FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/00ML/LSC/2019/0013 & CHI/00ML/LAC/2019/0005
Property	**:**	Flat 12, 37-38 Bedford Square, Brighton BN1 2PL
Applicant	**:**	Miss Hannah Chapman
Representative	**:**	
Respondent	**:**	Chancery Lane Investments Limited
Representative	**:**	Moreland Estate Management Darlington Hardcastle solicitors
Type of Application	**:**	For the determination of the reasonableness of and the liability to pay a service charge and administration charge
Tribunal Member(s)	**:**	Judge Talbot Mr N I Robinson FRICS
Deliberation	**:**	21 August 2019
Date of Decision	**:**	13 September 2019

DECISION

Decisions of the Tribunal

1. The Tribunal determines that the following sums are payable by the Applicant to the Respondent in respect of the disputed service charges:

2017	£
Internal decorations	250.00
Asbestos survey	nil
Common parts electricity	18.84
Door entry system	42.40
Fire alarm & emergency lighting	58.84
General repairs & maintenance	81.19
Management fees	128.89
Sinking fund	nil
Total	580.16

2018	
Asbestos survey	nil
Fire alarm & emergency lighting	46.98
General repairs & maintenance	93.75
Management fees	135.42
Sinking fund	nil
Total	£276.15

   This table does not include the undisputed service charges for which the Applicant is liable to pay 1/18 of the Respondent's actual expenditure as set out in the service charge annual accounts (docs.189 & 194).

2. No charges are payable for legal costs or interest for 2017 & 2018.

3. The Tribunal makes the determinations as set out under the various headings in this Decision.

4. The Tribunal make 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.

5. The Tribunal determines that the Respondent shall pay the Applicant £100 within 28 days of this Decision, in respect of the reimbursement of the Tribunal fees paid by the Applicant.

6. The Tribunal does not make a costs order under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) 2013.

The application

7. The Applicant seeks a determination pursuant to Section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the

amount of service charges and (where applicable) administration charges payable by the Applicant in respect of the service charge years.

8. A case management hearing took place by telephone on 13 March 2019. The Applicant took part but there was no attendance by or on behalf of the Respondent. As the Respondent failed without explanation to comply with the Tribunal's Directions, on 24 April Judge Agnew issued Notice that the Tribunal was minded to debar the Respondent. The Respondent's solicitors replied that the Respondent could not locate the Application or the Directions. This explanation was accepted by Judge Morrison, who decided not to debar the Respondent and extended the time limits for compliance with Directions.

9. By that stage, the Applicant had also made an Application in relation to administration charges, in respect of legal costs and interest charged by the Respondent's managing agents, Moreland Estate Management. This was directed to be heard at the same time as the service charge application. For reasons explained below, it was not necessary to issue a separate determination.

10. Neither party requested an oral hearing. The Tribunal considered that the matter was suitable for a determination on the papers.

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

The Property

12. The members of the Tribunal inspected the exterior of the property and the internal common parts, accompanied by the Applicant, Miss Hannah Chapman. There was no attendance on behalf of the Respondent.

13. The property which is the subject of this application is formed from two mid-terrace five-storey plus basement buildings originally constructed as two houses in the mid 19th century and subsequently converted into 18 flats. All the flats are accessed from the entrance to no.37, except for flats 5 & 6, which use the original door to no.38, and flat 3, which is accessed from Montpelier Road to the rear.

14. The elevations, which are Grade II listed with balcony and canopy details at the first floor front, are rendered and painted with timber windows, mostly double hung vertical sashes. The decorations were fair, although the front door to no.38 was in need of attention.

15. Internally, the common parts to no.37 were painted to a smooth finish with carpeting throughout. The decorations and carpets, which were renewed in 2017, were marked in various places but the standard of day-to-day cleaning appeared adequate. The lights, which are on timer switches, all appeared to be working. There were no warning lights on the fire alarm panel.

