FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BJ/LSC/2019/0417**
Property	**:**	**Wildcroft Manor, Wildcroft Road, London SW15 3TS**
Applicant	**:**	**Wildcroft Manor Limited**
Representative	**:**	**Mr R Bhose QC**
Respondent	**:**	**The Leaseholders at the Property**
Representative	**:**	
Type of application	**:**	**Landlord and Tenant Act 1985, s.27A(3)**
Tribunal members	**:**	**Judge D Brandler** **Mr C Gowman BSc MCIEH**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of hearing	**:**	**30th January 2020**
Date of decision	**:**	**29th February 2020**

DECISION

Decision of the tribunal

(1) The tribunal determines that, in principle, the cost of prospective works in relation to replacing the heating and hot water system at Wildcroft Manor, Wildcroft Road, London SW16 3TS ("Wildcroft Manor"), together with the cost of taking out and installing 5 new radiators in each flat, together with the costs for remedial works to the walls, ceilings, floors, floor coverings or decorations to each flat would be payable as a service charge by the leaseholders of Wildcroft Manor.

(2) The above will be subject to any s.20 application and assessment.

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

(4) The tribunal makes no order under section 20C of the Landlord and Tenant Act 1985

REASONS

The Application

1. This case concerns an application by Wildcroft Manor who seek a Tribunal ruling under section 27A(3) Landlord and Tenant Act 1985 for a determination that if they were to undertake the replacement of a communal heating and hot and cold water system, then each leaseholder would be liable to pay a service charge towards the full costs incurred in relation to those works as well as for the internal works in each flat in relation to installations of 5 new radiators with pipework, and the remedial works required after these major works have been completed.

2. The Applicant has not as yet undertaken statutory consultation but has obtained the detailed budget costing for the proposed works. The purpose of making this application is to enable the Applicant to establish in advance of consultation whether what it proposes to do is required or permissible under the terms of the lease and determine the Respondents liability if costs were to be incurred.

3. The Applicant recognises that whatever the Tribunal decides, they will still be subject to compliance with the statutory consultation requirement and the overarching protection to the Respondents that any service charges must have been reasonably incurred.

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

The background

5. The property which is the subject of this application comprises three four-storey blocks (together "the building") containing a total of 56 flats ("the flats"), together with a basement boiler house, garages and communal gardens. The Building was built in the 1930s.

6. The heating and hot and cold water is supplied to the building and the flats therein by means of the communal existing system. The general position with that systems is as follows: -

(a) The basement boiler house is situated in block 2. It houses three gas fired boilers which generate low temperature hot water for distribution to the building. It also houses two hot water calorifiers for hot water provision to the flats.

(b) The distribution pipework for the central heating, and the flow and return pipework for the hot water runs form the basement boiler house through underground service ducts and in floor trenches, then emerges at various points within the building (save that the pipework to block 3 is routed from block 2 at roof level). This pipework then rises-up in multiple locations within each block to serve each flat. There is asbestos in the underground service ducts.

(c) Each flat was designed to have only 5 radiators, with no radiators in the bedrooms. This remains the position for most but not all of the flats. Some flats still have working open fireplaces. The existing system provides heating to every flat and in the communal lobbies for 24 hours per day, 7 days per week during the winter months.

(d) The radiators of each flat are not connected together by internal pipework. Rather they are served by 4 different risers, three serving one radiator each, and the fourth serving two radiators. The risers are generally concealed form view in each flat, either being built into the building fabric or running up through service ducts. This means there are approximately 280 connection points in the flats.

(e) Mains cold water is supplied through pipework within concealed risers in the building, providing potable water to the kitchen sink in each flat and then to two main water tanks of nine tonnes in the loft space of block 2. They supply six further smaller water storage tanks in the loft spaces above the stairwells of all the buildings. Water for the bathroom and WCs is then provided by way of a down service pipework distribution, exiting horizontally within each flat to serve the sanitaryware.

7. The existing system does not include any provision for individual metering or timing or temperature controls within any flat. The only means of control available to an occupier is by manually turning the individual radiator valves on or off. The risers are generally inaccessible, making ongoing maintenance and repair extremely difficult.

