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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/12UD/LSC/2019/0060**
Property	**:**	**53 Leverington Road, Wisbech PE13 1PJ**
Applicant	**:**	**1.David Johnson** **2.Ajay Ahuja** **3.Benjamin Francis** **4.Olga Diamant**
Representative	**:**	**David Johnson**
Respondent	**:**	**Assethold Limited**
Representative	**:**	**Eagerstates Limited**
Type of application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	**:**	**Judge Ruth Wayte** **Mrs M Hardman FRICS** **Mr C Gowman MCIEH**
Date of decision	**:**	**3 April 2020**

DECISION

Decisions of the tribunal

(1) All the leaseholders are to be joined as applicants.

(2) The tribunal declines jurisdiction (to the extent that it has any) in respect of any claim for damages against the respondent in respect of the flooding of the cellar.

(3) The tribunal determines that the following service charges are payable by the leaseholders in respect of the disputed items:

2014/15	£	1,326	2015/16	£	1,368.40
2016/17	£	1,889	2017/18	£	696
2018/19	£	3,792.79			

(4) The tribunal determines that the on account payment in respect of the "stripping out" works is not payable under the terms of the lease.

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

(6) The tribunal makes 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 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service or administration charge.

(7) The tribunal determines that the Respondent shall pay the Applicant £300 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

The application

1. The applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the payability of certain service charge items from 2014/15 through to 2018/19. The application was prompted by the discovery of standing water in the basement and damage to the structure of the property from water ingress over a period of years. The applicants had been charged £4,130 in respect of urgent stripping out works which had not taken place by the date of the hearing. There was some confusion as to whether more substantial claims for monies on account had been made in relation to the replacement of the defective pump and other works to the cellar but in

any event there was nothing in the hearing bundle for the tribunal to determine on that point.

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

The hearing

3. The leaseholders of flats one, three and four: Mr Johnson, Mr Francis and Ms Diamant attended the hearing on 5 March 2020. The respondent was represented by counsel, Richard Granby. Mr Gurvitz of Eagerstates Limited did not attend the hearing as he was out of the country, no application for an adjournment was made by Mr Granby. Mr Granby also agreed that all the leaseholders should be joined as applicants, which was ordered by the tribunal under Rule 10 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

4. At the inspection immediately prior to the hearing, Mr Granby had provided a copy of his skeleton argument to the applicants and the tribunal. No objection was made to that document. During the hearing, the tribunal allowed the applicants to rely on an updated insurance quote from AXA Insurance UK, subject to the right of the respondent to provide written representations on that document by 12 March 2020. Nothing was received, other than a letter from Scott Cohen Solicitors Limited withdrawing the respondent's opposition to the applicants' Right to Manage claim, which is the subject of separate proceedings.

The background

5. The property which is the subject of this application is a Victorian building, dating back to 1899. It was thought to be used for commercial purposes until it was converted into four residential flats in or around 2002, the date of the leases. The freehold was purchased by the respondent in 2012.

6. The tribunal inspected the property before the hearing in the presence of the three applicants and Mr Granby. The general condition of the exterior was poor, with no evidence of any recent maintenance apart from the removal of ivy to both the front and rear of the building, although the main trunk remained visible to the side of the front door. The respondent's representative had originally expressed some surprise that the property had a basement, although it was obvious from even a cursory examination of the outside of the building: next to the front door there is a window to the basement with a protective grille of about 1.5m by 0.5m at ground level. The window was broken and the gully full of debris, as were all the drains around the building. At the rear of

the property the downpipe did not appear to go into a drain at all. This was clearly not a recent problem as there was extensive water staining and damage to the brickwork at ground level. The front door was in a poor condition with some evidence of repair works, albeit poorly executed.

