FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BG//LSC/2019/0130**
Property	**:**	**5A Olivers Wharf, 64 Wapping High Street, London, E1W**
Applicant	**:**	**1) Mr John C. Head** **2)Head Oil Company Limited**
Representative	**:**	**Mr Gavin Bennison, Counsel**
Respondent	**:**	**Olivers Wharf (Management) Limited**
Representative	**:**	**Mr Jonathan Upton, Counsel**
Type of Application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	**:**	**Judge Abebrese, Mr D. Jagger MRICS**
Date and venue of Hearing	**:**	**10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**30 October 2019 (Amended on 26 November 2019)**

AMENDED DECISION

Decisions of the tribunal

(1) The tribunal determines that the claims of the Applicant are dismissed on all grounds for the reasons provided below. The Respondent has complied with their obligations on the construction of the Lease.

(2) The total amount of service charges owned by the Applicant is £61,851 including annual demand in respect of external/ internal redecoration in 2017. The annual amount demanded by the Respondent is £59,551 and the Applicant has paid £46,931.47. The Respondent's are entitled to full payment of the amounts outstanding. The above figures are set out on Page 211 of the hearing bundle.

(3) The Applicant **has not** established an equitable set-off regarding the amounts demanded.

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

(5) The tribunal does not 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.

The application

1. The Applicant seeks a determination pursuant to s.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 administration charges payable by the Applicant in respect of the service charge years.

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

The background and issues

3. The applicant is the sole registered proprietor of a lease dated 11 February 2008 (''**the lease")** of Flat 5A, Oliver's Wharf, 64 Wapping High Street, London E1W 2PJ (**"the Flat")** entered into between (1) the Respondent as landlord and (2) Head Oil Company and Lorraine Gainfort as joint tenant for a term of 999 years from 25 December 1970.

4. The lease was assigned to and vested in the Applicant as sole registered proprietor on 9 January 2019. The flat is a four bedroom apartment located in Oliver's Wharf, a converted wharf building in Wapping overlooking the River Thames. The lease also demises the roof and airspace above these floors to the Applicant.

5. The following definitions in the first recital to the lease are relevant : "The Flats" means the twenty three flats forming part of the Property and "Flat" has a corresponding meaning .... "The lessee" includes the successors in title to the lessee... "The Premises" means the property hereby demised as described in the Third Schedule hereto.

6. The Applicant's obligations as Lessee as regards the payment of service charges are set out in paragraphs 17 and 31 of the Sixth Schedule to the Lease : "Any cost or expenses incurred by the lessor in ... doing works for the improvement of the Property providing services or employing managing agents or gardeners porters or other employees shall be deemed to have been properly incurred by the Lessor in pursuance of its obligations under the Seventh Schedule hereto notwithstanding the absence of any specific covenant by the Lessor to incur the same and the Lessee shall keep the Lessor indemnified from and against his due proportion thereof under the Clause 31 of this Schedule accordingly".

7. The Respondent's obligations as Lessor regarding the provision of services are contained in the Seventh Schedule to the Lease in particular, the service charge machinery is further set out at paragraphs 8 to 10. There is no provision in the Lease for the setting up of a reserve or sinking fund for the service charge expenditure. There is also no provision for the recovery of legal, surveyors or other professional fees or cost through the service charge, nor any provision for recovery of an administration charge in the Lease (whether in respect of litigation or otherwise).

8. The Applicant seeks an order under Section 20C of the Landlord and Tenant Act 1985 on the basis that no part of any cost incurred by the Respondent in this application are to be included in the amount of any service charges payable by the Applicant in respect of the Lease. The Applicant also seeks an order pursuant to paragraph to 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

9. The Applicant maintains that the respondent is in breach of their obligations in paragraphs 8-10 of the seventh Schedule and they **have not** specifically : taken a yearly account of cost incurred as required by paragraph 8 in respect of the year ending 25 December 2018 ; audited the accounts prepared for the calendar years 2010 to 2017, whether by using a competent accountant or otherwise in accordance with paragraph 9 ; The respondent's original company accounts for each of these years stated that the Respondent did not instruct its accountants to audit the accounts ; if the accounts had been certified by an

accountant in accordance with paragraph 9 Appendix 1 to the Respondent original company accounts for 2012 and 2013 does not purport to certify the Respondent's total expenditure but rather expresses an opinion as to whether the attached service charges account Appendix 2 represents a **"fair summary" of cost incurred**. According to the Applicant this is not what the Lease requires. There is no similar provision in the original accounts provided for any of the other years 2010 to 2017 in any event.

