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LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case Reference: LON/OOBK/LSC/2012/0404

Raised Ground Floor Flat, 119 Warwick Avenue, London W9 2PP

DECISIONS OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION MADE UNDER SECTIONS 19 and 27A OF THE LANDLORD AND TENANT ACT 1985

Applicant	Mr E. Harris (landlord)
Representation	In person
Respondent	Ms.M-J. Rhee (leaseholder)
Representation	Ms T. Cox (of counsel)
Pre-trial review	11 July 2012
Hearing dates	14 and 15 November 2012 (no inspection)
The Tribunal	Professor J. Driscoll, solicitor (Lawyer chair), Mr I. Thompson BSc FRICS and Mrs L. Hart
The Decisions Summarised	1. The demand for an advance payment of service charges of £5,600 is unreasonable and it is not recoverable from the leaseholder. 2. The claim for a contribution to the costs of major works carried out in 2009 (in the sum of £3,026.8 plus an administration fee) is not recoverable from the leaseholder as a service charge. 3. An order is made under section 20C of the Act.
Date of the decision	18 December 2012

Introduction

1. Our specific determinations are summarised above.

2. In the remainder of this decision we (a) explain the background to the dispute, (b) summarise the progress of the proceedings, (c) summarise the evidence and the rival submissions put forward by the parties and (d) set out the reasons for our decisions.

Background to the disputes

3. The parties to this application are Mr E. Harris, the owner of the freehold of the building and Ms M-J Rhee ('leaseholder') the leaseholder of the ground floor flat in the building. Mr Harris ('landlord') is the landlord under that lease. The building was originally constructed as a house and it has since been converted into four flats (on the basement, ground, first and second floor). Only Ms Rhee's flat has been sold on a long lease. The landlord retains ownership of the other three flats which he lets on assured shorthold tenancies. He does not, himself live in the building.

4. On 19 June 2012 the tribunal received an application made under sections 27A and 19 of the Act in which the landlord sought determinations of the service charges payable for the service charge years 2008, 2009, 2010, 2011 and what the landlord refers to as 2012/2013 charges. The latter relates to a demand that an advance payment of £5,600 should be made by the leaseholder for planned external works. We note that the service charge year runs as a calendar year

5. Following receipt of the application a pre-trial review was held on 11 July 2012. It was attended by the landlord (who told us at the hearing of the application that he is a practising barrister) and the leaseholder who was represented by her solicitor. (The leaseholder told us at that she is a solicitor who specialises in commercial law).

6. Directions were given at the pre-trial review. In accordance with these directions the landlord prepared bundles of documents.

The hearing

7. The hearing started on 14 November 2012. The landlord represented himself and he called Mr J. Goedecke FRICS of Watkinson & Cosgrave, Chartered Building Surveyors to give expert evidence on his behalf. The leaseholder was represented by Ms Cox of counsel. She did not call any witnesses.

8. Early during the first day of the hearing it became apparent that the leaseholder did not contest most of the charges and that she had tried to pay the landlord by cheque for all of the charges bar two. The landlord told us that he refused to accept payment because of various comments or qualifications made by the leaseholder when she sent the cheques. In his opinion if he accepted the cheques he would tacitly accept the leaseholder's comments or reservations about the charges. He therefore considered that those charges had not been settled. We told the parties that we doubted if we had jurisdiction to make a determination on the landlord's reservations about accepting payment and we urged them to formally agree on which charges the leaseholder disputed.

9. Counsel for the leaseholder told us that she did not contest most of the charges for the service charge periods in question. The leaseholder had sent cheques to settle most of the service charge items and she did not accept the landlord's explanation for failing to accept these payments. Counsel added that in fact there are just two challenges. First, to the costs the landlord seeks to recover for major works in 2009; second, the reasonableness of the advance charges the landlord has demanded for future major external redecorative works to the exterior of the building. The parties then agreed that these are the only two disputed service charge items for which the tribunal has to make determinations.

