FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AB/LSC/2021/0044**
HMCTS code (paper, video, audio)	**:**	**V: CVPREMOTE**
Property	**:**	**501 Samuel Garside House, 2 De Pass Gardens, Barking, Essex IG11 0FQ**
Applicant	**:**	**Mr Subramaniyan Iyer**
Representative	**:**	**In person**
Respondent	**:**	**Adriatic Land 3 (GR1) Ltd**
Representative	**:**	**Residential Management Group Ltd, represented by Mr Andrew Rose, Property Manager**
Type of application	**:**	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985 and ancillary orders**
Tribunal members	**:**	**Mr Charles Norman FRICS, Valuer Chairman** **Mr Christopher Gowman MCIEH**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of hearing	**:**	**19 July 2021**
Date of decision	**:**	**7 September 2021**

DECISION

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Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been not objected to by the parties. The form of remote hearing was V: CVPREMOTE. 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 that the tribunal was referred to are in bundles totalling 1495 pages, the contents of which the tribunal has noted.

Decisions of the tribunal

(1) The Tribunal makes the determinations as set out under the various headings in this Decision and on the attached Scott Schedule.

(2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessee through any service charge.

(3) The Tribunal makes an order under Sch 11 Para 5 of the Commonhold and Leasehold Reform Act 2002 that none of the landlords' legal costs may be recovered as an administration charge under the subject lease.

(4) The Tribunal determines that the Respondent shall pay the Applicant half of the Applicant's Tribunal fees within 28 days of this Decision.

The application

1. The Applicant seeks a determination pursuant to s.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 2016-2017, 2017-2018, 2018-2019. In addition, the applicant seeks orders under section 20C of the 1985 Act and Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act").

The hearing

2. The Applicant appeared in person at the hearing. The Respondent appeared and was represented by Mr Andrew Rose, Property Manager the Residential Management Group.

The background

3. The property which is the subject of this application is a two bedroom fifth floor flat in a development of 79 flats divided into four blocks

A,B,C and D. The property was completed in 2014. It forms part of the Barking Riverside Development. The applicant acquired the leasehold interest in flat 501 on 3 November 2017, held under a lease dated 28 August 2013, for a term of 125 years from 1 September 2011. The landlord holds a 999 year headlease from Barking Riverside Ltd from 18 April 2011.

4. The Tribunal has previously given a decision in relation to interim service charges, issued on 12 August 2019 (LON/00AB/LSC/2019/0096).

5. Neither party requested an inspection, and the Tribunal did not consider that one was necessary.

The issues

6. The relevant issues for determination are as follows:

   (i) The payability and/or reasonableness of service charges for years

   2016-2017, 2017-2018, and 2018-2019.

   (ii) the reasonableness and payability of fuel charges in 2019.

   (iii) whether section 20B notices dated 27 February 2018, 31 January 2019 and 3 April 2020 were validly served.

   (iv) whether orders should be made under section 20C of the Act and Paragraph 5A, Schedule 11 of the 2002 Act.

   (v) Whether the applicant's fees should be refunded by the Respondent.

The lease provides for a fair and reasonable proportion of the landlord's costs to be recovered via the service charge. These been assessed at 1.4085 in respect of landlords' costs and 0.6787 in respect of superior landlord costs (see below). These proportions have not been disputed by the applicant.

The Law

7. Relevant legislation is set out in the legal appendix, below.

The applicants case

8. The applicant's case may be summarised as follows. Mr Iyer purchased his leasehold interest in November 2017. He challenged the validity of the section 20B notices. He complained of difficulty in obtaining invoice information and budgets for the years in question. He had paid budgeted amounts for the years in issue, in full. He complained about mismanagement of the property.

9. Mr Iyer stated that on 9 June 2019 there was a major fire at the property. The entire property was vacated and 90% of households did not return sooner than nine months. He complained that he had received service charge demands for that year, when the property was the subject of insurance claims. Mr Iyer stated that property was subject to fuel recharge costs. The property had a system which was working. Another block in the vicinity had new plant installed as their heating system failed. Charges were levied for the year 2018/2019 when Samuel Garside House was vacant for much of the year, owing to the fire. Mr Iyer had not received clarification about this from the respondent. There had been a substantial increase in service charges since 2017.

10. Mr Iyer intended to call two co-residents in support of his contention that section 20B notices had not been received. However, no witness statements have been served in respect of the intended witnesses and the Tribunal therefore declined to hear evidence from them.

