FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AG/LSC/2020/0073**
Property	**:**	**45/47 Endell Street, London. WC2H 9AJ**
Applicants	**:**	**(1) Mr. J.C. and Mrs. S.J.S. Littman** **(2) Mr. B. Morgan** **(3) Mr. T.J. and Mrs. S.M. Swete** **The tenants of flats 1,2 and 3**
Representative	**:**	**Mr. Littman and Mr. Morgan in person**
Respondent	**:**	**Di Popolo Investments Ltd.**
Representative	**:**	**Mr. J. Roberts of Urang Property Management Ltd.**
Type of Application	**:**	**For the determination of the reasonableness of and the liability to pay service charges and/or administration charges**
Tribunal Members	**:**	**Tribunal Judge Stuart Walker (Chairman)** **Mr. Peter Roberts DipArch RIBA**
Date and venue of Hearing	**:**	**20 October 2020 – video hearing**
Date of Decision	**:**	**23 November 2020**

DECISION

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: Video Remote. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote

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hearing. The documents that the Tribunal was referred to are in an electronic bundle of 262 pages, the contents of which were noted. The Tribunal's determination is set out below.

The parties said that they were generally happy with the process. Although one of the parties had difficulty rejoining the hearing after a break, they all reported that they were happy with the procedure.

Decisions of the Tribunal

(1) The Tribunal determines that the sum of £250 per flat in respect of drainage costs for each of the service charge years 2019 and 2020 is not reasonable and so is not payable by the Applicants.

(2) The sum of £100 per flat in respect of fire safety equipment maintenance for each of the service charge years 2019 and 2020 is reasonable and these sums are payable by the Applicants.

(3) The sum of £10 per flat in respect of bank charges for each of the service charge years 2019 and 2020 is not reasonable and so is not payable by the Applicants.

(4) The sum of £33.33 per flat in respect of the communal electricity supply for the service charge year 2019 is reasonable and this sum is payable by the Applicants.

(5) The sum of £350 per flat in respect of the management fee for each of the service charge years 2019 and 2020 is reasonable and these sums are payable by the Applicants.

(6) The sum of £6.33 per flat in respect of the provision of an emergency out of hours service for the service charge year 2020 is reasonable and is payable by the Applicants.

(7) The sum of £14,372.51 in respect of the major external works is reasonable and payable for the 2020 service charge year.

(8) The application for an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge is allowed but only to the extent that 50% of those costs may not be recovered.

(9) The application for an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002, so that none of the landlord's litigation costs can be recovered as an administration fee is allowed, but only to the extent that 50% of those costs cannot be recovered.

(10) The Respondent is ordered to re-imburse the Applicants 50% of the fees incurred by them for issuing this application and having it heard.

Reasons

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 amount of service charges payable by them in respect of the service charge years ending 2019 and 2020.

2. The Applicants also seek an order for the limitation of the landlord's costs in the proceedings under section 20C of the Landlord and Tenant Act 1985 and an order to reduce or extinguish their liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 together with an order for the re-imbursement of their application and hearing fees.

3. The application was made on 7 February 2020. The issues identified in the application concerned charges in respect of the following; drainage costs, costs of fire safety equipment maintenance, bank charges, electricity, the management fee, charges for out-of-hours services, and the amount payable in respect of major works.

4. Directions were issued on 17 March 2020 and required the parties to complete schedules in respect of the disputed charges and for the provision of a hearing bundle. These directions were complied with and the relevant schedules are at pages 27 to 33 of the electronic bundle. The Tribunals findings set out below deal with the areas of dispute in the order that they appear in these schedules. All page references in what follows are to the pages of the electronic bundle.

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

The Hearing

6. Mr. Littman and Mr. Morgan appeared in person. The Respondent was represented by Mr. J. Roberts of Urang Property Management Ltd. ("Urang"), which is the current managing agent.

7. 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.

The Background

8. The property which is the subject of this application is a purpose-built block comprising commercial property in the basement and ground floor and 3 residential flats, one on each of the first, second and third floors. The residential area has its own entrance, and the common parts consist of an entrance corridor and staircase with landings on each floor.

9. The Applicants are the leasehold owners of the three flats in the premises which they hold under long leases granted on various dates on the same terms. The Respondent is the freeholder owner of the building.

10. The Applicants had previously applied to this Tribunal in 2018 (case no. LON/00AG/LSC/2018/0238) in respect of service charges for the years 2015 to 2018. A copy of the previous Tribunal's determination is included in the bundle at pages 214 to 229.

