FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BE/LSC/2021/0436**
HMCTS code	**:**	**Video**
Property	**:**	**26b Doddington Grove, London SE17 9TT**
Applicants	**:**	**Ms L Dove**
Representative	**:**	**Mr T Dove**
Respondent	**:**	**London Borough of Southwark**
Representative	**:**	**Mr P Cremin, of Southwark legal services**
Type of Application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	**:**	**Judge Prof R Percival** **Mr P Roberts DipArch RIBA**
Date and venue of Hearing	**:**	**6 June 2022** **Remote**
Date of Decision	**:**	**7 September 2022**

DECISION

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Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was CVP. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents are in a bundle of 90 pages, the contents of which have been noted.

The application

1. The Applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the service charge years 2018/19, 2019/20 and 2020/21.

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

The property

3. The flat is one of two into which a two storey terraced house has been converted. Number 26b is on the first floor. The ground floor/garden flat is number 26a.

4. The Applicant acquired the leasehold interest in August 2017. She sold her interest in December 2021.

The lease

5. The lease is dated 1989, for a term of 125 years, and was made under the Right to Buy provisions of the Housing Act 1985.

6. The flat is defined to exclude "all external windows and doors and window and door frames" (the definitions).

7. The Building is defined as the house, and includes any grounds and gardens (the definitions).

8. The lease is clearly of a standard form. Text relevant to an estate, or a block of flats, is crossed out. The definition of "services" includes a list of eleven items, all crossed out, leaving only "unitemised repairs" (definitions).

9. The lessee covenants to pay a service charge and "the Capital Expenditure Reserve Charge" contributions (clause 2(3)(a)). The details of the charge are set out in the third schedule to the lease.

10. By clause 4, the council covenants to keep in repair "the structure and exterior of the flat and of the building" (clause 4(2)), to keep in repair the "common parts of the building and any other property over or in respect of which the lessee has any rights under the first schedule" (clause 4(3)), and to provide and maintain the defined "services" (see paragraph 8 above) (clause 4(5)). There is no definition or description of the common parts.

11. The third schedule provides for the council to serve an estimated service charge, payable in advance by quarterly instalments, the service charge year running from the 1 April in each year (paragraphs 1(a) and 2). Provision is made for reconciliation, under-payment being demanded and over-payment credited (paragraphs 4 and 5).

12. The service charge is defined in paragraph 6(1) as a fair proportion of the specified costs and expenses. Those are, relevantly, the costs of carrying out the works required by clause 4(2) to (4) (paragraph 7(1)), providing "the services" as defined (paragraph 7(2)), "the maintenance and management of the building ..." (paragraph 7(6)), and either the cost of managing agents, or 10% added to any of the "above items ... for administration" (paragraph 7(7)).

13. Paragraph 7(9) includes in the costs referable to the service charge "the installation (by way of improvement) of: (a) double-glazed windows (including associated frames and sills) in replacement of any or all of the existing windows of the flat and of the other flats and premises in the building and in common areas of the building... should the Council in its absolute discretion ... decide to instal the same...".

14. Part II of the third schedule makes provision for the collection of a capital expenditure reserve fund in respect of "major expenditure".

15. The definition of "major expenditure" sets out two matters irrelevant to the property (lifts, central heating plant), external redecoration, then "any other major repair or renewal of any part of the building", and the installation of windows under paragraph 7(9).

16. By the first schedule, the lessee has a right of way on foot "over such parts of the building as afford access to the flat" (first schedule, paragraph 2).

The issues and the hearing

17. Mr Dove represented Ms Dove. The Respondent was represented by Mr Cremin of the Respondent's legal services department.

18. At the start of the hearing the parties identified the relevant issues for determination as the Applicants' liability to pay service charges relating to:

    (i) Gutter repairs;

    (ii) Path and fence repairs;

    (iii) Replacement of the door to flat 26a;

    (iv) The upgrading of the French doors of flat 26a;

    (v) Works arising from a fire risk assessment; and

    (vi) Window works as part of the major works.

19. However, during the course of the hearing, Mr Cremin, conceded on items (i) gutter repairs (£568) and (iv) upgrading of French doors (£875). In each case, it was inevitable that he should do so, as a direct result of how the evidence from the Respondent's witnesses came out, and we are grateful for his realistic approach. Accordingly, the sums claimed under those two headings are not chargeable to the Applicant.

