FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BJ/LSC/2020/0334**
HMCTS code (paper, video, audio)	**:**	**V: VIDEO**
Property	**:**	**20 Doverhouse Road, Putney, London SW15 5AU**
Applicant	**:**	**Dr Permjit Jhooti**
Representative	**:**	**In person, and Mr Humphrey Evans**
Respondent	**:**	**London Borough of Wandsworth**
Representative	**:**	**Mr A Kingston-Splatt of counsel**
Type of Application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	**:**	**Tribunal Judge Prof R Percival** **Ms Sarah Phillips MRICS**
Date and venue of Hearing	**:**	**Remote** **18 March 2021 and 19 April 2021**
Date of Decision	**:**	**18 June 2021**

DECISION

Covid-19 pandemic: description of hearing [Required, please amend as appropriate]

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was video, initially using VHS and then CVP. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that are referred to are in a bundle of 298 pages, the contents of which have been noted.

The application

1. The Applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the major works described in this decision, in the service charge year 2016 (estimated) and 2018 (final).

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

The property

3. The property is a one bedroomed flat in a purpose built building, one of a number in the Roehampton Estate. The buildings are brick built two storey structures, built between the wars. Each building contains four flats, two on the ground floor and two on the first floor. Number 20 is a ground floor flat.

The lease

4. The lease was granted in 1988 for a term of 125 years under the Right to Buy provisions of the Housing Act 1985.

5. The demise includes an area of garden at the rear of the block.

6. The "block" is defined and identified by means of a plan as the whole building comprising the four flats numbers 18, 20, 22 and 24. However, for the purposes of the lease, the "block" is treated by the Respondent as being the Northern part of the building comprising numbers 20 and 18. The service charge proportion attributable to number 20 is 50% of that relevant to the "block", not 25% (clause 10.1.3). In this Decision, we use the term "block" to mean the two flats 18 and 20, and the term "building" to mean the whole structure comprising the four flats. In the

papers, the term "block" is sometimes used in this sense, and in others in the sense of the building.

7. The Respondent agreed that the lease appeared to be defective in this respect, but Mr Kingston-Splatt said it was clear that the underlying intention was that the "block" should comprise only numbers 20 and 18 and the parties agreed that we should proceed on that basis, which appears to have been the parties shared understanding heretofore. We agreed with this approach.

8. The lease makes provision for an estimated service charge, certification by an account of the final service charge, and reconciliation of over- and under charging (clause 5).

9. The tenant covenants to pay "the Fourth Schedule Percentage" of the costs, expenses and outgoings of the landlord in complying with its obligations under the fourth schedule (clause 3(b)). The "Fourth Schedule Percentage" is defined as 50% (definitions clause).

10. The fourth schedule includes the landlord's obligation to repair and maintain inter alia the exterior of the block, "landscaped areas" and "all those parts used in common with the lessees of the other flats in the block".

The issues and the hearing

Technical problems

11. The hearing commenced on 18 March 2021, but it proved impossible for the Respondent's two witnesses located in Wandsworth Town Hall to maintain a connection to the VHS platform. Mr Kingston-Splatt was able to connect, and we did adjourn to see if it was possible for the witnesses to join by telephoning him, and having their voices relayed by his microphone. When that was tried, the audio was poor, and then disconnected. At that point, the Applicant applied to adjourn or vacate the hearing, even if an oral connection could be made, as she took the view that the hearing should only proceed if we had visual contact. The Respondent, having taken instructions, supported this application. We agreed to adjourn. The hearing re-convened on 19 April 2021, again using VHS.

12. Unfortunately, on that date a generalised fault with VHS closed the system as a whole for the day. Happily, our case officer in the Tribunal's office was able to secure a hearing using CVP, the system over which the Tribunal's officers have greater control, and the hearing was able to take place.

13. On behalf of the HMCTS, we apologise to the parties for these technical problems.

The parties and the issues

14. The Applicant, Dr Jhooti, represented herself, with assistance from Mr Humphrey Evans. The Respondent was represented by Mr Kingston-Splatt of counsel. We heard evidence from Ms Elizabeth Parrette and Mr D Lawrence for the Respondent. Ms Parrette is employed by the Respondent as a leasehold and procurement manager. Mr Lawrence is a project controller for the Respondent with responsibility for the relevant major works.

15. The issues were identified on the Scott schedule prepared by the parties following the directions. To the extent that there had been other issues raised at earlier points (such as whether all the costs were payable under the lease, and in relation to section 20B of the 1985 Act), these had fallen away by the date of the hearing. As the Respondent made clear in the Scott schedule, there were a number of items in respect of which the Respondent accepted that the Applicant was not liable, the errors having been identified as a result of these proceedings. These comprised non-chargeable amounts relating to decking in the garden of another flat (number 22), the painting of a demised door, and associated concrete threshold repairs, and some fencing repairs. A credit in respect of the amount attributable to the Applicant's service charge had accordingly been made in the sum of £300.31.

