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

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| **Case reference** | **:** | **CAM/00MC/LSC/2019/0062** |
| **Property** | **:** | **Crayshaw Court, Abbotsmead Place, Caversham, RG4 8EQ** |
| **Applicant** | **:** | **Caversham Court Residents Association (Leaseholders of 54 flats)** |
| **Representative** | **:** | **None** |
| **Respondent** | **:** | **McCarthy and Stone Retirement Lifestyles Ltd. No.6622231 (Landlord)** |
| **Representative** | **:** | **None** |
| **Type of application** | **:** | **For the determination of the reasonableness of S.19 and liability to pay a service charge S.27 (1) Landlord & Tenant Act 1985; and orders under S.20 L&TA 1985; and Para 5 Sch 11 CLRA 2002.** |
| **Tribunal member** | **:** | **Mr N. Martindale FRICS** |
| **Venue** | **:** | **Cambridge County Court, 197 East Road, Cambridge CB1 1BA** |
| **Date of decision** | **:** | **14 February 2020** |

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**DECISION**

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## Decisions of the Tribunal

The Tribunal determines that for the single item raised in dispute, the sum, reasonable and payable by the applicant to the respondent is, and orders made, are:

(1) Year 2018/ 2019, actual service charge: "House Manager and Associated Costs": £41,347 disputed; £22,963 is payable

(2) That an order under S.20C Landlord and Tenant Act 1985, barring the recovery of costs from the applicant, incurred by the respondent, arising from this application, be made.

(3) That an order under paragraph 5A, Schedule 11 Commonhold and Leasehold Reform Act 2002, extinguishing the applicant's liability to pay any administrative charge arising, be made.

## Applications

1. The applicant made an application dated 8 October 2019, received by the Tribunal on 11 October 2019. It disputed: 1. Reasonableness and liability to pay an element of the service charge under S.19 and S.27A Landlord and Tenant Act 1985. It applied for; 2. An order under S.20C Landlord and Tenant Act 1985 and; 3. An order under paragraph 5A to schedule 11 of the Commonhold and Leasehold Reform Act 2002.

2. The applicant is Crayshaw Court Residents' Association, through its secretary, also a leaseholder. The respondent is stated by the applicant to be *"McCarthy and Stone Management Services Ltd.* (Capacity) *The Landlord."* This does not appear to the Tribunal to be strictly correct. In their respective bundles both applicant and respondent provided copies of a sample lease. That received from the applicant was completed and for "*Apartment 24"*. The landlord is named as *"McCarthy and Stone Retirement Lifestyles Ltd. ...No.6622231"*. That received from the respondent was a draft for an unspecified Apartment. The landlord is also named there as *"McCarthy and Stone Lifestyles Ltd ... No.6622231"*. Neither lease mentions the existence of a management company as is sometimes the case in such schemes, but there is provision for the appointment of an agent by the landlord.

3. The Tribunal concludes that McCarthy and Stone Management Services Ltd. (No.07166051) is actually the agent. The Tribunal found that references to and of the identity of landlord and agent are readily interchanged in correspondence within each bundle from both parties.

## Directions

4. Directions were issued from this Tribunal, by Regional Judge Wayte on 4 November 2019. These provided for the applicant to send to the Tribunal and the respondent any further statement of documents in support by 22 November 2019. The respondent then had until 13 December 2019 to send 2 copies of the bundle to the Tribunal and another to the applicant. Any final reply to the respondent's bundle was to be with the Tribunal and the respondent by 20 December 2019.

5. The application was to be determined on or after 8 January 2020 or by hearing if there had been a request by 6 December 2019. There was no request.

6. The Directions identified that: *"This… challenge by the residents' association of a retirement block concerns the service charge levied for the house manager for 2018/19. Due to the need to arrange temporary cover, the charge sought from the residents is almost twice the budgeted amount. The applicant's case is that only the budgeted amount should be payable, the excess is unreasonable as it arose due to the failure of the respondent. The total in dispute is therefore the difference between £22,963 and £41,347."*

7. And further that: *"The applicant has also made an application for an order under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002, limiting payment of the landlord's costs as a service or administration charge under the lease."* The relevant legal provisions are set out in the Appendix to this decision.

8. Both parties substantially complied with the Directions. The Tribunal adopts and references the sample lease (for Apartment No.24) supplied by the applicant. This is because it was actually completed and not simply a draft.

