



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case reference** : **LON/00AH/LSC/2019/0149**

**Property** : **Flat D, 93 St James Road, Croydon,  
Surrey CR0 2US**

**Applicant** : **Sarum Properties**

**Representative** : **Paul Taylor, Remus Management**

**Respondent** : **Abdul Raheem Nuhu & Cynthia  
Nuhu**

**Representative** : **Mr Raheem in person**

**Type of application** : **For the determination of the  
reasonableness of and the liability  
to pay a service charge**

**Tribunal members** : **Judge D Brandler  
Hugh Geddes, Professional  
Member**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of hearing** : **21<sup>st</sup> November 2019**

**Date of decision** : **11<sup>th</sup> December 2019**

---

**DECISION**

---

## **Decisions of the tribunal**

- (1) The tribunal determines that the Applicant must pay to the Respondent the sum of £274.45.
- (2) Whilst the tribunal determines that all the service charge items were correctly charged, were reasonable and payable, the Applicant has, contrary to the terms of the lease, retained funds overpaid by service charges in a reserve fund which they were not entitled to do. That fund must now be refunded to the leaseholders. This results in a credit to the Respondent as set out above. The details are set out below
- (3) The tribunal determined that the service charges claimed from the Respondent for 2016 and 2017 were correctly charged in the total sum of £2408.37. That figure must be offset against the reserve fund held on the Respondents behalf in the sum of £2682.82.
- (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.
- (6) Since the tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the County Court at Croydon.

## **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 (where applicable) administration charges payable by the Respondent in respect of the service charge years 2015, 2016 and 2017.
2. Proceedings were originally issued on 28.11.2018 in the County Court at Croydon under claim no. E01CR970. The matter was then transferred to this tribunal by order of Deputy District Judge Waschkuhn on 15<sup>th</sup> April 2019, further to a hearing on 10<sup>th</sup> April 2019.
3. On 14<sup>th</sup> May 2019 the tribunal issued directions.
4. The relevant legal provisions are set out in the Appendix to this decision.

## **The hearings**

5. The first hearing took place on 15<sup>th</sup> August 2019. At that hearing the Applicant was represented by Mr Luke Tuvey, the Regional Manager of Remus and Mr Richard Redfern, the Property Manager for 93 St. James Road, Croydon. The Respondent appeared in person.
6. In breach of the directions issued by the tribunal on 14<sup>th</sup> May 2019, the bundles were late and the start of the hearing was delayed while the tribunal considered the evidence produced. The pagination of the bundles sent to the Tribunal was defective, the bundles did not match and the Tribunal could not locate documents referred to by the Applicant.
7. In further breach of the directions order, the Applicant had failed to file or serve the documents ordered. Even if the tribunal could have overcome the issues with pagination, essential information was missing.
8. The parties were given an opportunity to try to discuss matters outside the hearing room with a view to agreeing a figure that was owed. That was not successful, the Respondent's position being that he did not know what the charges claimed related to and sought clarification and the hearing was therefore adjourned on directions.
9. In preparation for the 2<sup>nd</sup> hearing on 21<sup>st</sup> November 2019 the Applicant complied with directions. However, the Respondent did not.
10. The Respondent failed to respond to the schedule submitted by the Applicant, which left the Tribunal unable to ascertain what his case was. His excuse for not complying with directions was that he had sought advice from a solicitor but that had not worked out, for an unknown reason, and then he had felt it was too late to do anything else.
11. No adjournment was requested by the Respondent. The Tribunal did not consider that this would have been in the interests of justice in any event, as the matter had been previously adjourned, and decided to proceed.

## **The background**

12. The property which is the subject of this application is Flat D, 93 St James' Road, Croydon CRO 2US. The lease is dated 28<sup>th</sup> October 1983 and the original parties to the lease were Wavebrae Limited as Lessor and Adrian Charles Philpott as the Lessee. The lease is for a term of 99 years from 25<sup>th</sup> December 1980. The lease was assigned to the Respondents in or around July 2007.

13. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
14. 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 specific provisions of the lease will be referred to below, where appropriate.

