



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

Case reference : **LON/00AC/LSC/2023/0350**

Property : **16 Sandringham Road London
NW11 9DP**

Applicant : **A C Stone & B Stone**

Representative : **Mr B Stone**

Respondent : **Mr P Perilly**

Representative : **None, the respondent did not appear
and was not represented**

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 : **Mr Charles Norman FRICS
Mrs Alison Flynn MRICS**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **1 May 2024**

DECISION

Decisions of the Tribunal

- (1) The Tribunal makes the determinations as set out under the various headings in this Decision.
- (2) The Tribunal determines that the Respondent shall pay the Applicant £150 within 28 days of this Decision, in respect of the reimbursement of half of the Tribunal fees paid by the Applicant.

The application

1. 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 administration charges payable by the Respondent in respect of the service charge year 2022/2023.

Directions

2. Directions were issued on 14 October 2023 setting the matter down for a determination on the papers, unless either party requested a hearing which the lessee did. The parties were required (amongst other directions) to agree a bundle which was required to be a single pdf document. The Tribunal stated that “only those documents sent in bundles are likely to be before the tribunal at the full hearing and parties should not send documents “piecemeal” to the case officer”. The parties were instructed that if the bundle could not be agreed the Respondent must submit his own digital indexed and paginated hearing bundle in PDF format by 29 January 2024.

The Law

3. The relevant law is set out in the Legal Appendix below.

The hearing

4. The Applicant appeared by Mr Benjamin Stone, Director. The Respondent did not appear and was not represented.

The background

5. The property which is the subject of this application is a ground floor flat in a building comprising ground and first floor flats.

6. 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.
7. 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 and will be referred to below, where appropriate.

The issues

8. The relevant issues for determination were as follows:
 - (i) The payability and reasonableness of service charges for 2022 and 2023 relating to
 - a. fire safety visits,
 - b. half year service charge,
 - c. Fire door inspection,
 - d. insurance
 - (ii) The payability and reasonableness of administration charges relating to
 - a. Late payment fees
 - b. Management charge re mortgage
 - c. Legal fees
 - d. Court fees
9. Having heard evidence from the landlord and read submissions from the parties and considered all of the documents provided, subject to paragraph 24 below, the Tribunal has made determinations on the various issues as set out below.

The Lease

10. The subject lease which is dated 8 August 2008 grants a term of 125 years from that date. The Tribunal finds the lease to be a poorly drafted document. Furthermore, the Tribunal pointed out that a page containing Para 1 of Schedule 3 was missing, and the applicant was

unable to provide a copy of this. In the event, the Tribunal does not consider that omission to be material to the case.

11. Clause 3 imposes tenant's covenants. Clause 3.5 obliges the tenant:

To permit the Landlord and its agents and all others reasonably authorised by any of them including any mortgagee or prospective mortgagee of the Landlord with or without workmen to enter upon the Flat at all reasonable times during the term on giving not less than two days previous notice (except in emergency) to inspect the same and ascertain how the same are being used and occupied or to estimate the current value thereof for insurance or mortgage or either of such purposes and to view the state of repair and condition thereof and to take a Schedule of the Landlord's fixtures and fittings therein and of any dilapidations and to exercise the rights hereinafter excepted and reserved causing thereby as little damage and inconvenience as possible and forthwith making good all damage thereby caused to the Flat.

To permit the Landlord and the tenants and sub-tenants of other flats in the Building and their respective agents with or without workmen at all reasonable times during the term on giving not less than two days previous notice (except in emergency) to enter and remain upon the Flat with all necessary tools appliances and materials (making good all damage thereby occasioned to the Flat) for the purpose of repairing cleansing renewing decorating or altering the Structure or any other parts of the Building (other than the Flat) or any adjoining or neighbouring property or of altering cleansing emptying removing renewing or maintaining any Conducting Media now or hereafter upon or passing or running through under or over the Flat but which do not solely serve the Flat.

