FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case References	**:**	**LON/00BB/LSC/2020/0174 & LON/00BB/LDC/2020/0258**
HMCTS Code (paper, video, audio)	**:**	**V - Video**
Property	**:**	**Flat A, 163 Leytonstone Road, London. E15 1LH**
Applicant	**:**	**Fast Homes Ltd.**
Representative	**:**	**Mr. Simon Stern of Fountayne Managing Ltd.**
Respondent	**:**	**(1) Lydia Brand** **(2) Elina Ivanova**
Representative	**:**	**In Person**
Type of Applications	**:**	**For the determination of the reasonableness of and the liability to pay service charges and/or administration charges; section 20ZA application**
Tribunal Members	**:**	**Tribunal Judge Stuart Walker (Chairman)** **Mr. Charles Norman FRICS** **Mr. Simon Johnson MRICS**
Date and venue of Hearing	**:**	**3 December 2020 – video hearing**
Date of Decision	**:**	**22 January 2021**

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 hearing. The Tribunal's determination is set out below.

The parties said that they were generally happy with the process, although they found that it took a long time to find documents referred to in the bundles.

Decisions of the Tribunal

(1) The Tribunal determines that the sums payable by the Respondents in respect of the service charges demanded for the years 2018, 2019 and 2020 are as follows;

2018	£1,111.47
2019	£980.72
2020	£1,326.50

(2) In respect of the Applicant's application under section 20ZA of the Landlord and Tenant Act 1985 the Tribunal determines that the statutory consultation requirements shall be dispensed with unconditionally in respect of the works to the staircase and the floorboards of the common parts and the carpeting of those areas.

(3) 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 refused.

(4) 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 refused.

Reasons

The Applications

1. The Applicant seeks 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 the Respondents in respect of the service charge years ending on 31 December 2018, 2019 and 2020.

2. In the course of the hearing, the Respondents sought an order for the limitation of the landlord's costs in the proceedings under section 20C of the 1985 Act 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.

3. The application was made on 24 June 2020. The application identified charges in respect of a number of different matters which are set out below and do not need to be itemised here.

4. Directions were issued on 27 August 2020 which required the parties to complete schedules in respect of the disputed charges and for the provision of hearing bundles by them. These directions were complied with and the Applicant and Respondents both provided bundles. That of the Applicant comprised 263 pages and the Respondents' bundle had 134. As is often the case, the page numbers marked on the hard copies from which the electronic bundles were made do not exactly coincide with the electronic numbering. All page references that follow are to the pages marked on the bundles. References to the Respondents' bundle have the prefix "R". The completed Scott Schedules are at pages 60 to 73. These covered the service charge years 2018 and 2019.

5. The Tribunal's findings set out below deal with the areas of dispute in the order that they appear in these schedules. Although there was no schedule for the 2020 service charge year, the areas of dispute were largely the same and the Tribunal's findings in respect of these are also below. The figures for 2020 were budget items rather than actuals and the budget is at page 249.The relevant legal provisions are set out in the Appendix to this decision.

6. As explained below, during the course of the hearing the Applicant stated an intention to make an application to the Tribunal for dispensation from the statutory consultation requirements pursuant to section 20ZA of the 1985 Act. This is case reference LON/00BB/LDC/2020/0258.

The Hearing

7. The Applicant was represented by Mr. Stern of Fountayne Managing Ltd. Both Respondents attended in person, though Ms. Brand largely spoke on behalf of them both.

8. 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

9. Although described in the application as a self-contained flat within a purpose-built block of 4 flats, the property which is the subject of this application is in fact a self-contained studio apartment flat which comprises part of the ground floor of a 2-storey Victorian terraced house which has been converted into 4 such apartments. The communal area comprises a corridor leading from the front door and a staircase leading to the upper floor. There is a small shared front garden area.

10. Although no evidence of title was produced, there was no dispute that the Applicant is the freehold owner of the building in which the property is

located. Similarly, although no dated lease was produced and no evidence of title was provided, there was no dispute that in or about May 2017 the Applicant demised the property jointly to the two Respondents and also to Yao-Jen Chuang and Alberto Torres Hernandez for a term of 125 years. The Tribunal was informed that the third and fourth tenants had paid one half of the service charges demanded by the Applicant. Nevertheless, the issue for the Tribunal was whether or not the total sums sought in respect of the property were both recoverable under the terms of the lease and reasonable.

The Lease

11. By Clause 5(a) of the lease the tenants covenanted to perform the covenants set out in Schedule 4 of the lease (page 117). By paragraph 2 of Schedule 4 they agreed to pay the service charge demanded under paragraph 4 of Schedule 6 of the lease and by paragraph 3.1(a) they agreed to pay the insurance rent. The service charge is defined in clause 1.1 of the lease as the tenant's proportion of the service costs – which is there defined as 25% - and the service costs are defined as the total of the costs reasonably and properly incurred or reasonably and properly estimated by the landlord to be incurred in providing the services. These are further defined in detail in the same clause and include cleaning, maintaining, decorating, repairing and replacing the retained parts (sub-clause (a)), cleaning maintaining, repairing and replacing security machinery and equipment on the common parts (sub clause (e)), maintaining any landscaped and grassed areas of the common parts (sub-clause (g)), cleaning, maintaining, repairing and replacing the floor coverings on the internal areas of the common parts (sub-clause (h)), and providing;

> "*any other service or amenity that the Landlord may in its reasonable discretion (acting in accordance with the principles of good estate management) provide for the benefit of the tenants and occupiers of the Building*" (sub-clause (i)) (pages 113 to 114).

