FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AW/LSC/2019/0151**
Property	**:**	**Flat 3 Festival House 18 Vicarage Gate Kensington W8 4AA**
Applicant	**:**	**Festival House Residents Limited**
Representatives	**:**	**Paul Anthony Cleaver; Property Manager of Urang property Management Limited**
Respondent	**:**	**Mr Guy Rudd**
Representative	**:**	**Ms Stephanie Lovegrove of Counsel**
Type of Application	**:**	**Reasonableness of and liability for service charges and administration charges under the Landlord and Tenant Act 1985**
Tribunal Members	**:**	**Judge Professor Robert M. Abbey** **Mr Duncan Jagger (Surveyor) MRICS** **Mr Alan Ring (Lay Member)**
Dates and venue of hearings	**:**	**16 September 2019 and 17 September 2019 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**24 September 2019**

DECISION

Decisions of the Tribunal

1. The Tribunal determines that as at the date when the county court proceedings were issued by the applicant there was payable by the respondent to the applicant all the service charges claimed by the applicant less the agreed and determined deductions more particularly set out in this decision. Therefore, the service charges claimed are determined to be reasonable service charges payable by the respondent to the applicant pursuant to the terms of the lease of the property other than charges which are reduced by this decision. The total deductions ordered in this decision amount to £3776.05 and therefore the net claim is now **£29,776.21.** The Tribunal further determines that it is just and equitable to make an order pursuant to S. 20c of the Landlord and Tenant Act 1985 as to 60% of the costs incurred by the lessor.

2. The file shall be returned to the Wandsworth County Court for the determination of the following claims which this Tribunal does not have jurisdiction to determine:

    - Court fee, interest and
    - Costs

3. The reasons for our decisions are set out below.

The application and procedural background

4. In November 2018 the applicant landlord commenced legal proceedings in the county court for the recovery of service charges against the respondent as proprietor of a long lease of the subject property. The works that gave rise to the service charges were carried out over several years as detailed in the particulars of claim. The arrears were expressed to be in the sum of £33,552.26.

5. The respondent did file a defence which asserted that the respondent was not liable because he said the costs were excessive, unnecessary or wrong, or that the applicant had not complied with statutory requirements. Consequently, the respondent considered that he was entitled to challenge the claimed service charges.

6. The applicant's claim concerning the determination of service charges referenced E4AY94HR was transferred to this Tribunal by order of District Judge Brafield from the County Court at Wandsworth. The date of the order was 15 April 2019. The claim made in the county court was for unpaid service charges amounting to £33,552.26.

7. The relevant legal provisions relating to this matter are set out in the Appendix to this decision and rights of appeal made available to parties to this dispute are set out in an Annex.

8. On 14 May 2019 Judge Nicol of this Tribunal issued Tribunal Directions arranging for a site inspection on the morning of the first day of the hearing. Accordingly, at 10.30am on 16 September 2019 the Tribunal inspected the

property. The flat is on the first floor of a tall thin block. It appears to be a property built in the 1950's and is of brick construction with metal windows comprising eight flats in total, (two flats in the basement and six floors/flats above). The flat is laid out in a long thin format with two/three bedrooms kitchen and bathroom. The flat was empty when the Tribunal inspected. Access to the upper floors and basement is by way of a lift with open metalwork concertina doors.

The hearing

9. There was one oral hearing on the dates shown above. The applicant was represented by Mr Cleaver of Urang Management, the managing agent of the property. The respondent was represented by Ms Lovegrove of Counsel.

10. The respondent holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The landlord applicant claimed service charges of £33,552.26. It is this sum that is in dispute and is the item referred to the Tribunal by District Judge Brafield.

The service charges claimed

11. Having read all written evidence and submissions and heard oral evidence and submissions from the parties and considered all of the documents provided, the tribunal determines the issue as follows.

12. Dealing first with the payability of the service charges claimed by the applicant it is clear that the lease of the property contains provisions requiring the respondent to pay service charges demanded by the applicant. The lease definitions clearly delineate the extent of the property and the block in which it is located. Clause 2 (c) of the lease requires the respondent to pay to the applicant service charges. The fourth schedule of the lease then sets out the service charge tasks to be performed by the lessor such as the maintenance and renewal of the roof foundations and main structure of the building in which the property is located. Accordingly, pursuant to these lease provisions the applicant is responsible for all maintenance and repair works in respect of the upkeep of the whole building at Festival House and therefore is dependent upon the leaseholders paying the duly demanded service charge in full. The landlord company is owned by five out of the eight lessees in the block

