FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BK/LSC/2018/0330**
Property	**:**	**Flat 3 Craven Court, 29-31 Craven Road, London W2 3BX**
Applicant	**:**	**Mr Alan Black**
Representative	**:**	**Applicant in Person**
Respondent	**:**	**Mr Rahmat Bamad**
Representative	**:**	**Mr Faisel Sadiq (Counsel).**
Type of Application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	**:**	**Judge Abebrese,** **Mr W R Shaw FRICS**
Date and venue of Hearing	**:**	**10 Alfred Place, London WC1E 7LR** **17 December 2018**
Date of Decision	**:**	**28 February 2019**

DECISION

Decisions of the tribunal

(1) The decisions of the tribunal are set out in paragraphs 52 – 73 in respect of the various items specified in the application and the Scott Schedule.

(2) The tribunal determines that the respondent reimburses tribunal fees paid by the applicant within 28 days of this decision.

(3) The tribunal makes an order under Section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

The application and the issues

1. The applicant raises issues to be determined by the tribunal as set out below. The Property is a three bedroom flat in a mixed use block. The applicant is the current lessee of the flat. The respondent is the current landlord. The lease is dated 20 May 1996.

2. On 3 September 2018 the tribunal received from the applicant two applications. One pursuant to s27A of the Landlord and Tenant Act 1985 which includes a related application under s20C of the Act in respect of any cost that the respondent may incur in connection with these proceedings. In addition a further application pursuant to schedule 11 to the Commonhold and Leasehold Reform Act 2002 in respect of administration charges claimed by the respondent.

3. The service charge years which are in a dispute are 2014/15, 2015/16, 2016/17 and 2018/2019. The total value of the dispute as stated in the application is £16,816.07. The applicant is also seeking an order under Section 20C of the Landlord and Tenant Act 1985 which gives the tribunal power to make an order that any costs are not to be included in the amount of any service charges payable by the tenant or any other persons who may be specified in the Section 20C application and also paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

4. The applicant states in the application that the service charges being claimed in the year 2014/2015, £3,758.60, 2015/16, £4,269.12, 2016/17, £4,510.16. In respect of the years 2018/2019 the applicant states that bearing in mind the determination of the tribunal in respect of the service charges in respect of the above mentioned years, and noting the amounts being demanded for 2018/19 is £36,150. The applicant's portion of this sum is £5,607.27. The applicant's request that the tribunal determine the reasonable amount which is to be payable by the applicant.

5. In respect of the administrative charges this may be summarised as follows. The landlord charged interest of £615.35 on service charge arrears and the applicant claims that no calculations were provided to justify the amount charged. The demand for payment was not accompanied by the summary of rights and obligations as required by the Administration Charges (Summary of Rights and Obligations)(England) Regulations 2007.

6. The applicant contends that under Section 21A of the Landlord and Tenant Act 1985 (as amended), if a landlord has failed to provide information required to be provided. Under Section 21, a tenant is entitled to withhold service charges up to the amount of the charges to which the information relates.

7. The applicant claims that the payment was made under duress because the landlord refused to acknowledge to the applicant's prospective mortgage lender that there were no disputes unless the applicant paid a number of administration charges. The applicant refers the tribunal to Clause 5(3) of the lease.

8. The applicant also claims in his application that the landlord is not entitled a charge of £50 on top of interest of late payment of service charge arrears. The applicant maintains that there are no provisions in the lease for such a claim.

9. The landlord's agent charged legal fees of £120 for early works in relation to arrears. Clause 3(13) of the lease sets out the circumstances in which a landlord may charge legal costs to the tenant and none of the circumstances under Section or 146 or Section 147 of the Law of Property Act 1925 applies in this instance. The applicant further contends that the demand for payment was not accompanied with a summary of rights and obligations.

10. The applicant further claims that the landlord has also charged legal fees of £102 for unspecified works carried out by unspecified solicitors and that this is also not provided for under Clause 3(13) of the lease and that none of the legal provisions cited in the above paragraph applies.

