FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AU/LSC/2018/0318**
Property	**:**	**Various Flats at St Williams Court, 1 Gifford Street, London N1 0JG**
Applicants	**:**	**Mr J S Sethi and Mrs S Sethi (Flat 118)** **Mr D McEvoy and Mr & Mrs S Gainsley (Flat 2)** **Mr M Szummer (Flat 8)** **Mr W Tarr (Flat 82)** **Mr R R Shah (Flat 120)** **Mr K Doyle (Flat 110)**
Representative	**:**	**Mr W Tarr (a Lessee)**
Respondent	**:**	**Islington Court Management Company Limited**
Representative		**Ms Ellodie Gibbons of Counsel**
Interested parties	**:**	**(1) Clapham One Ground Rents Limited** **(2) One Housing Group Limited**
Representative	**:**	**Mr Joseph Steadman of Counsel (For First Interested Party, the Second Interested Party not appearing)**
Type of application		**Liability to pay service charges - Section 27A, Section 20C Landlord and Tenant Act 1985, Schedule 11**

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Tribunal members	**:**	**Judge Lancelot Robson** **Mr S Mason FRICS FCIArb** **Mr J Francis QPM**
Venue and date of Hearing	**:**	**10 Alfred Place London WC1E 7LR** **10th and 11th June 2019**
Decision Date	**:**	**5th August 2019**

DECISION

Decision Summary

The Tribunal decided that:

(1) The Lease provisions (notably Clauses 1.1, 2.4 and Schedule 9) were sufficiently wide to include the charges demanded by the Respondent. However, paragraph 3.6 of part 1 to Schedule 9, and paragraph 7 of Schedule 4, cast responsibility upon the landlord (currently the First Interested Party) for construction and laying out defects. To that extent, such items are excluded from the definition of "annual expenditure" payable by the Lessees. The Tribunal notes that the lease to the Second Interested Party does not contain such a para 3.6, but apparently nothing turns on this point and it was not raised as an issue in submissions.

(2) the Applicants' submission that the combined effect of the Lease repairing provisions and the terms of the Planning permission granted in connection with the construction of the Building (with specific reference to the Green Roof) should be interpreted so as to cast responsibility for all repairs to and maintenance of the Green Roof upon the Landlord for the duration of the Lease, was rejected.

(3) the internal reserve fund was reasonably demanded and payable.

(4) the external reserve fund was reasonably demanded and payable.

(5) the survey (and investigation) costs for the Green Roof - the Tribunal decided that notwithstanding the Expert Witness' opinion evidence, although leaks had been reported and investigated earlier, the real problems with this roof could only have become reasonably apparent in November 2017, when part of the roof covering was stripped off. The survey and investigation costs were reasonable and reasonably incurred.

(6) the repairs to the roof - the Tribunal noted that it had taken some years to identify the true cause of the leaks, but the various works done were reasonable and reasonably necessary in the light of the limited information available at the time. To penalise the Respondent (and indirectly the body of lessees as a whole, including the Applicants) with the benefit of hindsight would be unreasonable.

(7) it declined to make an order in favour of the Applicants pursuant to Section 20C of the Landlord and Tenant Act 1985. The Tribunal decided to make an order pursuant to para. 5 to Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

(8) The Tribunal also made the detailed decisions noted below

Preliminary Matters

1. By an Application made on 23rd August 2018, the Applicants seek a determination pursuant to Section 27A of the Landlord and Tenant Act 1985 as to their liability to pay, and the reasonableness in amount, of certain items in service charge demands issued pursuant to the terms of a (specimen) lease (the Lease) dated 28th April 2008 relating to Flat 82. The disputed items related to the service charge years 2016, 2017, 2018, and estimated service charges for the year 2019. Specifically, the items were contributions to the internal reserve fund, the external reserve fund, the costs of professional surveys to the roof, and the costs of any works of repair to the roof to remedy leaks; all relating to defects to the roof (the "Green Roof"). Applications relating to costs pursuant to Section 20C of the Landlord and Tenant Act 1985, and Para. 5 to Schedule 11 of the Commonhold and Leasehold Reform Act 2002 were also made.

2. Additionally, the Applicants in their skeleton argument applied to the Tribunal to have the Respondent removed as manager, permit the Applicant to have the right to manage the property, and appoint new agents to oversee the renewal of the "Green Roof", collect the monies required from the First Interested Party, and to subsequently manage the property. Further the Tribunal was requested to make various other Orders and Declarations relating to the management of the Property. The Tribunal decided as a preliminary point that it had no jurisdiction to consider such matters, as Section 27A gave it no powers to do so, and no other application had been properly made.