7. The tribunal also inspected the common parts, which were in an equally poor condition apart from the door to the electric meters and stand pipes which had clearly been recently renewed. Access to the cellar was under the doormat in the small hallway. A piece of plyboard has been placed over an older more substantial wooden board, both of which were clearly affected by damp; as was the whole floor to the hallway, which was springy underfoot. When the board was lifted, the tribunal could see that the cellar was full of water to about 0.5m deep. There was a rotten wooden staircase to the cellar. The tribunal was also shown into Mr Johnson's property, flat 1, which has its own front door to the street. It was clearly uninhabitable, reeking of damp, with the wooden floors feeling as unsafe as the hallway. The floor had previously been removed in the bathroom, and the tribunal could see that the joists below were rotten, as well as the water in the cellar beneath.

8. The applicants hold long leases 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 Mr Johnson's lease (the tribunal assumes they are all in the same form and no representations to the contrary were made by Mr Granby) will be referred to below, where appropriate.

The issues

9. At the start of the hearing the parties identified the relevant issues for determination as follows:

   (i) The payability and/or reasonableness of various service charges from 2014/15 through to 2018/19.

   (ii) The payability and/or reasonableness of the interim service charge for works to clear the cellar.

   (iii) Whether the applicants had a claim in respect of damages due to the respondent's breach of covenant which could be set off any service charges.

   (iv) Whether an order should be made under section 20C of the Landlord and Tenant Act 1985 and/or paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 in respect of the respondent's costs.

10. Having heard evidence and submissions from the parties and considered the documents provided, the tribunal has made determinations on the various issues as follows.

The lease

11. As stated above, a copy of the lease for flat 1 was in the hearing bundle, it is assumed that all the leases are in a similar form. Despite being relatively modern, the lease is short and is without many of the clauses preferable to assist effective management. For example, there is no provision for a sinking fund or payment on account for major works. There is provision in the Third Schedule for payment of an interim service charge instalment, defined as an annual payment on account of the final service charge of the same amount as the final service charge for the previous year. There is clearly a disadvantage to both landlord and tenant of that drafting; with a risk of a substantial under or over payment, entirely dependent on the previous year's expenditure.

12. The services to be provided by the landlord are in the Fifth Schedule and include:

> "*1. Repairing the roof, outside, main structure and foundations of the building;*
>
> *3. Decorating the outside of the building once every three years;*
>
> *4. Repairing and whenever necessary decorating and furnishing the common parts;*
>
> *6. Repairing and maintaining those services in the building and its grounds which serve both the property and other parts of the building*."

13. As stated above, it was clear from the inspection that very little maintenance had been carried out to the property in recent years. The applicant submitted that the pump in the cellar was covered by paragraph 6 of the Fifth Schedule. Mr Granby argued that "*services*" would not apply to the pump, pointing to its use elsewhere in the lease to describe professional services. The tribunal disagrees, giving the wording in paragraph 6 its plain and ordinary meaning it clearly covers a pump in the cellar which serves the property i.e. the flat and other parts of the building by keeping the cellar free of water and therefore removing the risk of damage to the structure.

14. Finally, Mr Granby accepted there is no "orthodox" costs clause in the lease to support a claim for legal costs to be added to the service charge.

There is a section 146 clause in respect of the costs of forfeiture proceedings but that has no application here.

The claim for damages

15. It is convenient to deal with this issue before consideration of the service charges. The applicants' claim was based on the respondent's failure to maintain the pump in the cellar which had led to damage to the structure of the building. In the statement of case from Eagerstates on behalf of the respondent, they had denied that damages were a matter for the tribunal. The skeleton argument by Mr Granby produced at the hearing took a different stance, describing the claim as "inchoate". In any event he denied that there was an obligation on the landlord to maintain the pump (this tribunal considers there is) or that a flooded cellar was disrepair.

16. In the original application, it appeared that the largest element of the case would relate to works to the cellar, in particular in relation to structural repairs to the rotten joists and metal supports. However, the bundle only included evidence of a relatively small sum demanded in relation to stripping out works with no demand for any more substantial repairs. Figures in the region of £31,000 had been mentioned in the section 20 consultation process carried out in August 2019 but it was unclear whether any demands had been made for payment of this sum and in any event there was no provision for payment on account of major works, as set out above.

