FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AG/LSC/2023/0369**
Property	:	**Flat 6 Ladywell Court, 22 East Heath Road, London NW3 1AH**
Applicant	:	**Ladywell Court (Hampstead) Management Limited**
Representative	:	**Priya Gopal, Counsel**
Respondent	:	**Ruth Blair**
Representative	:	**-**
Type of application	:	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	:	**Judge D Brandler** **Ms S Phillips MRICS**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of hearing	:	**26 January 2024**
Date of preliminary decision	:	**29 January 2024**
Date of final decision	:	**22 February 2024**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the sum of £2,585.01 is payable by the Respondent in respect of the budgeted service charges for the year 2020.

(2) The tribunal determines that no other service charges claimed in the schedule relied upon in the County Court application are payable.

(3) The tribunal makes the determinations as set out under the various headings in this Decision.

(4) The tribunal makes an order under s.20C of the 1985 Act so that any of the costs incurred by the applicant landlord in connection with these 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 respondent tenant.

(5) Since the tribunal has no jurisdiction over ground rent, county court costs and fees, this matter should now be referred back to the County Court at Central London.

The application

1. Ladywell Court (Hampstead) Management Limited, ("the applicant") seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and (where applicable) administration charges payable by Ruth Blair ("the respondent") in respect of the service charge years 2018-2020 for Flat 6, Ladywell Court, 22 Eastheath Road, London NW3 1AH ("the property").

2. Proceedings were originally issued in 2021 in the County Court Money Claims Centre under claim no. H49YX954. The claim was transferred to the County Court at Central London. After various hearings the claim was transferred to this tribunal, by order of Deputy District Judge Smith on 20/06/2023.

3. Directions were issued by the Tribunal on 11/10/2023 which identified that the Defence to the claim puts the Claimant/Applicant to proof of all elements of its claim with specific challenges to the reasonableness of the provision for anticipated expenditure and whether the proportion of the Service Charge has been lawfully calculated.

4. The Counterclaim is based on previous Service Charge expenditure which the Defendant/Respondent says she paid, but which was not

reasonably incurred or otherwise lawfully due. There is reference to personal injury but no express claim in respect of that (nor any medical report) has been made. No overall value was put on the Counterclaim but it appears that it has been limited to £40,000.

5. The directions determined that the Tribunal will only deal with the payability of the Service Charges claimed by the Claimant/Applicant. Given the high value of the Counterclaim and the danger that it may exceed the Service Charges claimed, it is not appropriate for the Tribunal to deal with it. The directions related therefore only to the claim and the hearing of this matter was listed.

6. The respondent made four applications to postpone the hearing of this matter as follows:

(i) On 03/11/2023 the Tribunal considered a postponement. The grounds for the application were the respondent's ill health combined with caring responsibilities for the respondent's elderly mother. The applicant opposed the application on the grounds that the respondent had had ample time to deal with the claim that was issued in 2021, and with which she had already instructed direct access counsel. The Tribunal dismissed the application, but gave the respondent the opportunity to provide medical evidence of her ill health and independent evidence of her caring responsibilities. An offer was also made to convert the hearing to a remote video hearing.

(ii) On 16/01/2024 a further application was considered to postpone the hearing on the grounds of ill health. The application was refused, whilst acknowledging that the respondent had significant issues regarding her own health and her caring responsibilities but that the situation had been going on for some considerable time and the respondent had not been prevented from robustly setting out her case. It did not appear to the Tribunal that the respondent's difficulties prevented her from attending a hearing and having balanced both parties' positions, the application was dismissed due to the pressing need for matters at the building to be resolved.

(iii) On 23/01/2024 a further application to postpone was considered from the respondent. The application was accompanied by a GP letter dated 18/01/2024 which supports the application in as much as it states "*She has been unable to prepare for her case due to her medical conditions and caring duties. I am told that she is representing herself due to lack of funds*." The letter goes on to recite the effect reported by the Respondent of the previous refusal to postpone. The GP further asks "*I would be most grateful if you could reconsider a postponement to enable her to recover sufficiently to prepare for her case*". The medical conditions cited in the Respondent's application, shingles affecting her sight, are not confirmed by the GP letter. The applicant's position was that they had not seen the medical evidence. The application was refused.