The respondent's case

11. The respondent's case may be summarised as follows. Samuel Garside House is a purpose-built block of 79 apartments comprised of four smaller co-joined blocks having garages and parking areas in sub-basement floors. The residential areas above range from 3 to 5 storeys. The apartments have a wide range of sizes. The respondent holds a long head lease. It appointed HomeGround Management Ltd to effect management of its wider portfolio. HomeGround initially appointed Pinnacle to manage the block. The Residential Management Group Ltd replaced Pinnacle as block manager on 1 November 2018, and also have the conduct of the present case.

12. The respondents referred to relevant lease covenants, which the Tribunal addresses below. The respondents explained that the tenant's proportion was decided by use of comparative floor areas with the apportionment being 1.4085% for the subject property. The applicant had made a request to the landlord under section 22 of the 1985 act for the invoices and documents supporting the year-end accounts for 2016/17, 2017/18 and 2018/19. These were sent on 4 March 2021. On 22 April 2021, the respondent received the Scott Schedule and statement of case from the applicant. These included four amounts to be challenged: the three deficit charges arising from year end accounts and the fuel recharge for the financial year 2018/19. The applicant had

not challenged the figures within the year end accounts, the amounts, the deficit or surplus figures or any individual invoices. The respondent concluded that the applicant had agreed with costs identified in the year end accounts, surplus and deficit figures, together with supporting documents and invoices. Accordingly, the tribunal's jurisdiction was constrained by section 27A (4) (a) of the 1985 act.

13. The 2016/17 accounts were prepared by Moore Stephens on 11 December 2018, although these were not issued at that time. Pinnacle issued a section 20B notice to the applicant on 27 February 2018. The postcode was incorrect, but the respondent submitted that the notice would have been received by the applicant. Legislation required the leaseholders to be notified in writing, and on the balance of probabilities the notice was delivered to the subject flat. The same process, including postcode error, occurred in relation to the 2017/18 accounts [which were prepared by BDO]. In relation to the accounts for 2018/19, [prepared by Thomas David] Residential Management Group sent a section 20B notice with the correct postcode on 3 February 2021. The landlord submitted that the date 18 months prior to 3 April 2020 would have been 3 October 2018, just over two months into the financial year. It was extremely unlikely that the site was in deficit at this time in the financial year, and so this letter will have met the 18 month requirement under s.20B.

14. The property is designed with a district heating system. Individual meters were in place to record actual usage by residents. This plant has come to the end of its life, so the meters were unable to produce reliable readings. In the circumstances, the landlord has had to arrive at a reasonable and fair method of calculating energy usage. Watkins Energy were appointed to design an approach to be used. They concluded it would be fair to use the estimated annual usage of heating and hot water based on individual property energy performance certificates. In the case of the subject flat this was 4438 kWh per year. The landlord directed Watkins Energy to apply a rate of 10p per kWh, therefore arriving at a figure of £443.80 in relation to flat 501. With an additional 5% for the reduced VAT payable for energy, this gave a total annual figure of £465.99. This in turn was discounted for the number of days the flat was unoccupied because of the fire.

15. The Landlord submitted that this fuel usage charge is neither a service charge nor an administration charge, but an outgoing. It further submitted that this fell within clause 6.3 of the lease because the tenant was responsible for all outgoings. The landlord therefore averred that the fuel usage charge was not caught by the Landlord and Tenant Act nor the Commonhold and Leasehold Reform Act. The landlord also stated that it did not seek to recover any costs associated with this case.

16. Following revised directions issued on 17 May 2021, which required the applicant to provide a supplemental Scott Schedule, the applicant

revised the original Scott Schedule instead. This was updated to record the respondent's position and was returned to the applicant on 10 June 2021.

17. The landlord served witness statements from Ms Debbie Cook, Head of Property at RGM, and Anthony Rutt, also of RGM. These very short witness statements simply confirmed the correctness of the statement of case and in the event, Mr Rose decided not to call his witnesses. This followed a seriatim examination of the Scott Schedule with Mr Rose and Ms Cook making submissions alongside Mr Iyer, on a line by line basis.

The Tribunal's interim decision in relation to the validity of the section 20B notices

18. The Tribunal considered that it would assist case management to give an oral interim decision in relation to the validity of the section 20B notices. The Tribunal therefore caused to be circulated to the parties *London Borough of Southwark and Runa Akhtar and Stell LLC* [2017] UKUT 0150 (LC). The Tribunal adjourned to allow the parties to make oral submissions on this point. Having heard submissions from each party, the Tribunal determined that the notices dated 27 February 2018 and 31 January 2019 were invalid, and the notice of 3 April 2020 valid. These are the reasons.