8. The majority of the distribution and cold-water pipework is original and in excess of 80 years old.

9. The shareholding in the Applicant is held by the leaseholders of the Flats. Each holds a £1 share. Only three leaseholders do not presently hold a share, but two are in the course of purchasing a share. The Applicant's affairs are managed by a Board of directors, elected by the shareholder leaseholders. The management of the Property is undertaken on the Applicant's behalf by professional managing agents, Kinleigh Folkard and Hayward.

10. All the leaseholders have been served with this application. Further to the invitation set out in the Tribunal's Directions to indicate whether they support or oppose the application, a total of 10 responses were received. Three leaseholders oppose the application (flats 15, 35 and 47). Each of those leaseholders have included their explanations for their opposition in their letters.

11. The Respondents hold long leases of their individual flats 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.

12. The Applicant proposes:

(i) to replace the existing system with new gas-fired boilers to be installed to replace the existing boilers. They will be housed within a currently redundant

ground floor outbuilding near to the existing plant room [333] which was previously used to house oil tanks prior to the switch to gas.

(ii) To install new distribution heating pipework to run from the new boilers below ground level in dedicated new ducts, then up and through the rear staircase to the 8 flats in each core. [337-338].

(iii) To ensure that each flat will benefit from individual heat interface unit (HIU) and an individual meter will be installed which will also allow individual metering and control of the heating levels and consumption [337].

(iv) To install 5 new radiators to each flat connected by new internal pipework. With each flat owner having the opportunity to choose to have additional radiators at their own cost.

(v) A new incoming water supply to be delivered from Wildcroft Manor to be routed along the rear entrance road within the property. New water tanks and pumps to be installed in a new pump room next to the new plant room.

(vi) Reasonable remedial works are proposed to the walls, ceilings, floors, floor coverings or decorations which become damaged or disturbed as a result of the proposed works.

13. The Applicant seeks clarification on the following:

14. Whether the replacement of the communal pipework, plant room and equipment and general infrastructure by new installations which go through the common parts (and not on a like for like basis) would be in compliance with the landlord's repairing obligations;

15. Whether compliance with the landlords repairing obligations require it also to undertake consequential works to the individual flats to include demised installations and to works to make good the flats (and to what extent);

16. Whether the service charge would accordingly be payable;

17. Whether an order under s. 20C of the 1985 Act and /or paragraph 5A of Schedule 11 to the 2002 Act should be made.

The hearing

18. The Applicant was represented by Mr Bhose QC. He was accompanied by Marian Ferguson, the Applicant's expert witness who is a heating engineer of Energylab Consulting Limited; Konstantinos Korakakis, an architect of KKAD Ltd; Stacy Dawes from solicitors Bolt Burden; Tim Daniels, leaseholder and the current chair of the board; Tim Isaacs, leaseholder and board member; Fiona Wells, leaseholder and a board member; and John Smythe, leaseholder and the previous chair of the board.

19. Neither party requested an inspection and the tribunal did not consider that one was necessary.

20. None of the three leaseholders who opposed this application were present at the hearing. The only representations made by them were in the form of letters/responses which were admitted into evidence. The details of their objections are as follows:

(a) Dr Gamba of Flat 47 by letter dated 9.1.2020. put forward her objections based upon her personal circumstances although she acknowledges that the "heating and hot water work must be undertaken" she disagrees "with the demand presented to this tribunal in relation to the reasonableness of the service charged proposed by the board."

(b) Mr & Mrs Menon of Flat 15 by an undated and unsigned response sent by email on 10.1.2020; Their objection is based on the lack of alternative options having been considered, the lack of detail in relation to metering of costs, and lack of detail about reasonable remedial works. Reference is also made to the proposed building of flats in the roof space.

(c) Mr & Mrs Obreja of Flat 35 by letter sent by post and received by the Tribunal on 18.12.2019. They refer to the application "to determine reasonableness of service charges"; complaints that not much maintenance or improvement has been carried out over the years; agreeing that the defective communal parts of the heating and water system should be replaced or made good, but asserting that there is no evidence that the internal pipework within each flat is defective as well as other complaints about the location of new

pipes; financial questions are also asked in relation to the raising of finances for the project and how service charges will be calculated.

21. Immediately prior to the hearing, the tribunal was provided with the skeleton argument prepared by Mr Bhose, as well as a bundle of authorities. The start of the hearing was delayed while the tribunal considered these documents.