12. The service costs are also defined so as to include;

> "*the reasonably and properly incurred costs fees and disbursements of any managing agent or other person retained by the Landlord to act on the Landlord's behalf in connection with the Building or the provision of the services*" (page 113).

13. The insurance rent is also defined in clause 1.1 of the lease and is the tenant's proportion of;

> "*the cost of any premiums (including any IPT) that the Landlord expends (after any discount or commission is allowed or paid to the Landlord), and any fees and other expenses that the Landlord reasonably incurs, in effecting and maintaining insurance of the Building in accordance with its obligations in paragraph 2 of Schedule 6 including any professional fees for carrying out any insurance valuation of the Reinstatement Value*".

14. At the hearing, the Respondents made it clear that it was accepted that the terms of the lease allowed for the recovery of the sums which remained in dispute at the hearing provided that the expenses were reasonably incurred and were reasonable in amount.

MATTERS IN DISPUTE – 2018 SERVICE CHARGE YEAR

1. Communal Cleaning

15. The Applicant sought to recover a total of £650.04, of which the Respondents' share was £162.51 in respect of cleaning the communal areas of the building (page 156). Their case was that cleaning was carried out by their contractors Swiftclean on a fortnightly basis. Each visit lasted roughly 30 minutes. In his witness statement Mr. Stern said that the cleaners swept and washed the floor in the communal areas, wiped down the woodwork, changed lightbulbs if necessary and reported hazards or bulky waste (para 11 at page 99). Tenders were sought and two quotes were obtained (pages 163 and 164). That of Swiftclean was cheaper - £54.17 per month for fortnightly cleans as opposed to £70 per month from the other contractor. Attendance records were also provided (pages 165 and 166). The monthly charge was £54.17 plus VAT, which equated to £27.08 plus VAT per visit. It was accepted by the Respondent that the total sought included £65 which had been added in error (invoice 7398 at page 144).

16. The Respondents' case was that there was very little to clean. They relied on a photograph which showed the hall and staircase (page R95) and stated that there was no landing upstairs. They argued that all that was carried out was that the carpet was vacuumed and this would take no more than 5 minutes, though they accepted that this was taking place. They argued that an hourly rate for cleaning of £54.17 was excessive. They had never themselves paid more than £10 per hour for cleaners. They had sought to obtain quotes from other cleaners but had been unable to do so because of the Covid19 pandemic.

17. The Respondents' also sought to argue that there was a connection between the cleaning contractor and the Applicant and, by inference, that this was not appropriate.

18. The Tribunal bore in mind that the issue for it to decide was whether the costs incurred by the Applicant in the context of a commercial arrangement with their contractors were reasonable or not. It considered that there may well be a considerable difference between costs incurred in the context of such commercial arrangements and those which may be obtained by individual tenants seeking services on a personal basis. Such differences are not necessarily unreasonable but reflect commercial reality. It concluded that the arguments put forward by the Respondents failed to take account of this distinction. This was a feature which also occurred in the Respondents' case in respect of other items in dispute.

19. In the professional view of the Tribunal it was reasonable for cleaners to attend twice a month and that the sum of £27.08 per visit plus VAT in the context of a commercial arrangement was entirely reasonable. It bore in mind that there was no additional cost for the cleaner to travel to and from the property. Whilst the Tribunal accepted that the Covid19 pandemic may make it more difficult to obtain alternative quotations, it was not satisfied that it would be impossible to do so, yet none had been provided. With regard to the

other matters raised by the Respondents there was insufficient evidence to show any improper relationship between the Applicant and the cleaning contractors. In any event, the quote obtained from the appointed contractor was lower than one obtained from a company about whom no allegations were made by the Respondents.

20. The Tribunal took account of the error in respect of invoice number 7398 and reduced the total sum recoverable to £585.04 of which the Respondents' share is £146.26. It therefore concluded that this sum is reasonable and payable by the Respondents.

2. Communal Electricity

21. The Scott Schedule included this as an item for both 2018 and 2019 but as there was no charge, there was no decision to be made in respect of it.

3. Fire Risk Assessment ("FRA") & Health & Safety

22. The Applicant sought to recover a total of £280 of which the Respondents' share was £70. The Applicant's case was that they instructed JL Safety to carry out a fire risk assessment of the communal areas and that this was done by Mr. Jayson Smith. The report is at pages 167 to 185. The cost of this report was £280.

23. The Respondents' case was that it was unnecessary to commission such a report for what is a small property with only one exit. They again sought to suggest that there was some kind of improper relationship between the Applicant and the contractor and they also asserted that JL Safety was not an accredited body and that Mr. Smith was not on the register of fire risk assessors. They relied on the results of an online search of the fire risk assessor's register (page R58).

24. In the course of the hearing Mr. Stern was able to show the Tribunal an online confirmation that in 2012 Mr. Smith had been a member of the Institution of Fire Engineers.