## Background

9. The Property consists of 54 apartments. The residential development is modern. The scheme is intended for single residents of 60 or over, or where the youngest member of a household is at least 55. A resident or visiting 'House Manager' is appointed by the landlord. They are to provide some 35 hours of work, including interacting with residents, each week and are directly employed by the landlord. These services are specified in the lease's Fourth Schedule. The cost of this service or any addition is recoverable from leaseholders via a regular service charge contribution as set out in the lease at the Fifth schedule.

10. Although the landlord is McCarthy and Stone Retirement Lifestyles Limited and their appointed managing agent is McCarthy and Stone Management Services Ltd. the latter makes no distinction in its correspondence. McCarthy and Stone, 'are one'. Consequently the leaseholders treat McCarthy and Stone as a single entity for all intents and purposes. The completed Tribunal application form confirms. McCarthy and Stone do not seek to correct this. The additional company 'tiers' are of the landlord's creation and for its own reasons but, both parties may benefit from a greater clarity of the identity of roles and responsibilities played at this estate in the future.

11. Neither party requested a hearing. 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.

**Issues**

**House Manager and Associated Costs**

12. **Applicant:** In their bundle, from their covering letter of 8 October 2019 to the Tribunal, the applicant refers to the Fourth Schedule para. 6, 7.1 and 7.3. They state that these clauses *"spell out the Landlord's statutory duty to carry out formal consultation about varying a charge. This was not done, although the charge for the House Manager was almost doubled."* In addition the tenants maintain that the landlord warranted to them that there was adequate insurance cover for additional costs arising from the Manager's absence.

13. The applicant refers to the document in their bundle headed *"Management Services Service Charge Statement of Account Crayshaw Court Caversham for the year ended 31 March 2019."* (MSSCSA). The first item of expenditure is *"House Manager and associated costs, Cost of Employment".* The 2018 actual is £21,816, the budget for 2019 is £22,963, the actual for 2019 is £41,147. The document was prepared and signed off on`7 July 2019, by T. Martin Director of McCarthy & Stone Management Services Limited (The landlord's agent).

14. The tenants are arguing that the 'head' of service identified in the MSSCSA, as *'House Manager and associated costs, Cost of Employment'* only refers to a member of staff directly employed by the landlord as the house manager. The procurement of others working directly for the landlord on another estate, or of others working indirectly through an agency, in both cases represent an additional service.

15. Fourth Schedule paragraph 6. reads: *"Provided always that the Landlord shall be at liberty at any time to review the heads of cost*

*expenditure charge or allowance included in the Annual Service Cost as it shall in its discretion (acting reasonably) deem appropriate in the interests of good management and vary the existing items included in the calculation of the Annual Service Cost."* The Tribunal concludes that the applicant understands this to be those items and only those items as described and set out in the MSSCSA referred to above.

16. Fourth Schedule paragraph 1.2 *"Annual Service Cost, means the total of all costs expenses overheads payments charges loss and outgoings suffered or incurred by or on behalf of the Landlord in any Year in connection with the repair maintenance decoration renewal improvement and management of the Estate and the Building and the provision of all Services and any improvement and additional services from time to time and in the performance of its covenants…."* This provides a much wider definition of items of cost. And at paragraph 1.2.8 includes *"the costs of employing staff directly or indirectly for the performance of duties in connection with the maintenance and/or security of the Estate of any part thereof and the provision of Services and expenditure in relation to such employment which the Landlord may be required by state or otherwise to pay or may in its discretion deem desirable or necessary to pay."*

*17.* Under definitions: *"Manager: the person or persons employed by the Landlord or its agent for the purposes of being available to the tenants in the Building during reasonable hours of the daytime to render such assistance in cases of emergency as may reasonably be expected of a person in such position possessing no medical or other special skill and to monitor on a day-to- day basis the provision of services in the Building and on the Estate."* The Manager is not required to carry out maintenance or provide security services to the Estate.

18. Fourth Schedule paragraph 7.1, 7.2 and 7.3 set out detailed arrangements for notice to the tenant and to all the tenants of the Building the landlord… *"to add to, subtract from, change or vary any of the Services to be provided under this Lease or the method of carrying out any Services… the Landlord shall be entitled to give notice to the Tenant… of such proposals (coupled with an indication of the anticipated costs of the provision of same and/or anticipated changes to the Annual Service Cost as a result of same."*

19. There is no dispute between the parties that no notices were served under the Fourth Schedule as above, on tenants. The ability for the tenants to make 'qualifying objections' did not therefore, arise. The landlord does not consider that there was any addition to the services that could be provided by the landlord as allowed for under the lease and under the MSSCSA issued annually. Such notices were therefore not required. By contrast the tenants believe that there was an addition to the service – the assignment of other directly employed staff and the indirect employment of agency staff, towards the role of 'Manager' at

the Estate in excess of the short term cover mentioned in the duties. These additional items and their additional costs (approximately doubling for one year) should have been anticipated by the landlord and notice served under the Fourth Schedule as soon as the Manager was expected to go off on sick leave, but they were not served.