22. In oral evidence, the Tribunal first heard from Mr Konstantinos Korakakis of KKAD Limited. His report is in the appeal bundle [330] in which he describes the existing heating and hot and cold-water system as well as describing the proposed replacement system that forms the basis for this application. In oral evidence Mr Korakakis clarified issues.

23. In particular in relation to the issue of alternative heating systems, he clarified that a system involving the installation of individual boilers to each flat boiler would cause difficulties. Specifically, the space to locate the boiler/cylinder in the flat but also planning difficulties in relation to the unattractive flues that would be required for each flat. He had only spoken to the Planning Department and had no documentation in relation to this to show to the Tribunal. A further issue of concern raised by him was in relation to the existing water tanks located in the roof space which have created a potential problem with the structure of the roof. However, no documentary evidence was provided to the Tribunal in that regard. A further problem with the existing water tanks was their potential failure to comply with Thames' Water's updating of the mains system which is intended to reduce water pressure.

24. Mr Korakakis confirmed his understanding that none of the leaseholders had expressed an interest in individual boilers for each flat. Rather that all of them wanted the communal system to continue.

25. In relation to the internal works, he explained that the approach will be to minimise disruption to the occupiers and to enable the proposed system to be serviceable. The problem being with the current system is that the pipes are embedded into the walls and inaccessible.

26. In relation to the allowances to redecorate, Mr Korakakis explained that they will prepare a schedule of works. He has surveyed only 6 of the flats and chose a variety of flats and all of the common areas. He explained that some flats had been remodelled to very high specification and at least one was still in its original condition without any remodelling. His estimation for the redecoration works to the flats is between £10,000 to £20,000 per flat. Mr Korakakis had not

inspected any of the flats owned by leaseholders who opposed this application, that is flats 15,35 and 47.

27. In relation to the flats that are proposed to be built in the roof space where the existing system currently houses water tanks, he was able to confirm that this scheme was instigated for the sole purpose of raising finance to assist the Applicant to finance the high costs of the proposed replacement heating and hot water system.

28. The Tribunal then heard from Ms Fergusson who is the Applicant's expert witness. She is a chartered engineer with nearly 35 years' experience. She has produced a series of mechanical and electrical reports commissioned by the applicant since 2014. Her reports summarise the condition of the existing system [72 para 3.3] and the main elements of the proposed system [73 para 3.4]. Her report is in the bundle [71].

29. As a specialist heating engineer, Ms Fergusson was able to clarify some of the issues that had arisen during Mr Korakakis' evidence. Specifically, in relation to questions raised about the water tanks in the roof space, she explained that although the existing network of pressure was not covered specifically in her report, she confirmed it had been covered in previous reports and confirmed that the size of the current water tanks in the roof space and the pipework infrastructure results in a lower pressure in some flats, and the proposed replacements system will consider the mains pressure which in her opinion was a neater solution.

30. Ms Fergusson when asked about discussions with leaseholders about their preferred version, explained that she had not been directly involved in such discussions but understood that there was no preference by leaseholders for individual boilers.

31. In relation to the technicalities of water and gas pipework. In particular in relation to a comparison between the replacement of the existing system with another communal system as opposed to individual heating and hot water systems that would be installed into each individual flat. She explained that there are technical issues related to the gas supply to each flat as the system is not set up for this provision. This is despite the fact that some flats have installed their own boiler into the flat by using the gas supply provided for a gas cooker. In her opinion this supply is not satisfactory. If 56 individual gas boilers were to be installed into each flat, the gas supply is not sufficient, and in order to comply with regulatory requirements, 56 new gas supplies would have to be installed. In her expert opinion this would not make such a saving as compared to the proposed replacement communal system, and there would be issues with the space to install the boiler together with a possible cylinder in each flat.

32. There would also need to be extensive changes to pipe works to each flat and depending on whether each boiler would be outside the flat on the staircase, there could be fire risk and a requirement to comply with legislation for fire safety. She went on to say that the boilers would need to be condensing boilers which themselves could cause a nuisance from the water vapour expelled.