25. The Tribunal concluded that it was reasonable for the Applicant to commission a fire safety assessment of the property, especially given the greater emphasis that is reasonably attached to fire safety issues following the Grenfell tragedy. It noted that the usefulness of the report was demonstrated by the fact that a number of remedial actions were recommended (see for instance pages 75, 76 and 78). It also concluded that the cost of £280 for such a report was reasonable.

26. The Tribunal was satisfied that Mr. Smith was a Member of the Institution of Fire Engineers in 2012 and held a number of other qualifications which were set out in the report and were not in dispute. Having considered the content of the report it was satisfied that Mr. Smith was suitably qualified to produce it. There was no obligation for a report of this kind to be produced by a person holding any one particular qualification in order for it to fulfil the purpose for which it was obtained, namely identifying risks, which it had demonstrably done. The Tribunal also concluded that insufficient evidence had been provided to show any kind of improper relationship between the Applicant

and the contractor and, in any event, it considered the sum charged was reasonable.

27. The Tribunal therefore concluded that the sum of £70 in respect of this item was reasonable and therefore payable by the Respondents.

4. General Maintenance

28. Under this heading the Applicant sought to recover a total of £1,760 of which the Respondents' share was £440. According to Mr. Stern's witness statement this comprised £1,610 in respect of works to damaged floorboards, repairs to the staircase, new flooring and carpet, £100 in respect of the supply of an out of hours call centre and £50 in respect of repairs to the front door lock and the supply of keys. He stated that the front door lock was faulty and the new keys had to be provided and that there had been complaints about the flooring in the communal areas (paras 15 to 17 at page 100). A page of Mr. Stern's witness statement is missing. However, in his oral evidence he explained that there had been complaints that the carpet was a trip hazard. Whilst changing the carpet it became clear that a number of the floorboards were broken and squeaking and a decision was made to replace these also.

29. The Applicant also relied on a quote from Dependable Floor Covering provided in July 2017 for carpeting (page 188). This provided costs of two options. The first was for supplying and fitting felt-backed carpets only at a cost of £400 and the second provided for the supply and fitting of carpets, underlay and grippers at a cost of £510. Both options also incurred an additional stair charge of £50, a charge of £60 for lifting the old carpet and disposing of it, and a parking charge of £20. Therefore, the total for each option was £530 and £640 respectively.

30. The Respondents' primary challenge to this head of expenditure was that there had been no statutory consultation in relation to the works to the floor and the staircase and that, therefore, there was no liability to pay more than £250 in respect of it. That aspect will be dealt with first.

31. The invoice for the works to the floor is at page 147. A single price is given for the removal of old carpet and its disposal, the levelling of the floor, the changing of floorboards, the supply of new underlay and carpet, metal corners, hardboard, carpet grippers and clips. Despite this, Mr. Stern argued that this did not amount to one item of work and that the carpeting and the changing of the floorboards should be considered separately. In his oral evidence he said that the majority of the costs of these works related to the changing of the floorboards, which amounted to some £870 or £900.

32. The Tribunal concluded that the works set out in the invoice at page 147 constituted a single item. This was a single contract for works which in the view of the Tribunal formed part of one single project. It followed, therefore, that statutory consultation was required.

33. At this point the Tribunal reminded itself of the possibility of the Applicant making an application for dispensation from the consultation requirements as permitted by section 20ZA of the Act. Mr. Stern on behalf of the Applicant

made it clear that he would seek to make such an application. The Tribunal considered that it was expedient for any such application to be considered by the same Tribunal and so directed that any section 20ZA application should be made by the Applicant by 17 December 2020 with any response from the Respondents to be filed and served by 7 January 2021. The direction made it clear that any further submissions were to be limited solely to the question of dispensation and should not seek to re-visit issues on which the Tribunal had already taken evidence.

34. In pursuance of these directions an application under section 20ZA was made by the Applicant on 17 December 2020 for dispensation. This was sent by the Tribunal to all the leaseholders at the premises. The only response received by the Tribunal was from the Respondents. This was dated 7 January 2021.

35. In their response the Respondents argued that the works which were carried out were not urgent and it was argued that the Applicant had not shown why the works were so urgent there had been no time to consult the leaseholders.

36. As indicated in the directions, the Tribunal considered the additional submissions in relation solely to the issue of dispensation. It bore in mind that section 20ZA allows for consultation requirements to be dispensed with where it is reasonable to do so. It had regard to the decision of the Supreme Court in Daejan Investments Ltd -v- Benson [2013] UKSC 14. This decision makes it clear that the purpose of the consultation requirements is to protect tenants from paying for inappropriate works and from paying more than would be appropriate for such works. It follows that the issue when considering dispensation is the extent to which the tenants are prejudiced as regards these two protections. It is the question of prejudice, rather than urgency, which is at the heart of the Tribunal's approach.

37. In their reply to the dispensation application the Respondents have not identified any such prejudice. They have not shown that the works were not appropriate, nor have they shown that they were prevented from establishing that they were inappropriate. Similarly, they have not shown that they were prevented from showing that the costs of the works were excessive. In the view of the Tribunal the Respondents have failed to show that they have suffered any prejudice. As a result the Tribunal decided that the statutory consultation requirements in respect of the works to the floor and the carpeting should be dispensed with. This, therefore, removed the £250 cap in relation to this item.