11. The parties referred the tribunal to the following clauses of the lease in respect of the service charges and administrative charges that apply in this application. Clause 1(6) states : "the total expense" shall mean the cost of the expenses and outgoings and other heads of expenditure set out in the Third Schedule which have not only been actually disbursed incurred or made by the Lessor or others during the year in question but also such reasonable part of all such expenses outgoings and other expenditure hereinbefore described which are of a periodically recurring nature".

12. Clause 1(7) states that the "service charge" shall mean an amount equal to the percentage of the total expense. Clause 1(9) states that the "contribution" shall mean such a sum as the Lessor or its agents shall from time to time specify at their discretion to be fair and reasonable on account of the service charge. Clause 1(13) stipulates that the Lessee (applicant) is to pay the Lessor on demand all cost and charges and expenses (including legal costs and surveyors fees) which may be incurred by the Lessor which fall under Section 146 or 147 of the Law of property Act 1925.

13. Clause 5(3) states that any sums which are payable by the Lessee to the Lessor and which are not paid within 21 days after the due date shall be accrue interest at the rate of 4%.

14. The tribunal was also referred to the Third Schedule which deals with the Lessor's expenses and outgoings and other heads of expenditure. The Lessee under this clause is obliged to pay the percentage which is referred to in Clause 1 of the lease. The expenses and cost listed in the Third Schedule includes the expense of maintaining, repairing, redecorations, renewing, cleaning and insurance.

15. The tribunal noted Clause 12 of the Third Schedule which states that the cost includes the "**cost of doing all acts matters and things as** shall be necessary or advisable for the proper maintenance and administration or inspection of the Building (including without prejudice to the generality of the foregoing the appointment and remuneration of managing or other agents solicitors, surveyors and accountants).

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

The hearing and the evidence

17. Mr Sadiq on behalf of the respondent informed the tribunal that he was instructed on Friday prior to the hearing of the appeal, he had no witness statements or a skeleton argument and that in the circumstances it was necessary for him to take further instructions from the respondent. In light of the representations made by Mr Sadiq the Tribunal allowed the parties a further 20 minutes before commencement of the hearing.

18. The parties returned after the interval and it was still the case that the respondent landlord was not present and after careful consideration by the tribunal we reached the conclusion that we had been provided with information in the two substantive bundles to enable us to proceed with the appeal.

19. The applicant in the supplementary statement of case in outline makes the following points. The respondent's son Alexander Baker is the sole Director and shareholder of Baker Property Ltd and this is his first experience in such a role. Alexander Baker is according to the applicant an inexperienced managing agent, he is not professionally qualified and is not a member of any professional body and this they claim has been formally stated in a decision at a previous Tribunal hearing.

20. On 12 May 2015 Alexander Baker's then girlfriend, incorporated a company, Tidy Ltd, of which she is the sole shareholder and director. According to the applicant she has no previous experience as a professional cleaner. The applicant maintains that despite the lack of management experience of the respondent's son the fees after his appointment were 51% higher than the previous amount charged. The professional cleaning fees were 43% higher than those previously charged by the company who held the cleaning contract.

21. The applicant explains in his supplementary statement at paragraph 9 that during a five year period between 2010-2015 before the respondent acquired the freehold the service charge on average was £3,397.59 per annum and at its highest was £3,562.58. The applicant adds however, that immediately following the appointment of Alexander Baker as managing agent the service charge paid by the applicant increased to £4,549.12 which was a jump of up to 28%. The amount payable each year he contends since the respondent acquired the freehold has increased on average at a rate of 12.4% per year and is now 57% higher than the 2014/2015 figure.

22. The applicant states that despite repeatedly not having been provided with requested information from the respondent they made payments of service charges totalling an amount of £6,760.58 between the period July and September 2015 as a gesture of good faith. As at November 2015 the amount of £5,326.71 remained withheld by the applicant.