### **The lease**

15. The lease provides a definition of the Property and the Reserved Property in the first schedule: that is the structural elements and common parts to the building that are not specifically demised to each of the leaseholders. In the second schedule the extent of the subject Flat is defined as:

*“ALL THAT flat forming part of and situate on the second floor of the Property and known as Flat d 93 St. James’s Road aforesaid edged red on the Plan TOGETHER with (a) the plaster and surface of the ceilings and walls separating the Flat from any other flat or part of the Property used in common as aforesaid and the surface tiles or other surfaces of the floors of the said Flat and the floor screed but not the reinforced concrete structure or other parts of the said buildings to which the said plaster surface tiles and surfaces and floor screeds of the floors and staircases (if any) and ceilings are attached (b) the internal walls of the Flat (c) all cisterns tanks sewers drains pipes wires ducts and conduits used solely for the purpose of the said Flat but no others and (d) the front door of the Flat AND TOGETHER ALSO with the garden plot edged blue on the Plan”*

16. The sixth schedule sets out the Lessee’s obligations including a liability to contribute 25% to the service charges and the extent of the service charge liability is set out as the Landlord’s obligations in the seventh schedule.

*“(4)(i) ...*

*(ii) At all times during the said term to keep the Lessor indemnified from and against twenty-five per cent of all costs charges remuneration and expenses incurred by the Lessor in carrying out the Lessors obligations under the Seventh Schedule hereto ...”*

17. Under paragraph 11 of the sixth schedule the Lessee covenants:

*“To pay to the Lessor all costs charges and expenses including legal costs and surveyor’s fees) which may be incurred by the Lessor in the preparation of a notice or in contemplation of any proceedings under Section 146 and 147 of the Law of Property Act 1925 or any re-enactment or replacement therefore notwithstanding forfeiture may be avoided otherwise than by relief granted by the Court”*

18. The seventh schedule sets out the Landlord’s obligations to which the Lessee is obliged to pay the service charge contribution. This schedule provides that:

*“(1) The Lessor shall at all times during the term hereby granted insure and keep insured the Property in its full value under a Comprehensive Buildings Policy in an Insurance Company of repute and shall pay all premiums necessary for that purpose and in case the Property or any part thereof shall at any time during the terms be destroyed or damaged by fire then and as often as the same shall happen the Lessor with all convenient speed shall lay out all moneys received in respect of such insurance in rebuilding repairing or otherwise reinstating the Property in a good and substantial manner and making good any deficiency out of its own moneys*

*(2) The Lessor shall in the year One thousand nine hundred and Eighty-four and in every succeeding fourth year of this demise paint with two coats of suitable paint in a workmanlike manner all the exterior wood iron and other parts of the Property*

*(3) The Lessor shall keep the Reserved Property and all fixtures and fittings therein and additions thereto in a good and tenantable state of repair decoration and condition including the renewal and replacement of all worn or damaged parts PROVIDED that nothing herein contained shall prejudice the Lessor’s rights to recover from the Lessee or any other person the amount or value of any loss or damage suffered by or caused to the Lessor or the Reserved Property by the negligence or other wrongful act or default of the Lessee or such other person*

*(4) The Lessor shall keep the common parts of the Reserved Property including the communal entrance hall and staircase and corridors leading to the flats of the Property properly cleaned and lighted*

*(5) ....*

*(6) The Lessor shall keep proper accounts of all expenditure on carrying out its obligations hereunder and of fees of Managing Agents (if any) and shall produce annually to the Lessee statements of such expenditure and of cash in hand against future liabilities”.*

### **The issues**

19. The relevant issues for determination are set out in the Applicant’s schedule of disputed service charges. The Respondent did not make any representations in relation to the items identified. The tribunal accepted the issues to be as follows:
- (i) The payability and reasonableness of service charges for years ending 31<sup>st</sup> December 2016 and 31<sup>st</sup> December 2017 relating to service charges.
  - (ii) The claim by the Applicants in relation to year ending 31<sup>st</sup> December 2015 has already been decided by this tribunal under case reference LON/00AH/LSC/21016/0362, and could not be considered again in this appeal.
  - (iii) An issue arising during the hearing is whether or not the lease permits the Applicant to either demand or hold a reserve/sinking fund.
20. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