10. The Applicant states that on a proper construction of the lease the Respondent has not complied with the machinery as set out paragraphs 8-10 of the Seventh Schedule in that there is no obligation on the part of the Lessee to pay the Lessor 4.6% of all cost, charges and expenses incurred arising under paragraph 31 of the Sixth Schedule, as the quantum of the cost, charges and expenses are unknown ; the Lessor is **not entitled to make demands for quarterly payments on account under paragraph 32 of the sixth Schedule** unless and until the account preparation, auditing and certification procedure for the preceding calendar year has been undertaken ; furthermore there is no obligation on the part of the lessee under paragraph 33 of the Sixth Schedule because the Lessor has not served notice in writing on the Lessee stating the proportionate amount certified in accordance with paragraph 9 of the Seventh Schedule which is due to the Lessor from the Lessee under paragraph 31.

11. The Applicant states further that the Respondent was **in further breach** of its obligations because they served a statement on the First and or Second Applicant variously headed and addressed on or around the start of each calendar year seeking a single payment on account in respect of the relevant Applicant's contribution for "Service Charge and Reserve Fund" for the coming year. A discount was offered for payment in full prior to early February in each year, and the alternative option of making quarterly payments was given ; Respondent thereon served quarterly statements in a similar format on the same persons approximately every three months. The statements made no reference to the limit of 4.6% of the preceding years expenditure which is imposed by paragraph 32 of the Sixth Schedule on the amount recoverable from the Lessee by way of payments on account. The statements were also unaccompanied by a summary of the Lessee's rights and obligations which is a requirement to be included in service charge demands by section 21B of the Landlord and Tenant Act 1985.

12. The statements served on the applicant did not include an address for service on the Respondent as required under Section 47 and 48 of the Landlord and Tenant Act 1985 (L and TA 1985) in respect of 2010, January 2014 and July 2018. Applicant accepts that the address was however provided in later demands.

13. A breakdown of the heads of estimated expenditure never accompanied the statements and the Applicant was at all material times not aware of the precise items of expenditure comprised within the global sum invoiced to him at the time that each invoice was received and paid. The original company accounts for 2010 and 2017 indicated that it consistently purported to retain a reserve fund in respect of the service charge expenditure and to demand and collect service charge payments from the Applicant. The Applicant adds that the statutory requirements in Section 20 of the L and TA 1985 may not have been complied with consistently by the Applicant

14. The Applicant's case is that the Respondent **has never been entitled on a proper construction of the Lease to continually purport to exercise its rights to obtain payments on account of service charge from the Respondent under paragraph 32 of the Sixth Schedule** because they have not complied with its obligations under paragraph 8-10 of the Seventh Schedule in respect of the preceding calendar year. Without the preceding year's expenditure having been accounted for ie audited and certified the machinery in paragraphs 32 of the Sixth Schedule, which presupposes that the machinery in paragraphs 8-10 of the Seventh Schedule has been complied with is inoperable.

15. The Applicant in light of the above breaches claims to be entitled to **withhold all payments of sums demanded of him as a service charge since 2010**. The service charges they claim are not recoverable under the terms of the lease. Administration charges are not recoverable because these are not permissible under the lease.

16. The Applicant at paragraphs 20 sets out the sums which have been demanded during the period 2010-2018 this amounts to **£61,850.00**. The amounts which have been paid by the Applicant amounts to **£47,925.30.** The Tribunal note the figures relied on by the Respondent at page 211 of the hearing bundle which states that the total outstanding **is £61,851, total of £59,551 and the Applicant has paid £46,931.47.**

17. The Applicant claims that the payments referred to above were made in each case by the First Applicant either in their own capacity or as agents for the Second Applicant depending on whether the relevant statement had been addressed to the First Applicant and Ms Gainfort or the Second Applicant and Ms Gainfort. The payments referred to above were as at 27 March 2019.

18. The Respondent since 27 March 2019 instructed accountants to prepare audited set of accounts dated 3 July 2019 for each of the calendar years 2010-2018 and also with the objective of certifying the accounts in accordance with Schedule 9 of the Lease. The Applicant at paragraph 27 of their statement case conclude that the set of accounts

prepared fail to discharge the Respondent's obligations in paragraph 9 of the Seventh Schedule to the Lease because they certify the total amounts of the costs, charges and expenses incurred by the Respondent in the year they relate rather than as required the cost, charges and expenses incurred by the Respondent solely in carrying out its obligations under the Seventh Schedule to the Lease. The Applicant lists a variety of items which have been included which they contend are not service charges. The prepared accounts do not include the audit fee as required by paragraph 9 of the Seventh Schedule. Therefore the accounts are not accounts for the purposes of paragraph 9.