38. The Tribunal then considered the remaining arguments in relation to these works. In the Scott Schedule the Respondents again sought to suggest that the company undertaking the works was not genuine and again, by inference, suggested an improper relationship with the Applicant.

39. In addition, the Respondents argued that basic cheap carpet without underlay had been provided, they disputed that the floorboards had indeed been changed, and also argued that the floorboards were still squeaking. In support of this they provided a number of photographs (pages R48 to 53) and a short

video clip. They also argued that they had been told in July 2017 that the carpet could be replaced at a total cost of £260.

40. The Tribunal concluded that the sums charged by the Applicant were reasonable. It accepted the Applicant's case that the majority of the cost related to the floorboards rather than the carpet. The Respondents had not shown that these works had not been carried out. Whilst the video clip did show that there was still a slight squeak in one part of the floor, it showed nothing more than that. It was not clear whether the photograph of the carpet which had been raised was of the riser or the treader. In any event, even if there were no underlay on the stair treaders it did not follow that there was no underlay elsewhere and there was insufficient evidence that this had not been provided.

41. The Tribunal concluded that the quotation at page 188 was reasonable and bore in mind that the carpeting only formed a minority of the works done to the floor and staircase. The quote relied upon by the Respondents amounted to nothing more than an e-mail in which it was stated that a carpet fitter who lived across the road could change the hallway and stair carpet (page R66). It did not include anything in relation to the flooring itself. Although the Applicant expressed a willingness to consider the option identified by the Respondents and asked for a formal quote for that sum, none was ever produced by the Respondents. This appeared to be nothing more than an informal estimate by a neighbour and the Tribunal placed little weight on it.

42. As in other instances, the Tribunal was not satisfied that there was any improper relationship between the Applicant and the contractor. In any event, in its professional view the costs sought by the contractor were reasonable.

43. The Tribunal therefore concluded that the whole of the sum sought by the Applicant in respect of these works was reasonable and payable.

44. With regard to the other items under this heading the Applicant's case was that it was reasonable to provide an out-of-hours call service to deal with urgent maintenance matters whilst the managing agent's office was closed and that the total cost of £100 per year was reasonable. In relation to the remaining charge of £50, their case was that the landlord needed to make copies of the keys in order to carry out their obligations and that repairs to the lock were also required.

45. The Respondents' case was that it was "beyond belief" that a small property such as this required an out-of-hours service and that there was nothing that could be required from such a service. With regards to the keys, their case was that none of them were required or had been requested by them.

46. The Tribunal concluded that it was reasonable for the Applicant to employ an out-of-hours service. Although the Respondents were dismissive of the possible need for such a service, the Tribunal considered that such a need could well arise – for instance if the lock to the communal front door ceased to

work out of hours and access was no longer possible. It considered that the cost of such a service – at a mere £25 per flat – was reasonable.

47. With regard to the keys, the Applicant relied on the invoices at pages 57 and 58. The Tribunal found Mr. Stern's evidence on this less than clear. Although he said that the lock on the front door had needed to be changed, and the photograph at page 95 showed both a cylinder lock and a mortice lock on this door, the invoice at page 57 appeared to refer to 3 locks, one mortice and two cylinder. Mr. Stern was not able to explain this. The Tribunal concluded that the leaseholders would not be responsible for the costs of new keys or locks to individual flats and, in view of the lack of clarity, decided that only 50% of the sum sought could be justified. It therefore concluded that a total of £25 was recoverable under this heading, a total of £6.25 from the Respondents.

48. With that one exception, the Tribunal was satisfied that all the costs under this heading had been reasonably incurred and were reasonable and that, therefore, they are payable by the Respondents.

5. Garden Maintenance

49. The Applicant sought to recover a total of £350 for garden maintenance, the Respondents' share being £87.50. Their case was that the small paved area at the front of the property became untidy with bulky waste items being deposited there. In this service charge year the costs were incurred for a single tidy-up of the garden and the removal of bulk waste, the invoice for which is at page 151.

50. The first part of the Respondents' case involved serious allegations that invoices from the gardener, Burford & Co., had been forged. In support of this contention reliance was placed on a letter from Lauren Burford (page R68) which stated that some of her invoices had been altered. This was a serious allegation which was not supported by a statement of truth and was strongly denied by Mr. Stern.

51. The remainder of the Respondents' case was that the communal area was mostly paved and requires little maintenance and that the collection of garden waste is a free service offered by the local authority. In her oral evidence Ms. Brand accepted that there was a clear-up of the garden in 2018.

52. The Tribunal bore in mind the lack of a formal witness statement supported by a statement of truth from Ms. Burford to support her allegation that invoices had been altered. Ms. Burford did not attend the hearing and so could not be cross-examined by Mr. Stern. It also bore in mind that, even on the Respondents' case, gardening services had been provided by Burford & Co. In this financial year there was only one invoice and the letter from Ms. Burford showed that the amount she had invoiced for was the amount claimed by the Applicant in any event.

53. Despite the Tribunal's directions inviting the Respondents to provide copies of alternative quotes relied on, none were provided in relation to gardening.