17. It is well established that the tribunal has jurisdiction to consider a claim for damages by way of set off against a service charge claim. However, this is not a claim for unpaid service charges by the landlord and at present there is no evidence of any substantial service charges being levied in respect of the cellar against which a claim for damages could be set off. In the circumstances, to the extent that the tribunal has jurisdiction in this case, that jurisdiction is declined. Given that nothing has been done by the landlord despite constructive knowledge of the basement since its purchase in 2012 and with actual knowledge of the extent of the flooding since March 2019, the applicants may need to apply to the County Court for an order that the respondent comply with its obligations under the lease. In the circumstances, any claim for damages would naturally form part of the County Court proceedings.

Service charges 2014/15

18. The parties had provided schedules for each service charge year in dispute. Given that he was without his witness, Mr Granby relied on the documents provided by the respondent in the hearing bundle to support the service charges claimed. Turning first to 2014/15, during the hearing the applicants conceded the amounts claimed for the Fire Health Safety Service, chimney works and NIEC inspection, but

maintained their challenge to the cost of the gutter cleaning, electrical works and the management fee.

19. Gutter cleaning cost £288 and an invoice was provided by the respondent as evidence. The applicants challenge was that it was too high, and they produced an alternative quotation of £120. The respondent pointed out that the charge for 2014/15 included the removal of ivy from the roof as well as gutter cleaning. The applicants had also obtained a quote for the removal of ivy at an additional £245, which would actually make their quote, including the removal of ivy, higher. The tribunal considers that the ivy in question is different: the applicant's quote is in respect of the removal of ivy to the front and rear of the building rather than the roof. In the circumstances the tribunal agrees with the applicants that the cost is excessive and only £120 is payable.

20. £702 was claimed for electrical works and an invoice was provided in support. Although the tribunal agrees that the choice of a London firm may well have inflated the cost, in the absence of an alternative quote it determines that £702 is payable.

21. The last item was the management fee of £1008 or £210 plus VAT per flat. While this is not an excessive amount for management of a small conversion, the leaseholders are not getting a full management service. In particular, the RICS code of practice for residential managers provides that an annual fee should include a visit to the property to check its condition. There is no evidence that Eagerstates have ever done so and the inspection indicates that the property has suffered from a lack of maintenance for many years. In the circumstances, the tribunal determines that the fee should be reduced by 50%, to reflect the value of the service provided. The amount payable in respect of the management fee for 2014/15 is therefore £504.

22. That makes the total payable for the disputed items for 2014/15 £1,326 as opposed to the £1,998 claimed.

Service charges 2015/16

23. The applicants disputed the charges for Southern Electric, Fire Health Safety Service, the front mat works, fire and safety works and the management fee.

24. The electricity charges relate to the common parts only, that is lighting to the entrance hall and stairs, power to the smoke alarms and the electricity supply to the pump. The charge for 2015/16 was £363.46. The applicants stated that the previous year the charge had been just under £100 and this appeared to be supported by evidence of similar charges for previous years. The respondent relied on the invoices in the

bundle from Southern Electric but they did not appear to add up to the sum claimed and one, dated 6 July 2016 is an estimated bill for £286.53 for which no explanation was provided. For the tribunal, this was another example of the respondent's failure to manage the property. What a reasonable manager would have done is to obtain the actual readings to challenge the bill. In the circumstances the cost is not reasonable and doing the best it can in the light of evidence of previous charges, the tribunal determines that a reasonable charge is £100 per annum.

25. The charge for the Fire Health Safety Service was £318. An invoice was provided by 4site Consulting Limited, together with a copy of their report, which is in standard form. The report makes no reference to the basement and claims that the property should be reinspected in a year due to "non- completion of the previous risk assessments". It is not clear what this is referring to but the tribunal considers that this assessment is of no value whatsoever. As stated above, the communal hallway to the property is tiny. The report totally missed the cellar which is now stated to be a fire risk, due to the sodden cladding and there appears to be no attempt by either the consultant or the respondent to deal with any alleged issues from one year to the next. In the circumstances the tribunal considers that nothing is payable in respect of the Fire Health Safety Service for 2015/16.