10. Having established this we then heard evidence and submissions on those two issues. On the first issue, the leaseholder complains that the landlord did not consult her properly as required under section 20 of the Act and the regulations made under that section. She also submits that, in any event, the works were outside the scope of the landlord's repairing covenant and therefore the costs are not recoverable as service charges. The leaseholder also rejects the landlord's alternative argument that as they were works required by the relevant local housing authority they are recoverable under a term in the lease that allows the landlord to recover the costs of complying with statutory notices. On the second issue, the leaseholder complains that it is not reasonable to ask for a significant sum in advance of works which probably will not start well into the year 2013 by which time she will have sold her flat. As there is no reserve fund established for advance payments of leaseholder's monies to the landlord, any such contribution she agreed to pay would have to be returned to her by the end 2012.

11. The relevant terms of the lease are as follows. It is dated 30 November 1987 and for a term starting from 25 December 1983 for 99 years. Under the lease, the leaseholder covenants to pay 25% of the expenses and outgoings incurred by the landlord in repairing, maintaining, renewing, insuring the building and in discharging other obligations set out in the second schedule to the lease. Under clause 4(i) of the lease the landlord covenants to 'maintain repair redecorate renew amend clean re-point paint ... (a) the structure of the building..., (d) to paint such parts of the exterior of the building usually so painted or decorated every five years of the term...'.

12. As already noted, the second schedule defines the expenses, outgoings and other heads of expenditure in respect of which the leaseholder is to pay a proportionate part by way of service charges. In addition to the matters summarised in paragraph 11 above the costs of the landlord dealing with any legislative or statutory notice or requirement can be recovered as a service charge (lease, schedule 2, paragraph 7).

13. We then turned to the first disputed item. The landlord told us that the 2009 works were carried out as a result of local authority notices served on the basis that the building is a house in multiple occupation ('HMO') (under the Housing Act 2004). These works were also required, he argues, under his obligations as the landlord under the lease to carry out repairs and other works to the building.

14. The landlord called Mr Goedecke FRICS to give evidence and he spoke to a statement he signed on 25 October 2012. He answered questions from Mr Harris, from the tribunal and he was cross-examined by Ms Cox and re-examined by Mr Harris. He is a building surveyor with many years of professional experience.

15. He has been professionally involved with the building since 1987 and he has carried out various tasks for the landlord. Following his first inspection of the building he described the conversion works as having been carried out 'relatively inexpensively'. The flats were separated horizontally by the original wooden joists with the original floor boards above and a ceiling below. In 2006 the landlord asked him to draw up a specification of works to repair the basement flat and to convert the existing roof space into a habitable area and incorporate into the existing second floor flat. Mr Goedecke had some concerns over fire safety. He made enquiries of Westminster City Council (the relevant authority) as the landlord told him that the building is an HMO.

16. Fire resistance works were carried out in 2007 to the floor of the ground floor flat and the ceiling of the basement flat, the floor of the second floor flat and the ceiling of the first floor flat and the new intermediate floor in the top maisonette flat. This took the form of replacing the existing filling in the space between the ceiling of one flat and the floor of the flat immediately above it.

17. Mr Goedecke has also advised on external decorative works. Such works had not been carried out since 2000 but having inspected the external parts of the building he concluded that the lack of decorative work has not caused any damage to the wood work, or anywhere else on the exterior of the building and had not, therefore, resulted in the costs of the proposed works being higher than they would have been if the works had been carries out before. He submitted that some minor repairs and re-painting of, for example, window sills had been done since 2000

18. In answer to our questions he confirmed that the likely cost of redecorating the exterior of the building would trigger the statutory consultation requirements in section

20 of the Act. He doubted if it would be realistic to start the works until March or April 2013.

19. Mr Goedecke also explained that works had been carried out to the first floor flat and that this included installing new fire protection material into the space between the first floor flat's floor and the ground floor flat's ceiling. As the first floor flat was empty at that time, it was also decided to replace the existing kitchen and bathroom fittings as this would avoid having to provide temporary accommodation to an occupier whilst the works were carried out.