16. We consider each item on the Scott schedule in turn below.

Background to the major works

17. The background to the application was a major works programme to replace or repair balconies on the Roehampton estate. The notice of intention under the Service Charge (Consultation etc)(England) Regulations 2003 was served in April 2015. The main contract costs were charged as estimated costs in October 2016. The final service charge invoices were issued in August 2018.

18. The buildings making up the estate comprise two storey blocks containing four flats each. The buildings are in the shape of a capital E, but without the middle horizonal bar. Between the two horizontal wings at each end, on the inside of the E, is a balcony. There are two flats on the ground floor and two on the first floor. The balcony is, in structural terms, a single element, but each first floor flat has the use of the half of the balcony adjacent to the flat. The balconies were of concrete construction, formed around steel reinforcing bars cantilevered from the walls of the building.

19. As a result of earlier work to waterproof the surface of the balconies, the Respondent discovered that the condition of some of the balconies was poor. Undertaking further investigations, the Respondent exposed the steels in two of the balconies. In one, the steels were found to be in a such a poor condition that the balcony required to be replaced with a

new balcony, constructed of steel. In the other, it was possible to reform the concrete around the steels, the condition of which was adequate.

20. In the light of these findings, the Respondent sought to repair/replace all of the balconies on the estate. It was not possible to say in advance of exposing the steels whether a balcony was capable of being repaired with concrete on the existing steels, or required to be replaced with a new steel balcony. The Respondent undertook a major works exercise on the basis that a decision would be taken in each case, and the works were costed accordingly. In the event, we were told that every single balcony was, in fact, replaced with a steel structure.

Scott schedule issue 1: Apportioned costs

21. The sum of £6,705 was indicated in the Scott schedule as charged under this heading. There is some inconsistency in the presentation of figures in the Scott schedule, in that some of the figures relate to the building as a whole (ie that containing flats 18, 20, 22 and 24), and some to the block of flats 18 and 20. This figure relates to the building.

22. In the application, the Applicant said that she had had no breakdown of these costs, and queried why they had risen between the estimate and the final invoice if they were fixed.

23. The Respondent explained that this category reflected preliminary costs, such as site offices and staff, accommodation, communications etc; plus a sum for overheads and profits. The initial figure for this was £38,000. This was calculated on the basis of £1,500 per week for preliminaries for 16 weeks, and £14,000 for overheads and profit. However, a five-week extension was agreed, as a result of which these figures increased to £51,035 (which also included an additional sum of £1,160 for the unanticipated moving of the site office). The explanation for the delay was that it became apparent that it was necessary for some utility pipes to be moved by the relevant undertakers before foot pad supports for the new balconies could be put in place.

24. There had been a full breakdown of the preliminary costs by the contractor, but that was lost and could not now be located.

25. Before us, the Applicant's principal challenge through Mr Humphrey Evans' cross examination of Mr Lawrence and Ms Parette was premised on the basis that decision making and pricing should have been based on a calculation of labour time plus materials, and that without the wherewithal to make that calculation, the Respondent could not know whether the charges were reasonable of not.

26. In response, the Respondent relied on their approach of tendering and selecting the lowest tender (of two) being in accordance with general practice and providing an appropriate indicator of reasonableness. In

addition, reliance was placed on a consultant's pre-estimate of the approximate cost of balcony replacement, which was similar to, but somewhat greater than, the accepted tender.

27. We reject the Applicant's thoroughgoing attack on the form of the contract, to the extent that she argued that the only reasonable form of contract required calculation of person-hours and materials costs; or at least, that such an approach was a necessary check on the reasonableness of the cost of a contract. The approach adopted by the Respondent was standard practice. It is true that – as the Respondent agreed – it was unfortunate that only two contractors chose to tender for the contract, but we do not consider that that invalidates the procedure.

28. We also consider that the figure for overheads and profit was within the reasonable range. The figure, after the addition, was £18,375, which, at 9.55% of the final account sum (£192,272) is within the reasonable range.

29. However, the standard range for expenditure on preliminaries is 10% to 15%. At 17% (strictly, 16.98%), the figure for preliminaries (including provision of an appropriate site office), is substantially above the top limit of that range. We see nothing in the nature of these works that would justify a higher figure. The extension as a result of the very late realisation that preliminary utilities work was necessary does not do so. Accordingly we consider the charging to the service charge of the cost of preliminaries in excess of 15% is not within the reasonable range, and results in an unreasonable outcome.

