FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AC/LSC/2023/0047**
Property	**:**	**Simmay Villas, 152 Holders Hill Road, London NW7 1LU**
Applicants	**:**	**(1) Farhad Mohammadi and Shiva Samadi (flat 1)|** **(2) Wing Yee Mak (flat 2)** **(3) Pezhman Zomorodnia (flat 3)** **(4) Roberto Anzaldua Gi (flat 4)**
Representative	**:**	**Mr Mohammadi**
Respondent	**:**	**Assethold Limited**
Representative	**:**	**Mr Granby of counsel**
Type of Application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	**:**	**Judge Prof R Percival** **Ms R Kershaw BSc**
Date and venue of Hearing	**:**	**11 October 2023** **10 Alfred Place**
Date of Decision	**:**	**16 October 2023**

DECISION

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 and (where applicable) administration charges payable by the Applicant in respect of the service charge years 2022 and 2023.

2. Relevant statutory provisions are set out in the Appendix to this decision. The legislation referred to may also be consulted at:
https://www.legislation.gov.uk/ukpga/1985/70/contents
https://www.legislation.gov.uk/ukpga/2002/15/contents

The property and its management

3. The property is a brick built semi-detached house of a style suggestive of construction in the mid-20th century, which has been converted into four flats. At the front of the property is a paved area with three parking places, which are allocated to three of the four flats.

4. The leaseholders having exercised the right to manage, the Simmay Villas RTM Company Ltd acquired the right to manage on 10 November 2022. That date had been fixed when the Tribunal decision that the Applicant had established the right to acquire the right to manage (LON/00AC/LRM/2022/0002) was sent to the parties on 14 July 2022. The RTM Company had served its claim notice on 25 October 2021, and had issued its application under section 84(3) of the 2002 Act on 8 December 2021.

The leases

5. The leases, all of which were provided, appear to be materially identical.

6. The insurance risks and the insurance rent are defined in clause 1. "Service charge" is defined as the tenant's proportion of service costs, which in turn relies on the definition of services. That includes cleaning, maintaining etc, heating and lighting the common parts and maintaining etc machinery therein and cleaning the outside of the windows. There is a sweeper clause which includes within the services "any other service or amenity that the Landlord may in it's reasonable discretion … provide …".

7. Schedule 4 contains the tenant's covenants. These include to pay the service charge (paragraph 2), and the insurance rent (paragraph 3) by the date specified in the Landlord's notice.

8. The landlord covenants to insure the building in schedule 5, paragraph 2, "on fair and reasonable terms that represent value for money, for an amount not less than the Reinstatement Value …". There are requirements in terms of information and calculation imposed on the Landlord in relation to the insurance rent. In paragraph 4 of schedule 6, the Landlord covenants to provide the services. Paragraph 4.2 requires the Landlord to serve on the tenant a service charge notice "as soon as reasonably practical after incurring, making a decision to incur, or accepting an estimate relating to, any of the Service Costs."

The issues and the hearing

9. Mr Mohammadi appeared in person and told us he was representing the other Applicants. Mr Granby of counsel represented the Respondent.

10. The issues between the parties was identified in the Scott schedule. We proceeded by hearing the parties' submissions on each item in turn. There were Scott schedules for the service charges years 2022/23 and 2023/24. The latter, which included eleven items, was no longer in issue, as the Respondent had conceded all of the items set out therein.

Insurance

11. The Respondent arranged insurance, commencing on the renewal date of 1 March 22, for a year at the cost of £3,400.53 (and not £3,450.53, as the parties agreed was erroneously stated on the schedule).

12. Mr Mohammadi did not contest the amount of the insurance in principle, but contended that it should only apply pro rata to the period up to the acquisition date, which he calculated at £1,150.17 (that is, for the period between July 2022 until the acquisition date).

13. Mr Granby said that it appeared that the Respondent had paid the insurance premium at or before 1 March 2022, at which time it was obliged under the lease to insure the building. The cost was properly incurred at that time, and so was properly charged in the service charge.

14. The Respondent's obligation to insure the building elapsed on 10 November 2022 when the RTM acquired the right to manage. On the face of it, the cost of insurance after that date is not recoverable under the service charge, because the Respondent is relieved of the responsibility to provide the services after that date.