3. The Tribunal gave Directions for this hearing on 25th September 2018, with further Directions given on 10th January 2019 and 21st February 2019.

4. Extracts from the relevant legislation are attached as Appendix 1 below.

Background

5. The Tribunal's understanding of the factual background is based upon the documents in the hearing bundle, and the parties' respective statements of case. The Property is St Williams Court, built in 2008 being a development of four linked Buildings on 3 and 5 floors with internal and external common parts comprising 154 three bedroom flats. The First Interested Party has been the freehold owner of the Property since January 2013. The Head Lessee of 32 flats is the Second Interested Party. 122 flats are let on long leases to private lessees (the Private Flats). The Respondent is a party to the Lease and Headlease as the Manager. The Respondent is beneficially owned by the Second Interested Party and the lessees of the Private Flats. There are four roofs on the development; three asphalt roofs and a "Green Roof", which, as agreed by the Parties, has failed.

6. Problems with the roofs of individual flats began at some point in 2013/14. Various reports and remedies were made and undertaken. The insurers of the Building and the "Premier Guarantee" for new homes both disclaimed responsibility for reasons not the subject of this application. After the application was made, the existence of para.3.6 was noted. After receipt of the Joint Expert's Report, and shortly before the hearing the First Interested Party accepted liability for the defects, but refused to accept liability for any consequential costs or increases in repair costs occurring since 2014, when it considered that the problem should reasonably have been discovered by the Respondent's agents. The Applicants dispute that they should have to pay towards any of those costs through the service charge.

Hearing

7. The Applicants were represented by Mr Tarr (Flat 82), with the assistance of several other lessees. The Respondents were represented by Ms Gibbons of Counsel. The First Interested Party was represented by Mr J Steadman, also of Counsel. The solicitor to the Second Interested Party, Ms Curtis, sent an email to the Tribunal stating that her client did not intend to appear. Mr J R M De La Mere BSc (Hons) MRICS gave opinion evidence as the Single Joint Expert appointed by the President of the RICS at the request of the Applicants and the Respondent. Ms F. Docherty (James Andrew Residential Ltd; "JAR") the property manager, gave factual evidence pursuant to her witness statement. At the start of the hearing the Tribunal was requested to rule on who should pay for the attendance of Mr De La Mere. The Tribunal ruled that these costs were dealt with in the Directions, i.e at the joint cost of the Applicant and the Respondent. Also, the Tribunal would expect an Expert to appear unless it had previously agreed that he or she was not required. At the start of the hearing, the Applicants requested leave to include a 5th volume of evidence. Ms Gibbons and Mr Steadman generally agreed, although Ms Gibbons objected to the inclusion by the Applicants of the written opinion she had given to the Respondent at the commencement of this application. In her view it was privileged, and she was not aware that it would be disclosed to the First Interested Party. There was some discussion of

this issue. In the end the Tribunal ordered that the opinion to be withdrawn, although it appeared that the members of the First Interested Party might have already seen it, although Mr Steadman stated that he had not seen it.

Submissions

Applicants

8. In Mr Tarr's view, the 3 issues to be decided were: (1) who should bear the uplift in repair costs since 2014;
(2) whether as between the Applicants and the Respondents who should bear the cost of works done as a result of the alleged failure to identify the cause of the roof problems in 2014.
(3) between the same parties what additional work was required in respect of the internal decorations as a result of that failure.

9. The Applicants submitted that the First Interested Party was in actual control of the Respondent in 2014 as it had appointed certain of the Directors. The then managing agent,Braemar, had been appointed by the Freeholder. In 2014 the manager was replaced because it was unsatisfactory. There had also been claims on the insurance of which the freeholder must have been aware. There was also a clause in the insurance document which, the Applicants submitted, meant that the property was currently uninsured.

10. The relevant words in the Planning Permission dated 3rd April 2008 were in Condition 10 where it was stated:
"The green roof shall be provided as shown and shall be permanently maintained thereafter". This, it was submitted, should be interpreted so that the lessees should not be responsible for maintenance of the Green Roof at any time.