30. We add that it appears to us that a clear explanation of these figures was only forthcoming as a result of this application being made. We have seen in the bundle a (significantly interrupted) email exchange between the Applicant and the Respondent's consultation manager during which the applicant was not provided with a clear understanding of the basis of these costs.

31. *Decision*: The overheads and profit cost component of the final account referable to the service charge was reasonably incurred. The payment for the matters within the category described as preliminaries (including the separate payment for provision of an appropriate site office) referable to the service charge was not reasonably incurred, to the extent that it exceeded 15% of the final account, and a charge reflecting that percentage should be substituted.

Scott schedule issue 2: Balcony

32. The figure in the Scott schedule under this heading was £9,000, which represents the main part of the cost of the balcony, attributable to the building. It is unnecessary to further analyse the other costs.

33. The Applicant's challenge to these costs was based on a similar challenge to that outlined above – that is, that the reasonable costs fall to be determined by means of adding up the person-days of labour and materials costs. For the reasons explained above, we reject this approach, accepting the submissions of the Respondent.

34. *Decision*: The costs of construction of the balcony referable to the service charge were reasonably incurred.

Scott schedule issue 3: Demolition and removal of railings

35. The cost given against this item is £2,800. This represents the costs of demolishing the previous concrete balcony, and removing the waste, including the railings. It relates to the building as a whole. The demolition and removal of the material required the construction of a crash deck below the balcony.

36. As with the previous two items, the challenge to the reasonableness of the costs relied on the contested approach to the contract which we have rejected. There was no other substantive challenge to the reasonableness of the charge.

37. We do note, however, that there had been a lack of clarity about what was covered by this element, the Applicant having been left with the impression, not unreasonably, that it was confined to the removal of the railings at an earlier stage.

38. *Decision*: The cost of demolition of the old balcony and removal of the waste material, including the railings, referable to the service charge, was reasonably incurred

Scott schedule issue 4: Decking

39. Approximately a year before, the Applicant had installed decking for the whole of the garden of the flat, at an overall cost of £1,000. It was the Applicant's evidence that the installation had taken two carpenters three days to complete (including the frame). The Applicant did not produce any documentary evidence to support these figures. While Mr Kingston-Splatt noted this during his closing submissions, he did not invite us to disbelieve the Applicant's account, and we see no reason to do so.

40. In order to carry out the necessary work to the balcony, the Respondent's contractor removed a section of the decking. After the completion of the work, it was concluded that the framing upon which the decking boards rested was beyond repair, and accordingly, new framing to this section was installed and the old boards reinstated on top of it. The Applicant asserted that the frame was in good condition when the boards were taken up.

41. The cost to the Applicant of replacing the decking was £475, which was charged to the block (flats 18 and 20).

42. The cost of this work was not part of the original tender. Rather, it was charged on the basis that it took two carpenters two days to complete the work.

43. At the hearing, Mr Humphrey Evans stated that there were two sections of decking, one on a patio measuring about three metres by six, plus the rest of the garden, which amounted to about fifteen metres by six. The Applicant said that the decking removed amounted to about the metre and half by six metres nearest to the building, to allow for the erection of the scaffolding.

44. These figures were given by Mr Humphrey Evans expressly on the basis that they were a rough estimate. Were they accurate, they would give a figure for the cost of decking that appears to us not to be credible (that is, £1,000 for the installation of 108 square metres of decking). The lease plan is attributed to the "borough valuer and estates surveyor in association with the borough architect" and is expressed as being to scale. It gives dimensions for the garden of 4 metres by 10 metres, which is more credible.

45. As we have indicated above, we reject the Applicant's day-rate approach to costing in general. However, in relation to this additional fee element, the Respondent itself relies on a day-rate method of calculation.

46. Even if we take a generous approach to the Respondent, and assume that the amount taken out by the Respondent was 2 metres by 4 metres, or a fifth rather than the 12th estimated by Mr Humphrey Evans, there remains a stark difference in the costings and work rate of the Applicant's contractor compared with those of the Respondent. Proceeding purely on the basis of a person-day rate, the Applicant's contractor laid six and two thirds square metre per person per day, and at a cost of £166.67 per day. The Respondent's laid 2 square metres, at a cost of £237.50.

47. In the light of this, we do not consider the Respondent's approach to be reasonable. It would be artificial to attempt too precise a calculation of what would be reasonable. Taking a broad approach, we consider that the costs should be reduced by half.

48. *Decision*: The service charge referable to the relaying of the decking was not reasonably incurred. A cost half that expended would be reasonable and should be substituted for the purposes of the service charge.

Scott schedule issue 5: Consultant's fees

49. The Applicant raised a general complaint about the fees paid to consultants. The structure of those fees is helpfully explained in Ms Parrette's witness statement. A consultant surveyor was engaged as contract administrator (Pellings LLP) at a rate of 3.45%. The internal management role was conducted by an in-house team (Managing Agent, Housing Contract Services) at 3.5%. The client role, which included matters such as tendering and contracting, was performed by the Housing Department, for which 2% was charged. The first two appointments were made following tender exercises.