13. It was clear at the hearing that the following were items in dispute and these headings replicate the headings in the Scott Schedule that passed between the parties prior to the hearing and which could be found at pages 97 to 100 of the applicant's trial bundle:

    a. Urang opening balance credit

    b. Credits due to landlord's theft recovery

c. Management fees overcharge

d. Insurance over charging

e. Major works expenditure (Excluding 2010 and 20111 internal and external decorations)

f. General building repairs

g. Cleaning and lift maintenance

h. Credit due from under expenditure years ending March 2014, 2015 2017 and 2018

i. Administration fees and charges

j. Over estimate of actuals 2011 to 2018 – unsigned audit certificates

Each of these service charge items in dispute will now be considered.

14. Urang opening balance credit. Prior to the appointment of Urang as managing agents in October 2009 the property was managed by a company called Mantra. Unfortunately, this company failed and the principal of the company retained funds held on behalf of the tenants in this block. Urang did pursue Mantra and over a lengthy period of time managed to recover some monies in this regard. However, the applicant says that it is not clear what Mantra actually held on behalf of the lessees at the end of their management activities. The respondent asserted that £49,689 was the amount held by Mantra. The applicant stated in its statement of case that£29,669 was the amount recovered by Urang from Mantra and that the respondent had been properly credited with his share of those monies in the sum of £4797.

15. The Tribunal took the view that the amount of the opening balance was an arithmetical issue and not one or reasonableness of a service charge item. The sum was either correct mathematically or it wasn't. The sum in question did not form a service charge; it is an arithmetical construct being a balancing credit. Counsel for the respondent tried to persuade the Tribunal that they could have jurisdiction by reason of the decision in *Solitaire Property Management Company Limited Holding & Management (Solitaire) Limited v Dr Stephen Holden & Ors* [2012] UKUT 86 (LC). However, the Tribunal decided that after considering the details of the decision that they remained of the view that they had no jurisdiction and that they could not make any decision in this regard. The matter is to be referred back to the County Court and it is of course open to the Respondent to raise the matter once again in that jurisdiction. In passing the Tribunal also noted that there was little or no written evidence upon which to form a decision should one in due course be required.

16. Credits due to landlord's theft recovery. The Tribunal was satisfied from the evidence before it that this item in effect was part of the previous item and therefore no separate decision needs to be made in this regard.

17. Management fees overcharge. The applicant produced to the Tribunal a schedule of management fees giving details of the basis for these charges for the period from 2010 through to 2018. The schedule also detailed the fee per flat inclusive of VAT. (This is not the fee that was payable but simply an average of the charge ascribed to the eight units.) The amounts per unit ranged from £297 in 2010 and £415 in 2018. The Tribunal were also given a copy of the Urang management agreement and this highlighted both the general management and financial management tasks undertaken for which charges were levied. The Tribunal noted that the 2018 fee was £333 net of Vat, £415 gross as the average fee per unit but that the actual fee to the respondent at 16.166% amounted to £536.71. The respondent asserted that from his own professional experience that the Urang fee was too high and was excessive given the nature of the block and the work done by the agents.

18. The Tribunal from its own knowledge and expertise took the view that the range of fees currently experienced by it are in the range of £275 to £450 per unit in central London. The amount will of course depend on the block size as economies of scale will inevitably apply. The Tribunal was satisfied with the level of these charges which they found to be reasonable if at the top end of the scale and also noted that respondent failed to provide any convincing evidence to the contrary. In these circumstances the Tribunal were again satisfied as to the reasonableness of these management charges.

19. Insurance over charging. The applicant produced to the Tribunal a schedule of insurance premiums giving details the basis for these charges for the period from 2010 through to 2018. The premiums ranged from £2962 in 2011 up to £5042 in 2018. Mr Cleaver confirmed that each year they used a broker who went out to the market to get several quotes and then usually the lowest quote was accepted. To support this, he produced a copy letter from the brokers written in 2014 that showed that quotes had been obtained from five reputable insurers such as Axa, Aviva and Zurich and that they had selected the lowest of the quotes for that year. This process was repeated each year. The respondent again asserted that from his own professional experience that the premiums were far too high for a property of the nature of this block. The respondent did not produce to the Tribunal any alternative quotes. The applicant did point out that some of the premium increases could be attributable to a poor claims record as there were repeated claims for water damage due to leaks occurring in the block. The Tribunal is satisfied that the current insurer Axa is an insurance company of repute and that as such there is compliance with the lease covenant in that regard. In the cases of *Berrycroft Management Co Limited v Sinclair Gardens Investment (Kensington) Limited* 1997 1EGLR 47 and *Havenridge Limited v Boston Dyers Limited* [1994] 49 EG 111(CA) it was made clear that the landlord does not even have to accept the cheapest quotation but the landlord must insure with a reputable company as is the case in this dispute.