20. The tenants also refer to Second Schedule Part II. Paragraph 4. reads: *"Notwithstanding anything herein contained the Landlord shall not be liable to the Tenant nor shall the Tenant have any claim against the Landlord in respect of:…4.2 any act omission or negligence of the Manager or other servant or agent of the Landlord in or about the performance or purported performance of any duty relating to the provision of the Services or any of them except only to the extent that any liability is covered by insurance effected by or on behalf of the Landlord.* And Paragraph 5. reads: *"Except to the extent covered by the insurance effected by the Landlord or to the extent that the same is caused by the act neglect or default of the Landlord, the landlord shall not be responsible to the Tenants… for any financial or consequential loss….."*

21. Sixth Schedule paragraph 5.1 onwards: Such normal buildings insurance obligations for loss or damage to the physical Estate, on the landlord are set out in the lease from here onwards. They do not however include an obligation to arrange insurance against the failure by the landlord for example, to provide services including that of a 'Manager'. They do not include a specific requirement for the landlord to arrange adequate or any insurance against staff or agent negligence. Discretion or any obligation for arranging separate insurance against such additional losses which might form a claim against the landlord, lies separately with the landlord, as an employer.

22. The tenants considered that the landlord's employee was careless and failed to check that there was proper insurance cover for the absence of a Manager.

23. The tenants provided a list of 3 short statements which they attributed to Mr Kevin Rose, Area Manager. He was, in summary, said to have told them *"…not to worry about the cost of replacement staff as McCarthy and Stone took out insurance to cover this risk."*

24. To support their claim, the tenants provided the names, numbers and witnessed signatures of 49No. leaseholders of 54No. Apartments. (Some signatories own more than one apartment). They each state that they *'believe these statements to be true'.*

25. 'These statements' were: *"(A) When the matter of the House Manager (Malcolm James) being on sick leave for some time, the then Area Manager, Kevin Rose state that there was insurance cover which would be used to cover any additional cover needed and that the*

*residents had no cause for concern on this matter. (B) The first intimation that there was an excess which would be charged to the Residents came from Peter Jordan at a slightly "warm meeting" when he had told the residents that the insurance claim had not been met due to Malcolm James not being of an eligible age. (C) Peter Jordan said that if he and Sandra Reardon (who was with him for this meeting) were sitting in the audience they would have the same feelings that were obvious from those residents present. Please sign to show that YOU can remember which of the above statements (A)(B)(C) …"* Almost all signatories stated they could remember all 3 statements.

26. In summary the leaseholders considered that either one or both of the following apply: That these additional employments and their cost, were an 'addition' of services, for which no prior notice under the Fourth Schedule had been given by the landlord and/or: The landlord had separately provided an oral warranty at the 'Finance Meeting on February 1, 2018', for the leaseholders, through Mr Kevin Rose, named by them as the 'Area Manager' for McCarthy and Stone, that cover for any such extra expense was in place. Such losses as leaseholders should fall to the landlord to bear as their employee had been negligent in warranting the insurance cover was in place and could be relied on to meet all additional costs.

27. The applicants were did not consider the additional costs claimed by the landlords were reasonable incurred and payable.

28. **Respondent:** The managing agent provided a statement dated 18 December 2019, through Kate Skeens, Legal Counsel.

29. The respondent refers to the Landlord's Covenants at the Sixth Schedule paragraph 7. It repeats some of the definition of 'Manager' in the lease. *"So far as is practicable (and subject to Paragraph 4.2 of Part II of the Second Schedule) to use its best endeavours to provide and maintain the services of a Manager…. For the purpose of being available to the tenant in the Building during reasonable hours of the daytime to render such assistance in cases of emergency as may reasonably be expected of a person in such position possessing no medical or other special qualification or skill and to supervise the provision of services in the Building and on the Estate and to perform such other duties as the landlord may in its discretion stipulate together with an emergency call system connected to a central control for the purpose of providing assistance in cases of emergency and in the short term or temporary absence of a Manager and whilst the Manager is off-duty."*

30. The respondent refers to and quotes at length from the Fourth Schedule, paragraph 1.2 where the *"Annual Service Cost",* is defined, and in particular paragraph 1.2.8. Paragraph 1.2 *"Annual Service Cost,*

*means the total of all costs expenses overheads payments charges loss and outgoings suffered or incurred by or on behalf of the Landlord in any Year in connection with the repair maintenance decoration renewal improvement and management of the Estate and the Building and the provision of all Services and any improvement and additional services from time to time and in the performance of its covenants…."* This provides a wider definition of items of cost.