16. As the Applicant had alleged that weekly fire alarm testing was not being carried out, the Tribunal members looked at the fire record books stored by the fire alarm panel. From a brief reading, it appeared that regular inspections had been undertaken and recorded by date and signature on behalf of Brighton Fire Alarms over the period in question.

17. The Applicant had also disputed that window cleaning was being done. The Tribunal notes that there were no common part windows, just some glazing to the entrance doors and frames.

18. Access was not obtained to no.38 but it was possible to look through the letter plate into the common parts as far as the entrance doors to flats 3 & 5, which looked similar to those in no.27. albeit smaller.

The lease

19. The Applicant holds a long lease of the property dated 26 May 1982 for a term of 125 years from 25 December 1981, which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The tenant's contribution is 1/18.

20. By clause 7(1), the landlord may demand a payment on account at its discretion of anticipated expenditure, payable in advance on 25 December each year. Clause 7(4) provides that following service of certified accounts of actual expenditure, the tenant must pay 1/18 of any deficiency, but in the event of a surplus, the landlord has a discretion either to repay the tenant, to credit the tenant's next service charge advance payment, or carry forward the surplus as a reserve fund.

21. There is no other provision in the lease which permits the landlord to levy a reserve fund of any kind.

22. Any other specific provisions of the lease will be referred to below, where appropriate.

The issues

23. The Tribunal identified the relevant issues for determination as follows:

- The payability and/or reasonableness of service charges for 2017 & 2018, relating to certain items of charges disputed by the Applicant
- Payability of legal costs and interest.

24. Following Judge Morrison's Directions, the Respondent filed a Witness Statement of Laurence Freilich, Director of Chancery Lane Investments Limited. The Tribunal was not greatly assisted by this statement, which was generic in content and contained basic confusing errors, such as describing the landlord as "the Claimant" and referring to the Applicant as "the Respondent".

25. Appended to the statement were service charge budgets and accounts, demands sent not only to the Applicant but also her predecessors in title, and a printout purporting to be a spreadsheet but which had printed out as several pages of random numbers. Following a request from the Tribunal, the spreadsheet was re-sent in legible form. The Applicant sent a statement in reply.

26. The Respondent's witness statement did not include any receipts, invoices or other documentary evidence of any of the landlord's claimed expenditure. There was no explanation for this failure. The Tribunal has therefore done the best it can using the figures from the service charge accounts, which the Applicant has not directly challenged.

Preliminary matters

27. It worth noting at this stage some matters common to all the items in dispute. Taking an overall view of all the evidence, it appears to the Tribunal that the Respondent's practice was to prepare a budget of anticipated expenditure upon which to calculate the payments on account demanded in advance on 25 December 2016 for the year 2017 and 25 December 2017 for the year 2018 (as per cl.7(1) of the lease).

28. However, it also appears to the Tribunal that no balancing exercise took place after the end of the accounting year, as required by cl.7(4). This has given rise to some confusion. The Applicant seems to have challenged various service charge items on the basis of the anticipated budget of service charge expenditure (docs 184 & 185), whereas the Respondent's reply relies upon the actual expenditure set out in the annual accounts, which generally was not the same. The Respondent further contends that the Applicant was not in the event charged for some items.

29. So, for example, the statement of budgeted service charge expenditure for 2017 shows a breakdown of budgeted amounts under various service charge items, totalling £19,988, of which 1/18 is £1,110.45. This explains the service charge demanded on account by a demand sent on 1 December 2016. However, that demand also included an additional sum of £472.23 for an "internal redecoration project". This figure does not appear in the budget as anticipated expenditure. Perhaps not surprisingly, the Applicant was under the impression that this was the amount she was being charged for internal redecorations.

30. In the absence of any explanation from the Respondent, the Tribunal used its knowledge and expertise to analyse the accounts. It noted that the accounts for the y/e 24 December 2017 referred to an "internal redecoration fund account" demanded in the year, of £8,500.14. This figure equates to £472.23 x 18, i.e. the number of flats, but does not appear in the budget as anticipated expenditure. It is not known how the Respondent arrived at this figure, whether for example it was based on a specification of works or costed estimates from contractors. The Tribunal therefore inferred that the Respondent had added what was in effect a reserve fund charge allocated to internal redecorations.

