it. He said that it should be credited to their service charge account held by Moreland Estates.

The Respondent's case

69. The Respondent had maintained a reserve fund using the surplus accrued each year. The surplus money has now been returned to all of the tenants except for Mr and Mrs Marks who have refused to receive their surplus.

70. The surplus was shown in the accounts as a deferred maintenance fund. Following Mr and Mrs Marks contentions regarding the surplus the Respondent resolved to return the monies to the tenants. If Mr and Mrs Marks do not wish the surplus returned to them it can be applied as a credit against the next interim charge.

The Tribunal's decision

71. The surpluses should be returned as credits to the individual service charge accounts.

Reasons for the Tribunal's decision

72. The lease specifically provides for any surplus to be credited to the service charge accounts. Whilst the lease also provides that a reserve fund may be accrued and it is prudent to do so the amount should be shown in the service charge budget as a separate item. The correct procedure enables proper planning of expenditure and enables any lessee who is unhappy with the amounts to challenge the proposed annual sums.

Service Charge Year end

The Applicant's case

73. Mr Simon referred to paragraph 4 of Part One of the Fifth Schedule which states that *"In advance of, or as early as may be during, each accounting year the landlord must determine the Interim Charge and notify the Tenant in writing of the amount due from him and the instalment to be paid on the Payment Days in each accounting year"*. The payment dates are 25 January and 25 July in each year.

The respondent's case

74. Mr Fain referred to paragraph 1.1 of the Fifth Schedule Part One which allows the landlord or its agents (paragraph 2) in its discretion to

choose whichever year end it desires. Moreland have changed the year end to 31 July.

The decision of the Tribunal

75. The Landlord via the managing agent used its discretion to change the payment dates in accordance with the terms of the lease.

Reasons for the Tribunal's decision

76. The Tribunal determines that the landlord, via its agent was entitled to change the dates under the terms of the lease.

Service Charge contribution

77. Although the application was brought under section 27a the Applicants sought to open up the question of the correct service charge percentage payable as opposed to the percentage shown in their lease. No evidence is recited within this decision because this Tribunal has no jurisdiction to amend a contractual liability under such an application. Indeed without the agreement of the other lessees in the block it is difficult to contemplate the grounds on which an application to vary the lease terms could be successful since the total service charges payable add up to 100% of the costs incurred.

Application under s.20C

The appellants' case

78. The Applicants' grounds in the application are that the lease does not allow the landlord to recover legal costs as a service charge. Alternatively, the conduct of the Respondent means it would be unjust to allow the Respondent to put these charges through as a service charge because the Applicant pays the largest proportion of the service charge under the terms of the lease.

79. Mr Simon stated that the legal fees and disbursements incurred by the Respondent arising out of these proceedings were outside the scope of the definition of "expenses" in Part Two of the Fifth schedule.

The respondent's case

80. Mr Fain referred to in sub paragraphs 3.8 and 3.14 of the Fifth Schedule Part Two which he considered allowed the landlord to recover the costs of the application through the service charge. He stated that there were in his opinion no grounds for making a s20C order.

The decision of the Tribunal

81. Having considered the submissions from the parties, the tribunal determines that in the circumstances it is just and equitable that an order is made under section 20C of the 1985 Act because proper statutory consultation in respect of the CCTV was not undertaken and the surpluses were not dealt with in accordance with the terms of the lease, a matter which would not have been remedied without the application to the Tribunal. The lease terms referred do not relate to costs incurred in connection with an application to the tribunal and there are no clear words within the lease which would allow such charges to be added to the service charge account. Moreover, the Respondent asked for its own application under s20ZA, which was only made shortly before the hearing, to be dealt with at the same time as the substantive application.

Name: E Flint **Date:** 12 September 2017

ANNEX - RIGHTS OF APPEAL

i. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

ii. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -

(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -

(a) the person by whom it would be payable,

(b) the person to whom it would be payable,

(c) the amount which would be payable,

(d) the date at or by which it would be payable, and

(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -

(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 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.