23. In respect of the administration charges the applicant claims that he paid up the arrears under duress because in October 2015 the applicant was due to exchange contracts and the applicant's lender's solicitors required confirmation from the managing agent that there was no dispute between the applicant and the freeholder. The applicant paid service charges amounting to £5,326.71, interest of £615.35, a late payment fee of £50, legal fees of £120 for "early works in relation to the arrears, legal fees of £102 for unspecified works carried out by unspecified solicitors". The total amount paid was £6,214.06

24. The respondent in response to the applicant's supplementary statement in outline makes the following points. The respondent cites the relevant clauses which apply to this application which has been referred to above. The respondent refutes the suggestion by the applicant that he made service and administration charges under duress so as to allow

him to complete his mortgage transaction. The respondent claims that at the time the sums were being demanded the applicant did not raise any concerns. The respondent also rejects the claims of the applicant that he has not provided information which has been requested from him under Section 21A of the Landlord and Tenant Act 1985. The respondent claims that the applicant has not provided any evidence to suggest that he has not complied with any request and that the respondent's agents finalised the accounts for each of the accounting years.

25. The respondent also opposes any application that may be made by the applicant to prevent him from obtaining his legal costs and that all the claims that have been made in respect of service and administration charges are lawful and within the terms of the lease.

26. The applicant in response maintains the view that the respondent has not complied with the provisions under Section 21A of the LTA 1985 and this can be shown in the statement of accounts for the years 2009-2014. No statement of accounts have been received for the years 2013/14 and this he claims is evidenced in the letter by the applicant to Alexander Baker dated 7 September 2015 and is further supported by the then managing agent's letter to the applicant dated 22 December 2014.

27. The respondent is also of the view that the service and administration charges cannot be challenged by the applicant because it applies to sums which have been previously agreed or admitted by the applicant. The applicant rebuts this argument on the grounds that the payments were made under duress and that he has not waived his right to do so.

28. The parties both made representations and provided evidence essentially contained in the two hearing bundles in accordance with the Scott Schedule completed **("SCS")** by both parties.

29. The parties following the SCS addressed the tribunal on the issue of the contract with Tidy Ltd. It was submitted by Mr Black that the contract is a qualifying agreement of at least 12 month duration. The contracts are provided at pages 819-828 and that they have been signed a year apart to make them appear to be for 12 months only. The tribunal were specifically referred to the case of **Corvan (Properties) Ltd v Abdel-Mahmoud, Court of Appeal 2018 EWCA Civ 1102.** Subject to specified conditions, s20 of the 1985 Act, requires a landlord to consult his tenants before they enter into a qualifying long term agreement (QLTA). A QLTA is an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than 12 months. The landlord is obliged to consult where the cost incurred under a QLTA result in any tenant having to contribute to more than £100 in a 12 month accounting period (s20(3), (4) and (5) of the 1985 Act and Consultations Regulations reg 4).

30. The SCS for the period **2014/15** were dealt with as follows during the course of the hearing. In respect item 17 of the SCS which deals with the issue of the cleaning common parts and the contract with Tidy Ltd. The contention of the applicant is that Tidy Ltd is wholly owned by the respondent's son's former girlfriend and that she is completely unqualified to carry out cleaning services. The cost according to the applicant has increased by £50 and this he argues is unjustified.

31. Item 18 of the SCS deals with the issue of insurance the applicant claims that out of the total premium paid only one third is attributable to Craven Court. Furthermore, there has been no service of s20 notice and charges should therefore be capped at £100 per leaseholder.

32. **Item 19** of the SCS concerns accounts and audit fee where the applicant charges of £1,980. The Applicant states the accounts were signed by an unqualified person and in any event there was no s20 consultation notice served.

33. **Item 20** relates to the cleaning of the external part of the premises the sum being claimed of £16. According to the applicant this does not amount to a service charge as the front of the premises is demised to the restaurant. It was agreed between the parties that the sum being claimed is not in issue in respect of the rear of the premises.

34. Professional fees are being claimed in **item 23** and the argument of the respondent is that this does not amount to a service charge as it is payable by a third party (the ground floor restaurant lessee) and not the flat leaseholders.

35. **Items 26, 27 and 28** is headed as maintenance but the applicant states that it should be claimed under insurance. The respondent indicated that the total amount that he was seeking was £750 and this was agreed by the applicant and this item is therefore **no longer in issue**. In respect of items 29 and 32 the respondent also informed the tribunal that he was no longer pursuing a claim under these headings.

36. The respondent also informed the tribunal that he was willing to accept the offered sum of £43.87 for item 42, as a final settlement of this sum and was therefore no longer in issue. **Items 43 and 44** of the SCS raises the issue as to whether this is a long term qualifying agreement. Both parties referred the tribunal to the case of **Corvan (Properties) Ltd v Abdel-Mahmoud** cited above.

