



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **CAM/2UE/LSC/2022/0007**

HMCTS : **Paper**

Property : **116 Horizon Place, Studio Way, Borehamwood,
WD6 5FQ**

Applicants (Tenant) : **Sarah Levy**
Representative : **Philip Levy**

Respondent (Landlord): **E & M Ltd**
Managing Agent : **First Port Limited**

Type of Application : **1) to determine the reasonableness and
payability of Service Charges (section
27A Landlord and Tenant Act 1985)**
**2) for an order that the landlord's costs
arising from the of proceedings should be
limited in relation to the service charge
(Section 20C of the Landlord and Tenant
Act 1985)**
**3) for an order to reduce or extinguish the
Tenant's liability to pay an administration
charge in respect of litigation costs
(Paragraph 5A of Schedule 11 of the
Commonhold and Leasehold Reform Act
2002)**

Tribunal : **Judge J R Morris**

Date of Application : **16th February 2022**
Date of Directions : **24th March 2022**
Date of Decision : **24th June 2022**

DECISION

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Decision

1. The Tribunal finds that the inspection of a Service Installation to assess whether a water leak is from a part of the Maintained Area or part of a Demise and hence determine whether the cost of its repair is a Service Charge or Tenant liability is part of the Management of the Building within the Fifth Schedule of the Lease and so a Service Charge cost. Therefore, the Tribunal determines that the Cost in Issue comes under the head of Management and is a Service Charge Cost.
2. The Tribunal determines a reasonable charge for the Cost in Issue as a Service Charge cost of Management is £120.00 including VAT comprising £100.00 plus £20.00 VAT.
3. The Tribunal does not consider it just and equitable to make an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as a relevant cost to be taken into account in determining the amount of any Service Charge payable by the Applicant.
4. The Tribunal makes an Order extinguishing the Applicant's 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.

Reasons

Background

5. On 16th February 2022 the Applicant applied for:
 - a) A determination under section 27A of the Landlord and Tenant Act 1985 as to whether a charge of £609.72 for a contractor to assess whether a leak from a Service Installation was from a part of the Maintained Area or part of a Demise ("the Cost in Issue") is:
 1. A cost chargeable to the Service Charge; and, if so,
 2. Whether the cost is reasonable.
 - b) An order that the landlord's costs arising from the proceedings should be limited in relation to the service charge payable under section 20C of the Landlord and Tenant Act 1985.
 - c) An order to reduce or extinguish the tenant's liability to pay an administration charge in respect of the litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.
6. Directions were issued on 24th March 2022 with which the parties complied. The parties agreed that the matter should be dealt with on consideration of the papers alone.

The Law

7. The Law relating to these proceedings is set out in Annex 2 and should be read in conjunction with this Decision and Reasons.

The Leases

8. A copy of the Lease relating to the Property was provided together with a copy of HM Land Registry Entry Title Number HD565700116 under which the Property is registered. The Lease is dated 15th June 2017 between Landlord Linden Limited (1) Tenant Sarah Frances Levy (2) and Manager Pentland Estate Management Limited (3) for a term of 125 years from 1st January 2016. At some time thereafter it appears that the reversion was assigned to E & M limited.
9. It is not clear whether the role of Manager under the Lease has been assigned to the FirstPort Limited or whether the FirstPort is the Managing Agent of the Respondent and/or the Manager. For the sake of convenience FirstPort is referred to hereafter as “the Managing Agent”.
10. The relevant parts of the Lease are:
11. LR4 Property states:

In the case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail
Fourth floor Apartment/to be known as: -
116 Horizon Place, Studio Way, Borehamwood Hertfordshire WD6 5FQ
12. Clause 1 - Definitions
 - 1.8 “Demised Premises” defined as the Property Specified at LR4 and the First Schedule
 - 1.26 “Maintained Areas” defined as those parts of the Estate which are more particularly described in the Fourth Schedule
 - 1.14 “First Maintained Areas” defined as those areas and facilities described or referred to in part 1 of the Fourth Schedule
 - 1.36 “Second Maintained Areas” defined as those areas and facilities described or referred to in part 2 of the Fourth Schedule
 - 1.44 “Third Maintained Areas” defined as those areas and facilities described or referred to in part 3 of the Fourth Schedule
 - 1.38 “Service Charge” defined as the monies actually expended or reserved for periodical expenditure by or on behalf of the Manager or the landlord at all time during the Term in carrying out the obligations specified in the Fifth Schedule...
 - 1.40 “Service Installations” all drains channels sewers pipes wires cables conduits ...now constructed excluding such Installations exclusively serving the Demised Premises

13. Clause 2 - Demise

...The Landlord with full title guarantee hereby demises unto the Tenant all and singular the Demised Premises together with the rights set out in the Second Schedule...

14. The First Schedule - The Demised Premises Part 1 (Apartment) states:

The property referred to at LR4 (together with the floor surface only of any balcony or patio co-extensive therewith (if any) and the air space above such balcony or patio to a height one storey above the surface thereof) shown edged green on the Plan including:

6. All Service Installations exclusively serving the Demised Premises

15. The Second Schedule – Rights included in the demise

1. To the extent reasonably necessary for the purposes of domestic use and convenience incidental to the occupation of the Demised Premises to use those parts of the maintained areas intended to be accessible to the Demised Premises including but not limited to

3.1 The right to connect to and use inspect maintain and renew any Service Installations on the estate which serve the Demised Premises

16. The Fourth Schedule - The Maintained Areas

Part 1

First all those parts of the Estate which are available or are intended to be available for the use or benefit in common by the Properties on the Estate and which parts are not intended to be adopted but including but not limited to: -

(j) All Service Installations and the Satellite Apparatus but excluding any such Service Installations utilised exclusively by individual Dwellings

Secondly in relation to in addition to those first described above those areas intended to use or benefit in common by the Owners (and/or occupiers of a discrete group of Dwellings again not intended to be adopted including but not limited to: -

(s) All Service Installations and the Satellite Apparatus but excluding any such Service Installations utilised exclusively by individual Dwellings

Part 2

Relating to those parts of the Development intended for use or benefit in common by the Owners of the Apartments and not intended to be adopted including but not limited to: -

e) All Service Installations but excluding any such Service Installations utilised exclusively by individual properties

Part 3

Relating to the Building including but not limited to: -

- b) All structural parts of the Building including (but not limited to) the roofs beams timbers joists foundations cellars floors gutters rainwater pipes...of the Building... and all Service installations not used solely for the purposes of one Apartment

17. The Fifth Schedule - Maintenance obligations expenses and administration of the Maintained Areas

Part 1

Maintained Areas (applying as necessary to those parts as set out in the fourth Schedule)

- 3. Keeping in good order and repair any Service installations within the Maintained Areas

- 9.2 All such Service Installations in under and upon the Building as is enjoyed or used by the tenant in common with the Owners or occupiers of the other Apartments and other premises comprised in the building and insofar as the same are not maintained at the public expense or by the relevant Authorities

Part 2

Section 1 The Manager's expenses, outgoings other heads of expenditure and administration

- 1. The expenses incurred by the Manager in carrying out its obligations under this Schedule including the costs of carrying out inspections and tests...
- 2. The costs of employing contractors or managing agent to carry out any of the Manager's obligations under this lease

18. The Sixth Schedule - The Tenant's Proportion of Service Charge

- 1. The Tenant shall pay the tenant's Proportion to the Manager in the manner hereafter described Provided that the Manager may vary the scope of the maintenance obligations set out in the Fifth Schedule from time to time as may be deemed appropriate of the purposes of good estate management
- 4. The amount of the Service Charge shall be adjusted to take into account any sums received by the manager as contribution towards the cost of the matters mentioned d in the Fifth Schedule from the owners tenants or occupiers of nay adjoining or neighbouring properties to the estate.