20. The dispute over the costs of the works carried out in 2009 is in two parts: first, are the works within the landlord's repairing covenant as defined in the lease?; second, were the works required by service of a notice by Westminster City Council and so recoverable under the lists of expenses set out in schedule 2 to the lease? If we were to decide that the works fall within the landlord's repairing covenant we would also have to be satisfied that the relevant statutory consultation requirements were followed (and to deal with the leaseholder's challenge to the landlord adding administrative charges). The leaseholder argues that the correct procedures were not followed. Her landlord takes the opposite view.

21. To summarise, at the start of the hearing the parties told us that they have agreed on many of the service charge issues raised by the landlord in his application. In fact those charges have already been paid by the leaseholder. As a result we do not have jurisdiction to make determinations of the charges claimed in 2008, 2010 and 2011. We do have jurisdiction to make a determination of the charges for the major works carried out in 2009 and as to the reasonableness of the advance service charge demanded for works planned for 2013.

22. As to the 2009 works, the landlord argues that the leaseholder should contribute towards the costs as they were incurred under the repairing covenant in the lease, or, alternatively, they had to be carried out to comply with a notice served by the local authority. In response the leaseholder argues that the 2009 works were outside the scope of the landlord's covenants and that there was no notice given by the local authority requiring those works.

23. Turning to the demand for advance payments, the landlord contends that this is justified as he plans to commission major external redecorative works. The leaseholder argues that it is unreasonable, for various reasons, to make such a demand.

Reasons for our decisions

The 2009 major works

24. Ms Cox, counsel for the leaseholder, referred us to three legal authorities though she did not address us on them at the hearing. She and Mr Harris told us that they were content for us to read and analyse these cases and that there was no need for any oral submissions. We told Mr Harris that he could, if he wished, send us written submissions on the relevant law. In the event we did not hear any further from him on this.

25. The first case she drew to our attention is a House of Lords decision called *Eastwood v Ashton* [1915] A.C. 900. This seems to us to be a decision on conveyancing and we could not see its relevance to the application we are considering.

26. Counsel also referred us to a decision of the Court of Appeal in *Post Office v Aquarius Properties Limited* [1986] 54 P. & C.R. As this is a decision on the scope of covenant to repair (in a business lease) it is relevant to this application. In summary, it decided that an obligation to repair only arose when the property was in a state of disrepair. However, where (as on the facts of this case) the defects had existed since the building was constructed, and there had been no worsening or deterioration of the condition of the building, there was no want or repair, and therefore no liability arose under the covenant to repair.

27. We conclude that this principle applies to the facts of this application. The works carried out were to improve the fire safety between the subject flat and the flat above it. They also had the effect of providing better sound insulation between those two flats. The condition of the flats following the works converting the building, which was constructed as a house, into four flats, was very basic. It is unlikely that such rudimentary works would satisfy current building and other relevant standards. But this does not amount, in our opinion, to the property being, in law, in need of repair. By introducing additional safety materials into the cavity between the two flats the landlord has made improvements not repairs.

28. The other decision is the decision of the Court of Appeal in the case of *Quick v Taff Ely Borough Council* [1986] 1 Q.B. 809. This is a case of a residential tenancy where the landlord has a statutory duty to repair the premises let (under what is now section 11 of the 1985 Act). As a result of very severe condensation, caused by lack of insulation of window lintels, single-glazed windows and inadequate heating, much of the dwelling was uninhabitable. However, the Court decided that liability under the landlord's repairing covenant did not arise solely because of lack of amenity or inefficiency, but would only where there is a physical condition that required repair to the structure or exterior of the building. As there was no physical damage, or want of

repair to the windows, or lintels or to any other part of the premises, the landlord could not be required to carry out works to alleviate the condensation.

29. This decision is also directly relevant to the facts of this application. As in the *Quick* decision the property was not in disrepair, so in this case, the decision of the landlord to improve the fire safety and noise insulation between the ground floor flat and the first floor flat were works of improvement, not works to remedy any disrepair. Thus these works fell outside the landlord's repairing covenant in the lease and the landlord is not entitled to recover a proportion of the costs involved through service charges. When we reviewed the landlord's repairing covenants in the lease we were at first puzzled at the inclusion of the word 'amend'. But we concluded that this must be interpreted in the same way as the other phrases and words which are included in these covenants. In other words, they relate to any works of repair and they do not give the landlord the power, let alone a requirement, to carry out improvement works to the building.

