12804

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

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| **Case reference** | : | **LON/00AH/LSC/2017/0370** |
| **Property** | : | **Flats 1 and 2, 84 Birchanger Road South Norwood London SE25 5BG** |
| **Applicant** | : | **Mr Stefan Kowalczyk and Mrs Michelle Kowalczyk (Flat 1) and Mr Zygmunt Kowalczyk and Mrs Claire Kowalczyl (Flat 2)** |
| **Representatives** | : | **Mr Stefan Kowalczyk and Mr Zygmunt Kowalczyk** |
| **Respondent** | : | **Mrs Catherine Ndekwe** |
| **Representative** | : | **In person** |
| **Type of application** | : | **For the determination of the reasonableness of and the liability to pay a service charge** |
| **Tribunal members** | : | **Judge Carr**<br>**Mr Miller** |
| **Venue** | : | **10 Alfred Place, London WC1E 7LR** |
| **Date of decision** | : | **June 2018** |

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**DECISION**

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## Decisions of the tribunal

(1) The tribunal determines that the sum of £5,484.81 is payable by the Applicants, Mr Stefan Kowalczyk and Mrs Michelle Kowalczyk, in connection with Flat 1 in respect of the service charges for the years 2009 to date.

(2) The Tribunal determines that the sum of £4,981.75 is payable by Applicants Mr Zygmunt Kowalczyk and Mrs Claire Kowalczyk in connection with Flat 2 in respect of service charges for the service years commencing 15th October 2015 to date.

(3) The Tribunal determines that there is a notional figure of £22,860 in the sinking fund account.

(4) The Tribunal determines that the estimated service charges in connection with the major works are £24,750.

(5) The amount that each of the Applicants is required to pay in connection with their contribution to the estimated costs of the major works is £630.

(6) The tribunal makes the determinations as set out under the various headings in this Decision

(7) 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 lessees through any service charge.

## The application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicants in respect of the service charge years 2009 – 2016 and estimated service charges for the year 2017 – 2018.

2. The Applicants also seek a determination relating to the estimated sums demanded in connection with major works to be carried out in the immediate future.

## The hearing

3. The hearing took place over three days, 12th and 13th March 2018 and April 9th 2018. The Applicants were represented by Mr Stefan Kowalezyk and Mr Zygumunt Kowalczyk at the hearing and the Respondent appeared in person.

## The background

4. The property, which is the subject of this application, comprises two flats – Flat 1 and Flat 2 - in a semi-detached house converted into three flats. Mr Stefan Kowalczyk and Mrs Michelle Kowalczyk are long leaseholders of Flat 1 and have been the long leaseholders throughout the period in dispute. Mr Zygmunt Kowalczyk and Mrs Claire Kowalczyk are the long leaseholders of Flat 2. They acquired the lease on October 15th 2009. Both flats 1 and 2 are currently sublet to tenants. The Respondent is the freeholder of the property and lives in Flat 3.

5. There has been a long running dispute between the parties in connection with service charges and major works and the Respondent's management of the building. The Application in part stems from a Tomlin Order which requires that in the event of a dispute in connection with the reasonableness and payability of service charges in connection with proposed major works the Tribunal will determine whether that demand is payable and reasonable. This will enable the freeholder to proceed with the works to the property.

6. 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.

7. The long leases of the flats owned by the Applicants require the landlord to provide services and the tenants to contribute towards their costs by way of a variable service charge. The specific provisions of the leases will be referred to below, where appropriate.

## The issues

8. At the start of the hearing the parties identified the relevant issues for determination as follows:

   (i) The liability of the Applicants for service charges up to and including service charge demand on account for the service charge year ending June 2018. This issue includes various challenges to items on the service charge accounts, together with challenges in connection with failure to consult, and a challenge concerning the liability of Flat 1 to contribute towards grounds maintenance.

   (ii) The notional amount that is in the sinking fund

   (iii) The reasonableness and payability of the demand for estimated service charges in connection with the proposed major works

9. 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 explained below.

10. It should be noted that, because this has been a protracted dispute between the parties, because the Respondent has taken an informal approach to account keeping, taking at times what might be described as short cuts in order to minimise costs, and because, on occasions, the Applicants have taken matters of repair into their hands, the tribunal has worked with the parties to achieve, as far as possible, agreement about respective liabilities rather than carried out a forensic financial exercise. Where agreement has not been possible, the tribunal has drawn on the evidence before it, and its own expertise in reaching decisions.

