FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BF/LSC/2023/0406**
Property	**:**	**Albion Court, Albion Road, Sutton, Surrey SM2 5TB**
Applicant	**:**	**Mark Atherton and others (listed A/83)**
Representative	**:**	**Amanda Gourlay, counsel**
Respondent	**:**	**MB Freeholds Limited**
Representative	**:**	**Marcello Amodeo and Angela McMillan of Residential Management Group**
Type of application	**:**	**For the determination of the liability to pay a service charge**
Tribunal members	**:**	**Judge Hargreaves** **Kevin Ridgeway MRICS**
Date and venue of hearing	**:**	**Alfred Place, 10th June 2024**
Date of decision	**:**	**2nd July 2024**

DECISION

Decisions of the Tribunal

1. The leaseholders are not liable to pay the estimated service charge for the period March 2023-September 2023 contained in an invoice dated 28th September 2023 in the sum of £1755.98.

2. The amount payable by each leaseholder in relation to the estimated service charge for the period 15th March 2024-14th September 2024 attached to a letter dated 15th March 2024 is ££228.85 per leaseholder.

3. For the avoidance of doubt, an order is made in favour of the Applicants under *s20C Landlord and Tenant Act 1985* that none of the costs incurred by the Respondent in these proceedings can be added to the service charge.

4. In addition, for the avoidance of doubt, an order is made under *paragraph 5A Commonhold and Leasehold Reform Act 2002* that none of the costs incurred by the Respondent in connection with these proceedings can be charged to the Applicants as an administration charge under their respective leases.

REASONS

1. This application was set down for hearing for a half a day, with a second application for the appointment of a manager to start at 1.30pm. We did not start that application because we ran out of time, this application lasting a full hearing day. Separate directions have been given in relation to that second application (LON/00BF/LSC/2024/0001) which will be heard on 25th July. The property has been described several times before in previous Tribunal decisions referred to below and we have nothing to add to those descriptions.

2. References are to the Applicant's or Respondent's trial bundles (A/R followed by (paper) page number). Each bundle exceeded 500 pages and there was a fair amount of overlap. The Respondent's bundle was uploaded the Friday night before the Monday morning hearing, but Ms Gourlay took no point on that and handled the additional material capably without being prejudiced. Mr Atherton is the lead Applicant and an experienced litigator in this Tribunal. We are grateful to both representatives for their time in explaining their cases, but in particular to Ms Gourlay whose detailed preparation was evident and enabled the Tribunal to move through the documents with greater efficiency than might otherwise have been possible.

3. A brief overview of certain previous decisions and directions is necessary to explain the ambit of the first two paragraphs of the

Tribunal's findings in this decision, particularly since the second finding made above is not based on the application for relief contained in the application dated 27th October 2023 which only relates to the service charge demand dated 28th September 2023 (A/1-12).

4. It might be over-optimistic to express the view that it is hoped – subject to the appointment of a manager and the acquisition of the freehold – that the continuing disputes about the service charges will not trouble the Tribunal further. Certainly, as the day progressed, it became clear to the Tribunal that one of the reasons for the continuing litigation is because the Respondent or its representatives had not understood the meaning and effect of the Tribunal's previous orders.

5. There are two (ie the most) relevant previous decisions between the same parties and representatives. The first one is LON/00BF/LSC/2021/0320, the date of the decision being 7th March 2022 (A/277-286) after a remote video hearing. That decision followed an application dated 10th September 2021. The previous cases also concern the service charge provisions, being clause 1 of the relevant lease, clause 3(1)(vi)(vii), clause 4(c)(i)-(vi), a specimen lease being at A/191-204 and which we set out later for convenience.

6. Various issues were defined in the first case. At paragraphs 26-37 (A/283) the Tribunal considered the service charge provisions in respect of balancing charges which were described *'to put it charitably [as] obtuse'*. The Tribunal further noted (paragraph 28) '*It is not contested on behalf of the Respondent that there is no provision in the lease for the recovery by way of balancing payment in the circumstances that have occurred in this case … there is some limited provision for recovery of some disparity between estimated and actual costs within 6 months from the end of the service charge period …'* (This was by way of prelude to a decision – 'the second issue' in the first case - that a £14 balancing charge was not payable, which gives some idea of the detailed scrutiny being conducted by the Applicant of the Respondent's methodology.)