(iv) On 25/01/2024 the respondent made a further application for a postponement of the hearing which was considered by the Tribunal on the morning of the hearing. This application was made on the same grounds of ill health supported by a medical certificate signed by her GP citing "*stress, recurring shingles and chronic pain"*. The application was refused because the evidence did not support the respondent's position that she was quarantining and could not attend the hearing.

7. On the morning of the hearing, the Tribunal Clerk telephoned the respondent to make sure she had received the notification of the refusal of her application. The respondent confirmed to the clerk orally that she would not attend because she was quarantining and referred to the GP's medical evidence. That evidence does not confirm the requirement to quarantine or that she is unable to attend a hearing.

8. At the start of the hearing the applicant confirmed that they wanted to proceed with the hearing. The Tribunal determined that it could proceed to hear the matter in the respondent's absence (Rule 34 Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

The hearing

9. The applicant was represented by Priya Gopal of Counsel. She was accompanied by Jessica Howard, solicitor, Lawrence Phillips and Matthew Phillips who are both directors of the applicant company. Larry Phillips is also a leaseholder of flat 2 and he produced a witness statement dated 22/12/2023. The Respondent did not attend, as detailed above.

10. The Tribunal had the benefit of a bundle of 272 pages and the applicant's skeleton argument.

The background

11. The property which is the subject of this application is a one bedroom flat situated in a block of 9 flats. A separate freehold property known as 10 Ladywell Court shares some of the service charges with the other 9 flats in the block. At some time, which is not documented in the bundle, there was a change to the service charge apportionment. The tribunal were advised that this change in apportionment was changed after the relevant period for this application. The applicant's request to determine the apportionment is therefore outside of the period of consideration and no determination is made on that issue.

12. The block contains 3 three-bedroom flats, 2 two-bedroom flats and 4 one-bedroom flats.

13. The apportionment of the service charges for the property is charged by way of two different rates. Service charge group 1 includes: internal cleaning, tree surgery, gardening, entry phone, electric, door entry system, building insurance and terrorism insurance, CCTV maintenance, building reports, risk assessment, accountancy service, out of hours emergency service, professional and management fees, gas, engineering insurance, boiler sundries and bank charges are charged at 8.99566% of the total charges. Service charge group 2 covers refuse collection and cleaning internal and are charged at the lower rate of 8.344%. This is due to no. 10 Ladywell Court having to contribute only to Service charge group 2 [87].

14. Mr L Phillips explained that the owner of 10 Ladywell Court had purchased the freehold and had later brought the issue of payability of service charges to the Tribunal. The outcome of that Tribunal was, Mr Phillips says, that 10 Ladywell Court is liable only for those items under service charge group 2, cleaning – internal and refuse collection/bin store [87]. The Tribunal was not provided with the decision referred to. Mr Phillips also confirmed that no notification in writing had been provided in relation to the change in the apportionment.

15. The service charge schedule to the lease Part I states "*'the Tenant's Proportion' means the proportion which the rateable value of the Premises at 31st December in the Accounting Year bears to the total rateable values of all the parts of the Building used in common by occupiers of the flats in the Building or some of them) or such other reasonable proportion based on such proper and equitable method of calculation that the Landlord or his accountant or managing agents (as the case may be) may at their discretion adopt after giving written notice to the Tenant*" [82]

16. The respondent holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate. The lease under Title Number LN153200, dated 06/08/2002 between Ladywell Court (Hampstead) Management Limited (1) and Saloman Malka (2) was assigned to the respondent in December 2005.

17. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

18. The history of the managing agents is as follows: Aston Rose managed the flats for some 20 years until 2018 when Fifield Glyn took over. In 2021 Wayne and Silver were appointed as managing agents.

The issues

19. At the start of the hearing the parties identified the relevant issues for determination as follows:

    (i) The payability and/or reasonableness of service charges for 2018-2020, as detailed in the applicant's schedule which formed the basis of their claim in the County Court, as follows:

        (a) Balancing figure owed from 2017 in the sum of £427.60 demanded in 2018 after final accounting
        (b) Service charge for major works for external repairs and redecoration in the sum of £7,579.78. This sum was charged in two amounts: £3,789.89 on 25/09/2018 and £3,789.89 on 03/12/2018.
        (c) Service charge for major works for electrical works in the sum of £5,807.96 charged on 25/09/2018.
        (d) Budgeted service charges demanded quarterly in advance for the quarters 25/03/2020-23/06/2020, 24/06/2020-28/09/09/2020, 29/09/2020-24/12/2020 each in the sum of £861.67. The quarterly charge from 25/12/2020 in the sum of £833.01 is now accepted as paid. The total amount sought for these budgeted service charges in advance is the sum of £2,585.01.
        (e) Ground rent is a matter for the County Court.