31. The 2017 y/e accounts (doc.189) show that the landlord's actual total expenditure for that year was £30,870.98, as against the budget and service charges demanded of £19,988.10, leaving a shortfall of £10,882.87. The accounts also show an "internal redecoration fund account" of £8,500.14. What the Respondent's accountants then appear to have done, is to "transfer" the £8,500.14 from the "internal redecoration account" (along with £1,000 from the "sinking fund account") and to have applied ac £46.81 balance from 2016, to reduce the negative balance carried forward to -£1,335.92.

32. It is not known why the Respondent did not simply follow the terms of the lease and demand the shortfall between the payments on account and actual expenditure from the tenants at the end of the year. This would have amounted to 1/18 of £10,882.87 per flat, equating to £604.60.

33. By contrast, in 2018, the budget was £21,480 (doc.185) but the actual expenditure of £19,009.20 was less. Again, it is not clear why the Respondent did not follow the lease and either refund or credit the tenants or carry forward the surplus of £2,470.80 as a reserve. Instead, it appears the Respondent's accountants applied the surplus to offset the previous year's loss and carry forward the sum of £1,135.18.

34. This analysis may go some way towards clarifying some of the confusion arising from the service charge demands and the lack of explanation by the Respondent to reasonable queries by the Applicant.

The Tribunal's decision

35. Turning now to the disputed service charges, having considered the written evidence and submissions from the parties, and all the documents provided, the Tribunal has made determinations on the various issues.

36. The Tribunal determines that the amount payable in respect of the service charge items is as set out at para.1 above.

Reasons for the Tribunal's decision

2017: Internal Decoration Project

37. The Applicant was understandably under the impression that she had been charged £472.23 for the cost of internal decorations, as this was the sum demanded on account from her. She reasoned that as this sum exceeded £250 per flat, the landlord should have carried out statutory consultation under s.20 of the 1985 and failed to do so, she should not be liable for the excess of £222.23.

38. The Respondent gave 2 alternative and contradictory responses: (1) that the actual cost was £4,500 which fell under the threshold for

consultation, and/or (2) that the sum was taken from the sinking fund "built over the years" so there was no charge to the Applicant.

The Tribunal's decision

39. The Tribunal determines that the amount payable in respect of internal redecorations is £250.

Reasons for the Tribunal's decision

40. There is no evidence whatsoever that the Respondent had built up a reserve fund "over the years" to defray the cost of the internal decorations. As analysed above, the only reference to an "internal redecoration fund account" appears in the 2017 accounts and is the sum of £8,500.14, or £472.23 x 18, as demanded in advance from the Applicant (and presumably the 17 other lessees) on 1 December 2016.

41. The Respondent has not explained how the actual cost of the internal redecorations came to be £4,500 rather than £8,500.14, and has provided no receipts or invoices to support the expenditure.

42. Nonetheless, the Tribunal saw from its inspection that the redecorations had been carried out and the Applicant did not challenge the cost of £4,500, merely any amount demanded from her over £250.

43. For the sake of completeness, the Tribunal noted that there is no provision in the lease for the Respondent to levy a reserve fund (apart from to apply any surplus at the year-end). Therefore, it was not entitled to demand from the Applicant the additional sum of £472.23 in advance the way that it did.

Asbestos Survey: 2017 & 2018

44. The Tribunal determines that the amount payable is nil.

Reasons for the Tribunal's decision

45. This item is an example of the confusion which arose as a result of the budget anticipating a cost of £550 for each year and the service charge accounts showing no entry of expenditure under this head.

46. The Applicant was understandably confused, as when she queried the figure with Moreland, she was told that a copy of the asbestos survey would be forwarded "as required by law" and were payable every year.