19. In *London Borough of Southwark and Runa Akhtar and Stell LLC* [2017] UKUT 0150 (LC), it was held that a s 20B notice was "a notice served under the lease" because it enabled the landlord to do something prescribed by the lease i.e. recover a service charge. It also held that because section 196 of the Law of Property Act 1925 permitted the service of certain documents by post, section 7 of the Interpretation Act 1978 also applied to the posting. The significance of this is that unlike section 196, which requires use of registered or recorded delivery post, section 7 of the interpretation act 1978 states

> where an act authorises or requires any document to be served by post (whether the expression "serve" or the expression "give" or "send" or any other expression is used) then, unless the contrary intention appears, the service is deemed to be affected by **properly addressing,** prepaying and posting a letter containing the document and, unless the contrary is proved, to have been affected at the time at which the letter would be delivered in the ordinary course of post. (Emphasis added).

20. The Tribunal noted the landlords' statement of case that the incorrect postcode related to an entirely different property, half a mile away. The Tribunal did not accept the landlord's submission that the incorrectly

addressed letters were likely to have been delivered. In any event, the Tribunal held that the first two letters were not "properly addressed" within the meaning of section 7 (above) and accordingly the landlord was not permitted to rely on service by ordinary prepaid post. However the latest section 20B notice, having been correctly addressed was deemed to have been served.

The Lease (see Schedule below)

21. The salient parts of the applicant's lease are as follows:

    By clause 7.33 the applicant covenants "To pay the Service Charge Payment at the times and in the manner set out in the Sixth Schedule"

    relevant parts of the sixth schedule are as follows:

    "THE SIXTH SCHEDULE
    THE TENANT'S PROPORTION OF SERVICE CHARGE COSTS

    The Tenant's Proportion means a fair and reasonable proportion according to use of the amount attributable to the costs incurred in connection and in accordance with the matters mentioned in Part "A" of the Fifth Schedule together with the Tenant's Proportion of whichever of the expenses referred to in Part "B" of the Schedule are properly incurred by the Landlord in accordance with the Fifth Schedule and clause 9 are and relate to the matters mentioned in Part 'A' of the said Schedule

    In calculating a fair and reasonable proportion the Landlord shall be entitled to take into account the number of apartments within the Building in respect of services provided to the Building and the facilities enjoyed by the Building and the number of other properties in respect of services provided for the Apartments Communal Areas and the service charge payable by the Landlord under the Superior Lease"

    The Tribunal sets out salient parts of the Fifth Schedule in the appendix below.

The Tribunal's decision

22. The Tribunal makes the determinations set out on the attached Scott Schedule, as amplified by the specific issues referred to below.

Fuel charges

23. Notwithstanding the landlord's submission that the property has a district heating system, the Tribunal was unable to identify any relevant clauses covering this, in both the lease and superior lease, as it made clear at the hearing. In particular, there is no obligation on the landlord to provide heating nor was the Tribunal able to identify any

corresponding obligation on the tenant to pay for the same. The Tribunal rejects the landlord's submission that this is a form of landlords' outgoing within the meaning of clause 6.3, upon which the landlord relied. Clause 6.3 of the lease which is a tenants' covenant provides as follows "to pay all existing and future rates assessments charges and outgoings of every kind and description payable by law in respect of the property or any part thereof and whether by the owner landlord tenant or occupier thereof and to pay a fair proportion of any such expenses which are assessed or charged on the landlord's estate or any premises of which the property forms only part and are not otherwise recoverable hereunder". In the Tribunal's judgment this clause is concerned with liabilities imposed by law and not contractual obligations that the landlord has chosen to incur. The Tribunal determines that this clause cannot be relied upon to recoup the cost of the supply of heating and hot water to individual flats. The Tribunal therefore finds that the provision of heating is outside the lease as currently drafted and is not a service charge item within the meaning of section 18, Landlord and Tenant Act 1985. Accordingly, the Tribunal found that it did not have jurisdiction to deal with this issue. Should the Tribunal be wrong about this, it would have found the approach adopted and the amount charged to be reasonable.

Section 20B Notice in Relation to the Service Charge Year 2018/19

24. The Tribunal accepts the landlords' submission that the site would not have been in deficit at the beginning of the relevant 18 month period and that therefore the section 20B notice would have been effective.