50. The Applicant's objection to these charges was again a challenge to the form of the contract, particularly as it related to Pellings. She argued that remunerating the contractor on a percentage basis resulted in little incentive to control costs.

51. We reject this argument. We accept the Respondent's argument that the consultant was expected to behave in a professional manner. Further, the practice of consultants being engaged with remuneration on this basis is a very general one. It would be impossible for us to find that it did not fall within the reasonable range of options before the Respondent.

52. We observe that, in the result, the management/consultant functions were all performed for 8.95%, which is towards the lower end of the reasonable range.

53. *Decision*: The cost of consultants and management fees referable to the service charge were reasonably incurred.

Scott schedule issue 6: Surveys and the properties chosen

54. This heading in the schedule did not relate to a specific element of the service charge, but rather expressed the Applicant's general concerns about the decision-making process in relation to whether a balcony should be repaired or replaced, and in particular the lack of a detailed survey before each individual decision was made. The Applicant also asked if the same approach had been taken to blocks where the majority of flats were let by the Respondent on social housing tenancies as opposed to long leases.

55. In response, the Respondent outlined the history given above, and in effect relied on their general approach to the contract. Figures were provided on the numbers of social tenants and leaseholders effected.

56. We do not consider that it is necessary for us to comment on these issues, which do not affect the decisions we are called on to make.

Scott schedule issue 7: Lack of record keeping

57. Similarly, there was no direct cost attached to this item. Rather, the Applicant made general points about the lack of communication, or at least, clarity from the Respondent over a long period.

58. The Respondent argued that there had been an email correspondence with the consultation manager.

59. Without detailed analysis, we think it appropriate to record our general view that the explanations offered to the Applicant lacked clarity. It was clear, in our view, that it was only the fact that she entered on these proceedings that resulted in the Respondent giving due attention to the issues she raised. This is demonstrated by the very clear errors set out in paragraph [15] above that the Respondent, responsibly, corrected once the issues were subjected to scrutiny following the making of the application.

Issue 5: Application for orders under Section 20C of the 1985 Act/Commonhold and Leasehold Reform Act 2002, schedule 11, paragraph 5A and reimbursement of hearing fees

60. Mr Kingston-Splatt told us that the Respondent now did not oppose the application for orders under sections 20C and paragraph 5A. We make the orders.

61. We record that, had the Respondent not conceded, we would have been minded, subject to any submissions that Mr Kingston-Splatt would have made in that event, to have made the orders in any event.

62. The Applicant applies for an order that the application and hearing fees be reimbursed. We do not consider it would be appropriate for the fees to be wholly reimbursed. The Respondent has, in purely monetary terms, been largely successful before us. However, not only has the Applicant been successful in some contested areas, it was also only as a result of making this application that the Respondent corrected the reasonably obvious errors referred to above.

63. Further, as we have indicated above, we agree with the Applicant that it was only as a result of her making this application that she received, finally, clear answers to questions she had been asking for some considerable time. The general tenor of the Applicant's final submissions was that, had the Respondent answered questions and generally communicated more clearly earlier, there would have been no need for her to have made the application. We do not doubt the accuracy of that.

64. We consider, therefore, that we should mark this feature of the application by ordering that the Respondent reimburse the Applicant half of the £100 application fee and of the £200 hearing fee.

65. *Decision*: The Tribunal orders:

(1) under section 20C of the 1985 Act that the costs incurred by the Respondent in proceedings before the Tribunal are not to be taken into account in determining the amount of any service charge payable by the Applicant;

(2) under Commonhold and Leasehold Reform Act 2002, schedule 11, paragraph 5A that any liability of the Applicant to pay litigation costs as defined in that paragraph be extinguished; and

(3) under the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, rule 12(2) that the Respondent reimburse half of the sum of the application fee and the hearing fee paid by the Applicant.

Rights of appeal

66. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the London regional office.

67. The application for permission to appeal must arrive at the office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

68. If the application is not made within the 28 day time limit, the 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 these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

69. The application for permission to appeal must identify the decision of the Tribunal to which it relates, 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.

Name: Tribunal Judge Professor Richard Percival **Date:** 18 June 2021

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 provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(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.

(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 of an application under subsection (1) or (3).

(7) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

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 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 which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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 tribunal2 or leasehold valuation tribunal or the First-tier Tribunal3 , or the Upper Tribunal4 , 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 the county court ;

(aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;

(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

(ba) in the case of proceedings before the First-tier Tribunal, to the tribunal;

(c) in the case of proceedings before the Upper Tribunal4 , 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 the 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]1 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).