The Leases

11. Clause 1(6) of the leases provides that the annual service charge period begins on the 1st of January each year. Clause 2 reserves the service charge as rent and Schedule 6 provides that it is to be paid annually.

12. By clause 1 of Schedule 6 of the leases the lessees covenant to pay the service charge contribution in respect of the cost of providing the services and defraying the charges and expenses set out in Schedule 7.

13. Schedule 7 is in two parts. The first sets out services provided solely for the benefit of the residential leaseholders. These were referred to in the proceedings as the "Schedule 1 costs". The second part of Schedule 7 sets out the services provided for the benefit of the whole of the landlord's property. These were referred to in the proceedings as the "Schedule 2 costs".

14. Paragraph 8 of the Particulars of the leases provides that each lessee is to pay 1/3 of the Schedule 1 costs and 1/5 of the Schedule 2 costs.

15. The Schedule 1 costs include the cost of lighting (clause 1), the provision of cleaning, an entry phone and other services for the sole benefit of the residential leaseholders (clause 2) and the discharge of outgoings including electricity (clause 4).

16. The Schedule 2 costs include the cost of *"maintaining overhauling repairing cleaning the exterior structure foundations and walls of the Building …. And of those parts of the roof which are not the responsibility of the Tenant hereunder and where necessary replacing and renewing any and every part thereof together with in each case the cost of periodically inspecting and examining the same."*(Clause 2). They also include the cost of the management of the building including the employment of managing agents (clause 5). Also, Clause 4 of Part II of Schedule 7 provides for;

> "*(a) The establishment and maintenance of a sinking fund based on normal commercial principles for the performance of the Landlord's covenants hereunder*
>
> *(b) The establishment and maintenance of a reserve fund based on the principles of good estate management to cover prospective and contingent costs of carrying out repairs and other items referred to in this Schedule to the intent (so far as may reasonably be practicable) that the charge for such items made to the Tenant and other tenants and occupiers of the Building shall be progressive and cumulative rather than irregular*".

17. There was no dispute that the terms of the leases allowed for the recovery of the sums in dispute provided that the expenses were reasonably incurred and were reasonable in amount.

MATTERS IN DISPUTE – 2019 SERVICE CHARGE YEAR

1. The inclusion of a sum of £250 per flat for drainage

18. In their 2019 budget certificate Urang included the sum of £1,000 for general building repairs and works and an additional sum of £750 for drainage (page 79). Confusingly, the budget certificate referred to Schedule 1 costs as Schedule 2 and vice versa. For both of these items the service charge fraction was said to be 1/3 so they were being treated as Schedule 1 costs (page 80). On behalf of the Respondent Mr. Roberts accepted that sums charged for drainage works were Schedule 2 costs and so the correct fraction for that item was 1/5.

19. The Applicants' case was that the additional charge of £750 for drainage costs was unreasonable as any costs in respect of drainage issues could be met from the sums charged for general building repairs. They argued that no costs had been incurred for drainage repairs in the last 5 years and they relied on the previous conclusion of the Tribunal that a similar charge for plumbing, heating and drainage in 2017 and 2018 was unreasonable (paras 33-34 at page 221).

20. The Respondent's case was that the building has a communal stack pipe and a rainwater outlet and that the previous Tribunal had concluded that repairs and maintenance should be carried out on a responsive basis rather than a "pre-emptive drainage contract". They argued that this made it necessary to include an additional allowance in the budget to carry out such reactive repairs and argued that the sum of £750 was an appropriate budget for this.

21. The evidence of Mr. Roberts was that the Respondent had a service charge account into which the charges for general repairs were paid and that at the end of each service charge year any sum unspent was transferred to the sinking fund account. He accepted that the level of repairs in previous years had been low but argued that any blockage to the communal stack could be expensive and that therefore the £750 charge was reasonable.

22. The Tribunal had regard to the accounts provided by the Respondent. These showed that actual expenditure on general repairs was as follows;
2017 – nil (page 122)
2018 – nil (page 124)
2019 - £176.11 (page 134)
Mr. Roberts explained that the 2019 figure comprised £120 plus VAT for a plumbing inspection and £32.11 for a replacement key. The accounts also showed that there was no actual expenditure on drainage in 2019 (page 136). The accounts did, though, show that £720 was spent on a gutter clearing contract in 2018 (page 124), though a similar charge for 2016 was refunded in 2020 as the work was never done (page 115) and no such charge was incurred in 2019.