15. However, Mr Granby argued that the Respondent was not to know in March 2022 that the Applicant would succeed in acquiring the right to manage, or that the tenants would even persist in their attempts to do so. As insurance is conventionally arranged on an annual basis, the only

reasonable thing for the Respondent to do was to insure the building for a year at the renewal date. We add that the Respondent negotiates year by year for a block insurance contract covering all of its properties (an unexceptional arrangement in principle), so is, presumably, stuck with that particular date, which does not coincide with the service charge year, in any event.

16. We are attracted by the proposition that once the obligation to insure is no longer operative, the natural reading of the lease is that insurance for the period thereafter cannot be recovered through the service charge, and as far as a landlord is concerned, that that is just one of the vicissitudes of property management.

17. However, in this case, we do not need to so decide. The obvious practical solution is for the Respondent to cancel the insurance as from the acquisition date, something it would have been able to do well in advance. We think it highly probably that the block contract negotiated by the Respondent, which is well known to have a large portfolio of properties, would allow cancellation in such circumstances.

18. That this is so evidenced by the Respondent's written remarks in the landlord's column on the schedule. The Respondent wrote that "[a]ny refund is being dealt with separately under a return to the RTM company…". This, first, shows that the Respondent expects a refund, which it would only do if it were able to cancel the insurance. It also, secondly, shows that the Respondent anyway concedes that a refund is due to the Applicant in respect of the period after the acquisition date. It merely proposes an alternative method for the refund to be effected.

19. On this basis, we consider it cannot be said that the insurance premium referable to the period after the acquisition date can be recovered through the service charge.

20. There is no challenge to Mr Mohammadi's calculation.

21. *Decision*: the amount recoverable as insurance rent for 2022/23 is not payable. A sum of £1,150.17 is payable.

Additional insurance

22. It became clear, following further explanation from Mr Granby on the basis of the provision by him of an additional document some days before the hearing, that this charge related to an upward adjustment to the insurance as a result of the calculation of a higher reinstatement cost, all of which related to a period before the acquisition date. Mr Mohammadi accordingly conceded that the charge was justified.

23. *Decision*: The service charge referable to "additional insurance" is payable.

Common parts cleaning

24. Similarly, Mr Mohammadi conceded this item on the basis that he now had sight of the relevant invoices, which showed that the charges for cleaning only related to the period up to the acquisition date.

25. *Decision*: The service charge referable to common parts cleaning is payable.

Bin cleaning

26. In his challenge to this item, Mr Mohammadi relied on a photograph taken on 16 November 2022, which showed the row of bins outside the property, and a van parked on the road with the legend Prestige Bin Cleaners painted on the side. This, he said, was the only time that he had seen bin cleaners attending, that (as could be seen from the photograph) the bins were full of rubbish, so could not have been cleaned on the inside, and it was after the acquisition date.

27. Mr Granby referred us to a series of invoices from BML Security and Facilities Management (BML) for bin cleaning. These are dated 4 November 2021 (£84), 5 December 2021 (£84), 30 December 2021 (£84), 27 February 2022 (£84), 15 May 2022 (£75.60), and 14 August 2022 (75.60).

28. Mr Mohammadi said that he worked from home, and when sitting at his desk he looked out on the front of the building. Other than the post-acquisition date visit referred to above, he said he had never seen the bins being washed. On this basis, he argued that no bin cleaning had been performed, apart from the post-acquisition date occasion.

29. In the schedule, the Applicants also object to the reasonableness of the charges and the quality of the work.

30. We do not consider that we can rely on Mr Mohammadi's evidence as to the total absence of bin cleaning, without doubting Mr Mohammadi's honesty. It is difficult to prove an absence, and we do not think it can be said that he had the area under such complete surveillance during the entire period that we can reasonably exclude any work ever having been done.

31. However, we agree with the Applicants' objection on the reasonableness of the service. To have six jet washings of a set of ordinary domestic bins in a nine month period is manifestly excessive on any account. For that period, at the very most, two bin washes would have been reasonable.

32. *Decision*: The service charge referable to bin cleaning is not payable. A service charge of £168 is reasonable and payable.

Inventory report

33. A report under this heading is charged to the service charge at £72. It appears that this is the report produced at a late stage by Mr Granby, headed "Property Inspection Report", prepared by BML, and dated 21 September 2022.