It continues:

Subject to the 19th Schedule of the Housing Act 1980 or any Statutory amendment or re-enactment thereof without prejudice to clauses 3.23(b) and 3.23(c) below to pay to the Landlord in respect of each year commencing on the Twenty fourth day of June (each such year being hereinafter called "the Accounting Period") a reasonable sum equal to the relevant proportion (as defined in clause 3.23 (c)) of the Service Charge Estimates (as defined in the Third Schedule hereto) for such Accounting Period by two equal half-yearly payments in advance without any deduction whatsoever on the Twenty fourth day of June and the Twenty fifth day of December in each year (such dates being hereinafter referred

to as the "dates for payment") the first payment in respect of the period from the date hereof to the next date for payment hereafter to be paid on or before the date hereof PROVIDED THAT:

(a) If the Landlord shall not have posted or otherwise delivered to the Tenant at the Flat a copy of the Service Charge Estimates for any Accounting Period prior to the commencement of that Accounting Period then until the date for payment immediately following the date on which it shall be so posted or delivered the Tenant shall continue to pay the Landlord the sum due under this clause 3-23 at the times and in the manner aforesaid at the rate (hereinafter called "the Old Rate") payable in respect of the previous Accounting Period but on and after such date for payment the Tenant shall pay to the company such sum at the times and in the manner aforesaid at a rate (hereinafter called "the New Rate") based on such Service Charge Estimates and on such date for payment there shall be paid by or allowed to the Tenant (as the case may require) an amount equal to the difference between the Old Rate and the New Rate for the period from such commencement to such date for payment

(b) If and whenever any such Certificate as is mentioned in clause 4 of the Third Schedule hereto shall show that 'in the Accounting Period for which "the Certificate is given the amount actually expended by the Landlord within clause 3.1 of that Schedule in that Accounting Period exceeded or was less than the aggregate of:

(i) The amount estimated for that Accounting Period under clause 2.1 of that Schedule and

(ii) Payments out of reserves made pursuant to clause 2.2 of that Schedule for previous Accounting Periods on items for which those reserves were made then the Tenant shall pay or be allowed (as the case may require) the relevant proportions of such excess to the Landlord forthwith on demand

The relevant proportions hereinbefore mentioned shall be calculated by dividing the aggregate of the said expenses and outgoings incurred by the Landlord in the year to which the Certificate relates by 50% of the total expenditure of the Landlord and for the avoidance of doubt the tenant will not be obliged to contribute towards the maintenance or upkeep of the rear garden as it is not included in the demise or common parts.

[...]

The Third Schedule (omitting Para 1) provides as follows:

Third Schedule

2. The Service Charge Estimates shall together amount to a sum comprising the aggregate of:

2.1 The expenditure estimated as likely to be incurred in the relevant Accounting Period by the Landlord in the performance of its covenants contained in clause 4 of this Lease

2.2 An appropriate amount as reserve for or towards:

(a) the contingency of unforeseen expenditure on the matters mentioned in clause 4 aforesaid and

(b) those of such matters as are likely to give rise to expenditure after such relevant Accounting Period including (without prejudice to the generality of the foregoing) the redecoration of the Common Parts and the painting and cleaning of the exterior of the Building and the overhaul and replacement of any plant or machinery and maintenance and renewal as necessary of the roof structure and foundations of the building and the maintenance of all service equipment within the building including heating, lighting, wiring cabling of the building and furnishings of common parts. The said amount to be computed in such manner as to ensure so far as is reasonably foreseeable that the Service Charge Estimates shall not unduly fluctuate from year to year.

3. As soon as practicable after the end of each Accounting Period the Landlord shall procure that a qualified accountant of its Managing Agents shall certify:

3.1 The amount actually incurred by the Landlord in relation to items falling within clause 2.2 of this Schedule

3.2 The extent to which and the purposes for which reserves made pursuant to clause 2.2 of this Schedule for previous Accounting Periods have been used in expenditure under clause 2.2 of this Schedule in that Accounting Period

4. Every Service Charge Estimate which is signed by or on behalf of the Landlord and every such Certificate as is referred to in paragraph 3 of this Schedule for any Accounting Period

shall be conclusive evidence of the matters contained or referred to in it.

The Landlord's Case

12. This may be summarised as follows. The applicants appointed Capstone Management Ltd. Each of the residents pays a proportion of the cost of general repairs, gutter clearance, health and safety audit and management fee. The proportions for each flat are 50%.
13. Service charges have been incurred and demanded properly. The applicant relies on the lease, service charge demands, 2022 and 2023 accounts with supporting invoices and 2021 statement of anticipated expenditure. The respondent had not provided a cogent defence.