The Seventh Schedule - Covenants by the Tenant

4 Service Indemnity

- 4.1 To keep the Manager and the Landlord indemnified in respect of any charges for water electricity and gas or other services payable in respect of the Demised Premises such sums to be repaid to the Landlord or the Manager on demand.

Description

19. The Tribunal did not consider it necessary for the determination of the issues to inspect the Building in which the Property is situated.

Evidence

Applicant's Case

20. The Applicant provided a written Statement of Case and supporting documents which included a statement made by the Applicant to The Property Ombudsman relating to a complaint that the Managing Agent had incurred the Cost in Issue on behalf of the Applicant. The relevant parts of the statement are repeated here as an account of how the Cost in Issue was incurred.

21. The Applicant stated:

“During a routine boiler service, I was advised by the plumber that there was a leak and the pipe leading down into my flat should be checked. I phoned my point of contact at FirstPort, Julie Hearn [“the Property Manager”] to discuss this. I advised the I had a leak with water dripping into the electrics. She advised that the problem sounded as if it was contained within my own flat and if she sent a plumber out and that was the case, I would be issued a recharge for the call out. I explicitly said I could not agree to this without a quote and that my plumber would do the work, I asked her for the communal access point to the pipes coming into my flat as the plumber wanted to check for any more pipe damage, and she said she did not know where it was and would have to send someone to locate it. I was not advised of any possibility of a charge for this query. She advised they would be arriving at around 3 p.m. At 4 p.m. I tried to phone her and text asking for an ETA – she never responded to this.

At around 5 p.m. two workmen arrived and I showed them the pipe my plumber wanted to check and asked for the communal hatch entrance. They advised that there is no communal hatch entrance and instead showed me that the hatch leading out on to the top of the building. They said that Julie Hearn had advised them of a leak in the roof. This was not suggested by myself at any point.

Date the above took place: 5th February 2021”

22. A photograph of the leaking pipe was provided.
23. An email in response to the Property Manager’s account of the event was provided in which the Applicant stated that:
“I advised you [the Property Manager] that I had a pipe leaking and you explained that as this was in my flat it was my responsibility to fix. When I said that we could not tell at that point if the leak was in my flat or coming from above you offered to send someone out and explained that if the problem was within my flat, I could get charged for this. I explicitly said I could not agree to any call out charges without prior quote and that my plumber would fix the problem.

It was only when I asked you for the information regarding communal hatchet[sic] access from my plumber to check the pipes coming into my flat that you said you did not know where the access points were and would have to send someone out to advise of their location.”

24. The remainder of the Statement of Case and accompanying documents relate to:
- The disputed account of the conversation between the Applicant and Ms Hearn on 5th February 2021.
 - The inclusion of the Cost in Issue with the Service Charge demand.

Respondent’s Case

25. The Respondent provided a copy of a letter dated 12th February 2021 from the Managing Agents to the Applicant the text of which states:

“Further to our contractor’s attendance last week for a suspected external water leak, found that the issue was in fact coming from your own boiler. This would therefore be a recharge to yourself as it was not a communal issue but one within your own demised area”

26. A Statement of Events was provided from the Property Manager following a complaint by the Applicant as follows:

“Issue:

Suspected external water leak coming in to Flat 116 Horizon Place – Attendance by Ellis Enterprises 5th February 2021

Sequence of Events:

We have considered your objection to my letter and explanatory notes by way of an email dated 5th March 2021 setting out the sequence of events on the day (copy not provided)

Following your plumber’s attendance, he advised you there was a separate leak coming into your property and that water was running down the pipework from above and across your boiler which you were worried about and wanted the matter investigated immediately.

There was no talk of a quote and you stated quite categorically that you wanted me to get FirstPort’s contractors out as soon as possible as neither yourself nor your plumber knew where the water was coming from.

Any contractor that FirstPort instruct will be chargeable. If it was an external issue, the service charge would have supported it or in this case, it was found to be a flat specific call out thus chargeable to the owner. I advised at the time it would be flat specific but you said the water was streaming down from the ceiling, so the decision was made.