33. When asked if it would be easier to install a boiler in each flat, her opinion was that it would not. That is because of the extensive pipework that would be required for each flat, with new gas and cold-water pipes, and the compliance with legislation.

34. In relation to the water getting to radiators in individual systems she explained that the new pipework would need to follow a new route but there would still be a requirement for dropped ceilings to hide pipework.

35. When asked whether a combination boiler would assist in at least reducing the need for a cylinder. Her opinion was that because the flats are large, and have two bathrooms, a combination boiler may struggle with the amount of hot water and the heating. If the system could not cope with the level of demand a cylinder would be required.

36. Ms Fergusson was able to confirm that although some flats had used the existing gas pipes into the kitchen, intended only for the gas cookers, this would not be a solution to installing individual gas boilers in each flat. For this to be carried out in accordance with the requisite legal requirements, the current supply of gas was not either sufficient or correct to allow the boilers to be installed individually, without having 56 new inlets of gas to each flat.

37. The Tribunal also heard from Mr Timothy Daniel [396] who is the current chairman of the applicant's board. He explained that various people had installed boilers in their flats to ensure that they had heating when the communal system failed. He also explained that some people had installed additional radiators. There was some confusion about whether permission had been sought or granted by the board in relation to either these boilers or additional radiators. Although each flat should only have 5 radiators, over the years some leaseholders are said to have updated their flats, and as part of the updating, have installed new pipework and radiators, although Mr Daniel stated that they did not turn on these radiators. What was clear was that the Board's position was that none of the leaseholders wanted individual boilers. The individual boilers installed into the flats had resulted in complaints of nuisance from the water vapours expelled.

38. There was some impromptu evidence from Ms Wells, Mr Issacs and Mr Smyth who wished to clarify issues in relation to

additional radiators installed, the process for seeking permission to install boilers or radiators in the flats.

39. Finally, Mr Bhose took the Tribunal to the relevant provisions of the specimen lease provided [345] and the Deed of Trust referred to in the lease [348] and his submissions

The Lease

40. Recital B records that the Lessor desires to let the flats in the building with provision for contributions to be made in respect of each of them to "the Service Fund" as defined in the Trust Deed [348].

41. Clause 1. (A) [348-349] defines the Flat as demised to the Lessee "...(for the purposes of obligation as well as grant) include:

"(i) ...

(ii) ...

(iii) ...

(iv) all conducting media which are laid in any part of the Building and serve exclusively the Flat; and

(v) ...

But not include:

(i)...

(ii)...

(iii) any conducting media which do not serve exclusively the Flat".

42. Clause 1.(B) contains certain definitions [350], including that:

(1) All expressions expressly defined in the Trust Deed when used in the Lease have the same meaning as in the Trust Deed: sub-clause (ii);

(2) "conducting media" means and includes "cisterns tanks water oil gas and electricity supply pipes sewers drains tubes meters soil pipes waste water pipes ... appliances used exclusively for the purpose

of heating and all valves traps fuses and switches appertaining thereto …": sub-clause (v).

43. The Lessee covenants materially as follows:

Clause 2…

"(ii) That the Lessee will in respect of each Maintenance Year during the continuance of the term hereby granted pay to the Lessor as a contribution to the Service Fund…

(iii) To pay and discharge … all existing and future … charges … and outgoings whatsoever … of any other description which now are or during the said term shall be assessed charged or imposed on or payable in respect of the Flat …

(iv) … to keep all conducting media (now existing or hereafter constructed) exclusively serving the Flat in good repair and condition and free from obstruction…" [351]

"(xvi) To permit the Lessor … or the respective agents of workmen of the persons aforesaid at reasonable hours in the daytime after giving reasonable notice in writing (but without notice in case of emergency) to enter upon the Flat for the purpose of executing repairs improvements or alterations to any part of the Building (whether hereby demised or not) or for the purpose of constructing laying down altering cleansing emptying removing renewing or maintaining any conducting media now existing or hereafter constructed in the Building or any part thereof including the Flat but making good to the Lessee all damage thereby occasioned and carrying out such work as expeditiously and with as little disturbance to the occupier for the Flat as possible Provided that any new conducing media shall be located int the position which will in the opinion of the Lessor least interfere with the enjoyment by the Lessee of the amenities of the Flat" [354]

44. By clause 4(vii) [365] it is provided and agreed that "The Lessee hereby accepts and acknowledges to the Trustee and to the Lessor respectively that all the provisions in the Trust Deed contained shall be binding upon the Lessee".