Service charge items & amount claimed

Additional Fire Safety Visits £306.

14. Additional contractors' visits were required because the lessee would not provide access to his flat. This was supported by emails of 14 February 2022 and a separate email from the respondent's agent Finefair stating that the locks had been changed and that the agents would provide access. The contractor was required to re-attend on 8 April 2022.

Half Yearly Service Charges 2022 and 2023 (£397.50 in aggregate)

15. These were payable under the lease and had been served on the lessee. Invoices were attached. The on-account demands had been superseded by year end accounts final accounts.

Insurance £631.38

16. This was properly demanded in accordance with the lease. Although not in the name of the lessee, the insurance broker had confirmed that the leaseholders, mortgagees and tenants' interests are noted automatically. Leaseholders were thereby entitled to claim.

Fire Door Inspection £84

17. Access was not provided on two occasions after access had been requested in writing

Late Payment Fee £60 (administration charge)

18. The charge was levied on 30 September 2022 after ground rent and service charges from 30 June 2022 remained unpaid. This was in contemplation of legal action in accordance with clause 3.14 of the lease.

Management Charge regarding Mortgagee (£300) (administration charge)

19. This was incurred because service of a section 146 Notice [under The Law of Property Act 1925] and legal proceedings were being contemplated.

Legal Fees £350 (administration charge)

20. The applicant instructed Bailey Property Law owing to outstanding ground rent and service charges.

Court Fee £115 (administration charge)

21. Proceedings were issued in the County Court and allocated to the Small Claims Track. On receipt of the defence the applicant withdrew the application as they were advised that the correct forum was the Tribunal.
22. The Applicant also applied for its costs in applying to the Tribunal. In its skeleton argument this was expanded to include an application under rule 13 for unreasonable behaviour by the respondent (see below).

The Respondent's Case

23. The bundle included an email dated 17 January 2024 which may be summarised as follows, insofar as it relates to the present claim: there were numerous charges with which the respondent disagreed. He had rented the property to Finefair for 3 years, but they are not responsible for missed appointments. Historically there was no evidence of gutter repairs. There has been a lack of evidence regarding charges. The £350 relates to a small claim fee when the claim was dropped. The lease states that insurance should be in the name of the leaseholder and the lease needs to be followed to the letter.
24. The Respondent did not comply with the directions as to preparation of bundles. Instead, the Tribunal received numerous piecemeal submissions by email. This included photographs of the property, photographs of a handwritten counter claim in the county court proceedings and photographs of computer screen shots concerning insurance. There was also a video recording. The Tribunal did not admit this material into evidence but considered it on a provisional basis. Having done so, none of it affects the findings of the Tribunal in this case. There was no set off in the Tribunal proceedings.

The Tribunal's decision

Half Year Statements of Anticipated Expenditure £397.50

25. The Tribunal found Mr Stone to be credible. It noted the provision of relevant invoices. The Tribunal found that the statement of service

charge expenditure [81] was reasonable and finds the sum payable for each of the two half years in issue.

Additional Fire Safety Visits £306 and Fire Door Inspection £84

26. The Tribunal finds that these costs do form part of the service charges and are reasonably incurred but are only recoverable to the extent of 50% from the ground floor lessee. Further, the Tribunal finds that the lease does not allow ad hoc interim demands to be made unless the works relate to “substantial works to the building” under 3.23 (d). The Tribunal finds that neither of these matters falls within that definition. Therefore, the relevant proportion would have to form part of the final year reconciliation certificate under Schedule 3 Para 3 and 3.1. The Tribunal has not been supplied with such a certificate signed by a qualified accountant and therefore finds that these are not payable until such a certificate is provided.

Insurance

27. Clause 4.5 imposes an obligation on the landlord to insure. Sch 3 Para 2.1 then permits recovery of this expense as part of the service charge. However, as this was not included in the estimated amounts, it would have to form part of certified expenditure as required under Schedule 3, paragraphs 3 and 3.1.
28. The Tribunal finds that the amount appears to be rather high but in the absence of any alternative evidence from the lessee, is prepared to accept it as reasonable. It also rejects the lessee’s case that it does not comply with the terms of the lease, because the insurers have noted the lessee’s interest on the policy which has the same effect. Nevertheless, it is not payable until a certificate which complies with Para 3 and 3.1 of Sch 3 has been given.