31. In the Fourth Schedule in particular at paragraph 1.2.8 it includes *"the costs of employing staff directly or indirectly for the performance of duties in connection with the maintenance and/or security of the Estate of any part thereof and the provision of Services and expenditure in relation to such employment which the Landlord may be required by state or otherwise to pay or may in its discretion deem desirable or necessary to pay."*

32. Under lease definitions: *"Manager: the person or persons employed by the Landlord or its agent for the purposes of being available to the tenants in the Building during reasonable hours of the daytime to render such assistance in cases of emergency as may reasonably be expected of a person in such position possessing no medical or other special skill and to monitor on a day-to- day basis the provision of services in the Building and on the Estate."* The Manager is not required to carry out maintenance or provide security services to the Estate however.

33. The respondent maintains that the provision of the 'Manager' service and of any replacement is an obligation (not an addition), fulfilled as well as possible by the landlord. The costs from the normal and any temporary services, arising, are to be recovered from the tenants under the service charge.

34. The respondent though not obliged to do so under the lease, states in their submission that they arranged *"sickness cover"* for all of the House Managers for McCarthy and Stone Management Services Ltd.. It does so to *'try to mitigate the impact'* on the leaseholders *"in the unfortunate event that a… Manager is off work for a period of time. This is known and referred to in the correspondence provided in the tenant's application as the Key Staff Policy."* (KSP).

35. It is not clear to the Tribunal whether the 'impact' is of the possible absence of service, or of the additional costs arising from providing cover, or of both. The respondent adds that: *"It should be noted at this point that not all managers of retirement properties provide this cover and there is no obligation on us to do so but we felt that it was the best way of providing protection and assurance to our Homeowners* (leaseholders) *and House Managers."*

36. Although a copy of the KSP above was not included in the bundle a copy of a mid-term 'policy update' (1 April 2018 to 31 March 2019) from insurers (through brokers Marsh Ltd) Chubb European Group Ltd. was included. It is said to be for *"Injury and Travel insurance"*. The 'policyholder' is McCarthy and Stone plc, McCarthy and Stone (Developments) Ltd and/or Subsidiary Companies. Neither is the landlord nor agent, and whilst it is possible both are subsidiaries, it is not clearly set out.

37. At the 'policy update' page 2, Category A, insured person is *"House Managers in Retirement Living Developments*". It provides a benefit of £625 per week of 'temporary total disablement' and of £25,000 for 'permanent total disablement from usual occupation'. Pay out is to the policyholder in respect of the insured person. It is assumed that these sums are laid against such entitlements as the insured person may have against their employer. There is no obligation for the policyholder to share all or any of such a payout with the leaseholders by way of a full or partial set-off against additional services and their costs.

38. At the end of the policy there area list of *"Specific Exclusions applicable to Temporary Total Disablement (illness)"*. This includes reference *"The Insurer shall not be liable for Illness suffered or incurred after the expiry of the Period of Insurance during which the Insured Person attains the age of sixty-five years."*

39. The respondent has included a copy of the email dated 26 February 2019 from McCarthy and Stone (Developments) Ltd., (not the landlord) to the insurance company Chubb. The insurer confirms in reply dated 26 February 2019 that the claim is rejected as the insured person, Mr James, the Manager, was too old, being 67 around the time the claim was made.

40. The Tribunal was assured by the respondents Counsel that *"The application also alleges that the Homeowners were promised that the insurance policy would cover the Keys Staff Policy, but an insurance pay-out is never guaranteed, and our experienced Area and Regional Managers would not, and did not, make such promises."*

**Decision**

*41.* On the balance of the evidence presented, the Tribunal finds that the landlord engaged additional staff cover beyond that expected for… *"the short term or temporary absence of a Manager and whilst the Manager is off duty."* (Sixth Schedule para.7). In doing so it therefore failed to give prior notice to the leaseholders of that additional service (Fourth Schedule para.7).