54. The Tribunal was satisfied that a garden tidy-up was carried out in 2018 which included the removal of waste. It considered that whilst free services may be available to residents, they are unlikely to be provided to commercial bodies such as the managing agents of the property. In addition, the Tribunal considered that even if free services were available it was not incumbent on a landlord to seek those out and that also it may take a considerable time for these to be provided. It concluded that the scope of the work undertaken and the costs incurred were both reasonable and therefore the sum sought was payable.

6. Insurance Premium

55. The Applicant sought to recover a total of £515.84 in respect of the cost of insuring the premises, the Respondent's share being £128.96. It appears that in 2018 separate invoices were produced by the insurance broker OCK Insurance Services for the leaseholders (see pages R40 and R41).

56. The Respondents' case was that the property had been deliberately undervalued for insurance purposes and that the cost of the premium had been inflated by the broker. They contended that the broker was only regulated by the Financial Conduct Authority ("FCA") to act for commercial and retail customers (page R5) and they relied on an extract from the FCA's records to that effect (page R59). However, once again no alternative quotation was provided.

57. The Tribunal was satisfied that the insurance cost was reasonable. There was no doubt that the property was insured with Allianz – the certificate of insurance is at page R67. This states that the building was insured for £388,125. There was insufficient evidence to show that that was not an appropriate level of insurance for the building. There was no evidence from the Respondents to show that the premium was different from that claimed by the Applicant. This sum – a total of £460.56, the remainder of the cost being Insurance Premium Tax at 12% - is within the range of reasonable amounts for insurance of a property of this kind and in the absence of any alternative quotations the Tribunal concluded that the insurance cost sought was both reasonable and payable.

7. Management Fee

58. The Applicant sought to recover management fees of £980, the Respondents' share being £245. In his oral submissions Mr. Stern explained that the management fee covered the cost of setting up the building on the agents' systems, administrative work, dealing with maintenance requirements, collating and issuing service charge demands, collecting service charges, demanding and collecting ground rent, and chasing arrears.

59. In the Scott Schedule the Respondents stated that they contested this charge on the basis that there was no provision for a management fee in the lease (page 65). However, as explained above, at the hearing it was accepted by them that all the costs were, in principle, recoverable under the terms of the lease. In any event the Tribunal was satisfied that the costs of managing

agents fell within the scope of the definition of service costs in the lease (see para 12 above).

60. In her oral submissions Ms. Brand argued that the management fee was excessive, and that many of the services provided were not necessary or were provided too frequently. She argued that the fee should be consistent with the size of the property and that there was, in fact, no need for a managing agent at all.

61. The Tribunal bore in mind that the building is small, with only four flats, of which two were retained by the landlord, and that the level of administration required would be very much on the low side. However, it also concluded, based on its professional experience, that the figure sought, less than £250 per unit, was well within the range of what was reasonable for a property of this kind. It therefore concluded that the sum sought was both reasonable and payable.

Summary 2018

62. In conclusion all the sums sought by the Applicant are recoverable save that a reduction of £16.25 is required in respect of communal cleaning and a reduction of £6.25 is required for the cost of locks and/or keys. The total payable for this year is, therefore, £1,111.47

MATTERS IN DISPUTE – 2019 SERVICE CHARGE YEAR

1. Communal Cleaning

63. In this service charge year the Applicant sought to recover a total of £875.40, for cleaning, the Respondent's share being £218.85. They explained the increase on the previous year in two ways. Firstly, this charge was for a full year whereas the cleaning had only started in April 2018 and so the charge in that year was less. This was confirmed by the schedule of attendances and Mr. Stern's evidence. Secondly, the monthly charge from their contractors increased in May 2019 to £63 per month. In their comments in the Scott Schedule they described this as an increase which was roughly in line with inflation.

64. The Respondents' case was the same as that put forward in respect of the previous year. In addition, they argued that the increase during the year was excessive, as it amounted to an increase of 16.3% which was considerably greater than the rate of inflation.

65. The Tribunal again concluded that the rate charged for cleaning was reasonable and this was for the same reasons as those which applied to the previous year. Whilst the increase was high, the sum being charged was still less than that which was being quoted by the other contractor who was approached, who had proposed a price of £75 per month plus VAT. The Tribunal therefore concluded that the sum of £218.85 sought was both reasonable and payable by the Respondents.

2. Fire Prevention System Service

66. The Applicant sought to recover a total sum of £75 under this heading, of which the Respondents' share was £18.75. Their case was that this was for the installation of fire exit signage which had been recommended in the report prepared by Mr. Smith referred to above. The invoice is at page 209. Mr. Stern argued that the cost included not only the supply and fitting of the signs but also a call-out charge.

67. The Respondents' case was that this charge was excessive and they pointed to the fact that the three signs which were fitted cost less than £1 each. In oral submissions they suggested that the work could have been done by one of the cleaners.

68. The Tribunal concluded that the cost sought was reasonable. As referred to previously, the Respondents' argument failed to take account of the reality of commissioning works on a commercial basis. It bore in mind that as with any minor works there is still likely to be a call-out cost and that often the call-out is the most expensive element. That, however, is not unreasonable. In its professional judgment the Tribunal considered that the total cost here was within the range of what was reasonable. It therefore concluded that the cost sought was payable by the Respondents.

3. FRA & Health and Safety

69. The Applicant sought to recover a total of £280 of which the Respondents' share was £70. The Applicant's case was that they instructed JL Safety to carry out a fire risk assessment of the communal areas and that this was done by Mr. Jayson Smith. The report is at pages 221 to 240. The cost of this report was £280. The Applicant argued that this report was required as the report prepared the previous year had recommended a review in a year's time (page 168).