Summary – Service Charges

29. It follows that the Tribunal finds that the amount presently payable in respect of service charges is £397.50.

Administration Charges

30. The Tribunal finds that the late payment fee of £60 is reasonable. It finds that the management fee of £300 is too high and reduces this to £100. This is because this appears to amount to a letter instructing solicitors. It finds that the legal fees claimed of £350 were not reasonably incurred because the applicant subsequently decided that the county court was the wrong forum and withdrew the claim. For the same reason it rejects the costs of the application to court of £175.
31. Therefore, in aggregate the Tribunal finds that administration charges of £160 are recoverable.

Application for refund of fees

32. In the statement of case, the Applicant made an application for a refund of the fees that he had paid to the Tribunal. Taking into account the determinations above, where each party has been partially successful, the Tribunal orders the Respondent to refund half of any fees paid by the Applicant within 28 days of the date of this decision.

Rule 13 Application

33. The application was refused verbally at the end of the hearing with reasons reserved and these are set out below.

The law

34. The applicant seeks a costs order under Rule 13(1)(b), based on the respondent's unreasonable conduct. It does not seek an order for wasted costs under Rule 13(1)(a).

35. Rule 13(1)(b) is engaged where a party has acted "*...unreasonably in bringing, defending or conducting proceedings...*". The Tribunal's power to award costs is derived from section 29(1) of the Tribunals, Courts and Enforcement Act 2007, which provides:

*"(1) The costs of and incidental to –
(a) all proceedings in the First-tier Tribunal, and
(b) all proceedings in the Upper Tribunal,
shall be in the discretion of the Tribunal in which the
proceedings take place."*

It follows that any Rule 13(1)(b) order must be limited to the costs of and incidental to the proceedings before this Tribunal, namely the Section 27A and Sch 11 Applications.

36. In ***Willow Court Management Co (1985) Ltd v Alexander [2016] UKUT 290 (LC)***, the Upper Tribunal outlined a three-stage test for deciding Rule 13 costs applications. The Tribunal must first decide if there has been unreasonable conduct. If this is made out, it must then decide whether to exercise its discretion and make an order for costs in the light of that conduct. The third and final stage is to decide the terms of the order.

37. At paragraph 24 of ***Willow Court*** the UT said "*We see no reason to depart from the guidance in Ridehalgh v Horsefield at 232E, despite the slightly different context. "Unreasonable" conduct includes conduct which is vexatious and designed to harass the other side rather than advance the resolution of the case. It is not enough that the conduct leads in the event to an unsuccessful outcome. The test*

may be expressed in different ways. Would a reasonable person have conducted themselves in the manner complained of? Or Sir Thomas Bingham's "acid test": is there a reasonable explanation for the conduct complained of?"

38. At paragraph 43, the UT emphasised that Rule 13(1)(b) applications “...should not be regarded as routine...” and “...should not be allowed to become major disputes in their own right.”

The Tribunal's decision

39. The Tribunal records its verbal decision given at the hearing that the application for a Rule 13(1)(b) costs order is refused.

Reasons for the Tribunal's decision

40. The threshold for making a Rule 13(1)(b) costs order is a high one. As stated at paragraph 24 of ***Willow Court*** “...the standard of behaviour expected of parties in tribunal proceedings ought not to be set at an unrealistic level.”
41. The Tribunal first looked at whether the respondent had acted unreasonably in defending or conducting the Application. When doing so, it only considered the period from 13 September 2023 (the date the application was received by the Tribunal) until the hearing of 4 March 2024 (the hearing date). The respondents' conduct outside this window not relevant, as the Tribunal is only concerned with the conduct of the proceedings.
42. The applicant complained that the respondent had not sufficiently engaged for the applicant to know the defence. However, the respondent did provide a response in the form of an email of 17 January 2024 together with a Scott Schedule response, albeit in perfunctory terms.
43. The applicant has not established unreasonable conduct of the proceedings, on the part of the respondent and has not satisfied the first stage of the ***Willow Court*** test. This meant it was unnecessary for the Tribunal to go on and consider the second and third stages.

Name: Mr Charles Norman FRICS **Date:** 1 May 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).

Legal Appendix

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 provisions 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.

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 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 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).