23. There was insufficient evidence to show that any substantial increase in expenditure on general repairs was likely in 2020 nor was there sufficient evidence to show that there was a real risk of the communal stack pipe becoming blocked in the future.

24. Taking all the above into account the Tribunal concluded that it was not reasonable to make an additional charge of £750 in respect of drainage costs over and above the budgeted £1,000 per annum for general repairs. The actual cost of repairs in the past was negligible and there was nothing to suggest that this was likely to change significantly in the future. It followed that the anticipated budget of £750 for drainage works – if they should ever be needed – could be met adequately within the overall repair budget and no additional charge was reasonable.

2. The inclusion of a sum of £100 per flat for fire safety equipment maintenance

25. In their 2019 budget certificate Urang included the sum of £300 for fire equipment maintenance (page 79). The lease fraction applied was 1/3, making this a Schedule 1 cost. There was no dispute about this fraction.

26. The Applicants' initial case was that no fire safety equipment had been provided so there was no requirement for maintenance of such equipment. The Respondent's reply was that the building has emergency lighting on the staircase and that this budget is for the testing and maintenance of that lighting. The Applicants' further response (page 37) was that there was no evidence of inspections taking place and that the figure of £300 was excessive. An alternative quote of £110 had been obtained (page 241). Before the Tribunal they also put forward similar arguments to those made in respect of the drainage costs, namely that testing and maintenance costs could be met from within the general repairs budget.

27. On behalf of the Respondent Mr. Roberts explained that risk assessments were undertaken by an external contractor (page 85) – although these were budgeted for separately – and that the emergency lighting tests were done in-house – though it seemed that no tests were in fact done in 2019.

28. The Tribunal bore in mind that it was considering budget items rather than actual expenditure. It concluded that it was reasonable and prudent to include a budget item in respect of the testing and maintenance of emergency lighting at the premises. It bore in mind the informal quotation obtained by the Applicants – it was not clear whether the sum quoted included VAT or not – but was not satisfied that the sum budgeted for was excessive, especially as the budget would be expected to cover not just a test and inspection but any necessary maintenance should this be found to be necessary.

29. The Tribunal also bore in mind that whilst there is a separate budget for general repairs, its decision in respect of the drainage costs above had increased the likely calls on that budget and that it would not be reasonable to expect that fund to cover this budget item too.

30. The Tribunal therefore concluded that the sum of £100 per flat for fire safety equipment maintenance was reasonable and that the sum is payable.

3. The inclusion of a sum of £10 per flat for bank charges

31. In their 2019 budget certificate Urang included the sum of £50 for bank charges which it treated as a Schedule 2 cost, meaning that the leaseholders were charged £10 each.

32. The Applicants' case was that there was no justification for this charge and that it should, in any event, form part of the overall management fee.

33. The Respondent's case was that the sum was recoverable as it represented part of the costs incurred in setting up and running the reserve fund as provided for in Clause 4 of Part II of Schedule 7. They argued that the bank accounts for the service charge fund and reserve fund are commercial accounts for which fees are charged. Mr. Roberts' evidence to the Tribunal was that the bank charges were not subsumed within the overall management fee.

34. The Tribunal concluded that the imposition of this charge was not reasonable and agreed with the contention of the Applicants that any bank charges incurred should reasonably be expected to fall within the general management fee charged by the Respondents, especially given the amounts charged for management – as to which see below. It therefore concluded that this sum was not payable.

4. The inclusion of a sum of £50 per flat for the payment of electricity in the common parts

35. The sum of £150 was included in Urang's 2019 budget certificate as a Schedule 1 cost, meaning that each Applicant was charged £50.

36. The Applicants' case was that the electricity for the common parts was in fact paid for by the Applicants themselves and so they should not have to pay for it through the service charge. They also relied on the finding of the previous Tribunal that this charge was not reasonable (para 26 at page 220).

37. The Respondent's case was that the lease provided for the payment of electricity to the common parts and that a budget was set up to allow for a communal supply to be provided. Mr. Roberts in his evidence accepted that the Applicants were paying for the electricity directly but that the intention of the Respondent was for the electricity to be paid communally in future and that steps would be taken in order for this to happen as contemplated by the lease.

38. The evidence of the Applicants was that the amounts charged for the communal electricity supply were under £100 per year.

39. The Tribunal bore in mind that there was no legal or contractual obligation on the Applicants to have taken responsibility for the electricity supply and also that it was reasonable for the Respondent to wish to regain control of the

electricity account and it accepted that it intended to do so. It therefore concluded that it was reasonable for the Respondent to make a budget provision for it. It reached a different conclusion from the previous Tribunal because they had concluded that no expenditure on electricity was ever going to be incurred by the Respondent, which was not now the case.