### **Year ending 31<sup>st</sup> December 2016**

#### **Service charge item: Reserve Fund**

21. This item is not demanded in the service charge accounts. However, it was noted by the Tribunal that large sums are held over from unused service charges collected. This is identified on the Balancing Statement as at 31<sup>st</sup> December 2017 which sets out the reserve fund brought forward from 01.01.2017 as being £7173.90 plus a transfer from service charge of £3557.40 giving a balance at end of year 2017 of £10,731.30 [93].
22. The Tribunal considered only the balances that relate to 2016 and 2017 as being the subject of this appeal. No reference in the terms of the lease could be found to permit a reserve fund being held.

23. In response to this, the Applicant relied upon clause (6) of the seventh schedule, specifically that “...shall produce annually to the Lessee statements of such expenditure and of cash in hand against future liabilities”.
24. When asked what the Applicant would do if the Tribunal were to find that they were not entitled to hold a reserve fund, the response was that they would have to pay it back and consider making an application to amend the lease so as to entitle them to hold a reserve fund.
25. The Applicants stated that if the Tribunal find that holding a fund is not permitted by the lease, the funds they are holding will have to be refunded.
26. The Respondent made no submissions.
27. Whilst the Tribunal finds that it is good practice to hold a reserve/sinking fund when managing properties, the Tribunal are not persuaded by the Applicant’s argument, and find that the lease does not permit the collection or retention of funds. Accordingly, the amount held should be refunded to the leaseholders.
28. The respondent is owed 25% of the reserve fund held and declared by the Applicant as the sum held. Therefore 25% of £10,731.30 = £2682.82 and that sum is to be offset against the sum owed by the Respondent for service charges for the years 2016 and 2017.

**Service charge item: Buildings Insurance - Amount claimed: 25% of £975.45 (£243.86)**

29. This policy covers the period 29.09.2016-28.9.2017 and an invoice is produced at page 222 of the bundle. The Respondent does not dispute this item.
30. The Applicant is obliged to insure the building in accordance with The Seventh Schedule of the lease (1). The Respondent is obliged to pay 25% of the policy premium in accordance with the Sixth Schedule of the Lease (4)(ii).

**The tribunal’s decision**

31. The tribunal determines that the amount payable in respect of the building’s insurance is £243.86.

**Reasons for the tribunal’s decision**

32. The insurance premium is reasonable and payable. The Respondent is responsible to pay 25% of the sum paid by the Applicant in this regard as per the Sixth and Seventh Schedules of the Lease.

**Service charge item: General Repairs & Maintenance - Amount claimed: 25% of £1609.80 (£402.45)**

33. The Applicant is obliged to carry out works in this regard in accordance with The Seventh Schedule (3).
34. The breakdown provided in the 2016 accounts set out this figure as being made up of gardening work (£36 & £96) for which invoices were provided a p.160 & p.163 of the bundle; a survey of the metal stairs (£822) an invoice at p. 165; replace broken safety glass panel (££202.80) p.161; supply and install smoke alarms (£78.00) p.149; damp investigation, repair riser and clear drains (£250.00) p.154; a charge for attending the property but being unable to gain access (£125.00) p.147. This last item was explained by the Applicants to have been a call out fee that was ineffective due to the parking access having been blocked.
35. The Respondent did not provide a written response to this claim in breach of the directions made on 14<sup>th</sup> May 2019. In oral evidence he stated that it was unreasonable for the Applicants to have commissioned a survey of the metal stairs because that is a waste of money. Repairs should simply have been carried out without a survey. In relation to damp investigations, the respondent states this has not been resolved and there is still water dripping down. He was unable to provide the tribunal with any photographic evidence of alleged defects he now seeks to rely upon. He has a smart phone but did not think that photographs would have shown any issues.

**The tribunal's decision**

36. The tribunal determines that the amount payable in respect of general repairs and maintenance is £402.45.

**Reasons for the tribunal's decision**

37. The Respondent sought to dispute these items, but failed to provide any written response to the schedule of disputed service charges. Nor had he provided a statement of case, any photographs or videos. Mr Nuhu nevertheless wanted to challenge these items without offering any evidence for the Applicant to rebut. The Tribunal explained to Mr Nuhu that as he had not complied with directions it would be very difficult for him to now do so without having brought anything to assist the Tribunal. Although the Tribunal gave him an opportunity to explain, it



became clear very quickly that he could only make allegations about works not having been carried out.