Agreement by the Lessee to Service Charges

25. The Tribunal does not accept the submission that the lessee has agreed to the reasonableness and payability of service charges, save where he has expressly conceded the point. Mere payment does not connote agreement. Failure to specify disputed items in the Scott Schedule would amount only to a breach of the directions and would not, without more, amount to agreement as to reasonableness and payability. The Tribunal therefore finds that it has jurisdiction to consider all matters in issue, save for the fuel charges (see above).

Application under s.20C and Paragraph 5A, Schedule 11 of the 2002 Act

26. In light of the relative degree of success of the parties and their conduct and in all the circumstances of the case, the Tribunal orders the Respondent to refund half of any fees paid by the Applicant within 28 days of the date of this decision.

27. In light of the landlords' concessions on this application and in all the circumstances of the case, although the landlord indicated that no costs would be passed through the service charge, for the avoidance of doubt, the Tribunal nonetheless determines that it is just and equitable for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

28. For the same reasons, the Tribunal makes an order under Sch 11 Para 5 of the Commonhold and Leasehold Reform Act 2002 that none of the landlords' legal costs may be recovered as an administration charge.

Name: Mr Charles Norman FRICS **Date:** 7 September 2021

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).

Extract of Lease

Fifth Schedule

SERVICES TO BE PROVIDED AND OBLIGATIONS TO BE DISCHARGED BY THE LANDLORD

PART "A”

1. Subject to payment of the rents reserved by this Lease and compliance by the Tenant with its covenants hereunder to maintain renew replace and keep in good and substantial repair and condition

1.1 The main structure of the Building including the roofs roof garden gutters rainwater pipes foundations floors and walls bounding individual Dwellings therein and all external parts of the Building and the Apartments Area including all the main structural parts of the Balcony(s) on or Patios adjoining the Building together with all decorative parts

1.2 All doors and window frames not forming part of the demise of any of the Dwellings in the Building

1.3 All Service Installations, lifts and any fire alarms fire fighting equipment and security systems within the Apartments Area used or intended to be used in common by the owners or occupiers of the Dwellings in the Building

1.4 So often as the Landlord shall reasonably deem practicable acting reasonably and is in the interest of good estate management and reasonably necessary to paint or otherwise decorate the exterior of the Building and the internal communal areas in the manner in which the same are decorated at the date hereof or as reasonably near thereto as circumstances shall permit

1.5 The provision of buildings insurance In respect of the Building In accordance with clause 9.3 where not undertaken by the Landlord

1.6 To obtain all valuations necessary in respect of the Building to enable the Landlord to effect Insurance pursuant to clause 9.3

1.7 So far as practicable to keep clean and reasonably well lit the Internal communal areas as appropriate and to maintain any entry system

1.8 To clean the surfaces of the windows of the internal communal areas of the Building

2. Keeping the Apartments Area generally in a neat and tidy condition and tending and renewing any lawns flower beds shrubs and trees forming part thereof as necessary and maintaining repairing and where necessary reinstating any boundary wall hedge or fence (if any) on or relating thereto including any benches seats garden ornaments sheds structures or the like (if any)

3. To provide public liability and employers liability insurance in respect of the Apartments Area in accordance with the provisions of clause 9.6

PART “B"

(COSTS APPLICABLE TO ANY OR ALL OF THE PREVIOUS PARTS OF THIS SCHEDULE)

1. Insuring any risks for which the Landlord may be liable for material and third party liability as an employer of persons working or engaged in business in the Building as the owner of the same or any part thereof in such amount as shall be reasonable

2. Providing and paying such persons as may be necessary in connection with the upkeep of the Building as the Landlord acting reasonably and properly considers reasonably necessary for the proper performance of its obligations hereunder including (but without limiting the generality of such provision) advertising costs the payment of all wages income tax payable thereon National insurance contributions and such other insurance health pension welfare and other payments contributions and premiums industrial training levies redundancy and similar or ancillary payments that the Landlord may acting reasonably and properly at its absolute discretion deem desirable or necessary and the provision of uniforms working clothes tools appliances cleaning and other materials bins receptacles and other equipment for the proper performance of their duties and benefits in kind fares and out of pocket expenses and to appoint any managing agents to. administer the functions of the Manager if it thinks fit acting reasonably and properly