34. In the schedule, the Applicants object that such a report is unnecessary when the managing agent, Eagerstates, was charging £1,262.40 annually for management, that there is no provision in the lease to cover it, and that it is unreasonable in amount.

35. Mr Granby argued that the report was covered by the provision allowing the employment of a managing agent (in the definition of "Service Costs" in clause 1.1), or under the sweeper clause in the definition of "Services" in the same clause ("any other service or amenity …").

36. In principle, the commissioning of appropriate reports by relevant professionals, where there is a good reason to do so, will be an incident of normal property management that will be justifiable under lease provisions allowing for proper management, such as those referred to by Mr Granby.

37. But this report is not of that character. The author is named, but gives no professional qualifications nor any description of purpose or methodology. It is a pro forma document, not unlike those used by inventory clerks to take inventories of properties when a short term assured shorthold tenancy commences or comes to an end, for deposit purposes (although of course this report is limited to the areas for which the landlord was then responsible). Mr Mohammadi said that they had never been charged for a similar report in the past.

38. And it was completed just a few weeks before the acquisition date, when responsibility for managing the property would pass to the RTM Company. In all the circumstances, we do not think it was reasonable to commission and charge this report.

39. *Decision*: The service charge referable to the "inventory report" is not payable.

Repair to cracks, cutting of overgrown weeds and cleaning of moss and *repair to stair edges*

40. These are two items on the schedule, but we take them together as the Applicants claim that the second ("repair to stair edges") amounts to double counting work encompassed by the first.

41. First, we note that the work referred to in the first heading was proposed in the "Property Inspection Report" discussed above. That report was dated 21 September. The work therein recommended was undertaken (by BML) the day after the report was dated, the 22nd. It is surprising that a report delivered on the 21st should have been acted on so quickly both by the managing agent in approving the work, and by the contractor (from an enterprise called Superior Facilities Maintenance) in immediately making a worker available. Mr Mohammadi expressed cynicism about the report as a result. We have some sympathy with Mr Mohammadi.

42. Be that as it may, the invoice in respect of the first category of work sets out work to the front garden area. There are before and after photographs. It appears that the contractors cleaned moss and small weeds form the cracks in the blockwork paving which covers nearly the whole of the front garden. There is a negligible area of soil shown underneath a neat hedge to one side of the paved area, which, on the "before" photographs, might show a small number of weeds. There may be a weed visible under the bay window at the front of house, but the "after" picture is too indistinct to sees if it has been removed.

43. Mr Mohammadi's evidence was that the contractors did not ask the leaseholders to move their cars parked on the area, although we note that two cars, rather than the three allowed under the lease, can be seen in the photographs. Mr Mohammadi, who has measured the area and shown his measurements superimposed on photographs, asserts that the area cleaned was about 30m^2.

44. As to the other area of work, the invoice states "To repair where cracked (building)". The photographs relevant to this heading show the internal corridor and stairs. It is impossible to see any cracks on anything in the photographs, and therefore to distinguish the "before" and "after" photographs.

45. Mr Mohammadi's evidence was that the worker was on site for half a day. He says that it was at this time that the cracks in the skirting boards into which the steps sit were repaired. They were filled but not painted, he said.

46. The invoice, which does not separate out the charges for the three elements referred to, is for £900 (including VAT).

47. The second category of work, for which the invoice was £870 (including VAT), is described as being "To repair stair edge (building)". The contractor was again Superior Facilities Maintenance. The photographs show, somewhat indistinctly, hairline cracks on the skirting boards on the side of the stairs. There are what appear to be "after" photographs, again indistinct, that appear to show the cracks absent.

48. Mr Granby was unable to say what, apart from the cracks in the stair skirting board, could have been referred to in the first invoice.

49. Mr Mohammadi had secured, and produced in the bundle, a quotation for jet washing and removing moss from the front paved area (that is, on his account, the whole area, not the reduced area treated by the landlord's contractor), for £320. He also said that the hairline cracks on the skirting board had returned. This he demonstrated with photographs, which were notably clearer than the Respondent's. He obtained a quotation for repairing them at £300. Neither of Mr Mohammadi's quotations includes VAT, from which we conclude that the tax is not chargeable by those enterprises.

50. We accept Mr Mohammadi's argument that the second invoice double counts the work that was also claimed in the first invoice, in the absence of any evidence at all of any cracks other than those to the stair skirting.