38. The tribunal were satisfied that Mr Nuhu had been given every opportunity to make his position clear to the tribunal. He had been involved at the County Court stage, had been present at the first hearing on 14.5.19. He had represented himself at the previous case transferred by the county court to the tribunal, on similar issues for previous service charge periods. That matter was determined in 2017 under case no LON/00AH/LSC/2016/0362.
39. Having had this experience, the Tribunal found that the Respondent could have brought some evidence to assist the tribunal to clarify his assertions. He confirmed he had a smart phone but asked the Tribunal to accept that he could not have produced photographs to show dripping water and lack of decoration.
40. Mr Nuhu has throughout the proceedings failed to engage meaningfully or comply with directions. The Tribunal did not accept that he could not at least have submitted photographs. As such he left the tribunal with no alternative but to find his oral evidence unreliable, because it was vague, with no supporting information.
41. The tribunal considered that the amount claimed is reasonable and payable.

**Service charge item: Electrical Maintenance - Amount claimed: 25% of £90.00 (£22.50)**

42. The Applicant is obliged to carry out works in this regard in accordance with The Seventh Schedule (3).
43. This is detailed at p.88 on the notes for the accounting period to 31.12.2016 as *install battery powered lighting to hallways*. In oral evidence the Applicant explained that there is no landlord's electricity supply to the communal areas. They had been in discussion with the Respondent who had agreed in principle to provide access to the electricity supply in Flat D and that this would then be recharged to the Applicants. Although decided in principle, it has not been possible to put this arrangement in place, the Applicant says because the Respondent did not make himself available at the time they wanted to do works, the Respondent says that is not the case, and that they are not ready to do the works as there is no cabling in place. The Respondent also states that the battery-operated lights do not work, but has provided no evidence in relation to this complaint.

**The tribunal's decision**

44. The tribunal determines that the amount payable in respect of electrical maintenance is £22.50.

**Reasons for the tribunal's decision**

45. The sum claimed is very low and is reasonable. There was no evidence to support the Respondent's claim that the lights do not work, and no progress appears to have been made in relation to the proposed agreement to obtain an electric supply from flat D. In the meantime, this arrangement is in place at a reasonable cost.
46. The Respondent failed to comply with directions and no written comments were provided to the schedule of disputed items, nor did he bring any photographic evidence of problems now claimed orally at the hearing. Although the Tribunal allowed him the opportunity to explain issues he complained of, his arguments could not progress very far without having provided evidence or comments prior to the hearing.

**Service charge item: Out of hours service - Amount claimed: 25% of £72.00 (£18.00)**

47. The Applicant is obliged to carry out works in this regard in accordance with The Seventh Schedule (6).
48. The Applicant maintains that such a service is required for weekend periods for emergencies. This issue was not disputed by the Respondent.

**The tribunal's decision**

49. The tribunal determines that the amount payable in respect of out of hours service is £18.00.

**Reasons for the tribunal's decision**

50. The sum claimed under this heading was not disputed by the Respondent. The sums claimed are very low and are reasonable. No evidence was provided to show that this sum was not reasonably incurred.

**Service charge item: Risk Assessment - Amount claimed: 25% of £469.20 (£117.30)**

51. The Applicant is permitted to recoup expenses in relation to this issue in this regard in accordance with The Seventh Schedule (6).

52. The Applicant explained that a risk assessment is carried out every 18-24 months. Such an assessment is important to ensure the safety of the building and its residents. The invoice is at p.173 of the bundle
53. This item was not disputed by the Respondent.

#### **The tribunal's decision**

54. The tribunal determines that the amount payable in respect of the risk assessment is £117.30.

#### **Reasons for the tribunal's decision**

55. Regular risk assessments are important for the safety of the building and its residents. The sum was not disputed by the Respondent and the Tribunal found the sum to be reasonable.