37. In respect of item 45 the SCS refers surveyor's fees regarding specification of works. The applicant however has no details on the nature of the works. The respondent representative could not provide any information on this issue.

38. Both parties made submissions on the contents of the SCS for the period **2015/16**. Item 1 concerns decoration of the common parts and the applicant states that the overseeing of parts of the decoration is part of the managing agents normal duties and this should be included as part of the standard fee. The respondent is of the view that the works took longer than had originally been anticipated.

39. In respect of **item 2** the Applicant questioned the additional charge by the manager to change light bulbs. Regarding Items 7 - 14 both parties raised previous arguments in respect of whether it was a QLTA and they had nothing further to add. However, the applicant added further that **item 12** concerns cleaning for different premises and we were referred to page 526 of the hearing bundle and this appears to be the case.

40. **Items 15 and 16** both relate to insurance policies one of which excludes terrorism and the other covering terrorism. The applicant claims that a third of the sum being claimed applies to Craven Court but that the sum owing has not been accurately calculated.

41. **Items 18-24** concerns cleaning of the external part of the premises and this raises the issue of QLTA. The applicants states that it is QLTA and therefore it is subject to capping. Similar arguments are also relevant in respect of **items 26-34** which relate to maintenance.

42. In respect of **items 45-48** which relates to maintenance the applicant states that these could have been claimed under the insurance and furthermore that there was no consultation under Section 20. The applicant similarly in respects of **items of 50-57** relating to management fees as there was no consultation again under Section 20 and it should therefore be capped at £100. **Items 58-59** relates to printing and postage and the applicant states that this issue has already been determined by the tribunal in a previous application and in any event the charge should be capped.

43. The service charges for the periods 2016/2017 in the SCS were also considered by the tribunal. **Item 2-7** deals with lighting of the common parts. The respondent is of the view that this is chargeable. The applicants as stated earlier is of the view that no receipts have been provided. Item 8 refers to emergency light testing. The applicant contended that this was duplicate work (as Item 7).

44. **Items 17-24** deals with the cleaning of the common parts and the applicant relies on points which have been raised in respect of the contract the contact given to Tidy Ltd.

45. **Item 25** relates to insurance and the applicant relies on the lack of Section 20 notice. Item 26 relates to accounts and audit fees and again

the applicant relies on the lack of Section 20 notice and this should also be capped. The applicant at the hearing stated that there is no written contract to show positively that it is not a QLTA. **Items 27-36** relate to cleaning of external parts and the applicant relies on arguments raised above and is of the view that this should not classified as a service charge.

46. **Item 38-44** relates to maintenance. The respondent is of the view that the works constitute a service charge. The applicant states that some of these works constitute improvements and should have been included in the standard management fee. In respect of items 47-48 the applicant is also of the view that the works are improvements. The respondent states improvements are claimable as service charges.

47. The applicant in respect of **items 51-57** which concerns maintenance it is submitted that the works are of a poor standard and the tribunal were referred to pages 213, 214 and 215 of the hearing bundle in support of this argument. The applicant also raises concerns regarding the works having been carried out by friends of the managing agents. He also states that the sums being claimed could be recovered through the insurance. The applicant claims that **item 58** is a quote but the amount is now accepted.

48. The applicant also disputes items 59-61 in respect of management fees for caretaking services. The applicant is of the view that the appointment of a caretaker was unnecessary and in any event there are no specific terms in the lease to appoint a caretaker. The respondent is of the view that there is a power to appoint a caretaker under paragraphs 12 and 13 of the Third Schedule.

49. The applicant relies on the lack of consultation under Section 20 in respect of **items 62-71**. **Items 72-75** relates to charges for pest control and the applicant states that no receipts have been provided. **Items 76-77** concerns postage and printing and the applicant relies on the argument raised above that the tribunal has already determined this issue in a previous application and the amount should in any event be capped.

50. In respect of the administration cost listed at page 156g of the hearing bundle the applicant is of the view that there is no contractual entitlement under the lease for a "late payment fee" and no summary of tenant's rights and obligations. The respondent is of the view that there is a written agreement, between the Applicant and the manager accepting the fees.