27. Due to the fact it was fairly late in the day the contractors arrived out of hours, hence you texting me to ask where they were, but on arrival found that the leak was coming from your own boiler and that an error of judgement had been made.”

28. The Respondent provided an opinion from its solicitors, JB Leitch, which referred to the following parts of the Lease:

LR4 of the Particulars and the First Schedule which in turn are referred to in Clause 1.8 and 2 as defining the Demise.

Paragraph 6 of the First Schedule which states that the demise includes Service Installation exclusively serving the Demised Premises.

Clause 1.4 which defines Service Installation includes pipes tank conduits and any structures incidental to the use thereof

Clause 3 which states that the Tenant covenants to observe and perform the obligations set out in the Seventh Schedule

Paragraph 4.1 of the Seventh Schedule which requires the Tenant to keep the Manager and the Landlord indemnified in respect of any charges for water electricity and gas or other services payable in respect of the Demised Premises

Paragraph 5 of the Seventh Schedule which requires the Tenant to keep the Demised Premises in repair.

29. Reference was made to the Property Manager's Statement of Events. It was submitted that the Lease envisaged that either costs for services were charged to the relevant Leaseholder personally or by all the Leaseholders in a shared capacity by way of Service Charges under the Lease. It was said, what is not envisaged is that the Manager or Landlord subsidise a Leaseholder for the cost of services provided.
30. It was further submitted that as the Applicant requested the contractor attend then the fee charged by the contractor cannot be considered unreasonable.

Decision

Is the Cost in Issue chargeable to the Service Charge?

31. The Tribunal noted all the evidence adduced and submissions made by the parties in respect of whether the Cost in Issue is chargeable to the Service Charge. The Tribunal was of the opinion that the Cost in Issue might come under two heads of the Service Charge:
- 1) Repair and/or
 - 2) Management
32. Firstly, the Tribunal considered whether the Cost in Issue could be chargeable to the Service Charge under the head of a Repair.
33. The Tribunal found as follows:
1. The parties agreed that there was water leaking into the Applicant's flat which was subsequently found to be coming from the Applicant's boiler.
 2. The Applicant's boiler is what is referred to in the Lease as a Service Installation.

3. The Applicant's boiler is a Service Installation exclusively serving the Demised Premises which in the Lease are identified in LR4 of the Particulars, defined in Clause 1.8 and the First Schedule and demised in Clause 2.
 4. Under the Fifth Schedule only the costs incurred in relation to maintaining the Maintained Areas are chargeable to the Service Charge payable in accordance with Sixth Schedule.
 5. The Fourth Schedule of the Lease expressly excludes a Service Installation exclusively serving the Demised Premises from the Maintained Areas.
34. Therefore, as far as the Cost in Issue being a repair to a Service Installation within the Demise, it is not chargeable to the Service Charge. The Tribunal derives its jurisdiction from section 27A of the Landlord and Tenant Act 1985 which enables applications to be made by a landlord or a tenant for a determination as to whether a service charge is payable. If the Cost in Issue is not part of the Service Charge, then the Tribunal has no jurisdiction to determine whether it is reasonable.
35. The Tribunal found the contractor's invoice dated 11th February 2021 for the Cost in Issue states:
Description of Works Leak into Flat 116
Labour@ £475.00 + Vat £95
Materials and mileage £33.10 + VAT £6.62
Total £609.72
36. The Applicant, who was present at the time, said in her Statement of Case that "no action was taken at the time by the contractors" to remedy the leak. The Managing Agent's invoice dated 12th February 2021 states "Boiler Leak Investigation".
37. From its knowledge and experience the Tribunal would expect an invoice for a plumber who had carried out work in respect of a leak to state that the leak had been remedied. No evidence was adduced to show that a repair was carried out. If a repair had been carried out and there had been an issue regarding the reasonableness or payability as to its cost, it would be outside the Service Charge and the Tribunal's jurisdiction.
38. The Tribunal finds from the evidence adduced that on the balance of probabilities the Cost in Issue does not relate to a repair.
39. Secondly the Tribunal considered whether the Cost in Issue could be chargeable to the Service Charge under the head of Management as an inspection under Paragraph 8 of the Fifth Schedule of the Lease. Although the leak was from a Service Installation which was included in the Demise, the pipes from which the leak was emanating were situated in the void which was part of the Maintained Area and so an area subject to inspection by the Managing Agent.
40. The parties agreed that the Applicant telephoned the Managing Agent regarding a leak of water into the flat, coming from the void above the flat, which had been identified by the Applicant's plumber. The purpose of the telephone call was to find out from where the leak was coming for which there were two possibilities. Firstly, the leak could be caused from a Service Installation as part of the Maintained Area or secondly, a Service Installation that is part of the Demise. If it was from part of