26. The extent of the front mat works are described in the inspection notes above. A charge of £443 has been imposed for a flimsy board and mat. An invoice had been provided which referred to the use of self- levelling compound to raise the height of the drop but the tribunal saw no evidence at all that this has been provided, the new board and mat was simply placed on top of the old, more substantial board. In the circumstances the cost is excessive. The tribunal determines that a reasonable cost for the limited work seen is £125 plus VAT or £150.

27. Fire and Safety Works of £614.40 were also claimed for this year. These related to the replacement of the door in the communal parts to the cupboard housing the meters and standpipes. This appeared to be as suggested by a previous Fire Safety report and the door was seen on inspection. Although the cost is towards the upper limit of reasonable, the tribunal determines that this invoice is payable.

28. Finally, the management fee. The tribunal saw no evidence of better management in 2015/16 and therefore determines that the charge should be the same as for 2014/15, namely £504.

29. That makes the total payable for the disputed items for 2015/16 £1,368.40 as opposed to the £2,770.86 claimed.

Service Charges 2016/17

30. The applicants disputed charges for gutter cleaning, ivy removal, an item originally referred to as an "insurance revaluation" and the management fee.

31. £250 had been agreed by the respondent in relation to clearing the gutters and repairing a downpipe and an invoice was provided for this amount. The applicants had obtained a quote for £120. The tribunal agrees that the respondent's charge appears excessive. It was not clear which downpipe had been repaired as the one at the rear of the property was clearly still defective. In the circumstances the tribunal determines that a reasonable cost is £120.

32. £540 was sought for ivy removal. Again, the applicants had provided a quote for £245, based on the photographs showing the extent of growth at the time. This seems to the tribunal to be more reasonable for what is unskilled work, not least as the root was left behind: the tribunal therefore determines that a reasonable cost is £245.

33. During the hearing it became clear that the item referred to as an "insurance revaluation" was in fact a report on roof works and damp. It appears that no works were done despite the report but it is a comprehensive piece of work and in the circumstances the tribunal determines that £1020 is payable as claimed by the respondent.

34. Finally, the management fee. Again, there is no evidence of any improvement in the management of the property in 2016/17 and in the circumstances the tribunal determines that a reasonable management fee is £504.

35. That makes the total amount payable for the disputed items for 2016/17 £1,889 as opposed to the £2,914 charged by the respondent.

Service charges 2017/18

36. There were three items in dispute: emergency light testing, another Fire Health and Safety Risk Assessment and the management fee.

37. The respondent had provided an invoice to support the £374.40 charged. The principal challenge by the applicant was that the use of an organisation from Ipswich would have grossly inflated the costs due to the 2.5 hour journey each way to Wisbech. They had provided a quote from a local electrician for £192 which the tribunal agrees is a reasonable cost in the circumstances.

38. 4site Consulting Limited charged £228 for their Health Safety & Fire Risk Assessment, having attended the property on 12 July 2018. The tribunal noticed that in addition to the continual failure to spot the basement, the report refers to emergency lighting as "not maintained"

– despite the charge for works to the emergency lighting in March that year. The report recommends reinspection after just a year due to the lack of inspection and servicing paperwork available. There appears to have been no discussion at all with Eagerstates about the property or the report. This is not good enough. The tribunal determines that nothing is payable in respect of this report.

39. Finally, the management fee. As stated previously, no evidence was provided of any better management by the respondent and in the circumstances the tribunal considers that £504 is payable to reflect the limited value of the service provided.

40. That makes the total amount payable for the disputed items for 2017/18 £696 as opposed to the £1,812 charged by the respondent.