20. From *Forcelux v Sweetman* [2001] 2 EGLR 173 it is apparent that a landlord should test the market when considering an insurance quote. In this dispute it was demonstrated that a market test was undertaken by the brokers employed by Urang whereby several insurance companies were approached to test the market insurance premium rates.

21. The Tribunal took the view that the insurance charges were reasonable and payable by the respondent. In the absence of any alternative quotes the assertions made by the respondent were insufficient to persuade the Tribunal that the premiums were unreasonable. This was particularly so when the Tribunal noted that the applicant did go to the market to seek competitive quotes and seemed to select the lowest of the five of so quotes given each year. Therefore, the premiums are reasonable and payable by the respondent to the applicant. The respondent did enquire of the applicant about commission received on the premium paid. It was confirmed that Urang did receive a commission from the broker but that this did not disadvantage the tenants. This was because the commission came from the broker and that if Urang did not take the commission the commission would all accrue back to the broker in any event and so there was no financial difference/disadvantage/prejudice to the lessees.

22. General building repairs. This was an extensive list of items stretching over several years and was to be found at pages 102 and 103 of the applicants trail bundle listed as a summary of general repairs invoices. The respondent stated that these were unnecessary and expensive and that where appropriate s.20 consultation requirements applied. **This law requires that leaseholders paying variable service charges must be consulted before a landlord carries out qualifying works or enters into a long-term agreement for the provision of services.** Detailed regulations have been produced under section 20 of the Landlord and Tenant Act 1985 (as amended by S151 of the Commonhold and Leasehold Reform Act 2002) which set out the precise procedures landlords must follow; these are the Service Charges (Consultation Requirements) (England) Regulations 2003 ('the Regulations'). Qualifying works are 'works on a building or any other premises' – that is, works of repair, maintenance or improvement. Landlords must consult if these works will cost over £250 for any one contributing leaseholder. Thus, in a property with unequal service charge contributions, the landlord must consult all leaseholders if any one of them would have to pay more than £250. If consultation is not undertaken, the landlord may not be able to recover costs over £250 per leaseholder.

23. On consulting the list of general building repairs, it was clear that there was only one item that needed consultation. This was on 8 November 2011 and was for Christopher Wray lighting in the sum of £3000. When this item was put to the applicant it was immediately conceded by Mr Cleaver that no consultation process had been progressed. However he asserted that no lessee had been prejudiced by the absence of consultation and that in fact the respondent had selected this lighting. Notwithstanding the Tribunal took the view that the consultation process should have been entered into and that as a result of the failure to do so this item had to be capped at £250 per unit giving an amount of

£2000 instead of £3000 for the lighting. The legislation is in place to protect tenants and the Tribunal felt that this was a case where it should therefore apply. The reduction therefore amounts to £1000 of which the respondent is entitled to the benefit of his share at 16.166% in the sum of **£161.66**. Accordingly, the claim made by the applicant must be reduced by this sum.

24. With regard to the other items that the respondent asserted were excessive or unnecessary the respondent failed to produce any alternative quotes or any evidence that the works were unnecessary and therefore the Tribunal will not make any reduction other than mentioned in the previous paragraph.

25. Cleaning and lift maintenance. This was a heading included in the schedule. At the hearing it was conceded that this item was not disputed and therefore the Tribunal makes no decision in regard to cleaning and lift maintenance.

26. Credit due from under expenditure years ending March 2014, 2015 2017 and 2018. The respondent claimed that incorrect credits had been made for underspends over the four years listed above in regard to the annual service charge accounts. Sensibly the parties asked for time to try to agree these figures and after allowing an adjournment for this purpose the Tribunal was pleased to note that the parties reached agreement on the correct credits to be applied to the respondent's service charge account. This being so the Tribunal notes that the agreed deductions to be made to the claim are **£439.55** for the years up to 2017 and **£3174.84** for 2018 and will Order these two deduction be made.

27. Administration fees and charges. The Tribunal noted that these were not quantified in the Scott Schedule but the Tribunal took the view that this item linked to the next one and will therefore be considered in that context. (The Tribunal also considered this aspect when reflecting upon the s.20 application set out below.)