the Maintained Area the cost of any repair would be a matter for the Service Charge, if it was part of the Demise the cost would need to be met by the Applicant.

41. The Applicant states that the plumber was not able to investigate because it was not known where the access points to the void are. It then fell to the Managing Agent pursuant to its management obligations under the Lease to make the investigation and determine from where the leak was coming.
42. There are three actions the Property Manager could have taken on behalf of the Managing Agent. First, since the Property Manager should have known the access points for services, she could have given instructions to the Applicant or her plumber to access the void to make an assessment without incurring a call out charge to the Service Charge. Secondly, the Property Manager could have attended herself to determine from where the leak was coming. Thirdly she could delegate the task to a contractor, which, in the event is what the Property Manager did.
43. The Tribunal finds that it was incumbent upon the Managing Agent as part of its responsibilities of Management of the Building to investigate the leak. If the leak had been from a Service Installation which was part of the Maintained Area, then the Managing Agent would need to instigate a repair. Even if it came from a Demise, it would need to be inspected to ensure that it did not affect other flats in the Building or the Maintained Areas. Therefore, the Tribunal determines that the Cost in Issue incurred is chargeable to the Service Charge under the head of Management.

Is the Cost in Issue Reasonable?

44. The Tribunal then considered whether the charge incurred was reasonable. Irrespective of when the telephone calls were made by the Applicant to the Managing Agent or by the Property Manager to the contractor, the attendance by workmen was at 17.00 hours which is within the normal working day. There was no evidence of any exceptional circumstance or difficulties encountered by the contractors, in fact there is very little evidence as to what they did at all. However, it appears that they carried out the management duty of showing the Applicant where the access points to the void are and identifying the source of the leak.
45. The Tribunal considered the invoice submitted by the contractor and found from its knowledge and experience that the charge was high for the work said to be done. The charges referred to on the Internet site appear more in line with what might be expected where a Managing Agent engages a contractor to make an inspection of a specific item on its behalf provided it is not covered by the Management Fee, which has not been put in issue.
46. The Tribunal determines a reasonable charge for the Cost in Issue is £120.00 including VAT comprising £100.00 plus £20.00 VAT.

Other Matters

47. With regard to the Service Charge demands addressed to the Applicant by the Respondent's Managing Agent it appears that the full amount of the Cost in Issue is

being charge to the Applicant as a Tenant alone. This is not correct. Under the Lease the Service Charge is a collective charge apportioned amongst all the Tenants of the Building. Under the Lease an individual Tenant cannot be charged more than their designated apportionment for a cost incurred in respect of the Service Charge. As the Cost in Issue is part of the Service Charge, then it must be apportioned to all the Tenants in accordance with Lease.