7. The next issue (the fourth point in the first case) was dealt with at paragraphs 34-37. The Tribunal held that (i) any quarterly service charge in arrears could only relate to the contractually agreed figure of £20pa (however '*historic*') and is therefore limited to £5 per quarter and (ii) service charge demands are '*qualified … [by the requirement] to be for the 6 months succeeding the date of the estimate, and to the extent that those costs exceed the balance of the maintenance fund as described in the lease'*. Further, (iii), the Tribunal decided that the lease does not provide for a reserve fund. Points (ii) and (iii) remain critically important.

8. Notwithstanding the clarity of those findings, the parties litigated again in 2023, LON/00BF/LSC/2023/0107 (A/288-297). The hearing took

place on 4th September and the decision is dated 12th October 2023, just over two years after the previous application was issued. The principal issue for the Tribunal to decide was whether an estimated six-monthly service charge for the period 25th March to 28th September 2022 demanded 4th November 2022 in the sum of £1738.96 per leaseholder was payable and the Tribunal held that it was not. Mr Amodeo told us that he thought that meant it was not payable *then* but could be re-charged *later* and that is part of a misunderstanding which took time to unravel when we were deciding the second issue in *this* case.

9. The principal point at issue in the second case centred on the timing of the demand sent on 4th November 2022 which was obviously after the starting date for the period 25th March 2022. The findings and approach of the Tribunal overlapped with the previous decision. There were sub-issues which were canvassed again in this case (including the high cost of electricity charges). On the estimated six-monthly service charge, the relevant part of the second decision is in paragraphs 16-20 at A/292-3. The Tribunal cited clause 3(vi) of the lease in full and at paragraph 18 stated *'The written notification triggering an obligation to pay must therefore be a notification of the landlord's estimate of the cost of repairs/maintenance etc during the succeeding six months from the date of the estimate. So, for example, a notification given at the beginning of October 2023 would need to relate to the costs to be incurred from that date up to the end of March 2024. Whilst it is slightly curious that the clause uses the words "incurred or to be incurred", the reference to "incurred" could for example relate to costs whose amount is already known but which nevertheless do relate to the succeeding six-month period. In any event the key words in our view are "during the succeeding six months from the date of the estimate"'.*

10. In paragraphs 19 and 20 of the second decision the Tribunal concluded therefore that the demand for £1738.96 per leaseholder was not payable. Key documents relating to the November 2022 service charge dispute are at A/206-227.

5. Notwithstanding the submissions that must have been exchanged between the Tribunal, counsel and Mr Amadeo at the face-to-face hearing on 4th September, the Respondents issued another demand after the oral hearing but *before* the decision dated 12th October 2023 was handed down. The Respondent served an estimated service charge for the period March 2023-September 2023 contained in an invoice dated 28th September 2023 in the sum of £1755.98: see A/228-235 and supporting documents including a letter from the managing agents of the same date.

11. The Applicant received the estimated service charge demand on 28th September, read the Tribunal's second decision dated 12th October, and speedily issued this application on 27th October 2023, the third

application on similar issues in over two years. The matter might have ended there with a summary disposal in the Applicant's favour based on the two previous decisions had the Applicant not arguably gilded the lily in the panel at p10 of the application form (A/10) with reference to electricity charges.

12. Directions in the usual form were issued on 15 November 2023 (A/46-52) having identified the issue as whether the amount demanded on 28th September 2023 was payable (short answer: no). A hearing was listed for 25th April 2024. The Applicant's statement of case is at A/13-18 and the Respondent's at A19/21. The Respondent's pleading at paragraph 8 however acknowledged that the invoice dated 28th September 2023 was '*too late*' and that a reversal would be applied. Admittedly that left other issues pleaded by the parties in relation to the quantification of the amount claimed, but the inevitable result is the order made at paragraph 1 above. As with the two previous decisions, the amount is not payable.