47. In fact, the Respondent had never obtained an asbestos report for either year in dispute. In the spreadsheet it admits "no expenditure was incurred under this head" so there was no charge made. There are two problems with this: (1) the sum was included in the service charge demanded on account and (2) there is no explanation as to why the

Applicant was told by Moreland that the asbestos surveys had been carried out when in fact they had not.

48. It is at least clear that there is a nil liability for this item in both years.

Common Parts Electricity: 2017 (not challenged for 2018)

49. The Applicant challenged 50% of the electricity charges on grounds that the common parts lights on her landing were not fixed or replaced despite her complaints.

50. The Respondent argued that that the Applicant had only been charged her proportion of the actual expenditure.

The Tribunal' s Decision & Reasons

51. Tribunal determines that the amount payable is £18.84 for 2017, being 1/18 of the landlord's actual expenditure. The Applicant is liable for her proportion of the actual cost of electricity to the common parts regardless of whether the light outside her flat was working.

Entry Phone 2017 & 2018

52. The Applicant challenged the costs on the basis that the entry phone system was not always working, despite her complaints.

53. The Respondent asserted that no expenditure was charged in 2017 & 2018 but this is not understood. The accounts show that actual costs were incurred of £763.22 in 2017 and £1,862.00 in 2018, which in the Tribunal's view is not unreasonable given the high usage and the number of flats.

The Tribunal's Decision and Reasons

54. For the reasons stated above the Applicant's 1/18 liability is £42.20 for 2017 and £103.44 for 2018.

Fire Alarm & Emergency Lighting 2017 & 2018

55. The Applicant contended that the charges of £1,400 per year were very high and that weekly testing of the fire alarm and emergency lighting system was not being carried out. She referred to a fire safety report provided by the Respondent as evidence to support this.

56. The Respondent stated that weekly checks were carried out by Brighton Fire Alarms and the actual expenditure on the fire alarm and emergency lighting system was less than the anticipated budget at £1,059.10 in 2017 and £845.70 in 2018.

The Tribunal's Decision and Reasons

57. The Tribunal determines that the Applicant's 1/18 liability of the actual expenditure incurred is £58.84 for 2017 and £46.98 for 2018.

58. The Tribunal accepted on the balance of probabilities that frequent and regular testing was being carried out, based on its own observations at the inspection of a log book with weekly, handwritten, signed and dated records to that effect.

59. The Tribunal noted that the fire safety report dated 15/09/2017 stated that "no documented evidence was observed to suggest" that the emergency lighting and automatic fire detection system was subject to regular testing and servicing (docs.91 & 92). It is not known whether the log book seen by the Tribunal was available to GEC Safety, who prepared the report, or whether it has been subsequently displayed in the common parts next to the fire alarm panel.

60. Overall the Tribunal found the fire alarm and emergency lighting costs to be reasonable for the size and nature of the building.

General Maintenance

61. The Applicant argued that despite frequent requests she was not given any documentation by the Respondent to support the claimed costs of general repair and maintenance. Regular maintenance and repairs were not carried out promptly in response to complaints, for example to mend broken balustrades, missing door locks etc.

62. The Respondent's case was that items under this head fell outside the internal redecorations project and included work to repair locks, door hinges, gutter cleaning and gravel to the underground meter room, fitting bird spikes, attending site to investigate leaks. The total costs incurred were £1,461.45 for 2017 and £1,687.46 for 2018.

The Tribunal's decision and Reasons

63. The Tribunal determined that Applicant's liability was 1/18 of the actual expenditure incurred of £81.19 for 2017 and £93.75 for 2018.

64. Although the Tribunal was not impressed by the Respondent's failure to provide documents in support of its expenditure, it was prepared to accept overall and on the balance of probabilities that the listed minor repairs and maintenance had taken place, that the actual costs were not unreasonable and were under the budgeted cost of £2,000 for 2017 and £3,000 for 2018.