40. However, the Tribunal also concluded that it was not reasonable to include within this budget a sum significantly greater than the likely actual bills. As the evidence showed that the electricity costs were under £100 it concluded that a reasonable budget figure was £100. The appropriate service charge fraction was 1/3. It therefore concluded that it was reasonable for the Respondent to budget for the sum of £33.33 per flat for electricity and that this sum is payable by the Applicants.

5. The inclusion of a management charge of £380 per flat

41. There was no dispute that a management fee of some amount was reasonable and recoverable from the Applicants. The dispute was the amount of that fee. In its 2019 budget certificate Urang budgeted for a total management fee of £1,900, of which £380 was payable by each Applicant (page 79).

42. The Applicants' case was that there was very little routine management being undertaken. They contended that ground rent and insurance premiums were paid direct to the freeholder, that the tenants cleaned their own common parts and windows and that there was no plumbing in the common parts. They also relied on the conclusion of the previous Tribunal that a management fee of £248 plus VAT was reasonable (para 25 at page 220).

43. The Respondent's case was that the previous Tribunal decision was based on an admission that no actual management of the building had been done at all apart from some limited administrative functions by Urang. The Respondent argued that in 2019 Urang had, in addition, arranged for a site inspection, risk assessment and an electrical report and also that meetings had taken place in respect of the major works project and the service charge budget.

44. Mr. Roberts' evidence was that he attended the premises three times in the last 18 months and that on one of these occasions it was to discuss the major works. He also accepted that separate charges had been made for the preparation of the risk assessment and the electrical report. He accepted that the property had no lift and there was no significant disrepair and that there was very low management input.

45. Taking the evidence as a whole the Tribunal concluded that the sum sought was unreasonable. It bore in mind that there was a 10% management fee in respect of the major works project and that, apart from that project, minimal management was required. This is a low maintenance block with low expenditure and a low level of services. In the view of the Tribunal a fair and reasonable figure for the management of the premises was £350 per flat per annum and it concluded that this sum was reasonable and payable.

MATTERS IN DISPUTE – 2020 SERVICE CHARGE YEAR

46. The matters in dispute for 2020 were largely the same as for 2019. The Respondent sought £250 per flat for drainage, £100 per flat for fire safety, and £10 per flat for bank charges. The Tribunal reached the same conclusion in respect of these items as it did for the 2019 service charge year and for the same reasons. The general repairs budget had remained the same and there was insufficient evidence to suggest that any significant increased demand on the budget was likely. It follows that the Tribunal concluded that the drainage item and the bank charges were not reasonable and not payable, but that the fire safety budget was reasonable and payable at the rate of £100 per flat.

47. The 2020 budget certificate made no mention of electricity costs.

48. For 2020 the budget sought for management services had increased to £2,050 from £1,900 (page 81). The Tribunal bore in mind its reasoning and conclusions as regards the management fee for 2019 and also Mr. Roberts' evidence, which was that there had been no change in service delivery between 2019 and 2020 and that there had been no increase in the level of service. The Tribunal therefore concluded that it was not reasonable to increase the management fee and so concluded that the reasonable fee for 2020 was again £350 per flat.

49. There remain two additional items in the 2020 service charge year.

1. The inclusion of a charge for an emergency out of hours service

50. This was a very small sum - £20 in total split on a 1/3 basis, so £6.33 per flat.

51. The Applicants' case was that there was no justification for this charge which, they contended, should fall within the scope of the general building and repair fund. Their case before the Tribunal was that they could not see why they needed to be charged separately for this service.

52. The Respondent's case was that the service provided an out-of-hours response to any urgent building related issues such as leaks, loss of power and access issues through the night and over weekends when the property manager would not be available.

53. Mr. Roberts' evidence was that the tenants could opt out of the service if they did not want it.

54. The Tribunal concluded that it was reasonable to make a charge for an emergency out of hours service which would supplement the normal management arrangements and considered that the sum sought was reasonable. It was satisfied that this amounted to something different in nature to the general repairs and maintenance contemplated under that budget head. However, in reaching this conclusion it also bore in mind the Respondent's

expressed position that the Applicants could decide to opt out of this emergency cover if they chose to do so.