51. The Tribunal have also given careful consideration to submissions on the service charge budget provided by the respondent for the period 24 June 2018 to 23 June 2019.

The tribunal's decision

52. A large number of items on the SCS have been agreed. The SCS for the period 2014/2015 the Tribunal makes the following determinations. Item 1 relates to the previous service charge year and not therefore part of this application. The tribunal finds that **item 17,** cleaning of common parts is recoverable. The tribunal also finds, however, that this is an annual agreement but the respondent's total charge of £66 is not reasonable and that £40 per visit for all three years is reasonable.

53. In respect of **item 18** the Craven Court flats' share of the insurance premium is one third. The tribunal accept the representations of the applicant in respect of **item 19** that there was no consultation and no Section 20 notices were served and therefore the claim is restricted to £100 per leaseholder.

54. The tribunal concluded that item 20 is part of the claim referred to above in **item 17** and it is part of finding in respect of £40 for the three years. The tribunal in respect of **item 23** find that the professional fees being claimed is not a service charge for which Craven Court flats are liable.

55. The applicant at the hearing agreed to accept the sum of £750 in respect **items 26, 27 and 28**. In respect of items 29 and 32 the respondent informed the tribunal at the hearing that he was no longer pursuing the amounts stated in the schedule. In respect of item 42 the respondent accepted the sum of £43.87

56. The tribunal found **items 43 and 44** to constitute a QLTA and therefore there is a duty on the respondent to have gone through a consultation process in respect of the management fees which they failed to do. The amount recoverable by the respondent is therefore capped at £100 per year per leaseholder. The respondent we find was under an obligation to consult.

57. The tribunal find that in respect of item 45 there was a lack of information on the part of the respondent in respect of the works which have been carried out. In light of this we do not find the surveyor's fees are claimable as a service charge item.

58. The tribunal make the following conclusions in respect of the items listed in the SCS for the years 2015/2016. In respect of **item 1** the tribunal find that the 'overseeing' of the decorations is part of a managing agents normal duties and should not be an extra charge. The

appointment of the manager was a QLTA for which there was no consultation. Management fees limited to £100 per year per leaseholder.

59. **Item 2** relates to lighting of the common parts. The tribunal preferred the evidence of the applicant that this does not amount to a service charge as this should have been included as part of the manager's duties and receipts for light bulbs provided by the respondent.

60. The tribunal finds that items 7-14 is claimable by the respondent but only at £40 per visit and not £50. As item 17, paragraph 52 above.

61. The tribunal finds that items 15 and 16 in respect of insurance is claimable and that the portion of the Craven Court flats' liability is one third. The applicant in his evidence does concede that he is liable for his proper proportion of this third of the sum being claimed despite raising arguments about the calculation.

62. The tribunal concluded that **items 17-24** in respect of cleaning is claimable but is also limited to £40 per visit as stated above. Item 26 is as for item 2, paragraph 59. The tribunal are of the view that item 27 in respect of the notice boards are claimable. Items 28 and 32 are improvements and not claimable. Item 33 is a duplicate of item 27 and not claimable. Items 29, 31, and 34 are accepted by the Applicant. Item 30 is the responsibility of the ground floor restaurant.

63. In respect of item 44 the Respondent now accepts not chargeable. Items 45-49 now accepted by the Applicant.

64. The tribunal find that **items 50 to 57** in respect of management fees is subject to consultation under Section 20 because the contract was awarded without consultation and is therefore capped at £100 per leaseholder.

65. In respect of **items 58-59** regarding printing and postage the tribunal find these costs to be claimable on the part of the respondent but it is limited to £200 per year as costs which have been reasonably incurred.

66. The tribunal considered the claim for the years 2016/ 2017. **Items 2-6** in relation to lighting of the common parts and indicated above this item is not claimable as a service charge as no receipts have been provided for the light bulbs. Item 7 is accepted by the Applicant. Item 8 is for the same lighting test as item 7 only two months later and is not reasonable and not payable.