## Starting point for calculating service charge liability

11. The parties provided various figures and following negotiations and discussions, they agreed a starting point which would enable the tribunal to calculate any further deductions from respective liabilities.

12. The starting point for service charge liability for Flat 1 is £6,242.81 and for Flat 2 is £5,589.75. These figures are changed slightly, and in favour of the Respondent, from the figures agreed prior to the adjournment on March 13th 2018. The Tribunal provided the Respondent with an opportunity to check that she was happy with the calculation in addition to the three days she had had to consider the figures from the service of the additional bundles following the adjournment. She confirmed she agreed the figures.

13. The parties also agreed that the notional amount in the sinking fund was £22,860.

14. For the purposes of clarity these figures do not include any liability for ground rent which falls outside of the jurisdiction of the tribunal nor does it include the personal liability of flat 2 for a fee of £65 relating to the acquisition of the leasehold interest.

## Sums to be deducted from this amount so as to calculate the Applicants' liability

15. The applicants in their Scott Schedule set out their challenges to certain items which are included in their liability for service charges for the years

## Electricity charges for the communal areas

16. The first challenge to the service charges were charges for use of electricity in the communal areas. The Applicants made it clear that there were only 2 light bulbs in the communal area and suggested that some of the higher amounts demanded were excessive.

17. The Respondent stated that the charges were entirely based on the amounts demanded by the supplier. She supplied these accounts.

18. The tribunal noted that the electricity charges fluctuated over the years of dispute and suggested that once the charges were evened out the amounts were reasonable.

19. The tribunal determined that the charges for electricity in the communal areas were reasonable and payable and therefore there is nothing to be deducted from the liability of the Applicants in connection with electricity charges.

**Insurance**

20. The Applicants stated that whilst they acknowledged that insurance had to be paid, and they considered overall that the sum demanded was reasonable, their challenge was to the additional charges because it was paid on a monthly basis out of the Respondent's account rather than paid by the managing agent on an annual basis.

21. The Respondent said that she had to pay the monies monthly because of the extent of service charge arrears and that she had run the insurance herself in order to keep management costs to a minimum.

22. The tribunal considered that the extra charges resulting from monthly as opposed to annual payments were reasonable in this particular case because of the arrears of service charges. As no further challenges were made in connection with insurance charges, those charges are found to be payable and reasonable. Therefore nothing is to be deducted from the Applicants' liability in connection with insurance charges.

**Charges unsupported by invoices**

23. There are a number of demands made over the years which the Applicants challenge because the expenditure is not documented. The Respondent produced some documentation to support some of the payments. However a number of payments could not be substantiated and these sums are to be deducted from the liability of the Applicants.

24. The sums are as follows:

(i) A sum of £893.00 charged for general repairs and maintenance in 2013.

(ii) A sum of £146 for communal area cleaning, a sum of £167.50 charged for window cleaning and a sum of £360 for cleaning gutters and drains all charged in 2016.

**The decision of the tribunal**

25. The tribunal determines that these sums are to be deducted from the Applicants' liabilities.

**The reasons for the tribunal's decision**

26. The charges are not payable without documentation in support.

27. Therefore the sum of £522 is to be deducted from each of the Applicants liability. This sum represents one third of the total of the charges unsupported by invoices.

**Charge for repairs to side gate and joist to communal area**

28. A sum of £550 was charged in 2014 for repairs to the side gate and the joist to the communal area. The Applicants are not clear about their liability to pay this sum.

29. After discussion with the Respondent it appeared that the side gate is for the benefit of the Respondent only. However the invoice does not distinguish between charges for the joist and charges for the side gate.

30. The tribunal determines to limit the charges to the Applicants for in connection with this item to £100 each. Therefore each of the Applicants will have £83 (representing the difference between their share of £550 and £100) deducted from their liabilities.

**Land Registry fees**

31. There is an amount of £9.00 charged for a land registry fee charged in 2013, an amount of £70 charged in 2015. The Respondent was unable to provide satisfactory explainations as to the reasons for the charges.

32. The tribunal determined that Applicants' share of the sum of £9.00. be deducted from their liability for service charges.