28. Over estimate of actuals 2011 to 2018 – unsigned audit certificates. This was the heading listed by the respondent but in the cost column of the Scott Schedule there was an entry stating "TBA"; in other word there was no quantification of the amount in dispute. The tenant's comment that followed reads "audit certificates unsigned." The Tribunal assumed that the respondent was saying that because there was a suggested material irregularity in the way the service charge accounts were prepared and submitted that therefore no final charges could be confirmed as actuals while the lease terms were in breach. Accordingly, Counsel for the respondent invited the Tribunal to consider the terms of the lease regarding the accounts certification process and to do so in the light of the decision in *Wigmore Homes (UK) Limited v Spembly Works Residents Association Limited* [2018] UKUT 252 (LC).

29. The lease provides that the amount of the service charge shall be ascertained and certified by a certificate signed by the lessor's accountant (among others who can also sign) and shall do so, so soon after the end of the lessor's financial year as may be practicable. The lease goes on to say that a copy of the certificate shall be supplied by the lessor to the lessee "on written request". The lease states

that the certificate shall contain a summary of the expenses and outgoings reasonably incurred by the lessor together with a summary of the relevant details and figures forming the basis of the service charge.

30. At clause 2 (c) (vii) the lease states that "The lessee shall if required by the lessor with every payment or rent reserved hereunto pay to the lessor such sum in advance and on account of the service charge as" the lessor considers to be a fair and reasonable interim payment. Counsel for the respondent speculated whether the word "or" before rent should be "of" as a typographical error. The Tribunal was unconvinced by this suggestion and interpreted the lease as printed. The effect of this was that interim payments could be demanded with service charge demand or with rent remands.

31. Counsel for the respondent asserted that the certificate that appeared in the accounts was not good enough for the terms of the lease. She also asserted that payment was conditional upon the provision of a certificate and cited the *Wigmore Homes* case to support this assertion. However, the Tribunal took the view that conditionality is a matter of construction of the lease and that there is nothing in the lease to confirm this conditionality. Indeed, the position is quite the reverse as the lease provides that a certificate is only provided on written request. Furthermore, the lease at 2 (c) (viii) sets out a mechanism for the collection of under paid service charges or the taking into account of overpayments.

32. In these circumstances the Tribunal was satisfied as to the certification of the service charge accounts. They were expressed to be "leaseholder accounts" and were expressly prepared to take into account section 21 of the 1985 Act. The certificate provided that the accountant was of the opinion that the service charge statement was a fair summary complying with statute and that the summary was sufficiently supported by accounts receipts and other documents which had been produced to the accountant. Attached to the certificate were leaseholder accounts and a service charge income and expenditure account. This all seemed to the Tribunal to completely satisfy the lease requirements. Accordingly, the Tribunal rejected the argument put forward by the respondent's counsel and were content that the certification process had been properly complied with in connection with the service charge provision of the lease of the property. The Tribunal also noted that there was no provision in the lease requiring audited accounts.

33. Finally in this connection the Tribunal did observe that the respondent had on several occasions made written requests of Urang for signed accounts but that these were not forthcoming at the point of request. These examples can be found at pages 115, 118 and 120 of the applicant's trial bundle. It was disappointing to note the failure of the managing agents to supply the documentation requested until much later on and this is an issue that is considered further by the Tribunal later in this decision when the Tribunal considers below the s.20C application

34. Major works expenditure (Excluding 2010 and 2011 internal and external decorations). In this part of the claim the respondent was seeking a refund of £4073 and did so saying that a s.20 consultation had not been carried out and unnecessary and expensive works had been undertaken. The applicant asserted that no unnecessary works were undertaken. The Tribunal found this part of the dispute very difficult to quantify or to comprehend in detail as there appeared to the Tribunal to be a paucity of documentation to assist it in its endeavours. Happily on day two of the hearing further paperwork was forthcoming from the applicant that fleshed out the details. The Tribunal was supplied with a comparison of quotations for the 2010/11 major works as well as a comparison of the outcomes after those works were put in place. The Tribunal were also supplied with a separate list of "extras" that were carried out and which did not form part of the original specifications. These extras came to a total value of £20,825 and appeared to the Tribunal to be the items in dispute. It seemed that the works came in over the budgeted figure and therefore the respondent was challenging the overspend.