67. **Items 17-24** relate to cleaning as indicated above this is allowable but restricted to £40 per visit and this includes external and internal. **Item 25** relates to insurance and the tribunal formed the view that the

applicant's liability is his proportion of a third of the premium being claimed. The tribunal find that **item 26** in relation accounts audit fees is a QLTA and subject to consultation under Section 20 and is therefore capped at £100 per leaseholder.

68. **Item 27-36** in relation to cleaning is allowable as previously determined above and similarly it is restricted to £40 per visit. The tribunal also find that the items listed at 38-44 as maintenance are not claimable as they form part of a manager's duties or have no receipts or are improvements.

69. The tribunal considered that **items 47, 48 and 56 are not claimable** as maintenance and we do not accept the evidence of the respondent that they are improvements which should be allowed. We do not find that it was reasonable for the respondent to provide the mailbox. Furthermore there was general lack of detail in the demand for payment.

70. **Items 51-57 (excluding 56)** dealing with maintenance in our view may be **reimbursed** through insurance and it appears that part of the claim has already been reimbursed by Flat 1A. Therefore not payable by the Applicant.

71. The tribunal are of the view that items 59-61 are **not claimable** in respect of charges for caretaking. The evidence of the applicant suggests that there is no caretaking service on the premises. The respondent asserts that the service was necessary to check mail and lighting however, we do not find that this was required in the circumstances and if there was an issue it could have been dealt with by the manager.

72. Items 62 to 71 are as items 43 to 44 in 2014/2015 service charge year. The tribunal find that **items 72-75** dealing with pest control are not claimable because no receipts were provided by the respondent and therefore in the circumstances the claim is unreasonable. **Items 76-77** concerns postage. Allowed as determined above but limited to £200 per annum.

73. The applicant provided the tribunal on page 17 of the hearing bundle a service charge budget in respect of 2018/2019. We have not been provided with the detailed information that is required for us to make a detailed decision in respect of these years. However, decisions made above should be applied to this service charge year where applicable.

74. The tribunal considered the administration charges set out in paragraph 5, 6, 23 and 24 described above concerning £615.35 for interest for the late payment of a service charge; £50 penalty charge for the late payment of a service charge; £120 legal fees incurred by the respondent and lastly £102 incurred by the respondent in legal fees.

The tribunal were referred to **Avon Freehold Ltd v Gardiner 2016.** This case was relied on by the respondent to rebut the applicant's argument that his not liable and that they were made to the respondent under duress. The tribunal noted that the issue of duress is raised by the applicant in respect of the **administration charges and service charges. In Avon** the applicant/lessor made a request for payments in respect of administrative charges which the respondent/lessee later claimed had been paid under duress in order to allow him to complete a sale. The upper tribunal **held** that the applicant had not applied "wrongful or illegitimate threat" and stated that it was within the lessee's capabilities to have made the payment earlier rather than to wait until he was under pressure to complete a sale.

75. The tribunal are of the view that **Avon** may be distinguished from this application because the sums that were requested to be paid were payable in accordance with the terms of the lease in this however in this instance we find that the legal fees do not come within the terms of Clause 3(13) of the lease as this applies to circumstances relating to Section 146/147 of the law of Property Act 1925. We also find that it does not come within the wording of Clause 12 as "cost" as submitted by the respondent's representative. The administration charges we also find lacks receipts in respect of the legal fees, they are also vague and relate in the main to matters which are unspecified.

Application under s.20C and refund of fees

76. At the end of the hearing, the Applicant made an application for a refund of the fees that he had paid in respect of the application. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the Respondent to refund any fees paid by the Applicant within 28 days of the date of this decision.

77. The tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Application under paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002

78. The tribunal determines that it is just and equitable in the circumstances for an order to be made under paragraph 5Aof the 2002 Act, so that the respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Name:	**Date:**
Judge Abebrese	28 February 2019

Appendix 1 - 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).

Orders for costs, reimbursement of fees and interest on costs 13.—(1) The Tribunal may make an order in respect of costs only— (a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs; (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in— (i) an agricultural land and drainage case, (ii) a residential property case, or (iii) a leasehold case; or (c) in a land registration case. (2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor. (3) The Tribunal may make an order under this rule on an application or on its own initiative. (4) A person making an application for an order for costs— (a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made.