13. Because we do not have access to the court file, it was not clear to us how the revised directions dated 4th April came to be issued (A/54-60). It transpired (Ms Gourlay could inform the Tribunal) that the Applicant made an application to add a further application (not in the bundle) which arose out the *next* service charge demand issued by the Respondent before the April hearing date, the point being pleaded in paragraph 2 of what became the Applicant's supplementary statement of case (A/25-36) as *'whether and if so to what extent a service charge is payable by [the Applicant] pursuant to a six-monthly service charge demand dated 15th March 2024 for the period 15th March 2024-14th September 2024.'* The penny having by then dropped with the Respondent about the timing of the service charge demands, the Applicant then brought back into play the issues about its contents.

14. Some of these issues were flagged up in a Reply already pleaded by the Applicant on 5th March (A22-24) in which the Applicant pleaded its position on the proper interpretation of the maintenance fund, being limited to the matters permitted under clause 4(c)(i)-(v) of the lease. The Applicant's Reply then developed the point that the service charge accounts for 2021-2022 are incorrect and need adjustment because the retained accountants were never informed of the 2022 and 2023 Tribunal decisions which directly affect the calculation of the maintenance fund (A23-24), not least in directing certain charges were irrecoverable. The Reply also raised the question of electricity charges which we deal with below (A/24).

15. Therefore, the dispute we now – effectively - have to resolve features the demand dated 15th March 2024. New pleadings proliferated. The focus of the hearing moved to the Applicant's supplementary statement of case on the 'credit note' of 15th March 2024: A/25-36. The Respondent's pleading (not a model of clarity) in reply is at A/37-41. It

was followed by a further Reply filed by the Applicant at A/42-45. If there was ever a need for a skeleton argument to summarise the arguments, this case merited one, but Ms Gourlay was asked to and did provide opening oral submissions which assisted in knocking the dispute into a manageable shape.

16. To reproduce for convenience what has already been set out in the previous decisions, the core provisions in the 1963 Lease (A/191) include clause 3(vi) which is the leaseholder's obligation *'(vi) Within one month after receipt of written notification from the Lessor of the sum due from the Lessee … to pay to the Lessor a sum equal to one twenty-seventh part of (a) [provisions as to insurance premiums] (b) the amount by which the Lessor shall estimate that the cost of repairs and maintenance and other payments and expenses incurred or to be incurred pursuant to the Lessor's covenant contained in clause 4 sub-clause (c)(i)-(vi) hereof during the succeeding six months from the date of the estimate shall exceed the balance at the date of the estimate of the Maintenance Fund referred to'.*

17. In clause 1 of the Lease the leaseholder is obliged *[to pay] by way of further or additional rent the yearly sum of TWENTY POUNDS (without any deduction) as a contribution to the Maintenance Fund hereinafter referred to such contribution to be paid quarterly in arrear on the usual quarter days ..'.*

18. Clause 4(vi) provides for the Respondent *'To keep an account of all sums received from the Lessee and from the other lessees. … (hereinafter called "the Maintenance Fund") in respect of the annual sums of Twenty pounds payable by the lessees of ALBION COURT as a contribution to the Maintenance Fund or pursuant to the Lessee's covenant … to make further payments contained in clause 3(vi) hereof and of all sums expended by the Lessor pursuant to the covenants on the part of the Lessor herein contained in sub-clauses (c)(i)-(v) ….'.*

19. The Maintenance Fund is the balance of the £20pa contributions and anything left after expenses. There is no provision for a balancing charge if there is an overspend and there is no provision for a reserve fund contribution.