11. The concierge's log in the bundle showed that there had been issues with water on November 2014 on the first floor landing, and in the basement in July 2013. There was a reference in the minutes to a Directors meeting in 2014. There was a report by Harris Associates to JAR relating to leaks on 3rd July 2015. In 2016 there was an ADI report relating to Mr Doyle's flat (Flat 110). [Tribunal's note: noting problems with lead flashing and membrane around a soil stack]. There were problems in Flat 134 (at the other end of the roof) in 2017. The Second Interested Party had also written to JAR about the roof on 24th November 2017

12. The Respondent should also know when the "mansafe system" was installed, but claimed not to know this. Access logs existed which had to be signed by contractors when they went onto the roof. The mansafe system had been installed after the original construction, and had been linked with the problems.

Respondent

13. The Respondent submitted that the landlord's covenant and obligation was very widely drawn, as was the lessees' service charge obligation. The only exception was para.3.6. The Respondent's interpretation was that all other costs were recoverable by the Respondent. In reality the dispute was one between the Applicants and the First

Interested Party. The Respondent's difficulty was that it had no assets other than the funds provided by the Applicants and the other lessees. The Respondent could not be criticised for being cautious about spending money which might not be refunded by the freeholder.

14. The First Interested Party's current position was that it would only meet the cost of the work as at 2014. The Joint Expert gave evidence that there had been no change since then except in the costs of building work. The First Interested Party effectively was saying that the work should have been carried out sooner, but without funds the Respondent could not do so. The Respondent accepted that the true nature of the work might have been identified by a Building Surveyor, but the Joint Expert (a Building Surveyor) could not say what a reasonable property manager should have noticed.

15. Answering the Applicants' points relating to specific leaks, the Respondent submitted that it was difficult to say that these problems originated in the roof. One item seemed to relate to the water table. The Leak Detection (ADI) Report in 2016 in May 2016 (p.754 of the bundle) did not show a construction defect but only a particular issue around the roof vent terminals. While there was a problem with a flat under the Green Roof, the issue at that time was still considered to be a problem related to a soil pipe, not the whole roof. The Harris (CAPEX) Report in 2015 looked at the Building as a whole but did not identify a problem with the whole roof. At p.581 of the bundle, it stated;"The green roof generally appeared in fair condition". The Report identified items which agreed with The Joint Expert's evidence of the ongoing costs for a green roof, but no major work was identified.

16. There was no evidence of the Green Roof having failed until 13th September 2017. The letter from the Second Interested Party to JAR was dated 14th November 2017. The Respondent had investigated all leaks previously notified to it, and they did not suggest a problem. Schedule 9 to the Lease was very widely drawn, so the Respondent submitted it was entitled to recover the cost from the lessees, subject to any recovery the lessees/Respondent might be able to make against the Freeholder.

17. Referring to the cost of remedying the consequential internal damage caused by the water ingress, again the Respondent submitted that the Lease permitted it to recover the cost from the lessees, and that the real dispute was between the Applicants and the First Interested Party. The Respondent set out the disputed service charge items and amounts at paragraph 13 of its skeleton argument. [Tribunal's note: these items and amounts were not disputed at the hearing].

First Interested Party

18. The First Interested Party submitted that its only obligation was under para. 6 of 4th Schedule to the Lease, which obliged it to pay sums falling under para. 3.6 of the 9th Schedule. An ongoing concern with the management was not envisaged by the Lease. The Applicants' interpretation appeared to have no commercial purpose. Para.3.6 was intended to prevent a freeholder from finishing the development at the lessees' expense, or using the service charge being used to fund defects in construction. Neither the Lease nor the planning permission could reasonably permit the interpretation argued for by

the Applicants. Para. 3.6 should be interpreted purposively, and the word "maintained" in Condition 10 of the planning permission was intended to ensure that the use of the Green Roof was retained and not changed to e.g. a sitting area.

19. The Applicants and the Joint Expert suggested that the problem should have been discovered by March or April 2014, or even (per the Joint Expert), after the first winter. The First Interested Party submitted that the problem lay with the Respondent's agents. They admitted that they had not been aware of Para 3.6 until March 2018. The First Interested Party had never denied that if there was such a defect it would take responsibility.

20. Replying to the Applicants' suggestion of an inappropriate relationship between the Respondent, the First Interested Party, and the previous managing agents, Mr Steadman stated that he had checked this point himself at Companies House with no result. The First Interested party had been incorporated in May 2012. In March 2012 Rendall & Rittner had been appointed as managing agents, and were replaced by Braemar in 2013. Braemar was removed on 1st April 2014, and JAR was appointed on 1st October 2014. Also, there was nothing in the Lease to allow the First Interested Party to appoint the managing agent, there was only a backstop allowing an appointment if the Respondent failed to do so. The shares in the Respondent had been allocated in 2011, so that by 2012 the Respondent was in fact controlled by the shareholders and it was noted that the Second Interested Party controlled 32 shares. Mr Steadman accepted that the identity of the Directors of the Respondent might affect the day to day management, but the shareholders were ultimately in control. The particular Director named by the Applicants was related to a member of the Developer, but had only volunteered in default of sufficient volunteers from other lessees. The First Interested Party rejected any liability for any failures of the Respondent or its agents in the period of concern.