51. In assessing what would be a reasonable charge for these services and repairs, we must take account of the fact that Mr Mohammadi's quotations did not include VAT, both in terms of the actual sums quoted, and the fact that not being liable for VAT means that the contractors are smaller enterprises, and that it may be more appropriate for a large landlord such as Assethold to contract with larger concerns, which might somewhat increase costs.

52. However, we conclude that, in addition to the double counting element, the charges were excessive. We take into account both Mr Mohammadi's quotations and our general knowledge.

53. *Decision*: the services charges in relation to the repair to cracks, cutting of overgrown weeds and the cleaning of moss and repair to stair edges were not reasonably incurred and are not payable. A service charge in respect of these categories, taken together, of £800 is reasonable and payable.

Drain repairs

54. A service charge of £1,494 for drain repairs was supported by an invoice produced in the bundle. The invoice was dated 20 November 2022, and the work detailed on the invoice showed that the work was undertaken on the same day.

55. As this was after the acquisition date, Mr Granby, for the Respondent, conceded that it was not chargeable.

56. *Decision*: the service charge referable to drain repairs is not payable.

Management fees

57. The management fees amount to £263 plus VAT per unit for this four flat property.

58. The Applicants object to the management fee on the basis of the conduct of the managing agent, Eagerstates. In particular, in their comments on the schedule, they criticise the failure of the managing agent to communicate with the tenants, ignoring emails, letter and telephone calls, and limiting communication to threatening letters demanding payment.

59. The Respondent produced no evidence to contradict these charges. The entry in the landlord's column in the schedule merely asserts reasonableness. Mr Granby argued that even if we found that some of these criticisms were made out (which he did not concede), we should not reduce the management fees to zero, as the Applicants contended. Neither, he said, should we use any criticism we might have of Eagerstates conduct after the acquisition date to justify a reduction in the management fees before that date.

60. As we stated at the hearing, in our experience, these fees are towards the lower end of the normal range of such fees in relation to similar properties in London. This we base on general experience of the market in property management in London rather than any specifically disclosable pieces of evidence. But we also accept the un-contradicted criticisms made by the Applicants. We note that, in respect of the matters conceded by the Applicants before us, better and earlier basic communication could have disposed of the issues earlier.

61. On the other hand, we agree with Mr Granby that we should not use the management fees to "kick Assethold" in a purely punitive way. Nonetheless, we think the quality of management fell below the level that could properly be expected even in the context of a moderate fee. We mark this by reducing the per unit fee to £245.

62. *Decision*: The service charge referable to the management fees are not reasonably incurred and are not payable. A sum of £980 plus VAT is reasonable and payable.

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

63. The Applicant applied for orders under section 20C of the 1985 Act that the costs of these proceedings may not be considered relevant costs for the purposes of determining a service charge; and an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 extinguishing any liability to pay an administration charge in respect of litigation cost in relation to the proceedings.

64. We think it unlikely that the Respondent will be able to claim the costs of these proceedings either through the service charge or as administration charges. However, at the invitation of both parties, we consider the applications on the basis that such recover might be possible, without deciding whether that is the case or not. Those questions are, accordingly, open should the matter be litigated in the future.

65. In general, an application under section 20C is to be determined on the basis of what is just and equitable in all the circumstances (*Tenants of Langford Court v Doren Ltd* (LRX/37/2000). The approach must be the same under paragraph 5A, which was enacted to ensure that a parallel jurisdiction existed in relation to administration charges to that conferred by section 20C. The orders are an interference with the landlord's contractual rights, and must never be made as a matter of course.

66. We should take into account the effect of the order on others affected, including the landlord: *Re SCMLLA (Freehold) Ltd* [2014] UKUT 58 (LC); *Conway v Jam Factory Freehold Ltd* [2013] UKUT 592 (LC); [2014] 1 EGLR 111. This is an important factor in relation, for instance, to tenant-owned freehold companies, but does not have any particular weight in the instant case.

67. Finally, the success or failure of a party to the proceedings is not determinative. Comparative success is, however, a significant matter in weighing up what is just and equitable in the circumstances.

68. In this case, the Applicants have been overwhelmingly successful before us. We consider it just and equitable to make the orders, on the basis set out above.

69. *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; and

(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.

Rights of appeal

70. 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.

71. 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.

72. 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.

73. 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:** 16 October 2023

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).