#### **Service charge item: Management fees - Amount claimed: 25% of £1032.00 (£258.00)**

56. The Applicant is permitted to recoup expenses in relation to this issue in this regard in accordance with The Seventh Schedule (6).
57. This fee or the sum claimed was not disputed by the Respondent.

#### **The tribunal's decision**

58. The tribunal determines that the amount payable is £258.00.

#### **Reasons for the tribunal's decision**

59. The Respondent did not dispute this item. The Tribunal considered that the sum claimed was reasonable.

#### **Service charge item: Accountancy - Amount claimed: 25% of £187.20 (£46.80)**

60. The Applicant is permitted to recoup expenses in relation to this issue in this regard in accordance with The Seventh Schedule (6).
61. The details of accountancy fees were explained by the Applicant and demonstrated in the accounts contained within the appeal bundle. This item was not disputed by the Respondent.

#### **The tribunal's decision**

62. The tribunal determines that the amount payable in respect of accountancy is £46.80.

**Reasons for the tribunal's decision**

63. The figure charged is reasonable. The Respondent did not dispute this sum.

**Service charge item: Bank Charges - Amount claimed: 25% of £8.00 (£2.00)**

64. The Applicant is permitted to recoup expenses in relation to this issue in this regard in accordance with The Seventh Schedule (6).
65. The Applicant explained that they use one bank account for all the various properties that they manage. They have based this figure on the basis of 6 transactions per flat per annum at a composite rate of £0.33 per transaction.

**The tribunal's decision**

66. The tribunal determines that the amount payable in respect of bank charges is £2.00.

**Reasons for the tribunal's decision**

67. The Respondent did not dispute this item. The Tribunal considered the sum claimed to be reasonable.

**Year ending 31<sup>st</sup> December 2017**

**Service charge item: Buildings Insurance - Amount claimed: 25% of £1013.62 (£253.41)**

68. This policy covers the period 29.09.2017-28.9.2018 and an invoice is produced at page 221 of the bundle. The Respondent did not dispute this item.
69. The Applicant is obliged to insure the building in accordance with The Seventh Schedule of the lease (1). The Respondent is obliged to pay 25% of the policy premium in accordance with the Sixth Schedule of the Lease (4)(ii).

**The tribunal's decision**

70. The tribunal determines that the amount payable in respect of the building's insurance is £253.41.

### **Reasons for the tribunal's decision**

71. The insurance premium is reasonable.

### **Service charge item: General Repairs & Maintenance - Amount claimed: 25% of £2293.20 (£573.30)**

72. The breakdown provided in the 2017 accounts set out this figure as being made up of repair concrete to secure handrail (£399.60 with an invoice p.203); clear rubble and make safe brickwork (£526.80 with invoice at p. 183); Replace union joint at high level (£360.00 with invoice at p. 189); repair metal steps (£582.00 with invoice at p. 192); replace brickwork, repoint and return to white (£424.80 with invoice at p.201).
73. The Respondent disputed that items had been carried out, but he had not responded to the schedule of disputed service charges and did not produce any photographs to explain what had not been carried out.

### **The tribunal's decision**

74. The tribunal determines that the amount payable in respect of general repairs and maintenance is £573.30.

### **Reasons for the tribunal's decision**

75. The Respondent had been given every opportunity to provide his position in writing by way of a response on the schedule of disputed service charges. He failed to comply with the direction in this regard. He could have brought some evidence for the Tribunal to consider at the hearing, but did not. He sought to rely on vague assertions without any thing to support his claims.
76. The tribunal were satisfied that Mr Nuhu had sufficient experience of the Tribunal from the previous case, as well as the previously adjourned hearing of this case, such that he could have made some effort to bring some evidence of his assertions. He confirmed he had a smart phone but asked the Tribunal to accept that he could not have produced photographs to show the alleged dripping water and lack of decoration.
77. Mr Nuhu has throughout the proceedings failed to engage meaningfully or comply with directions. The Tribunal did not accept that he could not at least have submitted photographs. As such he left the tribunal

with no alternative but to find his evidence unreliable, because there was nothing to back it up.