35. The Tribunal carefully considered the list of extras and took the view that these were works that all appeared to arise out of the works covered by the initial s.20 consultation. For example the highest amount, £4,500, was for roofing works. On then looking at the list of works in the original estimates there was indeed a section that stated "Roofing works - allow the provisional sum of £xxxx for any roofing repairs found necessary following detailed inspection from the scaffolding as instructed by the contract administrator". (In this regard each contractor submitted a sum of £1000.) As the extra roofing works included work to an "asphalt roof" and work to "skylights" it seemed to the Tribunal that these were all interlinked items that were properly payable.

36. Accordingly the Tribunal was not persuaded that there was a section 20 issue and then considered the reasonableness of the extras. In the absence of any evidence to show that they were not reasonable and bearing in mind it was confirmed that the respondent was closely involved in the carrying out of the major works in 2010-2011 the Tribunal was of the view that these works, the extras, were reasonable and payable by the respondent.

37. A further set of issues related to the reasonableness and payability of on account service charges demanded by the applicant, linked to the possibility of carrying out works to the outside front stairway to the front door of the block. In essence the applicant says that the lease authorises the collection of on account payments in the manner adopted by the applicant in this dispute. The respondent suggested that the proposed works were both unnecessary and costed excessively. In fact the Tribunal were shown two estimated figures, one for repair and the other for replacement. Furthermore the Tribunal did note on their inspection substantial cracking on the surface of the stairs as well as several items of patched repair work.

38. The applicant seems to rely upon the terms of section 19(2) of the Landlord and Tenant Act 1985 which says :-

Limitation of service charges: reasonableness.

(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 provision 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.

39. In the light of this the Tribunal was itself mindful of the case of *Pendra Loweth Management Ltd v Mr and Mrs North* [2015] UKUT 0091 (LC), where Martin Rodger QC stated in his judgment at paragraphs 42, that:

> *42 There was no allegation in this case of bad faith or deliberate overcharging by the Management Company and the FTT made a point of stating that nobody had "acted in an untoward manner". Where parties agree that one of them is to be trusted to make an estimate which the other is required to pay, subject to an account being taken at a later date, and the estimate is made in good faith, there seems to me to be little or no scope to challenge the estimate except by relying on s.19 (2) of the 1985 Act. Where a service charge is payable before the relevant costs are incurred, s.19(1) provides that no greater amount than is reasonable is so payable; there is therefore a statutory limit on estimated charges, even where they have been estimated in good faith. Where a deliberately inflated estimate has been submitted in bad faith or an entirely arbitrary figure has been chosen the contractual position is likely to be different, and it may be possible to say that, even without regard to the statutory cap on advance payments, the estimate is not payable in full; but that is not this case.*"

40. The Tribunal noted that there were no allegations of bad faith or deliberate extreme overcharging in this dispute and as such the Tribunal find for the applicant in this regard. The Tribunal accepts that the estimates are reasonable and as such there can be no adjustment thereof. In the case before this Tribunal the parties were bound by way of the terms of the lease such that one of them

(the lessor/applicant) was to be trusted to make an estimate which the other (the tenant/respondent) is required to pay, subject to an account being taken at a later date. As the estimates were made in good faith, there seems to be little or no scope at this time to challenge the estimates. However, it is open to the respondent to challenge the actual charge by way of an application to this Tribunal should he consider the final and real cost to be unreasonable.

41. The claim made in the county court was for unpaid service charges amounting to £33,552.26. The total deductions ordered in this decision amount to £3776.05 and therefore the net claim is now **£29,776.21**

Transfer back to the County Court

42. There were some claims made in the court proceedings which we do not have jurisdiction to determine. We have therefore transferred the file back to the County Court so that these claims may be pursued if the applicant wishes to do so.

Application – S.20C of the 1985 Landlord and Tenant Act

43. The respondent also made an application under section 20C of the Act, i.e. preventing the landlord from adding the legal costs of these proceedings to subsequent service charge accounts. Having read the submissions from the parties and listened to their oral submissions at the hearing and taking into account the determination set out above the Tribunal determines that an order should be made as to 60% of the costs incurred by the lessor. It is the Tribunal's view that it is just and equitable to make such an order.

44. With regard to the decision relating to s.20C, the Tribunal relied upon the guidance set out by HHJ Rich *in Tenants of Langford Court v Doren Ltd* (LRX/37/2000) in that it was decided that the decision taken was to be just and equitable in all the circumstances. The Tribunal thought it would be just to allow the right to claim 60% of the landlord's costs as part of the service charge. Therefore the s.20C decision in this dispute gave the Tribunal an opportunity "to ensure fair treatment as between landlord and tenant in circumstances where even although costs have been reasonably incurred by the landlord, it would be unjust that the tenant or some particular tenant should have to pay" (all of) "them."