20. Having heard evidence and submissions from the applicant and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Deficit year end 2017 accounts – amount claimed on 01/01/2018 - in the sum of £427.60

The tribunal's decision

21. The tribunal determines that the amount payable in respect of the claimed deficit to the year end 2017 accounts is £0.

Reasons for the tribunal's decision

22. The only documentary evidence produced in this regard is the schedule which forms the basis for the claim issued in the County Court. That schedule says only "*1 Jan 2018 Deficit – YE 2017 Accounts £427.70*" [26]. No final accounts were produced to evidence this claim, nor was there any evidence to explain what charges were covered by this sum. In

oral evidence Mr L Lawrence didn't know what the sum covered. It was therefore impossible for the Tribunal to assess whether the charge was payable.

External repairs and redecoration in the sum of £7,579.78

23. These works were charged in two equal amounts, £3,789.89 on 25/09/2018 and £3,789.89 on 03/12/2018. It is referred to in the schedule that forms the basis of the claim to the County Court [26]. The applicant's position is that a s.20 consultation was carried out. The respondent challenges whether the s.20 consultation was carried out correctly.

24. The evidence produced in the bundle consists of a letter dated 14/08/2018 to Lawrence Phillips from their agents Fifield Glyn providing information about "*progress with replacing the electric supply to the flats and implementing the outside decorations*". That letter refers to "*The required Section 20 notice of intent to carry out both works sent to you by Aston Rose in January 2017 included an invitation for you to nominate a contractor within 30 days. That was stage one of the three stages of consultation about the works*". The majority of that letter refers to the major electric works. The following is the only other mention of the external works : "*The electrics took us so much time in 2017 that the outside decorations were delayed, but Fifield Glyn drew up the specifications earlier this year and tenders have now been received. We also suggested that if the electrics and outside decorations could be done at the same time, that would save on scaffolding costs if they were done at different times. That has now been arranged.* The letter goes on to confirm that both major works contracts were awarded to GC Property [91]. Although Fifield Glyn had proposed Guy Connew for the external works as being the second lowest quote. [91]

25. The original s. 20 Notice was not available at the hearing so as to explain what works were proposed. Nor was an invoice or receipt for works apparently carried out. The only evidence to explain what external works were included came from Matthew Phillips, who had not produced a witness statement, who reported that external works related to external window sills, doors, repointing/brick work and replacing a few roof slates.

26. In her defence to the County Court claim, the respondent puts the applicant to strict proof of: (i) compliance with s.47 Landlord & Tenant Act 1987 ("the 1987 Act"), in default of which no rent or service charge is due by operation of s.48 [31 paragraph 19]; (ii) compliance with s.21B of the Landlord & Tenant Act 1985 ("the 1985 Act") [31 paragraph 20]; (iii) to the extent that any costs were incurred more than 18 months prior to being properly demanded, and therefore recoverable pursuant to s.20B of the 1985 Act [31 paragraph 21]; (iv) compliance with ss 20-20ZA of the 1985 Act and the Service charges (Consultation

Requirements)(England) Regulations 2003 [32 paragraph 22]; (v) compliance with the requirement at clause 7.2 in the lease, namely that any notice under the lease shall be in writing, personally served or left at the property, or by sending by registered post or recorded delivery, not by email [32 paragraph 23,24]; (vi) compliance with s.19(1)(a) and (b), and s.19(2) of the 1985 Act as to reasonableness [32 paragraph 25]; (vii) for want of particularity in the schedule attached to the Particulars of Claim, the respondent seeks clarity on what works the Claimant says the arrears relate to [32 paragraph 26].

27. In the respondent's witness statement dated 22/12/2023 at paragraph 3 states *"the Defendant denies that all the consultation requirements were complied with by the Claimant. Almost every Section 20 consultation process has been flawed…"* [99]. This put the applicant on notice of having to provide evidence of full compliance.