Management Fees

65. The Applicant considered that the Respondent, in the form of its managing agents, Moreland, had provided very poor service over the past 3 years. She set out a timeline summary of her attempts to contact Moreland by telephone and email to report urgent matters, such as

broken bannisters, broken door locks and missing lights in the common parts, to which she either did not receive replies or the replies were inaccurate. She was told she could not see invoices or would have to pay £75 copying charges. She was repeatedly told asbestos report were "required by law" but in fact they were never obtained (see paras.44-48 above). She found the poor communication to be frustrating, time consuming and it had a negative effect on her wellbeing and her enjoyment of her property. She contended that she should only have to pay 50% of her share of the management fees charged.

66. The Respondent has not replied to any of the Applicant's complaints about poor communication and failure to act promptly on reports of problems at the property. Moreland simply states that a great deal of work was carried out by them in 2017 with no extra charge for overseeing the interior redecorations. In 2018 they simply state "this is the fee for managing the block" with no attempt to explain its charges.

The Tribunal's Decision and Reasons

67. The Tribunal determines that the Applicant is liable to pay 50% of her 1/18 share of the management fees, namely, £127.89 for 2017 and £135.42 for 2018.

68. The Tribunal accepted the Applicant's submissions and found that the communication from Moreland to the Applicant was poor, that they failed to act promptly in reply to reasonable complaints and requests.

69. The Tribunal noted that the managing agents did at least prepare budgets, send out service charge demands and prepare service charge accounts in accordance with the lease, though it appears they failed to carry out the required reconciling exercise at the end of the accounting year (see Preliminary Matters, above).

70. The actual total management fees set out in the accounts were £4,640 for 2017 and £4,875 for 2018. The Tribunal agrees with the Applicant that the recoverable amount should be reduced by 50% to reflect the inadequacies and poor level of service.

Sinking Fund

71. The Applicant stated that in response to her queries, Moreland had given conflicting justifications regarding use of the sinking fund, namely that that it was, or was not, put towards the internal redecoration project in 2017, or that it would be used for unspecified major works.

72. The Respondent has merely stated that there is a sinking fund used for capital expenditure at the building. The accounts state that a total sinking fund contribution of £1,000 was charged in each year.

The Tribunal's decision and reasons

73. The Tribunal determines that the amount payable is nil.

74. Quite simply, there is no provision in the lease which entitles the landlord to levy a reserve fund charge or any type of "sinking fund". As explained at paras. 20 & 21 above, the only mention of a reserve fund is at cl.7(4) of the lease which allows the landlord at its discretion in the event of a surplus to repay or credit the lessee or to carry forward the surplus as a reserve.

75. It follows that there is no power for the Respondent to include a reserve fund contribution in the service charge demands. The service charge accounts suggest that the landlord is holding various "sinking fund accounts" but this is not within the terms of the lease.

Window cleaning

76. The Applicant complained several times to Moreland that no window cleaning had been carried out to the rear of the property where her flat is located, and the Respondent had confirmed this to be the case.

77. The Respondent stated that the Applicant had been charged £8.89 in 2017 for cleaning of "accessible windows". The total actual cost in the accounts was £160 for 2017 and £480 for 2018. There was no explanation given for the increase.

The Tribunal's decision and reasons

78. The Tribunal determines that the amount payable is nil.

79. This is because there is no obligation under the terms of the lease for the landlord to carry out window cleaning. This is in fact the responsibility of the lessee under clause 4(5) of the lease. Accordingly, the Respondent is not entitled to pass on any costs of window cleaning as service charges.

80. At clause 5(4)(d) of the lease, the landlord covenants to maintain, repair, redecorate and renew the common parts of the building. Therefore, the only window cleaning that could be charged as a service charge would be any windows in the common parts.

81. The Tribunal observed at the inspection that there are no windows in the common parts. The only glass is in the front doors and fan light in the door frames. It would be neither necessary nor reasonable to employ a window cleaner to clean this glass, which should dealt with as part of the cleaning of the common parts.