**Accountancy fees**

33. The Applicants objected to a charge of £360 for preparation of independent accounts. They said that sum was excessive and not necessary.

34. The tribunal determines that the amount is payable and reasonable. It is a standard charge for the preparation of service charge accounts and it is reasonable for the Respondent to carry out an independent audit.

35. Therefore nothing is to be deducted from the liabilities of the Applicants in connection with accountancy fees.

**Management fees**

36. The Applicants objected to management fees charged by Urang. The objections were that the service provided had neither been extensive nor efficient. The Respondent continues to manage particular aspects of the property. The Applicants also argued that the Respondent should have consulted over the appointment of the managing agent.

37. The Respondent argued that the fees charged by the management company are reasonable and payable. She noted that the Applicants had asked for a management company to take over responsibility for running the building. She argued that the contract with the managing agents was terminable with three months notice.

**The decision of the tribunal**

38. The tribunal determines that the management fees are reasonable and payable.

**The reasons for the tribunal's decision**

39. The tribunal determines that the contract with the managing agents is not a qualifying longterm agreement and therefore does not require statutory consultation.

40. The charges of the managing agents fall within the reasonable spectrum of charges. The Applicants have not provided alternative quotes for managing agents fees.

41. Therefore no monies are to be deducted from the Applicants liabilities in connection with managing agents fees.

**Are amounts to be deducted because of failure to consult?**

42. The Applicants raised the Respondent's failure to consult in relation to a number of service charge demands over the years in dispute.

43. As part of the directions issued following the adjournment on March 13th 2018, the Respondent was provided with the opportunity to apply to dispense with the consultation provisions, and the Applicants were given an opportunity to provide evidence of any prejudice they had suffered as a result of any failure to consult.

44. The Respondent applied for dispensation from consultation as follows:

45. Repair to burst water pipe beneath the concreted communal footpath leading to the property's front door charged at £893.00 in . The Respondent says that the works were urgent because they were causing the formation of mildew on the public pathway which was potentially slippery and therefore hazardous to public users of the pathway. The work was carried out with the full knowledge and consent of the applicants. The cost of the work was competitive and cost efficient.

46. Full replacement of the property's rear back garden fence in 2010 at a cost of £1795.00. The Respondent states that this work was carried out in order to protect the property and the flats contained in the property from trespassers. The fence was unstable and old and provided very limited protection from people using the grounds of the property as a cut through to adjacent roads and surrounds. The work was therefore both necessary and urgent. Solid concert posts and boulders were used to permanently secure the fence to the ground. The work was of good quality and has stood the test of time.

47. Full replacement of the property's rear back side fence in 2010 at a cost of £850.00. This structure dated from the conversion of the house into flats during the 1980s and had rotten wooden pillars and no boulders and was near collapse. Re-fencing was urgently required to offer security and protection.

48. Re-roofing porch and bay window roof which was charged at £2750 in 2014 together with scaffolding charges of £480. The Respondent says that the structure was bowing and required urgent work in order to resolve this and to prevent further damage and possible collapse of the structure which was potentially dangerous to occupants and users. In order to resolve the problems the porch structure had to be reconstructed and retiled and scaffolding was required in order to carry out the work.

49. Roof repair works charged at £975 in January 2014. The Respondent stated that water ingress from the roof area was causing extensive black mould to cover a large surface area of two walls on the second floor of the building. The walls were becoming increasingly saturated with water and the damage threatened to affect the first floor level if it had not received urgent attention and repair. The costs were reasonable.

## The decision of the tribunal

50. The tribunal determined to exercise its discretion and dispense with the requirements to consult in these instances. It determined not to make an award in connection with any prejudice that might have been suffered by the Applicants.

51. The tribunal considered that the works were all necessary and urgent and if they had been delayed could have resulted in further costs.

52. The tribunal asked for observations from the Applicants in connection with any prejudice suffered. The Applicants were unable to provide evidence of losses that had resulted from the failure to consult, other than the disadvantages of not being able to obtain their own quotations for works. The tribunal therefore determines that the Applicants suffered no prejudice as a result of the failure to consult.