21. The Tribunal was in fact being asked to decide 3 points in this application;
a) whether the service charges for the years 2016 - 19 are recoverable under the Lease,
b) whether the charges were reasonable;
c) when the Respondent should have discovered the defect.

Mr Steadman then presented a table of the invoices for the period, some divided into two categories, those in green were, he submitted, patch repairs to the roof, and outside the First Interested Party's liability. Those in blue were necessary to remedy water ingress (i.e consequential works) which also fell outside the terms of Para 3.6. As the real problems should have been identified in 2014, the First Interested Party should not be liable for either category of items.

22. Mr Steadman further submitted that the Tribunal was not tasked with quantifying the cost of the roof repairs, or the amount that the Freeholder should pay in this application, but only if the service charges demanded by the Respondent were reasonable. It was up to the Respondent and the Freeholder to make arrangements for the replacement of the roof. If it was possible to find a solution without replacing the

roof, then that would be reasonable. The Freeholder should not be tied to what it considered was the most expensive option.

Decision

23. The Tribunal considered the submissions and evidence. As a preliminary point, the Tribunal decided that the Applicant's submissions that the Respondent or its managing agents were controlled or improperly influenced by the First Interested Party lacked credibility.

a) Relating to the service charges, it accepted the Respondent's submission that the service charge provisions were very widely drawn. The Applicants did not seriously contest that point. The Applicants' submission relating to the proper interpretation of para 3.6 was novel, and not backed by any useful authority. It decided that the submission made on behalf of the First Interested Party on the proper interpretation of para 3.6 was helpful. The Tribunal decided that when interpreting a lease provision, it should, in accordance with well established judicial precedent, look at the plain meaning of the words, and endeavour to discover what a reasonable bystander at the date the lease was granted would have thought that the service charge provisions and para.3.6 meant. The Applicants' submission suggested that the Developer/Freeholder was obliged to repair and maintain the Green Roof for the duration of the Lease. This interpretation appeared somewhat fanciful in the real world, particularly in the face of other more likely interpretations following the plain meaning of the words. The wording of the planning permission seemed irrelevant. The parties' obligations to each other are defined by the Lease, where there is no reference to the relevant terms of the planning permission. In any event, the Tribunal accepted the Freeholder's interpretation of the word "maintain". That interpretation was a much more proper subject for a planning condition, (i.e the use of the roof), as opposed to an attempt to impose liability for repairs and maintenance of the roof in perpetuity. Thus, the Tribunal decided that the Respondent was entitled in principle to charge the costs of the surveys and works already done, and the proposed works to the service charge pursuant to the Lease, subject only to credit being given for any reimbursement recovered by the Respondent from the First Interested Party subsequently. While the Tribunal had some sympathy for the lessees being required to find the costs "up front" due to structural and legal matters beyond their knowledge and control, the alternative would be to await the outcome of negotiations and possibly very complex litigation between the Parties, and an as yet undetermined number of third parties. Fixing the leaking roof quickly, and then sorting out who should have ultimate liability, is much more beneficial to all parties, and particularly protects the lessees' wellbeing and investments. Further, taking an entirely practical view, the Respondent, which is contractually responsible for the repairs and maintenance, has normally no recourse to funds other than those provided by the lessees.

b) The Tribunal noted and placed reliance upon the statement of Ms Docherty in connection with the above, that lessees would be credited pro rata with any sums so recovered.

c) Relating to the question as to whether the Respondent should have discovered the true state of the Green Roof in 2014, the Tribunal noted that there was much complex and conflicting evidence. While the Joint Expert was very clearly of the opinion that the problem would have very quickly become obvious to a Building Surveyor, he agreed that he could not say whether a (presumably competent) managing agent should have spotted the cause of the problem so quickly. The Tribunal noted that the roof had been constructed in about 2008. The evidence suggested that no relevant problems had been notified to it prior to 2013/14, as the Applicants withdrew their submission of leaks in 2012 due to lack of evidence. The current agents had called in specialist assistance in 2014 shortly after being appointed in response to water ingress becoming apparent. In 2015, the Harris Report did not identify major ongoing problems with the roof. There were other reasonable and likely explanations put forward for the problems, and some of the water ingress incidents were traced to other causes. It also appeared from the evidence offered to the Tribunal that not all the problems had been revealed to the Respondent by the Second Interested Party at that time, and it had carried out work on the roof, possibly more than once, apparently without the Respondent's knowledge or permission. Once the roof had been investigated and partially stripped in November 2017, the cause became clear.