19. The Respondent in their statement of case in reference to prepared accounts after March 2019 maintains that paragraph 33 of the Sixth Schedule provides that the Lessee shall pay to or be entitled to receive credit from the Lessor as the case maybe within 21 days after the service by the Lessor of a notice in writing stating the proportionate amount (certified in accordance with paragraph 11 of the Seventh Schedule). Paragraph 9 of the Seventh Schedule provides that the accounts shall be prepared and audited by a competent chartered accountant or incorporated accountant who shall certify the total amount of the cost charges and expenses for the period to which the account relates. The accountant is not required to certify the proportionate amount pursuant to paragraph 9 of the Seventh Schedule or at all.

20. The Respondent submits further that under paragraph 10 of the Seventh Schedule the Lessor is required to serve on the Lessee a notice in writing stating the total amount certified in accordance with paragraph 9. The notice pursuant to paragraph 10 is **not** according to the respondent to state the proportionate amount. There is no paragraph 11 in the Seventh Schedule.

21. The respondents are of the view that according to the proper construction of the Lease, the Lessee is liable to pay the proportionate amount without the same being certified. Alternatively the Respondent claims that on the proper construction of the Lease the reference to Clause 11 of the Seventh Schedule in paragraph 33 of the Sixth Schedule to the Lease and this should refer to paragraph 9 of the Seventh Schedule in that the accountant must certify the total amount of the cost charges and expenses for the period to which the account relates not the proportionate amount.

22. The Respondent is of the view that they have the right to recover the service charge by reason of a failure, which is not admitted they would still have a right to recover once the requirements of the Lease have been satisfied (**Warrier Quay Management Company Ltd v Joachim LRX/42/2006).**

23. The Respondent's in paragraph 8 of its statement of case maintains that the revised demands dated 30 June 2019 and notices dated 4 July 2019

served pursuant to paragraphs 10 of the Seventh Schedule have had the effect of remedying any previous defects. The requirement under Section 47 and 48 of the Landlord and Tenant Act 1987 are satisfied. The Respondents case is that the matters set out in paragraph of the Applicant's case became payable if not before upon the service of the demands dated 30 June 2019 and any balancing charges were payable within 21 days of service of the notices dated 4 July. The Respondent's plead by reason of the matters stated in paragraphs 7,8, and 9 of their statement of case they have complied with their obligations under the Lease. The Tribunal have taken into consideration all the matters relied on by the Applicant and the Respondent in their Statements of Case in the determination of this Application.

Evidence and Submissions

24. The representatives of both parties were permitted during the course of the hearing to make submissions in support of their case and in doing so were referred to the relevant parts of the lease which have already been cited above. The representatives directed the Tribunal to the construction of the lease, statutory requirements, waiver, estoppel and the relevant case law. The essence of the submissions of the Applicant's representative is that the Respondent's have not complied with their obligations within the lease and they have not remedied any of the defects and the Applicant is within its rights to withhold payment of service charges and also future payments.

25. The Tribunal heard evidence from Mr Head in support of his application and Mr Haas on behalf of the Respondents and these have also been given careful attention in the decision. The Tribunal have taken into consideration all of the evidence and submissions provided to us during the course of the hearing even if they have not been directly referred to in the decision. The parties in total provided the Tribunal with six lever arch files containing evidence and the law.

DECISION

26. The Tribunal considered the construction of the Lease and we preferred the evidence and submissions of the Respondent for the following reasons. The Tribunal were referred to a number of cases on this point including **Rainy Sky SA v Kookmin Bank 2011 1 WLR 2900, Arnold v Britton 2015 A.C 1619 and Wood v Capita Insurance Services Ltd 2017 A.C 1173.**

27. **In Arnold v Britton** Lord Neuberger stated : "When interpreting a contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean".

28. The Tribunal in adopting the above approach may focus on the meaning of the relevant words in their documentary, factual and commercial context. The meaning has to be assessed in light of the natural and ordinary meaning of the clause ; any other relevant provisions of the lease ; the overall purpose of the clause and the lease ; the facts and the circumstances known or assumed by the parties at the time that the document was executed ; the commercial common sense and lastly disregarding subjective evidence of any party's intention.

29. The Tribunal also noted that in **Rainy Sky** the Supreme Court **held** that where there are two possible constructions the court was entitled to prefer the construction which was consistent with business common sense and to reject the other. The Tribunal in this instance prefer the Respondent's interpretation of the construction of the lease. The Tribunal is of the view that in order to arrive at a true interpretation of a document a clause must be not be considered in isolation but must be considered in the context of the whole document. The Tribunal have made the findings below adopting the above approach.