3. Paying all rates taxes duties charges assessments and outgoings whatsoever {whether parliamentary parochial local or of any other description) assessed charged or imposed upon or payable in respect of the Building or any part thereof except insofar as the same are the responsibility of the owner of any of the Dwellings

4.Paying any value added tax chargeable in respect of any of the matters referred to in this Schedule

5. Abating any nuisance and executing such works as may be necessary for complying with any notice served by the Authorities in connection with the Building or any part thereof insofar as the same is not the liability of or solely attributable to the owner of any of the Dwellings

6. Preparing and supplying to the owners of the Dwellings copies of any Regulations when reasonably necessary

7. Generally managing and administering the Building and protecting the amenities of the Apartment Area (acting reasonably and properly) and for that

purpose if reasonably necessary employing a firm of managing agents (PROVIDED ALWAYS that the payment of such managing agents shall be met exclusively from the fees more particularly mentioned in paragraph 12 hereto) or consultants or similar and the payment of all reasonable costs and expenses properly incurred by the Manager

7.1 in the running and management of the Building save that the collection of the Service Charge Costs and any other costs issuing therefrom and in the enforcement of the covenants and conditions and regulations contained in the leases to the owners of the Dwellings and the Regulations shall be attributable to the relevant Dwelling owner in question

7.2 in making such applications and representations and taking such action as the Manager shall reasonably think necessary acting reasonably in respect of any notice or order or proposal for a notice or order served under any statute order regulation or bye-law on the Tenant or any owners of the Other Properties or on the Landlord in respect of the Building

7.3 in the valuation of the Building from time to time for insurance purposes and

7.4 in the preparation for audit of the accounts in respect of the Service Charge Costs

8. At the request of the Tenant enforcing or attempting to enforce the observance of the covenants on the part of any owners of the Dwellings

9.Employing an independent qualified accountant for the purpose of auditing the accounts in respect of the Service Charge Costs (acting reasonably and properly) and certifying the total amount thereof for the period to which the account relates

10. Providing inspecting maintaining repairing reinstating and renewing any other equipment and providing any other service or facility which in the opinion of the Landlord (and acting reasonably at all times) it is reasonable and necessary to provide

11. The reasonable and proper fees of the Landlord from time to time relating to its general management of the Building

12. Such sum as shall be considered necessary by the Landlord acting reasonably and properly (whose decision shall be final as to questions of fact) to provide a reserve fund or funds for items of future expenditure to be or expected to be incurred at any time in connection with the Building

13. Operating (as may be applicable) maintaining and (if necessary) renewing the lighting water and power supply apparatus from time to time of the

Building and providing such additional lighting water or power supply apparatus as the Landlord may reasonably think necessary acting reasonably and properly

14. Paying all bank charges and the cost of interest and overdraft facilities in respect of any separate bank account(s) maintained by the Landlord for the receipt of the Service Charge Payments and the payment of any monies in pursuance of the Landlord's obligations contained in this Lease

15. Paying for proper and reasonable insurance of the directors and for other the officers of the Landlord against third party liability and the cost of bringing or defending proceedings relating to their acts or omissions as officers of the Landlord and insurance in full of the Landlord against its legal liabilities to its employees in connection with any works carried out to the Building pursuant to any obligations or any enabling provisions contained in this Lease and to third parties generally

16. All other reasonable and proper expenses (if any) properly and reasonably incurred by the Landlord

16.1 in and about the maintenance and proper and convenient management and running of the Building including in particular but without prejudice to the generality of the foregoing any expenses incurred in rectifying or making good any inherent structural defect in the Building (except in so far as the cost thereof is recoverable under any insurance policy for the time being in force or from a third party who is or who may be liable therefor)

16.2 as to any interest paid on any money borrowed by the Landlord to defray any expenses incurred by it and specified in this Schedule

16.3 as to any legal or other costs reasonably and properly incurred by the Landlord for the benefit of the Landlord's Estate and otherwise not recovered in taking or defending proceedings (including any arbitration) arising out of any lease to any of the owners of the Dwellings or any claim by or against the Tenant or any Tenant or any tenant agent or visitor thereof or by any third party against the Landlord as owner or occupier of any part of the Landlord‘s Estate

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 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).

Schedule 11, paragraph 5A

5A(1)A tenant of a dwelling in England may apply to the relevant court or Tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2)The relevant court or Tribunal may make whatever order on the application it considers to be just and equitable.

(3)In this paragraph—

(a)“litigation costs” means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and

(b)“the relevant court or Tribunal” means the court or Tribunal mentioned in the table in r