28. The applicant's position is that the respondent does not challenge s.20 compliance with s.20 in relation to the external works because s.20 is not specifically mentioned under the heading of "*year ending 2018*" [34 paragraphs 34,35]. Under that heading she challenges the electrical works only, which will be referred to under the heading for those works. In the alternative, the applicant asks that if the Tribunal finds that s.20 was not complied with, that dispensation is granted under s.20ZA. However, no application for dispensation has been made.

The tribunal's decision

29. The tribunal determines that the amount payable in respect of external repairs and redecoration is £0.

Reasons for the tribunal's decision

30. In her defence, the respondent put the applicant to proof that they had complied with the s.20-20ZA requirements for major works. Despite this challenge, the applicant failed to provide the documentary evidence to demonstrate: (i) whether s.20 had been fully complied with. (ii) what works were required; (iii) what works had been carried out; (iv) whether works had been paid for and in what sum; (v) evidence of demands to the applicant. The letters that are included in the bundle that refer to s.20 consultation, provide no information of what works were anticipated let alone whether the process was complied with fully.

31. The only demands issued to the respondent that have been included in the bundle do not refer to these works, other than to refer to "*B/F bal: £14,687.01"* dated 29/05/2020 [271], and "*B/F bal: £15,548.68*" dated 01/09/2020 [272]. There are no final accounts in the bundle. There are only budgets.

32. The Tribunal do not accept the applicant's argument that the respondent raised an issue in relation to s.20 compliance in this regard. Paragraph 22 of the applicant's defence puts the applicant to strict proof in that regard [32].

33. Nor do the Tribunal accept the request to dispense with s.20 as set out in Counsel's skeleton argument and orally. There must have been an application under s.20ZA for the Tribunal to consider the same. There is none.

34. Not only is there no documentary evidence that s.20 had been fully complied with, there is no evidence in the bundle to explain what works were carried out under this heading. It was only an oral statement from Mr M Phillips during the course of the hearing that gave a flavour of the works that had been carried out. It is difficult to understand why such documentation would not have been included in the bundle if it was in existence, and how the applicants could contemplate the Tribunal being able to assess reasonableness and payability without providing all the necessary documentation. When asked, Mr M Phillips said they did have the documents and didn't know they were not included.

35. In the absence of the final audited accounts, relevant invoices, evidence of s.20 compliance, compliance with the requirement under the lease to correctly send demands to the respondent, or indeed provide the relevant demands in the appeal bundle, the Tribunal finds on balance that this service charge is not payable. The Tribunal cannot order that £250 is paid, in the absence of evidence of s.20 compliance, because there is no evidence of demands having been correctly made. For those reasons £0 is found to be payable under this heading.

Electrical works in the sum of £5,807.96

36. This was apparently charged on 25/09/2018, although no bill to the respondent was exhibited in the bundle, other than those referred to above providing a "*B/F*" balance with no detail. The reference to this charge is contained in the schedule to the claim to the County Court only as electrical works [26]. The applicant's position as that a s.20 consultation was carried out. The respondent challenges whether the s.20 consultation was carried out correctly.

37. The evidence before the Tribunal to demonstrate a s.20 consultation consists of a letter dated 14/08/2018 to Lawrence Phillips from Fifield Glyn in which a s.20 consultation is referred to as are quotations, none of which are provided in the bundle. Mr L Phillips has provided this letter on the basis of his position as leaseholder. [88]

38. Also produced is another letter also dated 14/08/2018 to Lawrence Phillips from Fifield Glyn providing information about "*progress with*

replacing the electric supply to the flats and implementing the outside decorations". That letter refers to "*The required Section 20 notice of intent to carry out both works sent to you by Aston Rose in January 2017 included an invitation for you to nominate a contractor within 30 days. That was stage one of the three stages of consultation about the works*". The majority of that letter refers to the major electric works but provides no detail of what works are required. The letter goes on to confirm that both major works contracts were awarded to GC Property [91].