2. The Major Works

55. On 7 July 2016 the Respondent sent the Applicants notice of intention to carry out major works consisting of external repairs and decoration works, roof repairs and associated works, and invited representations (page 179). Then on 8 July 2019 the Respondents sent a statement of estimates to the Applicants in relation to these proposed works and again invited representations (page 191). The specification for the proposed works is at pages 199 to 210. The contractor selected was Millane Construction Ltd. and the total tender sum including VAT and a 10% management fee was stated to be £97,334.55 (page 231).

56. The Respondent's sought to collect a total of £91,862.55 but decided that £15,000 could be used towards this sum from the existing reserves in the sinking fund account. This left a balance to recover of £76,862.55. These were Schedule 2 costs so the amount to be recovered from each leaseholder was 20%, which amounted to £15,372.51.

57. The Applicants did not challenge the consultation process. There was also no suggestion that the works or the costs of them were not reasonable. In any event the Tribunal was satisfied that the works were reasonable and that the costs of them were payable by the Applicants.

58. However, the Applicants' challenge was based on the Respondent's decision to allocate only £15,000 from the sinking fund account towards these works. Their case was that a greater proportion of the sinking fund should be used, thereby reducing the additional sums they would be required to pay.

59. The Respondent's accounts showed that at the beginning of the 2019 service charge year the reserve fund contained a total of £29,754.83 (page 140). A further £2,000 was to be collected towards the reserve in the 2020 service charge year, bringing the total to over £31,000. Mr. Roberts' evidence, which the Tribunal accepted, was that the reserve fund now contained £36,500. Of this, £15,000 was to be put towards the major works.

60. It is clear from the specification that the external works proposed are extensive, including external repair and decoration of all elevations including repairs to the upper string course on the third floor, repairs to the chimney stack brickwork, and the construction of an overlay system on the roof. Mr. Roberts' evidence was that the remainder of the reserve was required as it was intended to carry out internal works in the future. The interior had last been decorated 10 or 11 years ago and work needed to be done in respect of fire alarms.

61. The Tribunal bore in mind that the interior of the premises consisted of no more than an entrance, stairways and landings. There was no lift. There was no suggestion that the interior required any significant works other than the decoration and the installation of fire alarms. That being the case it concluded

that the allocation of no more than 50% of the available reserve fund to the external major works was not reasonable. It accepted that the maintenance of a reserve for future works and contingencies was, of course, reasonable. However, it determined that an allocation from the reserve of £20,000 should be made rather than the £15,000 proposed.

62. The effect of this, as the costs are Schedule 2 costs, would be to reduce the sum payable by each of the leaseholders in respect of the major works by £1,000. The Tribunal therefore concluded that the reasonable sum payable by the Applicants for major works is £14,372.51.

Applications under s.20C of the 1985 Act and Para 5A of the Commonhold and Leasehold Reform Act 2002 and Fees

63. In their application form, the Applicants applied for orders under section 20C of the 1985 Act and under para 5A of the Commonhold and Leasehold Reform Act 2002. At the hearing the Applicants argued that although they had tried to resolve issues with the Respondent there had been delays in providing accounts and that they had no choice but to make their application in order to obtain redress. At the hearing they also sought re-imbursement of their fees.

64. Mr. Roberts argued that the Respondent had engaged with the leaseholders, especially as regards the major works, and that it was not for a want of effort on the part of the Respondent that the hearing had taken place. He resisted the applications.

65. The test for whether orders should be made under section 20C and paragraph 5A is whether or not the making of such an order is just and equitable. The Tribunal considered that in this case it was just and equitable to make such an order, but only to a limited extent.

66. The Tribunal accepted that there had been some delay in providing accounts but also accepted that the Respondent had engaged to some extent, especially in respect of the major works. It also had regard to the relative success achieved by the parties. The situation was similar to that which faced the previous Tribunal and it decided that a similar approach was appropriate. The Tribunal therefore decided that it was just and equitable to make an order preventing the Respondent from recovering 50% of the costs it had incurred in these proceedings.

67. For the same reasons the Tribunal also ordered the Respondent to re-imburse the Applicants one half of the fees they have incurred to have this application issued and heard.

Name: Tribunal Judge S.J. Walker **Date:** 18 November 2020

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.

- If a party wishes to appeal against 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.

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).

Schedule 11, paragraph 5A

5A(1)A tenant of a dwelling in England may apply to the relevant court or Tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2)The relevant court or Tribunal may make whatever order on the application it considers to be just and equitable.

(3)In this paragraph—

(a)"litigation costs" means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and

(b)"the relevant court or Tribunal" means the court or Tribunal mentioned in the table in relation to those proceedings.