20. In relation to the 15th March 2024 demand, the core documents include the demand which is somewhat mysteriously headed 'Credit Note' despite claiming £3220.93 from the Applicant and the other leaseholders: see A/238-9, together with a letter also dated 15th March 2024 (A/240-241) explaining the Respondent's interpretation of the Tribunal decisions, citing paragraph 36 of the March 2022 decision and adding *'This means the landlord is permitted to issue a demand for a six-month period for sums where the cost is greater than the balance of the maintenance fund. This balance is calculated based upon the £5 quarterly in arrears contributions, actual expenditure, and any items*

for which an invoice has been received, but not yet paid, for services carried out at Albion Court.' The contents also *'included the balance of the maintenance fund'*, breakdown enclosed, calculated from 25th March 2021 (A/243) partly to explain the figure for the *balance of the maintenance fund* in the *service charge budget* (A/242).

21. It is accepted that the date of the 15th March 2024 demand is valid in accordance with the terms of the lease and following the first and second decisions. Without re-writing the accompanying letter or delving into its construction unnecessarily it arguably misses the point about what the previous Tribunal decisions decided in terms of the obligation to pay estimated costs during the next six months to the extent they exceed the Maintenance Fund which is based on the historic £20 pa contributions and any other balance remaining.

22. In the Applicant's case, a statement sent to him dated 22nd April 2024 at R/79-80 which includes the £3220.93 figure, calculated his personal balance due as £1215.35. Because of the problem with the overall £3220.93 figure, we cannot conclude, for the avoidance of doubt, that this demand is accurate or reasonable or payable save to the extent we set out in paragraph 2 of the directions above. This is because the demand is based on the service charge budget at A/242 which is inaccurate and contains unrecoverable demands.

23. The significant feature of the Service Charge Budget at A/242 is that the budget for the six months *exceeds £86,000* of which £73,503.01 is attributed to *'Balance of Maintenance Fund'* as the letter cited above indicated. It took time to unravel the inclusion of this figure as we did not understand the contents or even purpose of the document at A/243 headed '*Balance of the Maintenance Fund'*. But it provides the maths behind the Respondent's approach. On the face of this document, the £73,051 is calculated by expenditure since March 2021, totalling £76,968, minus income (£76,051) plus the money in the bank as at 25th March 2021 (£2548) which produces £73,503 described as *'(sum required)'*.

24. The Applicant submits this *Balance of the Maintenance Fund* document is based on a misinterpretation of the 2022 and 2023 decisions and we agree. Furthermore, subject to individual leaseholder arrears, there should be no arrears as such as effectively monies are paid in advance on estimated six-monthly charges and invoices, spent, with no provision for a reserve fund. But the main problem with the figure of £73,500 was the Respondent's plain oral admission to the Tribunal that it is the sum represented by the required credit notes and reversals following the two previous Tribunal decisions. These reversals actually exceeded £90,000 but the 'sum required' to square the accounts for the Respondent is calculated at £73,500 (A/243). The £73,500 *Balance of Maintenance Fund* set out in the service charge budget at A/242 explaining the demand at A/238 and calculated at

1/27th being £2,722.33 of the £3220.93 demanded per leaseholder has already been decided to be not payable. It cannot be re-introduced later as the Respondent has provided for in the March 2024 demand.

25. At A/244-6 are three documents headed *'Expenditure Summary'* for the years 25th March 2021- 24th March 2022/25th March 2022- 24th March 2023/25th March 2023- 14th March 2024. We know therefore what was spent subject to the qualification that the last set of audited accounts was for the period 2021-2022 (A/212-219) which are incorrect, not least because they account for a reserve fund (and which the Applicant was led to believe in respect of the period 2022-2023 that audited accounts would be provided by now: see letter dated 4th November 2022 at A/226). No coherent explanation was provided by the Respondent as to why no complete or even draft accounts had been prepared for subsequent years.

26. The Applicant's relevant pleading at A/28 (paragraph 21) argues that the estimated charge of £3220.93 is not payable for three reasons: (a) the Respondent withdrew services in respect of which it issued an estimated demand (b) some of the services are unreasonably incurred/unreasonable in amount (c) the balance of the maintenance fund is incorrect. A substantial amount of time was spent on (c), pleaded in more detail at paragraphs 25-51 A/30-33, and paragraphs 6-12 of the Applicant's further Reply at A/43. The principal question to be answered by the Tribunal is defined at paragraphs 17-19 of the Applicant's pleading at A/28 and focuses on the balance said to be owing by the Applicant of £3220.93.