d) Thus the Tribunal considered that what is now obvious with the benefit of hindsight, would not necessarily have been obvious in 2014, 2015, or 2016. Reported problems in those years were traced to other particular items. The Tribunal further noted that the Respondent was dealing with a new roof, and that in the absence of unequivocal evidence, it was not unreasonable to assume that the problems were related to snagging issues with the construction, rather than the total failure of a new roof. The Respondent was also obliged to demand and obtain the necessary funds before authorising major works. While the Tribunal considered the Joint Expert's views very carefully, it considered that, like the Tribunal, he had the benefit of all the evidence, and particularly the partially stripped roof. His methodology and opinion as to the specific problems with the roof was accepted. However hindsight is a wonderful thing. On the other hand, the Respondent's agent, did not have that advantage, or claim any significant expertise in Building Surveying. It had relied upon the reports of its experts. If it had ignored its experts, and advised the Respondent and its shareholders to replace the roof, it would have laid itself open to very serious criticism, and financial consequences if it was not entirely correct in its assessment. All things considered, the Tribunal concluded that the Respondent had not unreasonably delayed or failed to discover the true cause of the problem before November 2017.

d) Relating to the question as to whether the individual items of charge were reasonable, the Tribunal considered that most, if not all, of the items in dispute were effectively related to investigatory work. While some work might now be considered to have been wasted, such work as a whole provided pointers towards the true situation, and should therefore not be disallowed. The Tribunal decided that the demands for the relevant service charge years (as noted in para.13 of the Respondent's skeleton argument) were reasonable and reasonable in amount. For the avoidance of doubt, the Tribunal decided that the Reserve Funds in dispute were reasonable (subject again to credit for any

reimbursement obtained by the Respondent from the First Interested Party pursuant to para. 3.6)

Section 20C Landlord and Tenant Act 1985 and Paragraph 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002

24. The Tribunal notes that only the Respondent's costs are in issue in this part of the application. The Tribunal decided that it would deal with these matters summarily. The Applicants submitted that the Respondent's costs of this application should not be considered relevant costs and added to the general service charge, or to any administration charge charged to any individual lessee. The Tribunal is therefore asked to exercise its discretion (acting reasonably) when deciding if it should make such an order. The Tribunal noted that it has decided all matters able to be disputed in this application in favour of the Respondent. It also notes that the Respondent is entitled by the Lease to charge its costs to the lessees collectively. Also, the Respondent is owned by the lessees collectively, and any shortfall in the service charges or administration charges would have to be made up by the shareholders. The Tribunal considers that while the application was unsuccessful, the decision is likely to benefit the lessees collectively. The Tribunal therefore decided that it would make no order under Section 20C. The Tribunal noted that there appeared to be very restricted provision to charge administration charges to individual lessees, which was not relevant to the present circumstances. However, in case the Tribunal's view was erroneous, and for the avoidance of doubt, it decided to make an order under Paragraph 5 so that all lessees will contribute pro rata to the Respondent's costs through the service charge.

Tribunal Judge: Lancelot Robson Dated; 5th August 2019

Appendix 1

Landlord & Tenant Act 1985

.Section 18

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

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

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

Section 19

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

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

Section 20B

Limitation of service charges: time limit on making demands

(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 21B

(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4) Where a tenant withholds a service charge under this section any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

(5) and (6)....

Section 27A

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

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

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

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

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

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

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

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

Commonhold and Leasehold Reform Act 2002
Schedule 11

"Meaning of "administration charge"

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 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) .....

(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).....

Reasonableness of administration charges

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

3. .....

Notice in connection with demands for administration charges

4.- (1) a demand for the payment of an administration charge must be accompanied by a summary of rights and obligations of tenants of dwellings in relation to administration charges.

(2) (3) and (4).....

Liability to pay administration charges

5.- (1) An application may be made to a leasehold valuation tribunal for a determination whether an administration charge is payable and, if it is, as to

a) the person by whom it is payable

b) the person to whom it is payable

c) the amount which is payable

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

e) the manner in which it is payable.

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

(3) (4) (5) and (6)....."