70. In addition to the arguments they put forward in relation to the previous years' report, the Respondents argued that it was not necessary for a further report to be prepared a year later.

71. The Tribunal reached the same conclusion as that for the previous year and for the same reasons. It was satisfied that the report was prepared by a properly qualified person and took account of the fact that that person had previously recommended a review in a year's time. The Tribunal therefore concluded that the sum of £70 was reasonable and recoverable from the Respondents.

4. General Maintenance

72. The only costs sought under this heading in this service charge year were a total of £140 in respect of the out-of-hours call centre, the Respondent's share being £35. In his oral submissions Mr. Stern explained the increase of £40 from the previous year as being due to a change in the terms of the service. In 2018 had there been a call-out using the service a call-out charge would have been made. However, under the new agreement there would be no charge for an out-of-hours attendance.

73. The Respondents' repeated the arguments they had raised in respect of this item in the 2018 service charge year.

74. For the same reasons as those given above, the Tribunal concluded that this cost was reasonable. It accepted Mr. Stern's explanation for the increase of the charge. In its view the provision of such a service was reasonable and good estate management. It therefore decided that the cost of £35 was payable by the Respondents.

5. Bulk Rubbish Removal

75. The Applicant sought to recover a total cost of £144 for the removal of bulk rubbish from the garden area of the property. The Respondents' share was £36. The costs were made up of a charge of £84 made by Swift Waste Management of £84 for the removal of a large couch and some carpet on 1 February 2019 (page 212) and a £60 charge made by Burford & Co. for rubbish removal from the front garden in November 2019 (page 217).

76. The Respondents' case was that the collection of bulky rubbish and garden waste is a free service offered by the local authority. They also sought to raise questions about the nature of Swift Waste Management's business and, by implication, to suggest an improper relationship with the Applicant (page R5). It was not contended by the Respondents that rubbish had not been removed from the property.

77. The Tribunal accepted that rubbish had been cleared from the property. As explained above it considered that whilst free services may be available to residents, they are unlikely to be provided to commercial bodies such as the managing agents of the property. In addition, the Tribunal considered that even if free services were available it was not incumbent on a landlord to seek those out and that also it may take a considerable time for these to be provided.

78. There was insufficient evidence to show that there was any improper relationship between Swift Waste Management and the Applicant. In any event, the service had been provided and the Tribunal considered the cost charged for it to be reasonable.

79. Although the letter from Ms. Burford referred to above suggested that she had charged £50 for rubbish collection rather than £60, the Tribunal could not be satisfied on the balance of probabilities, given the lack of evidence supported by a statement of truth, that this invoice had been altered by the Applicant. What there was no doubt about, though, was that Ms. Burford had cleared rubbish from the property for which she had made a charge. Again, the Tribunal considered the amount of the charge to be reasonable.

80. The Tribunal therefore concluded that the sum of £36 for bulk rubbish removal was both reasonable and payable by the Respondents.

6. Garden Maintenance

81. The Applicants sought to recover a total of £485 in respect of estate gardening, of which the Respondents' share was £121.25. They relied on invoices from Burford and Co. at pages 213 to 217.

82. The Respondents' case was the same as that put forward in respect of the 2018 service charge year.

83. The Tribunal noted firstly that there appeared to be an element of double recovery. The total of the invoices relied on was £485. However, this includes the £60 charged for rubbish removal already referred to (page 217), thus bringing the total down to £425.

84. In addition, the Tribunal bore in mind the small size of the garden and the fact that it is largely paved (see page R55). It concluded that once cleared up in the autumn of 2018 the amount of work needed would be relatively small. It concluded that the charge the Applicant was seeking to make was excessive and concluded that an appropriate sum for this item would be £350.

85. In all other respects the Tribunal reached the same conclusions as it had done with regard to the 2018 service charge year. It therefore decided that the appropriate total figure for estate gardening was £350 of which the Respondents' share is £87.50. This sum is payable by them.

7. Roof Report and Maintenance

86. The Applicant sought to recover a total of £216 under this heading, of which the Respondent's share was £54. Their case was that in 2018 a roofer attended to clean the box gutters of rubbish and moss. They relied on an invoice for this service totalling £120 (page 218). Although the work was done in 2018 this work was not charged for in the 2018 service charge year. The remaining costs under this head were for a survey of the roof and the preparation of a report. The cost was £96 (invoice at page 219) and the report is at pages 241 to 246.

87. The Respondents' case was that it was unlikely that any work was required, and they suggested that the invoices were suspicious because banking details were not on them. In the course of her oral submissions Ms. Brand accepted that it was reasonable for the gutters to be cleared.

88. The Tribunal accepted that the gutters had been cleared and it was obvious that a report on the state of the roof had been prepared. The utility of that report was equally obvious as it identified a number of items of work required including replacing the render to the right and rear parapet walls, resealing a mastic joint and refitting a number of tiles (page 241). The need for these items of work was supported by the photographs attached to the report. The Tribunal dismissed the Respondents' arguments about the lack of banking details as having no merit as it ignored the possibility of payments being made by cheque, which is still common practice with small contractors.