39. The original s. 20 Notice was not produced to explain what works were proposed. Nor was an invoice or receipt for works provided. The only information available to the Tribunal in relation to what these works included came from an oral statement from Matthew Phillips. He told the Tribunal that the electrical works had come about because one of the residents wanted to have an electric charging point installed for an electric vehicle. This was around the same time works on the driveway were going to be carried out. After asking for a quotation for this work, the landlord was told that the electrics in the block were in such a poor state that they had to be replaced. No documentary evidence was produced to explain this, the works, or the health and safety issues that appear to have been raised.

40. The applicant submits that the respondent did not raise s.20 compliance because in her defence under the hearing "*year ending 2018*" she makes an argument in relation to reasonableness only [34 paragraphs 34,35].

41. The respondent put the applicant to strict proof of s.20 compliance in her defence to the County Court claim as well as in her witness statement as detailed above [paragraphs 26,27].

The tribunal's decision

42. The tribunal determines that the amount payable in respect of external repairs and redecoration is £0.

Reasons for the tribunal's decision

43. In her defence, the respondent put the applicant to proof that they had complied with the s.20 requirements for major works. Despite this challenge, the applicant failed to provide the documentary evidence to demonstrate: (i) whether s.20 had been fully complied with; (ii) what works were required; (iii) what works had been carried out; (iv) whether works had been paid for and in what sum. In these circumstances it was impossible for the Tribunal to consider whether the service charge had been reasonably incurred, but in any event, found that the evidence did not support an assertion that s.20 had been properly complied with. In the absence of evidence that the service charge had been correctly

demanded, the Tribunal finds that £0 is payable by the respondent under this heading.

44. The Tribunal rejects the applicant's submissions that the respondent did not challenge s.20 compliance for these works. That submission is made on the basis of the commentary in her defence under the heading "*year ending 2018*" which the applicant says is an argument in relation to reasonableness only. This argument is rejected by the Tribunal. The respondent challenged s.20 in the defence as well as in her witness statement. While she did not specify each s.20, this was enough to put the applicant on notice that they would need to provide evidence to counter the respondent's allegations. This they have failed to do. As detailed above, there is insufficient evidence to demonstrate on balance that s.20 was fully complied with. In normal circumstances that would lead to a restriction of liability to the tenant leaseholder to pay £250. However, in this case, there is no evidence either of a proper demand, or payment of the invoices to the contractors, or what works were carried out. The tribunal has therefore no alternative but to order that the respondent is liable for £0 under this heading.

Budgeted quarterly payments in advance: 25/03/2020-23/06/2020 in the sum of £861.67; 24/06/2020-28/09/2020 in the sum of £861.67; 29/09/2020-24/12/2020 in the sum of £861.67; from 25/12/2020 in the sum of £833.01

45. The tenant's covenants in the lease require the Tenant " *5.2 to pay the Service Charge to the Landlord by way of further and additional rent subject to and in accordance with the terms and provisions set out in the Schedule*" [74].

46. Part I of the Schedule "*SERVICE CHARGE" "'the Interim Payment' means 25% of the Service Charge which in the reasonable opinion of the Landlord's managing agents or surveyor fairly represents the Service Charge for the current Accounting Year*" [82]

47. *"Payment of the Interim Payment On each of the usual quarter days the Tenant shall pay the Interim Payment in advance"* [83]

48. "*Service Charge account As soon as practicable after the end of each Accounting Year the Landlord shall furnish to the Tenant an audited account of the Expenses and the Service Charge payable for that Accounting Year …"* [83]

49. No accounts or demands have been produced by the applicant. Budgets are included. The applicant asserts that the sums included in the interim payment are not reasonable and cites various issues under the headings in her defence from paragraph 27 onwards.

50. The applicant says that none of the issues raised by the respondent are relevant to the budgeting period claimed.

The tribunal's decision

51. The tribunal determines that the amount payable in respect of budgeted quarterly payments in advance from 23/03/2020 to 24/12/2020 are payable in the sum of £2,585.01.

52. It should be noted that these are budgeted amounts only as no evidence was provided of final accounts. Nor was any evidence provided of invoices paid.

Reasons for the tribunal's decision

53. The sum of £833.01 claimed in the schedule to the County Court claim for the budgeted service charges from 20/12/2020 was withdrawn as the applicant confirms that sum has been paid by the respondent.