45. By clause 3(x) [362] the Lessor covenants "To perform the obligations of the Lessor in relation to management pursuant to Clause 3 of the Trust Deed …"

The Trust Deed

46. Clause 1 contains certain definitions, including the following [377]

> ""The Service Fund" means the moneys payable to the Lessor by the owners of the flats in accordance with Clause 2(ii) or as the case may be Clause 3Ivi) or (vii) of the form of lease in respect of all parts of the Building …
>
> "The Surveyor" means the Chartered Surveyor appointed pursuant to Clause 4 hereof and for the time being holding the appointment" [378]

47. Clause 4 provides that "The Lessor shall appoint a Chartered Surveyor (who may be a member of the staff of the Lessor or of the Trustee or not as the Lessor shall think fit) to be the Surveyor The Lessor shall have power at any time to terminate the appointment of the Surveyor and to appoint some other Chartered Surveyor in his place…." [379]. The current Surveyor is John Byers of LBB, Chartered Surveyors [329]

48. Clause 3 provides, inter alia, that [379]: "The Lessor shall manage the Building upon the terms as to remuneration and with the powers and duties hereinafter contained and in particular shall carry out in relation to the Building the matters set out in the First Schedule hereto and shall apply therein (subject to the provisions hereinafter contained) the contributions to the Service Fund payable by the Lessees under Clause 2(ii) of the long leases and by the Lessor under Clause 5(b) of this Deed…"

49. The First schedule contains the following relevant "matters" that the Lessor is required by clause 3 to carry out [390]

> "(iv) To keep … all conducting media now laid or hereafter to be laid in or upon the Building or any part therefore (other than those servicing exclusively individual flats therein) in good repair and condition"
>
> "(vii) To defray all expenditure incurred for the purpose of or in connection with supplying hot and cold water (including any hot water supplied for heating) to the Building or any part thereof"
>
> "(viii) To carry out or make such improvements to the Building as the Surveyor shall certify to be appropriate"
>
> "(xxi) To carry out all repairs to any other part of the Building for which the Lessor may be liable"

"(xxii) To defray such other costs (including the modernisation or replacement of plant and machinery) as the Surveyor shall certify to be necessary or desirable"

50. The Second Schedule records the percentage contributions to be made by each Respondent towards the Service Fund. These total 100% [394]

The Tribunal's decision

1. The tribunal accepts the applicant's arguments that they are bound by terms of the lease as set out above in particular clause 3(x) of the lease and paragraph (vii) to the first schedule provide the obligation on the applicant to supply hot and cold water including that used for heating to the building and to defray all expenditure in connection with that

Further under paragraph (viii) to the first schedule of the trust deed that the applicant will carry out improvements to the building as the surveyor shall certify to be appropriate and to defray such other costs and the surveyor, in this case Mr Byers, has issued a certificate dated 7th October 2019 that the proposed works are necessary and the costs for them to be carried out.

The tribunal therefore accepts that the proposed works namely the removal of the existing radiators and the provision of 5 new radiators with connecting pipework in each flat, the reasonable remedial works consequent to that work to each flat, the replacement of the existing boilers and hot and cold water supply and all works detailed in the report of Marian Fergusson.

The tribunal finds that the lease both permits and obliges the applicant to carry out the works proposed.

2. Under the terms of the lease, the lessees covenant to pay contributions to the lessor under clauses 2(ii) and 2(iii).

The second schedule to the trust deed details the percentage contributions to be made by each lessee.

As a consequence, the costs of the works proposed are payable in full by the lessees according to their relative percentage contributions in the second schedule subject to the tests under s.20 of the 1985 Act.

3. The tribunal cannot determine the amount of those costs, the date on which they are to be paid, under section 27A(3)(c)(d) or (e)

There will have to be a consultation, and the applicant accepts that a s.20 consultation will have to take place.

4. The Tribunal considered the objections made by the 3 dissenting leaseholders but found none of their objections to be relevant to the matter to be considered.

Name: D. Brandler **Date:** 29th February 2020
Tribunal Judge Brandler

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).