20. There were no disputes as to the calculation of the sums charged. We have, for the convenience of the parties, indicated the sums that we believe were agreed to represent the contested works, including in the paragraph above. However, if the sums we give are mistaken, the parties are at liberty to substitute an alternative agreed sum. If the parties do not agree what the correct sum is, the sums we give should be adhered to, unless a party requests us to review the decision under Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, rule 55.

Path and fence repairs

21. Flat 26a comprises the ground floor of the house containing the two flats. It has been let to a Mr Fret by the council on a secure tenancy since 1992. Both the front and rear gardens are included in the letting to Mr Fret.

22. The path giving access to the house, and hence to flat 26b, crosses the front garden. The path, it was agreed, was in a state of disrepair, the paving slabs being uneven. It was repaired by the Respondent in late 2018 or early 2019. There were consequential works to a fence, which also contributed to the cost charged to the Applicant.

23. The damage to the path was (it was agreed) caused by the planting of a tree in the front garden by Mr Fret at some time (possibly about 2000). The Respondent was alerted to the issue in 2013, and the tree was removed in 2013 or 2014. The evidence of Mr Malcolm, a resident service officer for the Respondent, was that his concern at that time was to rectify the problem as soon as possible, and he did not consider the legal position as to liability for the damage. He knew Mr Fret, who he described as a vulnerable individual, with a number of health and other issues.

24. Mr Dove did not argue that the costs were not, in principle, recoverable under lease. Rather, Mr Dove's case was that the damage was caused by the Respondent's tenant, Mr Fret, and so it was not reasonable to charge its rectification to the Applicant.

25. Mr Cremin argued that in 2013, it was reasonable for the council to act to deal with the tree that was causing the damage swiftly. Subsequently, the damage the tree had caused to the path was rectified, and it was reasonable and proper for that to be charged to the service charge.

26. On balance, we prefer the Respondent's submissions. It is clear that it would not have been at all straightforward to have pursued Mr Fret for the cost of either or both of removing the tree and rectifying the damage to the path. As Mr Cremin observed, if the Respondent had had to go against Mr Fret, the costs of that action, which may have included, for instance, obtaining an injunction requiring him to act, would have led to delays , and (he said) would have been chargeable to the service charge. We add at this point that we did not consider arguments as to whether such costs were chargeable under the lease, and make no determination on the question.

27. Although it does not appear that the Respondent gave proper thought to whether they should seek to hold Mr Fret responsible for the damage at the time of the repair, we consider that, had they done so, they could reasonably have come to the conclusion that that was not an appropriate course of action.

28. Mr Dove's answer to that was that if that was the Respondent's conclusion, then it should have accepted that the consequence of that was that it should have met the costs. We reject that, insofar as it is an argument that to have charged the repairs to the service charge was not capable of being a reasonable approach. The repair to the path was a proper step to take in satisfaction of the Respondent's repairing obligations under the lease. The Respondent itself was not responsible for the damage caused by Mr Fret's actions. It cannot be said to be unreasonable to charge repairs to the service charge in such circumstances.

29. *Decision*: The costs of repairing the path, and consequential costs relating to the fence, were payable and reasonably incurred (£1,576).

Replacement of front door of flat 26a

30. There is a communal front door to the house, giving access to a communal hall. Off that hall are the front doors to the two flats.

31. The door, or the automatic self-closing mechanism, of the internal front door to flat 26a was defective, and it was replaced. It was common ground that the tenant, Mr Fret, had repeatedly removed the door closer, thus making the door ineffective as a fire door. The new door had an integrated closing mechanism.

32. The cost of the replacement was charged to the service charge. In fact, the total cost was higher than the threshold for a consultation process under section 20 of the 1985 Act, and so the cost charged to the Applicant was limited by the Respondent to £250.

33. The Respondent's evidence was that when a repair to a front door was required as a matter of normal responsive repairs, it would be charged to the service charge, but where it fell under a major works contract, the charge would be made to the individual occupant.