*42.* The landlord could have raised and explained its position on additional services and costs at the February 2018 meeting; or at a subsequent one; or by way of correspondence with leaseholders. There was no evidence that it did any of these things. It could have served a protective notice under the Fourth schedule, that likely or probably additional services and their costs would be required: It did not. Even if the notice period was shorter than required in the lease, and/ or turned out to be unnecessary, it did even attempt to do so.

43. Although not obliged by the lease to arrange such insurance cover, the Tribunal looked in the respondent's bundle, for a copy of file notes or signed minutes of the meeting held by the landlord/ managing agent on 8 February 2018, with the leaseholders, prepared by their staff. If they had been taken on that occasion, copies were not provided. In the alternative the Tribunal was looking for one or more statements of truth prepared and signed by the employees in particular of Mr Kevin Rose, setting out their later recollection based either on those notes or of a memory, of the events of the meeting and in particular of the three key statements said to have been made by him. If statements of truth encapsulating these copies existed, copies were not provided. In the further alternative, the Tribunal was looking for an explanation for the absence of notes, minutes and statements perhaps because those involved were no longer employed by the landlord/ managing agent. If this was the explanation; it was not provided.

44. The insurance policy provided appeared to have been renewed for at least two periods and payments made for the cover by Policyholders, yet it was already of no effect in respect of illness, at this Estate. So while a warranty as to insurance cover was being made to the leaseholders by the landlord's representative at a meeting, there was not actually any effective cover for illness of the Manager in place.

45. The only first hand account of the warranty provided by the landlord to the tenants at the meeting comes from the applicant. It is supported by nearly 50 leaseholders. The statement for the landlord against this comes from their single representative who was not present at that meeting therefore. No supporting evidence was provided. The Tribunal prefers the evidence from the applicant.

*46.* The Tribunal finds that at the February 2018 meeting the landlord misrepresented the position regarding additional costs for the services of a Manager and as to who would be ultimately responsible. Statements made to the leaseholders by the Area Manager of the landlord and/or his agent at the February 2018 meeting, were wholly unreliable. They sought and gave assurance to leaseholders. This was even worse than simply omitting the provision of notice under the Fourth Schedule.

*47.* If the leaseholders had been told by the landlord at that meeting, that there was: 1) no cover in place to meet this cost, or 2) that whilst in place the cover was probably inadequate, or 3) or that whilst in place the cover should not be relied on at all, or 4) or that the Area Manager was unclear about the details of any cover but, would check and confirm back to the leaseholders, or 5) that the Area Manager was simply unclear about it all; or 6) that the Area Manager had not mentioned it all; then the leaseholders might have made or at least attempted to have taken out their own insurance. They might also have raised the prospect of and need for a notice under the Fourth Schedule that additional services and costs should be expected, so that they could make representations. None of the possibilities happened.

*48.* The provision of additional staff cover in the case a suspected long term illness where the Manager was to be off for weeks or months should have prompted the issue of a notice by the landlord to all leaseholders under the Fourth Schedule, paragraph 7. The parties do not dispute that no notice was served. Although the quality of the services provided and the unit and total costs (supported by detailed invoices from third parties in the respondents bundle) are not disputed, the final liability for that total additional cost is.

*49.* S.19 Landlord Tenant Act 1985. *"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."* The Tribunal finds that the additional costs incurred by the landlord or these additional services in the absence of compliance with the prior notice requirements under the lease, are therefore not 'reasonably incurred'.

*50.* Under S.27a Landlord and Tenant Act 1985, the sum incurred for the single item in dispute between the parties is £22,963 in total. This is to be paid by each leaseholder by due proportion reserved in each lease at this Estate. It is to be paid by the leaseholders to the landlord.

**S.20C Order barring landlords service charge costs recovery**

51. The Tribunal could not find any representations from either party. However in view of the decision above the Tribunal makes an order barring recovery of the landlords costs incurred in responding to this application through the service charges levied on all and any leaseholders in future years, under the lease.

**Para 5 Schedule 11 Order barring administration costs recovery**

52. The Tribunal could not find any representations from either party, nor any item or sum billed to the applicant for administration costs. However for the avoidance of doubt the Tribunal makes an order barring recovery of the landlords costs incurred in responding to this application through administration charges levied on all and any leaseholders in future years, under the lease.

**Name: Neil Martindale Date: 14 February 2020**

## 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).