30. The leaseholder also raised issues over whether the statutory consultation process had been carried out correctly. She argued that there were deficiencies in the procedures, whilst the landlord contended that he carried out the consultation properly. However, at the hearing as we took counsel through the documents, she conceded that the landlord had followed the statutory consultation requirements properly. Although she raised an issue about the premature dating of the contract, we did not consider that she had mounted a convincing challenge to the validity of the landlord's consultation. Nor did we see anything of substance in her point about the date of the contract. Looking at the written evidence of the steps taken by the landlord we conclude that the leaseholder was made fully aware of the landlord's plans (even though she did not agree that she should be required to pay towards the costs of the proposed work). If we had been convinced that her counsel had a legitimate point about the dating of the contract we would have exercised our discretion (under section 20(1)(b) of the Act) to dispense with the requirements.

31. If we had decided that the costs of the 2009 works for which the leaseholder has been asked to contribute were within the landlord's repairing covenant we would have found that he had complied with the section 20 consultation requirements.

32. This leaves the issue of whether these works were carried out in order to comply with a local authority notice. As noted above, the landlord can recover the costs of works of having to comply with statutory notices. Were these works carried out as a response to a local authority notice?

33. The landlord argues that they were. He contends that the building is an HMO under the definition in section 257 of the Housing Act 2004. This applies the 2004 Act HMO provisions to certain converted blocks of flats. We agree with the landlord that the premises are almost certainly an HMO under this definition as they were converted into flats, less than two-thirds of the flats are owner occupied, and that

building works were not carried out in compliance with 'appropriate building standards' and still does not comply with them' (section 257(2)). Assuming that the conversion works were not carried out in compliance with the relevant standards, the building is an HMO under the 2004 Act.

34. However, there is no evidence that what prompted these works was service of a notice by the local authority. There is evidence that following a visit by a member of the local fire authority that other works were carried out to improve fire safety. This did not extend, however, to these works for which the landlord seeks to recover a proportion of the costs from the leaseholder.

35. What evidence there is, shows that by letter dated 3 April 2006 the landlord asked Westminster City Council to register the building as an HMO. The Council notified him (on 12 July 2006) that it had approved the application for a period expiring on 12 July 2011 subject to him complying with a list of management conditions (which include fire safety matters). Certain works were also to be carried out to make it suitable for occupation. This registration was varied on 19 June 2007 to reflect the fact that those works had been completed.

36. The landlord wrote to the Council on 25 September 2009 raising certain queries in relation to the registration. In response the Council decided to visit the premises to conduct an inspection to see if there were any hazards (as defined in Part I of the Housing Act 2004). It appears that following their visit (in October 2009) they made certain comments in a letter dated 12 October 2009 to the effect that as the ground floor flat is owner-occupied they considered that only limited changes needed to be taken by the owner of the flat. They urged the landlord not to carry out any works until a fire officer has inspected and approved any necessary works.

37. On 5 November the Council served the landlord with a notice under section 12 of the 2004 Act requiring improvements to the fire safety provisions in the building generally. On 9 February 2010 the Council served a hazard awareness notice on the leaseholder advising that fire safety works should be carried out to the flat. As with all such notices she was not required to carry out any works though she was informed that the Council considered them to be practical and appropriate.

38. We repeat the point that the works in 2009 to the area between the ceiling of the ground floor flat and the floor of the flat above were not carried out in order to comply with a notice given by the Council.

39. We conclude that the costs of the major works carried out in 2009 are not recoverable as a service charge. They were outside the landlord's repairing covenant as they were improvements, not repairs, and they were not carried out to comply with a statutory notice given by a local authority. In this connection we note that the landlord did not seek to recover as a service charge the costs of the works carried out in 2007.