78. The maintenance charges for the year are reasonable.

**Service charge item: Out of hours service - Amount claimed: 25% of £76.80 (£19.20)**

79. This service is required for weekends.

**The tribunal's decision**

80. The tribunal determines that the amount payable in respect of out of hours service is £19.20.

**Reasons for the tribunal's decision**

81. This issue is not disputed by the Respondent. The sums claimed are low and are reasonable.

**Service charge item: Risk Assessment - Amount claimed: 25% of £483.00 (£120.75)**

82. This item is not disputed by the Respondent.

**The tribunal's decision**

83. The tribunal determines that the amount payable in respect of the risk assessment is £120.75.

**Reasons for the tribunal's decision**

84. The sum claimed is reasonable.

**Service charge item: Gardening - Amount claimed: 25% of £144.00 (£36.00)**

85. Invoices are available in the bundle [208-209]. This sum was not disputed by the Respondent.

**The tribunal's decision**

86. The tribunal determines that the amount payable in respect of the risk assessment is £36.00.

### **Reasons for the tribunal's decision**

87. The sum claimed is reasonable.

### **Service charge item: Management fees - Amount claimed: 25% of £984.00 (£246.00)**

88. The Applicant is permitted to recoup expenses in relation to this issue in this regard in accordance with The Seventh Schedule (6).

89. The Respondent does not dispute this item.

### **The tribunal's decision**

90. The tribunal determines that the amount payable in respect of this charge is £246.00.

### **Reasons for the tribunal's decision**

91. The sum charged is reasonable.

### **Service charge item: Accountancy - Amount claimed: 25% of £187.20 (£46.80)**

92. The Applicant is permitted to recoup expenses in relation to this issue in this regard in accordance with The Seventh Schedule (6).

93. The details of accountancy fees were explained by the Applicant and demonstrated in the accounts contained within the appeal bundle. This item was not disputed by the Respondent.

### **The tribunal's decision**

94. The tribunal determines that the amount payable in respect of this item is £46.80.

### **Reasons for the tribunal's decision**

95. The sum charged is reasonable.

**Service charge item: Bank Charges - Amount claimed: 25% of £8.00 (£2.00)**

96. The Applicant is permitted to recoup expenses in relation to this issue in this regard in accordance with The Seventh Schedule (6).
97. The Applicant explained that they use one bank account for all the various properties that they manage. They have based this figure on the basis of 6 transactions per flat per annum at a composite rate of £0.33 per transaction.

**The tribunal's decision**

98. The tribunal determines that the amount payable in respect of bank charges is £2.00.

**Reasons for the tribunal's decision**

99. The Respondent did not dispute this item. The Tribunal considered the sum claimed to be reasonable.

**Application under s.20C and refund of fees**

100. There was no application for a refund of fees in this matter and no order is made.
101. At the hearing, the Respondent applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal makes no order.

**The next steps**

102. The tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the County Court.

**Name:** Judge D Brandler

**Date:** 11<sup>th</sup> December 2019



## **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

## **Appendix of relevant legislation**

### **Landlord and Tenant Act 1985 (as amended)**

#### **Section 18**

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
  - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
  - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
  - (a) "costs" includes overheads, and
  - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

#### **Section 19**

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
  - (a) only to the extent that they are reasonably incurred, and
  - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

#### **Section 27A**

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

- (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
  - (b) the person to whom it would be payable,
  - (c) the amount which would be payable,
  - (d) the date at or by which it would be payable, and
  - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

## **Section 20**

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
  - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
  - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

### **Section 20B**

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

### **Section 20C**

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are

not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

- (2) The application shall be made—
  - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
  - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
  - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
  - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

## **Commonhold and Leasehold Reform Act 2002**

### **Schedule 11, paragraph 1**

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
  - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
  - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
  - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
  - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
  - (a) specified in his lease, nor
  - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

### **Schedule 11, paragraph 2**

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

### **Schedule 11, paragraph 5**

- (1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—
  - (a) the person by whom it is payable,
  - (b) the person to whom it is payable,
  - (c) the amount which is payable,
  - (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) may be made in respect of a matter which—
  - (a) has been agreed or admitted by the tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
  - (a) in a particular manner, or

(b) on particular evidence,  
of any question which may be the subject matter of an application  
under sub-paragraph (1).