27. In reality, the Applicant's case on point (c), the maintenance fund charge being incorrect, could start and end with the Respondent's admission that it was reintroducing charges under this heading already declared to be irrecoverable. But with respect to Ms Gourlay's detailed pleaded arguments, we add the following. The substance is pleaded at A/30-33. The underlying point is that the estimated demand so far as it includes a balance of the maintenance fund item must be incorrect, as we have decided. In particular the March 2021-2022 accounts are incorrect for the five particular reasons pleaded at paragraphs 38-445 at A/32. Once that is accepted, carried through to 2023 in the absence of any re-statement or audited accounts for the following years, the inevitable conclusion is that the balance of the maintenance fund for the purpose of the 15th March 2024 demand cannot be accepted on any basis suggested or calculated by the Respondent before us, and must therefore be irrecoverable and not payable (ie the £73,503.01 or the 1/27th amount of £2723.33).

28. The Respondent's pleading on point (c) at A/39-41 is not easy to follow, and in effect reiterates the underlying problems with the Respondent's defence which is undermined by the admission as to what the balance of the maintenance fund actually consists of as stated above.

29. While the Applicant sets out at length in his detailed witness statement (from A/179) what he considers a restatement of accounts might include or exclude, the Tribunal cannot do that, but notes his arguments at paragraphs 9-19 as supportive of the Tribunal's main decision on point (c). The Applicant's witness statement was not substantially challenged so far as its evidence on services, points (a) and (b), is concerned.

30. Having decided point (c), we now turn to the other reasons why the Applicant submits the leaseholders are not required to pay the 15th March 2024 estimated charge. These divide into point (a), that certain of the services in respect of which charges are estimated, have been withdrawn by the Respondent; and (b) that certain items are unreasonably incurred or unreasonable in amount. These items are more straightforward to deal with on the evidence presented, orally and written.

31. In relation to the withdrawal of services, the Applicant's case on cleaning/window cleaning/grounds maintenance/electrical maintenance (not pursued at the hearing by the Applicant)/gutter clearance is pleaded at A/29, and again at A42-45. We approached each of the disputed points (a) and (b) items by reference to the service charge budget at A/242 together with the pleadings. These disputes hinge on principal rather than amounts, especially in relation to point (a). Insofar as the documentary evidence is concerned, the bundles before the Tribunal contain many pages of invoices in relation to the charges, though it is fair to say that neither party relied on these in any detail. See for example A/300-716, and R/112-531. A particularly useful document is at R/104-111, and though it was produced late, provides a detailed overview of all expenditure and we are grateful to the Respondent for producing a document which cut down the forensic work otherwise required on points (a) and (b). For the Respondent's pleaded case on points (a) and (b), see A38-39, again rather confused but that was somewhat offset by the document at R/104.

32. Turning to point (a), the Applicant relies on a letter written by the Respondent at A/326, dated 1st November 2023. It states quite specifically that the items listed by the Applicant 'are withdrawn' (except for electrical maintenance). The Respondent's pleading at A/38 does not assert that these services were reinstated to justify inclusion in the March 2024 demand. The evidence before us is that they have not been. Therefore they cannot be included as estimated costs. The point is not 'moot' as the Respondent pleads, but clear. Services withdrawn and still withdrawn cannot be claimed.

33. The total of the estimated charges for cleaning (£1283), window cleaning (£55), grounds maintenance (£3242) and gutter clearance (£648) amount to £5228 for the twenty seven leaseholders, or £196.53 each. These amounts are not recoverable because are not being

provided and there was no evidence on which we could find on the balance of probabilities, that half-way through the relevant six-month period, they will be (contrary to the Respondent's assertions).

34. These findings reduce the number of items challenged as unreasonably incurred or unreasonable in amount under point (c). It requires a decision on audit and accounting fees (£576), management charges (£4049), and electricity (£1479).