34. The reason for the distinction was that it was only in respect of major works contracts that the Respondent had sufficient information available to it to allow it to charge individual residents (at least where they were leaseholders). The centrally collected information in respect of responsive repairs was not practically capable of allowing individual charging, so the charge was made to the service charge. The central team (the manager of which gave evidence) received hundreds of thousands of lines of information from those responsible for compiling the information on which the service charges were based, and it was in practice impossible to scrutinise every line to see if it related to a door. The Respondent's view was that both methods were reasonable, and so justifiable under the lease.

35. However, the final effect of the evidence was that, where damage was attributable to a tenant (whether a secure tenant or a leaseholder), there was a system for so indicating, so that the tenant could themselves be charged. In relation to leaseholders, a "line", or report, relating to that repair would not be forwarded to the central service charge team. Further, that team, which did scrutinise repairs for, for instance, whether they were covered by leases, would also aim to pick up lines that specified that the damage had been caused by a tenant. In the case of the repair to the front door of flat 26a, there was no such indication.

36. Mr Cremin's case for the Respondent was that both doors fell under the Respondent's repairing obligations, and that in respect of 26a was therefore chargeable to the service charge.

37. Mr Dove submitted that where the damage was caused by the tenant, it should be paid by the tenant, in accordance with the Respondent's practice. Here, it was clear that the Respondent was aware that the damage had been caused by the tenant (it was so stated clearly on the relevant entry in the Scott schedule), and so should not be chargeable.

38. Before us, it was the Respondent's case that it was the tenant of flat 26a who had, repeatedly, damaged his own door, such that it had to be replaced. As it finally came out, the evidence was that the Respondent would not have charged the Applicant for the door through the service charge had they dealt with the question of charging according to their established procedure for charging a tenant for damage caused by that tenant. Further, if, when it had arrived at the central team responsible for constructing the service charges, there had been a note to the effect that it was the result of damage caused by the tenant of 26a, it would have been weeded out at that point, and not charged to the service charge.

39. As a matter of fact, then, it was only because the Respondent failed to properly apply its own systems or policies that the Applicant was charged. In our view, in those circumstances, it cannot be said that the Respondent's process in arriving at the charge was a reasonable one, and accordingly the charge itself is unreasonable (*Waaler v Hounslow London Borough Council* [2017] EWCA Civ 45, [2017] 1 WLR 2817).

40. We note that, in its statement of case, the Respondent asserts that it may adopt any reasonable method of ascertaining the costs chargeable to the service charge, citing paragraph 6(2) of the third schedule to the lease. We assume that this is the basis on which Respondent asserted that it could adopt any reasonable basis for charging, or not charging, for front doors, the evidence indicating that there were different methods, as described above. The point was not argued before us, and we have decided the issue on another basis. But paragraph 6(2) relates to the method of ascertaining the "fair proportion" of the costs which is payable by the lessee – in other words, the lessee's percentage contribution to the overall costs of a block or converted house, not the ascertainment of that which may form the subject matter of the service charge.

41. *Decision*: The charge for the replacement of the front door of flat 26a was not reasonably charged (£250).

Works arising from the Fire Risk Assessment

42. A major works project had been undertaken in relation to a batch of on-street properties owned by the Respondent in 2017 and 2018. They were substantially finished in Doddington Grove by June 2018. Subsequently, further works were undertaken to secure compliance with the recommendations of a Fire Risk Assessment (FRA). That assessment was dated 23 November 2015. The work was carried out in October and November 2018, after practical completion of the major works contract.

43. Mr Dove's case was that these works were not covered by the section 20 consultation process that had been undertaken in relation to the main major works, and accordingly the Applicant's contribution should be limited to £250.

44. Further, Mr Dove argued that in addition to the works carried out to satisfy the requirements of the FRA, the Respondent laid a vinyl, lino, floor covering in the communal hall.

45. Mr Cremin conceded that the vinyl was not required by the FRA, and that it should not have been charged.

46. The Respondent's evidence was that a section 20 notice of intention was served on the Applicant in March 2017. The statement of intended works contained in the notice specified, as one of a number of bullet points, "Repair and decoration of shared communal areas / hallways (including FRA compliance works)".

47. Mr Dove argued that the "FRA compliance works" were, nonetheless, completed after the major works justified by the section 20, and referred us to a statement in the witness statement of Mr Y King, the contract manager of the Respondent's investment team, to the effect that the major works contract was completed on August 2018.