89. The Tribunal also concluded that the sums charged for the works carried out were entirely reasonable. As a result, it concluded that the sum of £54 was a reasonable one and was payable by the Respondents.

8. Insurance Premium

90. The sum sought for insurance in this service charge year was £536.48 of which the Respondents' share was £134.12. The relevant invoice is at page 220 and the certificate of insurance is at page 247.

91. The Respondents' case was identical to that put forward in respect of the 2018 service charge year and the Tribunal rejected it on the same basis as it had rejected the arguments presented in respect of that year. It therefore concluded that the sum sought under this head was both reasonable and payable.

9. Bank Charges

92. The Applicant sought to recover a total cost of £90 in bank charges which, Mr. Stern said, represented a monthly charge of £7.50. No invoices were provided in respect of them.

93. The Respondent objected to these charges as being unreasonable and unsupported by invoices.

94. The Tribunal concluded that it was not reasonable to make a charge for bank charges as these properly fell within the scope of the management fee. It therefore concluded that this charge was not payable.

10. Accounts

95. The Applicant sought to recover a total of £130 as accountancy fees of which the Respondents' share was £32.50. The Respondents objected to this as no invoice had been provided. In the course of the hearing Mr. Stern provided the Tribunal with a copy of an invoice from R. Abramovitz in respect of the preparation of the service charge accounts. The Respondent raised no other objections to this item and the Tribunal concluded that the sum was a reasonable one and so the amount sought was payable by the Respondents.

11. Management Fee

96. In this service charge year the Applicant sought a total of £1,176 in service charge costs, the Respondents' share being £294. Their case was that the increase on the previous year's charge was solely attributable to the fact that in the interim the managing agents had become VAT registered and the difference was simply the amount of the VAT.

97. The arguments put forward by the Respondents in respect of this item were identical to those raised in relation to the 2018 service charge year and they were rejected by the Tribunal for the same reasons. The increase was 20% which was consistent with the managing agents becoming VAT registered. The Tribunal therefore concluded that the sum of £294 was both reasonable and recoverable from the Respondents.

Summary 2019

98. In conclusion all the sums sought by the Applicant are recoverable save that a reduction of £33.75 is required in respect of the reduction in the payable amount for estate gardening and the sum of £22.50 for bank charges is not payable. The total payable for this year is, therefore, £980.72 as opposed to the £1,036.97 sought.

MATTERS IN DISPUTE – 2020 SERVICE CHARGE YEAR

99. In considering the disputed items for 2020 the Tribunal bore in mind that the service charges being sought were budget items rather than a reflection of actual expenditure. It considered the items in the order in which they appear in the budget at page 249.

1. Communal Cleaning

100. The Applicant sought to recover a total of £700 in respect of communal cleaning. The Respondents case was the same as that advanced for previous years.

101. The Tribunal noted that the sum sought was less than the actual expenditure for the previous year and for the same reasons as set out above it concluded that the sum sought was reasonable and payable. The Respondents' share is £175.00.

2. Fire Prevention System

102. The budget figure for this item was £650. The Applicant's case was that this sum was to cover the likely costs of following the recommendations in the fire safety report prepared the previous year to prepare a further annual assessment (page 222) and to carry out regular testing and maintenance of the fire alarm system and emergency lighting (pages 232 and 233) at a cost of £150 per test. The cost of the annual report was £280 in previous years.

103. The Respondents' case was that it was not necessary to carry out a further annual report and that the sum for testing was excessive, and they also relied on their arguments in respect of previous years.

104. The Tribunal reached similar conclusions to those set out above in respect of previous years. It accepted that the 2019 report was produced by a suitably qualified person and noted the recommendations set out in that report. It considered that it was reasonable for the Applicant to budget to take the steps recommended in that report and concluded that the sum put forward by the Applicant was a reasonable estimate for carrying out those works. It therefore concluded that the sum was reasonable and payable. The Respondents' share is £162.50.

3. General Maintenance

105. The Applicant's budget for this item for 2020 was £650. The Applicant's case was that this was to pay for the anticipated installation of safety equipment as recommended in the fire safety report. Mr. Stern's submissions were that this would include the fitting of intumescent strips and smoke seals to the doors to the flats (page 229), the boxing in of the electrical services (page 231) and the provision of an additional smoke detector (page 233).

106. The Respondents' case was that this was once again an excessive cost.

107. In the professional view of the Tribunal the sum sought was a reasonable amount to cover the works that the Applicant anticipated doing in respect of fire safety measures together with any contingencies in the course of the year. It therefore concluded that the sum was reasonable and recoverable. The Respondents' share is £162.50.

4. Bulk Rubbish Removal

108. The Applicant budgeted a total of £120 for bulk rubbish removal. The Respondents' repeated their arguments in respect of this item in 2019.

109. In view of the fact that the removal of bulk rubbish had proved necessary in both previous years the Tribunal considered that it was reasonable to include this as a budget item. It reached the same conclusions as it had done previously in respect of the Respondents' arguments about the reasonableness of the charge. It concluded that as the budget sum was less than the actual sum for the previous year the amount of the budget was reasonable. It therefore concluded that the Respondents' share of £30 was reasonable and payable by them.