48. The Solicitor for the Respondent submitted that the Cost in Issue would come within Paragraph 4 of the Seventh Schedule as an indemnity payment for services. The Tribunal finds that this paragraph relates to the payments of utility charges for water, electricity and gas and other services. The Tribunal is of the opinion that the general words “other services” are limited to matters of the same kind by the specific words i.e., charges for water, electricity and gas.
49. Similarly, the Tribunal is of the opinion that Paragraph 5 of the Seventh Schedule requiring the Applicant Tenant to keep the Demised Premises in repair is not an issue. The Cost in Issue is not part of a charge against the Applicant for failing to keep the Demise in repair. These proceedings have arisen because the Applicant was seeking to keep the Demise in repair.

Decision re Section 20C and Paragraph 5A of Schedule 11

50. The Applicant applied for an order under section 20C of the Landlord and Tenant Act 1985 that the landlord’s costs arising from the proceedings should be limited in relation to the service charge and for an order under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 to reduce or extinguish the Tenant’s liability to pay an administration charge in respect of litigation costs.
51. The provision enabling a landlord to claim its costs directly from a tenant is an individual liability, whereby a tenant alone bears the landlord’s costs of the proceedings. Under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 a tribunal may, if it is satisfied it is just and equitable, make an order that a landlord’s costs, either in part or whole, cannot be re-claimed directly from the tenant.
52. The first issue is whether the Lease contains either or both of these provisions enabling the Respondent to claim its costs in respect of these proceedings through the Service Charge or directly from the Applicant.
53. The Tribunal found that the only provision in the Lease which places personal liability on the Applicant Tenant for legal costs is under Paragraph 10 of the Seventh Schedule. Under that Clause the Applicant covenants to pay the Respondent Landlord’s costs charges and expenses incurred in respect of any proceedings under sections 146 or 147 of the Law of Property Act 1925. As these proceedings are not under sections 146 or 147 of the Law of Property Act 1925 the Tribunal finds that there is no provision in the Lease enabling the Landlord to reclaim its costs against the Tenant as an individual.
54. Notwithstanding there being no provision in a lease, for the avoidance of doubt, a tribunal is able to make an order under paragraph 5A of Schedule 11 of the 2002 Act if it is satisfied that it is just and equitable to do so. Having found that the Cost in Issue

was a chargeable to the Service Charge the Tribunal determined that it was just and equitable that the costs of these proceedings should not be reclaimed against an individual tenant and so makes an Order under paragraph 5A of Schedule 11 of the 2002 Act.

55. The Tribunal found that there was a provision for the Respondent to recover the costs of these proceedings under the Seventh Schedule Part 2, Section 1 Paragraph 4 of the Lease. The effect of making an Order under section 20C would be to exempt the Applicant from being charged for the Respondent's costs of these proceedings under the Service Charge leaving the other Tenants who were not directly involved on this occasion to pay the costs as the Order can only apply to the Applicant.
56. The Tribunal does not consider it just and equitable to make an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Applicants.

Judge JR Morris

APPENDIX 1 - RIGHTS OF APPEAL

1. If a party wishes to appeal the 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.
2. 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.
3. 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.
4. 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 2 – THE LAW

The Law

1. The relevant law is contained in the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002.
2. Section 18 Landlord and Tenant Act 1985
 - (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, improvement 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 of which the service charge is payable.
 - (3) for this purpose
 - (a) costs include 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 period
3. Section 19 Landlord and Tenant Act 1985
 - (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.
4. Section 27A Landlord and Tenant Act 1985
 - (1) An application may be made to a leasehold valuation 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 a leasehold valuation 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 arbitration agreement to which the tenant was a party
 - (c) has been the subject of a determination by a court
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

5. 20C Landlord and Tenant Act 1985

Limitation of service charges: costs of proceedings.

- (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 leasehold valuation tribunal or the First-tier 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 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 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 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.

6. Schedule 11 Commonhold and Leasehold Reform Act 2002 relating to reasonableness of Administration Charges

Paragraph 1 Meaning of “administration charge”

- (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.

Paragraph 2 Reasonableness of administration charges

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Paragraph 5 Liability to pay administration charges

- (1) An application may be made to a 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 a leasehold valuation 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 subparagraph (1).

- 5 A Limitation of administration charges: costs of proceedings
 - (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—