Legal costs and interest

Legal costs

82. The Applicant made a separate application in respect of these charges as Administration Charges. However, the Tribunal was able to deal with

this within the Service Charge application because the landlord is entitled to charge legal fees under clause 7(7)(d) of the lease, which provides that the service charges include "all fees charges and expenses payable to any solicitor accountant surveyor or architect whom the landlord may from time to time reasonably employ in connection with the management or maintenance of the building".

83. The Applicant submitted that she had been shocked to receive on 31/10/2018 a letter from the Respondent's solicitors, JB Leitch, threatening legal action and forfeiture of her flat if all service charges, extra fees, interest and legal fees were not received within 7 days. This followed email exchanges with Mark Muster and other staff at Moreland in which the Applicant was seeking answers to various queries about service charges and documents to support claimed expenditure.

84. On 12/09/2018, the Applicant reported in her timeline a telephone conversation with Mark Muster in which he told her that invoices could be sent and that the extra charges would not be pursued. The Applicant confirmed the contents of this call by email offering to make further service charge payments upon receipt of the promised documentation, but received no reply other than the solicitor's letter.

85. The Respondent did not quantify or seek to justify the various legal costs claimed for letters written. The witness statement of Laurence Freilich simply states that legal fees, interest and arrears letters charges are all recoverable under the lease terms.

The Tribunal's decision and reasons

86. The Tribunal determines that nil is payable for legal fees and arrears letters.

87. The key word in clause 7(7)(d) is "reasonably". Given the Applicant's timeline and history of her email and telephone attempts to correspond with Moreland to obtain answers to her perfectly reasonable queries, the Tribunal considered that it was neither necessary nor reasonable for the Respondent to employ solicitors to write to the Applicant threatening to forfeit her lease.

88. The Tribunal also gave weight to the Applicant's account of the telephone conversation with Mark Muster when she was assured that the extra charges (by implication, legal fees, arrears letters and interest) would not be pursued, on which she was entitled to rely.

89. The Respondent is however correct in its submission that the Applicant's £25 membership fee for the Brighton and Hove Leaseholder's Association is not recoverable from the Respondent.

Interest

90. The Tribunal determines that nil is payable in respect of interest.

91. Clause 7(6) of the lease provides that interest of 15% (or 2% above Barclays Bank PLC base rate whichever is the greater) is payable "in the event of any of the payments due from the lessee under the three preceding sub-clauses not being paid within 14 days from its due date".

92. The three preceding sub-clauses in fact refer to any payments demanded after the reconciliation exercise the landlord is required to carry out after the service of the certificate of account at the year end, in the event of a deficit shown in the accounts, i.e. the difference between the payment on account demanded in advance on 25 December and the landlord's actual expenditure. As explained above, this reconciliation process does not appear to have taken place. The interest provision does not apply to the advance payments on account.

93. Even if the lease did provide for interest on the demands sent to the Applicant, the Tribunal would regard these charges as unreasonable, as Mr Muster of Moreland had waived these sums.

Application under S20C and refund of fees

94. In her application, the Applicant applied for a refund of fees that he had paid in respect of the application. 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.

95. In the application form, the Application applied for an order under Section 20C of the 1985 Act. The Respondent did not make any submissions on the application. Taking into account the determinations above, 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.

Costs under Rule 13 of the Tribunal Procedure Rules

96. The Applicant claimed £779 charged at £19 per hour x 41 to reflect the time she had spent trying to negotiate with and get information from Moreland. Had she received timely, comprehensive replies she would not have needed to apply to the Tribunal. She relied on previous decisions against the same Respondent by the London RPT.

97. Before a costs order can be made, the Tribunal must be satisfied that the Respondent acted unreasonably in defending or conducting proceedings in a leasehold case. The Upper Tribunal has expressed the test as "vexatious and designed to harass the other side". This is a high bar. Overall, although the Respondent did not respond to the Application or comply with Directions until after a debar warning, and the quality of the Respondent's submissions was not impressive, this did not amount to unreasonable behaviour. Therefore, the Tribunal makes no order.

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).

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.