35. As for audit and accountancy fees, the evidence is that the Respondent paid £343.76 in the year 2021-2022 to an accountant in July (R/167) and a further charge of £663.24 from the managing agents RMG to the Respondent in August (R/168). For 2022-2023 Fortus was paid £354.07 in August 2022 and RMG charged a further £682.92 later that month (R/265-266). No audit and accountancy fees are included in the Respondent's bundle for 2023-2024. It appears that none have been incurred by the Respondent since August 2022. There is no evidence that any accountants or auditors have been instructed to prepare year end accounts for 2023-2024 and Mr Amodeo's evidence was less than convincing on this point, as it would have been relatively easy to produce evidence of instructions, and yet in all the hundreds of pages of documents, nothing suggests that audit and accounting fees are going to be incurred in the six-month period estimates. In particular it is hard to see why he could not have given direct positive evidence on this point rather than saying 'we are quite likely to be charged' which is, as stated above, less than convincing: again the Respondent's pleaded case is defensive rather than assertive (A/40).

36. In relation to audit and accountancy fees therefore, there is no evidence to support a finding that £576 is an estimate of any charge which will be incurred in the six-months following 15th March 2024. On that basis, the claim is disallowed.

37. Turning to management fees, the Respondent has submitted an estimated figure of £4049 for half a year. That works out at roughly £150 per flat. That is not unreasonable. Even taking account of the withdrawal of services, and the arguably chaotic approach to calculation of service charges, we take account of the fact at the managing agents retain a management responsibility which – including emergencies and the other daily demands, cannot be deemed as too high or unreasonably incurred. We should qualify that by indicating that RMG just gets over the line on this point.

38. That leaves the difficult point of the electricity charge estimated to be £1479 for the six months. The question of electricity was raised in the second case but no decision was required given the incorrect date of the service charge demand.

39. The starting point is the Applicant's detailed pleading at paragraphs 52-72, A/33-36. The basic submission is that the leaseholders on their analysis are owed such a substantial credit for the reasons pleaded that nothing is due for the relevant period, least of all the estimated £1479. The Respondent's pleaded response – to what is a careful and highly particularised allegation is quite extraordinary, or unusually frank. At A/41, paragraphs 23-25, the Respondent pleads (i) the electricity is being investigated (ii) the matter is complex and the Tribunal is invited to accept the Respondent's position that it will make a proper report on the matter (it did not despite this being raised in the application) (iii) the Respondent has not had time to prepare its case by the date of the pleading (by 14th May it could have produced something to counter the Applicant's evidence). Furthermore, what the Respondent could have done but did not do, is plead why the estimated charge is reasonable. The Applicant's terse response at paragraphs 13 and 14 at A/44 ie that the burden shifts to the Respondent to justify its estimated charge, is correct. The Respondent failed to discharge that burden for the reasons stated.

40. In looking at the electricity issue we have read the Applicant's witness statement dated 22 May 2022 paragraphs 20-31. In this he carefully sets out his case on electricity. The hearing took place a few weeks later but it cannot have been impossible for the Respondent to do something about challenging his analysis and overall evidence which – as the Respondent's pleaded case shows, was not done. It is the Respondent who set the estimate charge and it is unrealistic to expect the Tribunal, with the history of dispute on this issue, to be able to accept that the budgeted estimated figure is anywhere near reliable or reasonable. All the Applicant's submissions and evidence suggest that it is not.

41. In the circumstances, the estimated charge for electricity is not reasonable.

42. In conclusion, the following items are reasonable and chargeable under the 15th March 2024 demand.

    (i) emergency lighting (£408)

    (ii) general repairs and maintenance (£1250)

    (iii) health and safety (£342)

    (iv) management expenses (£4049)

    (v) postage expenses (£130).

43. This is £6179 or £228.85 per leaseholder.

44. In the circumstances, directions 3 and 4 are wholly justified, though it is possibly unnecessary to make those orders, the Applicant contending that on a construction of the lease the charges are not recoverable, and the Respondent conceding the orders.

Judge Hargreaves

Kevin Ridgeway MRICS

2nd July 2024

Rights of appeal

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

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

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

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

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

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

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 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).