48. Mr King's response was to make the point that while August 2018 was the practical completion date, the defects period ran for a further 12 months, and the FRA works were undertaken during that period. He further argued that practical completion meant that the majority of the work was completed, and some first-instance work could be done during the defects period.

49. Mr Roberts put it to Mr King that the normal approach to practical completion was that the defects period existed to allow for defects in the works completed before practical completion. Mr King agreed that that was usually the case, but that it could also be used to deal with work that could not be done because of, for instance, access issues before practical completion.

50. We doubt that the approach of the Respondent to practical completion is in line with usual practice. However, the Respondent's approach to how the contract or contracts were let and administered is not directly relevant to the question of whether the FRA work was covered by the section 20 consultation. We consider that Mr Dove's submissions rely on the mistaken assumption that the section 20 works consulted on must be coterminous with, and bounded by, the specific major works contract entered into by the Respondent. Once the works intended were described and properly consulted on, it does not matter how the Respondent organised or administered its contracts, provided that the works carried out were covered by the notice of intention.

51. So understood, it is clear that the FRA works were included in the notice, and were covered by the section 20 consultation that was carried out.

52. We accordingly find for the Respondent, there being no challenge to the substantive reasonableness of the costs charged.

53. We note that there was some slight indeterminacy as to the cost of the vinyl. It is given as £150 in the Scott schedule. The schedule of costs in the bundle states that the cost for the whole house was £240 (ie £120 attributable to the Applicant), but that figure did not include overheads and profit. We will state (for the purposes of paragraph 20 above) that the cost is the higher figure in the Scott schedule, which was not contested in the schedule by the Respondent, but it is subject to the caveats set out in that paragraph.

54. *Decision*: The costs of the FRA works are reasonable and payable in full, except for the laying of the vinyl in the communal hall (£1,743).

Window works as part of the major works

55. Work was carried out on the windows in number 26 as part of the major works.

56. Mr Dove's first point, initially, was that there had been double counting. This was on the basis that he thought that an entry stating "overhaul timber windows" should include painting. Mr King was clear that overhauling would have meant repair work to sash windows, in advance of painting, a point we understood Mr Dove to accept (and we accept).

57. Mr Dove's second point was that the quality of the work done was poor. Mr King effectively accepted that. He had been told by Ms Dove that the windows had been painted shut, and Mr King accepted that this had not been rectified in the defects period (apparently as a result of personnel changes at the main contractor). He offered to instruct the contractor to return to rectify the problem.

58. Further, Mr King accepted that, given that the windows had been painted shut, it was more likely than not that the overhauling had not taken place. He did note that the outturn costs under this heading for the house were less than the estimates, but he could not assert that this was because the windows in flat 26b had not been overhauled.

59. Finally, Mr King was also constrained to agree that the quality of the painting cannot be said to have been reasonable, given that the windows had been painted shut.

60. The Applicant, in the Scott schedule, was prepared to agree 50% of the charge under this heading (with a further allowance for double counting, as to which see above). We have had some trouble reconciling the figures in respect of these works, given the different figures provided in the contractual outturn table and those provided by the Applicant in the Scott schedule. For current purposes, we will use the figures provided by the Applicant, but the procedure in paragraph 20 above applies if we are wrong. The overall figure given there was £1,187.

61. *Decision*: The work undertaken as part of the major works contract on the windows was not reasonable in quality. A reasonable charge would have been half of that which was in fact charged (£593.50).

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

62. 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.

63. We consider these applications on the hypothetical basis that the lease does provide for such costs to be passed on either in the service charge or as administration charges, without deciding whether that is the case or not. Whether the lease does, in fact, make such provision is, accordingly, an open question should the matter be litigated in the future.

64. 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.

65. Such orders are an interference with the landlord's contractual rights, and must never be made as a matter of course.

66. 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.

67. Mr Cremin said that he was neutral as to the making of the orders.

68. The Applicant has had a substantial degree of success before us, including in respect of concessions made by the Respondent, both at the hearing and earlier. We consider that it is fair and just that we should make the orders, and we do. For the same reasons, we order reimbursement of the Applicant's application and hearing fees by the Respondent.

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 Applicants;

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

(3) under Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, rule 13(2) that the Respondent reimburse the Applicant's application and hearing fees.

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:** 7 September 2022

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.

<u>Section 20B</u>

(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.

<u>Section 20C</u>

(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).