Service Charges 2018/19

41. This year saw many disputed items. The first was insurance, which the applicants stated had increased by 229% in 5 years. The charge for this year was £1,791.77, said to include the broker's fee. The certificate of insurance in the bundle stated that the premium was £1,741.77, no evidence was provided of the broker's fee and none of any commission despite the tribunal requesting disclosure by the respondent. There was also an additional charge of £260.18, no explanation was provided to support this additional charge. The applicants provided an updated quote from the same insurer on the same terms of £609.39 and the respondent made no objections in respect of this quote, despite being given an opportunity to do so. The tribunal considers that the charge by the respondent is excessive and is likely to have increased due to an undisclosed commission. In the circumstances and doing the best it can with the evidence, the tribunal determines that a reasonable charge for insurance is £609.39.

42. Common parts electricity was charged at an extraordinary £423.24. The respondent had provided a number of bills which came to some £441.24. Again, the issue appeared to be wildly inaccurate estimated costs which had not been queried by the manager. As previously, the tribunal determines that a reasonable charge is £100.

43. Gutter cleaning was charged at £350. An invoice was in the bundle, indicating that the work was carried out in November 2018. The applicant's challenge was based on the fact that the work was redone shortly afterwards and therefore had been unsatisfactory. Ms Diamant in flat 3 had arranged for builders to carry out the long outstanding works to the roof and chimney as her flat was being affected by damp. Given that the gutters were cleaned again after such a short period, the tribunal accepts that this is evidence that the earlier works were of no value and therefore this item is disallowed.

44. Emergency light and smoke detector testing was charged at £410.52. The invoices provided by the respondent showed two visits, some 6 months apart. This appears grossly excessive. The tribunal determines that nothing is payable.

45. Emergency light remedial works were charged at £319.20. An invoice was provided by the respondent which appeared to relate to two lights. The applicants had provided an alternative quote of £48 per light. In the circumstances, the tribunal determines that a reasonable cost is 50% of the amount charged or £159.60, to include an allowance for labour as well as the actual lights.

46. Ivy removal appears again charged at £480, although this was conceded at £240 as it appeared to be a mistake, charging for both the invoice and the quote.

47. £900 was sought for a valuation report for insurance. The report was made available and is comprehensive. In the circumstances the cost is allowed.

48. Lock works of £760.80 were charged in respect of the front door. An invoice was available to support the cost and although the repair works were rudimentary, the tribunal also allows this sum.

49. £324 was sought in respect of the survey of the property following the report of flooding. The tribunal considers this is a reasonable cost.

50. £390 was claimed for an asbestos survey. There was no report but it was accepted that a workman attended. In the circumstances the tribunal determines that a reasonable cost is 50% or £195.

51. An item of £1,000 for works to the roof and guttering was accepted. This was a contribution towards the works paid for by Ms Diamant, which actually came to £2,175. The tribunal explained that the leaseholders might want to come to an arrangement with her to cover the cost in full. The respondent had limited the costs to £1,000 as no consultation process had been undertaken.

52. Management fees of £1,176 were sought. For the same reasons as before, the tribunal considers that £504 is payable as the value of the management provided.

53. The final item for 2018/19 was £4,130 for the "stripping out" works to the cellar. This was paid under protest, although the works had not taken place as at the date of the hearing. As stated above, there is no provision in the lease for payment in advance for major works. All the respondent is entitled to is monies on account equivalent to the

previous years' service charge. In the circumstances this invoice is not payable.

54. That makes the total amount payable for the disputed items for 2018/19 £3,792.79 as opposed to the £12,715.71 sought.

Application under s.20C and refund of fees

55. At the end of the hearing, the applicants made an application for a refund of the fees paid in respect of the application/ hearing[1]. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the respondent to pay the applicants £300 within 28 days of the date of this decision.

56. In the application form, the applicants had also applied for an order under section 20C of the 1985 Act. Although the landlord indicated that no costs would be passed through the service charge, due to the lack of any provision in the lease the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Name: Judge Wayte **Date:** 3 April 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.

[1] The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

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).