5. Estate Gardening

110. The Applicant sought a sum of £400 as the budget for gardening in the 2020 service charge year. The arguments put forward by the Respondents were the same as those in respect of previous years.

111. The Tribunal concluded that as a budget item the sum of £400 was reasonable. It amounted to an increase of £50 compared to the figure which the Tribunal had considered reasonable for the 2019 service charge year. However, the Tribunal considered that some increase was reasonable and that also it was reasonable to include a small amount for contingencies. It therefore concluded that the Respondents' share of £100 was reasonable and payable by them.

6. Roof Report and Maintenance

112. The Applicant sought a budget sum of £250 for this item and argued that this figure was broadly in line with the previous year's expenditure and drew attention to the recommendations in the report prepared the previous year. The Respondents again repeated their arguments in respect of the previous year.

113. As explained above, the Tribunal was satisfied that the report undertaken in 2019 in respect of the roof had identified a number of items of work which needed doing. It considered that a budget of £250 was eminently reasonable in respect of those works. It therefore concluded that the Respondents' share of £62.50 was both reasonable and payable by them.

7. Window Cleaning

114. The Applicant sought a budget of £150 in respect of window cleaning. However, in the course of the hearing Mr. Stern conceded that this item was not recoverable under the terms of the lease and so this matter was no longer in dispute.

8. Insurance Premium

115. The Applicant sought a sum of £800 as the budget for the cost of insurance. This was an increase from £536.48 the previous year. Their case was that the increase was due to the fact that a claim had been made which was likely to give rise to an increase in the premium (page 105). In his oral submissions Mr. Stern explained that the claim arose from a leak in the roof.

116. The Respondents' repeated their arguments in respect of previous years and also challenged the existence of a claim as there was no documentary evidence of it.

117. The Tribunal rejected the arguments put forward by the Respondents in respect of previous years for the same reasons as set out above. It accepted the evidence contained in Mr. Stern's witness statement that there had been a claim which was likely to increase the premium. It also bore in mind, in any event, that this is a budget item and that other events may lead to an increase in the premium payable. In that context it did not consider the increase when compared to the actual figure for the previous year to be excessive.

118. The Tribunal therefore concluded that the sum was reasonable and recoverable. The Respondents' share is £200.

9. Accounts

119. The Applicant sought a sum of £420 in respect of accountancy costs for the 2020 service charge year. In his oral submissions Mr. Stern explained that the figure of £130 charged the previous year had been a one-off figure which the contractor was not willing to offer in future.

120. The Respondents' case was that the amount was excessive, but they provided no alternative quotes.

121. The Tribunal considered the scope of the accounts in question and the likely amount of work involved in preparing them, which is not extensive in this case. Whilst in its professional view the sum of £420 was on the high side, especially when compared to the previous year, it concluded that it was not outside the range of what was reasonable. The sum sought was, therefore, payable. The Respondents' share is £105.

10. Management Fee

122. The Applicant sought the same amount in respect of the management fee as had been demanded in the previous year. The arguments of the parties were the same as for that year and the Tribunal reached the same conclusion for the same reasons. It therefore concluded that the sum of £1,176 was reasonable and recoverable. The Respondents' share is £294.

11. Professional Property Services

123. The Applicant sought a sum of £140 under this head. Mr. Stern explained that this was in respect of the out-of-hours service already referred to above. The sum sought was the same as that charged in the previous year. Again, the arguments of the parties were the same as put forward previously and the

Tribunal reached the same conclusions for the same reasons. The Respondents' share of £35 is both reasonable and payable.

Summary 2020

124. The Respondents' share of the total amount sought for 2020 was £1,364. Of this all but the sum of £37.50 in respect of window cleaning, which was conceded by the Applicant, is payable. This makes the total payable for 2020 £1,326.50.

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

125. The Respondents applied for orders under section 20C of the 1985 Act and under para 5A of the Commonhold and Leasehold Reform Act 2002.

126. At the hearing the Applicant argued that it had been necessary to bring the proceedings in the Tribunal as the Respondents had persistently failed to pay the sums demanded.

127. The Respondents argued that they had been unaware of the demands for payment until the proceedings had been commenced because, they argued, the correspondence had not been sent to their home address, despite this being included as their address on the lease and the terms of clause 14.1 of the lease.

128. The Tribunal noted this, but also bore in mind that the Respondents had persisted in their refusal to pay after the proceedings had been issued and had contested each and every item of the service charges presented by the Applicant.

129. 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 bore in mind the history of the proceedings. It also had regard to the relative success achieved by the parties. In that regard the Applicant's case had been overwhelmingly vindicated, with the Respondents only achieving very minor reductions in the amounts payable. The Tribunal considered that in this case it was not just and equitable to make such orders.

130. There were no further applications by the Applicant.

Name: Tribunal Judge S.J. Walker **Date:** 22 January 2021

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.

Section 20ZA

(1) Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the

tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

(2) In section 20 and this section –
"qualifying works" means works on a building or any other premises, and
"qualifying long term agreement" means (subject to subsection (3) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement –
(a) if it is an agreement of a description prescribed by the regulations, or
(b) in any circumstances so prescribed.

(4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord
(a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,
(b) to obtain estimates for proposed works or agreements,
(c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements

(6) Regulations under section 20 or this section
(a) may make provision generally or only in relation to specific cases, and
(b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

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.