30. The Applicant in paragraph 10 of their statement of case state that the reference to clause 11 of the Seventh Schedule in paragraph 33 of the Sixth Schedule to the Lease should refer to clause 9 of the Seventh Schedule. The Tribunal preferred the evidence and submissions of the Respondent that this interpretation in incorrect for the following reasons. The Tribunal considered the provisions of the Lease contained in **paragraphs 32 and 33 of the Sixth Schedule**. Paragraph 33 provides that the Lessee shall pay to or be entitled to receive a credit from the Lessor within 21 days after the service by the Lessor of a notice in writing stating the proportionate amount certified in accordance with paragraph 11 of the Seventh Schedule. Paragraph 9 of the Seventh Schedule provides that the accounts shall be prepared by a competent chartered or incorporated accountant who shall certify the total amounts of the costs charges and expenses for the period to which the account relates. The accountant is not required to certify the proportionate amount pursuant to paragraph 9 of the Seventh Schedule or at all. The Tribunal also form the view that the Seventh Schedule states that the accounts shall be taken on 25 December of each year but time is not of the essence as it could not reasonably have been expected that the parties to the lease intended the account to be taken, literally on Christmas day each year.

31. The Tribunal also find that on a proper construction of paragraph 9 of the Seventh Schedule that the purpose of the accountant's audit and certificate is to confirm that the books of account and financial statements as a whole are accurate based on the information provided by the Lessor and that its purpose is not to express an opinion on whether the items of expenditure have been incurred in carrying out an obligation under the Seventh Schedule of the Lease.

32. The Tribunal also note that in paragraph 29 of the statement of case that the accounts do not comply with the requirements of paragraph 9 of the Seventh Schedule because they fail to include the audit fee of the accountant. The Tribunal formed the view that on the evidence no audit fee was incurred during any of the years in dispute and therefore the Applicant is not liable to contribute to any cost.

33. The Tribunal finds that the accountant is **not** required to certify the proportionate amount pursuant to paragraph 9 of the Seventh Schedule. The Lessor furthermore under paragraph 10 of the seventh Schedule is required to serve on the Lessor a notice in writing stating the total amounts in accordance with paragraph 9. The Tribunal finds that the notice under paragraph 10 is not required to state the proportionate amount. The Tribunal also finds that there is no paragraph 11 in the Seventh Schedule.

34. The Tribunal is of the view that on the proper construction of the Lease the reference to paragraph 11 of the Seventh Schedule in paragraph 33 of the Sixth Schedule to the Lease should be a reference to paragraph 9 of the Seventh Schedule the accountant must certify the total amount of the cost charges and expenses for the period to which the account relates and not the proportionate amount. The Tribunal preferred the evidence of the Respondent in that paragraph 9 of the Seventh Schedule provides that the accounts shall be prepared and audited by a competent or incorporated accountant who shall certify the total amounts of the cost, charges and the expenses for the period for which the account relates. The Tribunal preferred the evidence and submissions of the Respondent.

35. The Tribunal also preferred the submissions of the Respondent counsel on paragraph 32 that the Lessor is entitled to demand payment on account and that he does not have to specify the date of payment and that it would not be practicable for payment on account to be certified on a specific day. Furthermore the wording of the lease is as such that it is possible to ascertain the amount of the charge and the lack of a certificate does not make this invalid. The Tribunal does not accept the arguments of the Applicant's that the defects run through all of the years and we were referred to various parts of the hearing bundles such as pages 128-129-page 130-133. The approach taken by the Respondents in our view does make it clear regarding the demands being made.

36. The Applicants claim that the notices served under paragraph 10 of the 10 Schedule are not valid in that they were not served on the current Lessee the first applicant ; the proportionate amounts are not certified or they require payment of the balance by which the proportionate amount exceeds the total amount demanded rather than the actual amount paid. We find that the notices were properly addressed to the

persons who were the Lessees during the accounting period which each notice relates to.

37. The Tribunal considered the case of **Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd 1997 AC 749** in this case Lord Steyn stated : "The question is not how the landlord understood the notices. The construction of the notices must be approached objectively. The issue is how a reasonable recipient would have understood the notices. And in considering the question this question the notices must be construed taking into account the relevant objective contextual scene".