45. In this case, on the one hand ongoing non-payment of the service charge meant that the landlord had no option but to bring proceedings to recover it. On the other had the initial conduct of the managing agents in dealing with accounts and request for copies had been slow. Furthermore it should be remembered that the block was managed by a not-for-profit, leaseholder-controlled company that held no assets other than the freehold and any funds collected through the service charge. The Tribunal also had in mind the determinations above had not strongly favoured either party.

46. As was clarified in the *Church Commissioners v Derdabi* LRX/29/2011 the Tribunal took a robust, broad-brush approach based upon the material before it. The Tribunal took into account all relevant factors and circumstances including the complexity of the matters in issue and the evidence presented and decided that the order should extend to no more than 60% of the costs. The Tribunal were mindful that service charge accounts were greatly delayed in the early part of the period where services were managed by Urang. The Tribunal was also mindful of the provision of incorrect credits that had to be resolved at the time of the hearing rather when the problems first arose. Finally, the Tribunal is mindful of the other issues referred to in this decision as being relevant to the making of this order and therefore the Tribunal fixes the decision at 60% of the costs.

Name: Judge Professor Robert M. Abbey **Date:** 24 September 2019

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

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

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

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

Section 19

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

   and the amount payable shall be limited accordingly.

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

Section 27A

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

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

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

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

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

Section 20C

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

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

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

Commonhold and Leasehold Reform Act 2002
Schedule 11
Administration charges
Part 1 Reasonableness of administration charges

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 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.

Reasonableness of administration charges
2 A variable administration charge is payable only to the extent that the amount of the charge is reasonable.
3(1)Any party to a lease of a dwelling may apply to a leasehold valuation tribunal for an order varying the lease in such manner as is specified in the application on the grounds that—

(a)any administration charge specified in the lease is unreasonable, or

(b)any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable.

(2)If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the lease in such manner as is specified in the order.
(3)The variation specified in the order may be—

(a)the variation specified in the application, or

(b)such other variation as the tribunal thinks fit.

(4)The tribunal may, instead of making an order varying the lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified.
(5)The tribunal may by order direct that a memorandum of any variation of a lease effected by virtue of this paragraph be endorsed on such documents as are specified in the order.

(6)Any such variation of a lease shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title), whether or not they were parties to the proceedings in which the order was made.

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 the rights and obligations of tenants of dwellings in relation to administration charges.
(2)The appropriate national authority 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 an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.
(4)Where a tenant withholds an administration charge under this paragraph, any provisions of the lease relating to non-payment or late payment of administration charges do not have effect in relation to the period for which he so withholds it.

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)The jurisdiction conferred on a leasehold valuation 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).

The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 S.I. 2013 No. 1169 (L. 8)

Overriding objective and parties' obligation to co-operate with the Tribunal

3.

(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.
(2)
Dealing with a case fairly and justly includes—
(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;
(b) avoiding unnecessary formality and seeking flexibility in the proceedings;
(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
(d) using any special expertise of the Tribunal effectively; and
(e) avoiding delay, so far as compatible with proper consideration of the issues.
(3)
The Tribunal must seek to give effect to the overriding objective when it—
(a) exercises any power under these Rules; or
(b) interprets any rule or practice direction.
(4)
Parties must—
(a) help the Tribunal to further the overriding objective; and
(b) co-operate with the Tribunal generally.

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; and
(b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.
(5)
An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends—
(a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or

(b) notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.

(6)

The Tribunal may not make an order for costs against a person (the "paying person") without first giving that person an opportunity to make representations.

(7)

The amount of costs to be paid under an order under this rule may be determined by—

(a) summary assessment by the Tribunal;

(b) agreement of a specified sum by the paying person and the person entitled to receive the costs (the "receiving person");

(c) detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment is to be on the standard basis or, if specified in the costs order, on the indemnity basis.

(8)

The Civil Procedure Rules 1998(**a**), section 74 (interest on judgment debts, etc) of the County Courts Act 1984(**b**) and the County Court (Interest on Judgment Debts) Order 1991(**c**) shall apply, with necessary modifications, to a detailed assessment carried out under paragraph (7)(c) as if the proceedings in the Tribunal had been proceedings in a court to which the Civil Procedure Rules 1998 apply.

(9)

The Tribunal may order an amount to be paid on account before the costs or expenses are assessed.

ANNEX - RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.