54. In relation to the other 3 quarters claimed, the Tribunal considers that the budgeted sum of £861.67 per quarter was not unreasonable particularly in light of the payment made by the respondent in the sum of £833.01 for the budgeted service charges. That sum having been paid would suggest that on balance a slightly higher figure would be reasonable, and that had been correctly demanded.

55. Detailed assessment of reasonableness of the charges was not possible for the Tribunal in the absence of documents that the applicant was directed to include in the bundle, i.e. relevant invoices and accounts. Nevertheless the Tribunal is able to assess that the budgeted service charges quarterly in advance are payable in compliance with the terms of the lease. The budgeted sum only is determined by this decision.

Application under s.20C and refund of fees

56. The respondent applied for an order under section 20C of the 1985 Act at paragraph 63 of her defence/counterclaim. This was not addressed at the hearing in her absence. However, having taken into account the determinations above, the tribunal finds it unjust not to consider making such an order.

57. In the absence of submissions at the hearing, the parties were invited to make submissions on this point within 14 days of receipt of the preliminary decision dated 29/01/2024, sent by email on 05/02/2024, for the Tribunal to consider before making a final determination on this issue.

58. By 22/02/2024 no submissions had been received from the applicant.

59. On 20/02/2024 the tribunal received an email from respondent tenant with her submissions, many of which do not relate to the making of an order under this section and which cannot be considered. Her submissions arrived after the date prescribed by the preliminary order and are therefore out of time. In any event, submissions were invited only in relation to section 20C and in that regard her out of time submissions add nothing further to the position in the preliminary decision. The issue of her barrister's fees is not a matter for this tribunal, nor are any issues relating to her counterclaim.

60. The tribunal makes an order under s.20C of the 1985 Act so that any of the costs incurred by the applicant landlord in connection with these 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 respondent tenant.

The next steps

61. The tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the County Court at Central London.

Name: Judge D Brandler **Date:** 22 February 2024

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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 regional office which has been dealing with the case.

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

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
   (a) the person by whom it is payable,
   (b) the person to whom it is payable,
   (c) the amount which is payable,
   (d) the date at or by which it is payable, and
   (e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
   (a) the person by whom it would be payable,
   (b) the person to whom it would be payable,
   (c) the amount which would be payable,
   (d) the date at or by which it would be payable, and
   (e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
   (a) has been agreed or admitted by the tenant,
   (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
   (c) has been the subject of determination by a court, or
   (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
   (a) complied with in relation to the works or agreement, or
   (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
  (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
  (a) an amount prescribed by, or determined in accordance with, the regulations, and
  (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
  (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
  (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
  (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
  (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
  (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
  (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
  (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
  (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
  (a) specified in his lease, nor
  (b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

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

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject matter of an application under sub-paragraph (1).The Service Charges (Consultation Requirements) (England) Regulations 200

The Service Charges (Consultation Requirements)(England) Regulations 2003

SCHEDULE 3CONSULTATION REQUIREMENTS FOR QUALIFYING WORKS UNDER QUALIFYING LONG TERM AGREEMENTS AND AGREEMENTS TO WHICH REGULATION 7(3) APPLIES

Notice of intention

1.—(1) The landlord shall give notice in writing of his intention to carry out qualifying works—

(a)to each tenant; and

(b)where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall—

(a)describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;

(b)state the landlord's reasons for considering it necessary to carry out the proposed works;

(c)contain a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred by him on and in connection with the proposed works;

(d)invite the making, in writing, of observations in relation to the proposed works or the landlord's estimated expenditure;

(e)specify—

(i)the address to which such observations may be sent;

(ii)that they must be delivered within the relevant period; and

(iii)the date on which the relevant period ends.

Inspection of description of proposed works

2.—(1) Where a notice under paragraph 1 specifies a place and hours for inspection—

(a)the place and hours so specified must be reasonable; and

(b)a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

Duty to have regard to observations in relation to proposed works and estimated expenditure

3. Where, within the relevant period, observations are made in relation to the proposed works or the landlord's estimated expenditure by any tenant or the recognised tenants' association, the landlord shall have regard to those observations.

Landlord's response to observations

4. Where the landlord receives observations to which (in accordance with paragraph 3) he is required to have regard, he shall, within 21 days of their receipt, by notice in writing to the person by whom the observations were made, state his response to the observations