38. Lord Hoffman discussed mistakes regarding names and addresses and he stated that the test could be put in this manner : "I would put the test generally applicable as being this : ''Is the notice quiet clear to a reasonable tenant reading it ? Is it plain that he cannot be misled by it". The approach in Mannai was adopted in **Lay v Ackerman 2004**. Furthermore in the case of **Dukeminster Ltd v West End Investments (Cowell Group) 2019 L & T R 4** there was a mistake in the naming of an addressee of a notice pursuant to Section 25 of the Landlord and Tenant Act 1925. The notice was addressed to **Dukeminster** rather than its subsidiary **Dukeminster (UG).** It was held that that the directors which were the same for both companies objectively must be taken to have known that the tenant was **Dukeminster (UG).**

39. The Tribunal find that based on the authorities cited above and in particular Dukeminster Ltd that Mr Head is the sole owner and controller of Head Oil and husband of Mrs Gainfort. He knows that in fact he is the tenant of the flat. A reasonable recipient we find of the demands would immediately and clearly have understood the intended addressee of the demand was the actual tenant. The Tribunal therefore finds that on balance and considering all of the evidence in the round that the Respondent has complied with the Strict demands and requirements of the Lease. Furthermore the Tribunal for the following reasons also find that the Applicant through his conduct has waived his rights under the Lease. The Tribunal in coming to this conclusion preferred the evidence of Mr Haas the Company Director and the submissions of Mr Upton. The Tribunal were referred to numerous authorities contained in the authorities bundle all of which have been carefully considered by the Tribunal.

40. The Tribunal found particularly useful the decision **in London Borough of Southwark and Dirk Andrea Woelke 2013 UKUT 0349** paragraph 62 it was stated : "Although the LVT considered that it is simply not open to Southwark to issue separate demands the appellant is obviously free to make alternative arrangements by agreement with its leaseholders, Such arrangements, especially in relation to major works, may be less administratively burdensome for

the appellant. Many leaseholders may be unconcerned about the strict compliance with the terms of the lease and content and more which delays the date of the payment and allows the cost of the works to be spread over a longer period than the single year provided for by the lease. **Any leaseholder who availed themselves of the favourable payment terms offered by the appellant would not be taken to have agreed to waive strict compliance.**

41. The evidence of Mr Head was that he was Company Secretary from 2008-2010. Mr Haas explains in some detail in his witness statement the historical practices of the Company in relation to the Lease and service charges. Mr Head in his evidence accepts that he was aware of the practices and methods of payment and decisions that were made by the Board he was referred to page 443 of the hearing bundle 2 of 2 in respect of the record of the minutes of the Board. Mr Head was also referred to other parts of the hearing bundle where he had adopted and accepted decisions of the Board.

42. The Tribunal finds that the offer of a discount for early payment was supported by Mr Head and this practice continues today and it has also been taken up by Mr Head in his capacity as a leaseholder. The Tribunal find that that Mr Head by his conduct in making decisions in his capacity as Company Secretary gave an implied assurance that Head Oil and his wife would pay the service charge despite any failure to comply with the strict requirements of the lease. Furthermore even if the service charges had been demanded and paid on the basis of a mistake of fact or law that it would not be equitable for the Applicant's to insist on their strict legal rights in respect of any of the procedures Mr Head initiated or supported. The Tribunal accepts the evidence of Mr Haas that prior to Mr Head being appointed as Company Secretary the Respondent introduced the offer of a discount to those leaseholders who paid the service charges for the year in one advance payment up front and that this idea was supported by Mr Head and he has indeed benefit from it for several years. This practice is still in place to the present day. Mr Haas states at paragraph 13 of his witness statement that the accounting practices of the company have historically been prepared by the accountants each year and circulated to each leaseholder during the summer before the AGM and before the distribution of the budget relating to the forthcoming year. All Leasholder's are also directors.

43. The Tribunal also finds that the Applicant's by agreeing to pay a discounted sum waived their rights and any entitlement. The evidence of Mr Haas is also preferred in relation to the fact that Mr Head's

predecessors in title had made payments of the service charges over a long period of time without qualification or protest.

44. On the basis of the above findings this application is dismissed in respect of the interpretation to be applied in the construction of the lease and the application of the law in respect of waiver and or estoppels.

Application under s.20C and refund of fees

45. Having heard the submissions from the parties and taking into account the determinations above, the tribunal does not order the Respondent to refund any fees paid by the Applicant.

46. The Tribunal does not make any order in respect of administrative charges.

47. The Tribunal makes no order under Section 20C of the Landlord and Tenant Act 1985.

Name: Judge Abebrese

Date: 30 October 2019

(Amended on 26 November 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 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;
- (a) 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).