53. This means that no sums are to be deducted from the Applicants' liabilities as a result of failure to consult.

## What is the responsibility of flat 1 for costs of works of ground maintenance?

54. A number of items on the service charge accounts relate to works done on grounds maintenance and the garden.

55. The Applicants argue, in relation to flat 1, that it has no liability for any works of ground maintenance and to the garden of the house as flat 1 does not have access to the garden and it is not included in the demise.

56. The Applicants argue therefore that Flat 1 is not liable for its share of the following charges

    (i) A sum of £350 for the removal of a tree on the boundary fence charged in 2009

    (ii) Charges of £50 for ground maintenance, £250 for replacement of rear boundary fence, £250 for replacement of side boundary fence demanded in 2010

    (iii) Charges of £300 for ground maintenance, and £250 for fence maintenance charged in 2011

    (iv) Charges of £120 for ground maintenance charged in 2012

(v) Charges of £180 for ground maintenance charged in 2013

(vi) Charges of £223.70 for ground maintenance charged in 2014

(vii) Charges of £290 for ground maintenance charged in 2015

(viii) Charges of £180 for ground maintenance charged in 2016

(ix) Charges of £340 for ground maintenance charged in 2017

57. The Respondent argues that the grounds of the property include the front forecourt consisting of car parking spaces for flats 1 and 2, and a portion of space belonging to the Respondent but to which the Applicants have access. The forecourt is concreted and due to age has various large cracks and where there are cracks, grass and weeds frequently grow through it. In addition to this there is a communal side path to the right, facing the property, which is used by all residents to access the rear of the property and grounds of the property to the rear. This space is also concreted and in a similar worn condition as the front forecourt of the property. Thus it also suffers from extensive weed and grass growth, which requires regular maintenance.

58. There is also a garden at the rear of the property, and the Respondent argues that the right to use this is given to both flats as well as the Respondent. As all flats have access to the garden they are all subject to the costs of maintenance. A gardener is provided on a regular basis during the growing season.

59. The Respondent argues that the word appurtenances is something subordinate to or belonging to another, larger, principal entity. She argues that the two rear back garden fences and the hedges at the front of the property are an appurtenance of the property, which contains three flats and thus the responsibility of the maintenance of these fences and hedges fall onto all the lessees equally.

60. The Tribunal considered the wording of the lease to flat 1 carefully. It includes the following definitions:

(i) The Building: The freehold semi-detached house known as 84 Birchanger Road South Norwood London SE25 consisting of 3 maisonettes of which the demised premises form part together with all common parts and the appurtenances thereof.

(ii) The Maisonette: the ground floor flat known as Flat 1, 84 Birchanger Road South Norwood London SE25.

61. The First Schedule to the lease includes the following description of the demised premises:

> All that ground floor maisonette knows as Flat 1, 84 Birchanger Road, South Norwood, London SE25 all of which is shown on Plan B and thereon edged red TOGETHER with (a) the parking space numbered 1 in front of the house and edged blue on the Plan A and (b) the patio and garden area at the rear and side of the building and hatched green on the plan marked A.

62. The service charge obligation is set out in clause 3(3) (3) (1) of the lease

> In consideration of the covenants on the part of the Lesssor contained in Clause 5 hereof to pay to the Lessor on demand one-third of the sum which the Lessor may reasonably expend...
>
> (b) In carrying out external and structural repairs to and maintenance and external decoration of the building and all additions thereto including the roof and roof timbers and the loft the foundations the chimneys main walls and party walls the main door and common entrance hall the stairs and staircases in the building the water tank and other things used in common by the Lessee and the owners and occupiers of the remainder of the building

## The decision of the tribunal

63. The tribunal determines that the lessee of Flat 1 is responsible for the maintenance of the common parts of the grounds and the maintenance of the boundary to the property including fences which in this instance also includes the removal of the tree within the boundary fence. The lessee of flat 1 is not responsible for the garden at the rear of the property.

64. No evidence was given to the tribunal in connection with the costs of the maintenance of the rear garden. The tribunal therefore determines that a sum of £150 should be deducted from the overall liability of the lessee of Flat 1 in respect of ground maintenance costs.

## The reasons for the tribunal's decision

65. The tribunal accepts the argument of the Respondent that the definition of the building includes the boundary fences, because these are an appurtenance to the building. It also accepts that the costs of ground maintenance include the maintenance of the external common parts to the building which are currently concreted but in poor condition.