The demand for advance payments of service charges

40. We turn to the issue of the current demand for an advanced payment of service charges. As Mr Goedecke stated in his evidence external decorative works should be carried out. The parties agree that such works fall within the landlord's repairing covenant and that the costs are likely to be such that a consultation will need to be carried out in accordance with section 20 of the 1985 Act.

41. The landlord has asked the leaseholder to pay the sum of £5,600 as an advance payment. In answer to our questions he agreed that this was the first time he had made such a demand from the leaseholder.

42. Although the leaseholder accepts that under clause 2f of her lease the landlord is entitled to claim advance payments, she argues that to make such a demand in advance of the statutory consultation process is premature and that the sum demanded is unreasonably high. She also complains that the landlord's failure to comply with his covenant to carry out such external works every five years may result in the costs of the works being greater than they would otherwise be.

43. In answer to our questions Mr Goedecke stated that given the need to carry out a consultation with the leaseholder, the tendering process and the choice of contractor coupled with the fact that it would be sensible to leave the works until the Spring of 2013, means that it is unlikely that these external works could be started until March or April 2013.

44. It emerged during the hearing that the leaseholder is selling her flat and the landlord is fully aware of this. She told us that she has made a claim for a new lease under the provisions in Part I of the Leasehold Reform, Housing and Urban Development Act 1993 and the landlord confirmed that terms have been agreed for the grant of the new lease. We were told that the leaseholder has done this in order to make the flat more marketable.

45. Although the landlord is entitled to claim advance payments ,..no greater amount than is reasonable is so payable..' (section 19(2) of the 1985 Act). In the circumstances of this application we conclude that demanding this sum is unreasonable for several reasons. First, the landlord told us that he had not made such advance demands before now. We therefore question the fairness of making such a demand when he is aware that the leaseholder is about to sell her flat. Second, Mr Goedecke told us that the earliest the works could be started is March or April 2013 by which time the leaseholder will not longer own the flat. Putting this another way, the landlord has not entered into a contract for these works to be carried out so that he needs funds to pay the costs. Third, since there is but one long leaseholder in the building, the landlord will have to bear three quarters of the costs of

these works. In other words,, this is not the typical case where a landlord needs to recover sums in advance of works to protect his financial position. Fourth, the timing of these works is questionable. The landlord accepts that these external redecorative works should have been carried out in the past.

46. More importantly, the demand was made on 16 September 20011. The financial accounting year end for the property is 31 December 2012. The landlord by his own admission and that of his witness, Mr Goedecke, will not be able to start the the work and incur the cost within the present financial year. Having regard to the required section 20 consultation and the preference for the work to be carried out in clement weather, the earliest they would commence would be Spring 2013. Therefore, the landlord is faced with the prospect of making a demand on account of expenditure within the present year which he has no reasonable prospect of incurring. In addition, it seems unlikely that this work will become of an urgent nature (Mr Goedecke did not suggest that the proposed works were urgent).

47. The significance of this point is underlined by the fact that the landlord admitted that there is no reserve fund. Advance payments must be held in a trust fund (see section 42 of the Landlord and Tenant Act 1987. If the leaseholder paid the advance demand, as the works would not be commenced, let alone completed by the end of 2012 her contribution would have to be returned to her. The whole exercise would, therefore, be both pointless and unreasonable.

Costs

48. We turn finally to the question of costs and how we should exercise our discretion under section 20C of the 1985 Act. As the leaseholder has agreed most of the charges referred to in the landlord's original application and as the landlord has been unsuccessful in the two remaining service charge items we conclude that an order should be made under section 20C with the result that any claim for professional costs incurred in the proceedings before this tribunal may not be recovered as a service charge in future.

James Driscoll

James Driscoll (Lawyer Chair)

18 December 2012

Appendix of the relevent legislation

Landlord and Tenant Act 1985

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 a Leasehold valuation 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 a Leasehold valuation 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 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 leasehold valuation 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 a leasehold valuation tribunal;

(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

(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.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003
Regulation 9

(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

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 a leasehold valuation 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 a leasehold valuation 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 12, paragraph 10

(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where—

(a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or

(b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—

(a) £500, or

(b) such other amount as may be specified in procedure regulations.

(4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.