66. The extent of the obligation on the lessee of flat 1 in connection with the rear garden is not clear as the rear garden is not mentioned in either the demise or the service charge obligation. However the tribunal determines that as the garden is not used in common by the lessee and the owners and occupiers of the remainder of the building and drawing on the principle of contra proferentem the lessee of flat 1 is not obliged to pay a share of the costs of the maintenance of the garden.

67. It considers that the costs of such garden maintenance are likely to be relatively low in proportion to the entire costs, and probably represent no more than one third of the total costs of ground maintenance. Working from the figures provided, the tribunal estimates that one third of the costs is approximately £450. Flat 1's share of the charge is £150/ The tribunal recommends that the Respondent keeps separate the costs of the maintenance of the common grounds and the rear garden so that in future costs can be properly apportioned.

## The sinking fund

68. The parties agreed that the Applicants were required to pay sums into the sinking fund.

69. The parties also agreed that the first port of call for payment of the demands in connection with the major works is the sinking fund.

70. The Respondent explained that she had been using monies paid into the sinking fund to ensure that the building was insured and essential services provided. This explained why the actual amounts in the sinking fund was depleted.

71. The parties reached an agreement as to the notional amount of monies in the sinking fund. That figure is £22,860.

## The reasonableness and payability of the estimated costs for the major works.

72. The first point to be made here is that the demand relates to estimated costs. There will be a further opportunity for the Applicants to challenge reasonableness and payability of the actual sums demanded once the works are completed. Decisions made by the Tribunal at this stage are made bearing that further opportunity in mind.

73. The Applicants raised a number of arguments in connection with the reasonableness of the estimates.

74. Three items, £300 for the replacement of defective floorboards in the main hallway, £1450 for internal damp works, and £200 for replacement skirting boards, they argue are charges for works which have already been carried out.

75. The Applicants also argued that certain items were not a priority and therefore should not be included in the major works schedule.

76. The Respondent accepted that works carried out already should not be charged, and agreed those sums should be deducted from the estimate.

77. She disputed that the Applicants could determine the priority of works, and pointed out that these were works identified by the surveyor as necessary.

## The tribunal's decision

78. The tribunal determines that the estimates for works which have already been carried out should be deducted from the total. This means that the estimate of £26700 should be reduced by £1950.

79. The tribunal does not make any further deductions from the estimate.

## Reasons for the tribunal's decision

80. The parties agreed to the reduction of the estimate by £1950.

81. The tribunal agrees with the Respondent and considers that it is for the Respondent to determine what works require doing, following the advice of her surveyor.

82. Therefore the estimated charges for the major works are £24,750.

## Reasons for not allowing a set-off for works carried out by the Applicants

83. In the directions issued on 13th March 2018, the tribunal indicated it would provide reasons for not allowing the Applicants to set off costs of works carried out to their properties.

84. Those reasons are that the Applicants did not follow standard legal procedures for set off, in that they did not provide the Respondent with any clear indication that they were going to carry out the works in default, nor did they provide estimates etc in connection with the works.

**Name:** Judge Carr **Date:** 5th June 2018

## Rights of appeal

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

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

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

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

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

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

## Appendix of relevant legislation

### Landlord and Tenant Act 1985 (as amended)

### Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

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

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

### Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

   and the amount payable shall be limited accordingly.

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

### Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
   (a) the person by whom it is payable,
   (b) the person to whom it is payable,
   (c) the amount which is payable,

(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

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

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

**Section 20**

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

**Section 20B**

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

**Section 20C**

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are

not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
(aa) in the case of proceedings before a residential property tribunal, to that tribunal;
(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
(c) in the case of proceedings before the Upper Tribunal, to the tribunal;
(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

**Commonhold and Leasehold Reform Act 2002**

**Schedule 11, paragraph 1**

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
    (a) specified in his lease, nor
    (b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

**Schedule 11, paragraph 2**

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

**Schedule 11, paragraph 5**

(1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—
    (a) the person by whom it is payable,
    (b) the person to whom it is payable,
    (c) the amount which is payable,
    (d) the date at or by which it is payable, and
    (e) the manner in which it is payable.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—
    (a) has been agreed or admitted by the tenant,
    (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
    (c) has been the subject of determination by a court, or
    (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
    (a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).