9560

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BG/LSC/2012/0417**
Property	:	**Flat 3, First Floor, 32-42 Hackney Road London E2**
Applicant	:	**Kedai Limited**
Representative	:	**Mr S Miles, solicitor and Mr P Sherreard Property Manager**
Respondent	:	**Mr Ian Jacobsberg**
Representative	:	**In person assisted by Mr F Jacobsberg (Senior)**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Ms M W Daley LLB (hons)** **Mr J Barlow FRICS** **Ms S Wilby BA**
Date and venue of Hearing	:	***29 October 2013 at 10 Alfred Place, London WC1E 7LR***
Date of Decision	:	**03 January 2014**

DECISION

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Decisions of the tribunal

(1) The tribunal makes the determinations as set out under the various headings in this Decision

(2) The tribunal does not make 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 lessees through any service charge].

(3) Since the tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Clerkenwell & Shoreditch County Court.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") [and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act")] as to the amount of service charges and administration charges payable by the Applicant in respect of the service charge years .

2. Proceedings were originally issued in the Northampton County Court and subsequently transferred to the Clerkenwell & Shoreditch County Court under claim no.3YJ54750. The claim was transferred on 6 June 2013, to the tribunal, pursuant to and order of DJ Sterlini.

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

The hearing

4. At the hearing the Applicant was represented by Mr Miles of G.R Miles & Co Solicitors, and Mr Sherreard property manager of Sterling Estates Management attended to give evidence on behalf of the Applicant at the hearing. The Respondent appeared in person and represented himself assisted by his father Mr F Jacobsberg.

5. At the start of the hearing, Mr Jacobsberg made an application pursuant to Regulation 9 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, to have the application struck out, and the claim dismissed. The grounds of the Application were set out in the Respondent's letter to the Tribunal dated 28 September 2013 which stated-: *"... The Directions from Judge Pittaway... instructed the Applicant, Kedai Limited, to send to the tenant copies of audited and certified accounts, by 6 August 2013.*

Nearly two months later, they have still failed to provide accounts for the largest charge on the disputed Statement of Accounts, making it impossible for me to comply with the Directions. The Applicant and Representative continually fail to comply with Judge Pittaway's Directions; they are making it impossible for the Directions to be completed and consequently, for the case to be heard by the due date; they have failed to cooperate in a fair and just way;...In accordance with the changes from the Leasehold Valuation Tribunal, I formally request strike out and that this case be dismissed.."

6. Mr Miles apologised for the Applicant's failure to comply with the Directions, he stated that he had difficulties in preparing the case as the Respondent had not narrowed the issues, and it was impossible to deal with every service charge item, in the absence of the Respondent setting out his specific objections.

7. The Statement of Accounts had been provided by 6 September 2013, the delay had been because Mr Miles had been on holiday for three weeks in August. He stated that although the accounts had been provided late, the Respondent had not suffered any prejudice.

8. Mr Jacobsberg did not accept Mr Miles submission; he stated that he had suffered prejudice, as he had been hampered in the preparation of his case.

9. The Tribunal considered the relevant regulation to be both Regulation 8 and 9, of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, which states-: *8(1) An irregularity resulting from the failure to comply with any provision of these Rules, a practice direction or a direction does not of itself render void the proceedings or any step taken in the proceedings. (2) If a party has failed to comply with a requirement in these Rules, a practice direction or a direction, the Tribunal may take such action as the Tribunal considers just which may include (a) waiving the requirement; (b) requiring the failure to be remedied(c) exercising the power under rule 9 (striking out a party's case)(d) exercising its power under paragraph (5) or barring or restricting a party's participation in the proceedings.*

10. *Regulation 9 (striking out a party's case) states 9(1) The proceedings or case, or the appropriate part of them, will automatically be struck out if the applicant has failed to comply with a direction that stated that failure by the applicant to comply with the direction by a stated date would lead to the striking out of proceedings or part of them..."*

11. The Tribunal determined that although the Applicant had delayed in filing the documentary evidence the Respondent had not been unduly prejudiced by the delay. The Tribunal in determining whether to Strike out the proceedings had to look at all the surrounding circumstances of

the case, including the issues advanced by the Respondent and how far he had been prejudiced in not being able to advance his case.

12. The Tribunal noted that the issues were limited to the amount which was outstanding for each of the periods in issue. No issues were raised concerning whether the services provided were provided at a reasonable cost, whether the quality of the services had been provided or alternatively had been provided to a reasonable standard.

13. The sole issue appeared to be related to the amount of service charges claimed by the Applicant. The Respondent did not assert that services had not been provided during the period when Woods Management had been responsible for the management of the premises.

14. The Tribunal also noted that the Respondent had filed a hearing bundle and was able to deal with the issues raised by the Applicant. Accordingly the Tribunal determined that the case should proceed, if during the course of the hearing it becomes clear that the Applicant was prejudiced in any material aspect in dealing with issues that arose in the case, then the Tribunal would consider whether on that issue, the prejudice was such that, that aspect of the case should be struck out.

The background

15. The property which is the subject of this application is a flat situated on the first floor, of a purpose built block of 14 flats.

16. The Respondent holds a long lease of the property pursuant to a lease dated 19 December 2003. The lease requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

The issues

17. At the oral pre-trial review held on 9 July 2013, Judge Pittaway identified issues for determination. At the hearing on 29 October 2013, the Tribunal added issue No (ii), for determination. The issue for determination were as follows:

    (i) The Liability to pay and the reasonableness of the Brought forward balance, prior to SEM Management taking over the management of the premises,

(ii) Whether a letter sent by SEM Management on 5.09.2006 amounted to a waiver of the brought forward balance

(iii) Liability to pay and reasonableness of the service charge demand for the years from 30 September 2006 to 24 March 2009.

(iv) Liability to pay and reasonableness of the management hand over fee of £50.00

(v) The Liability of the Respondent to pay administration/ late interest charges in the following sums Late Payment Lease Interest Charges in the sums of £181.54 (25.03.09) and £266.07 (22.12.11).

(vi) The Tribunal noted that there had been other issues which were raised at the pre-trial review, however at the hearing; the scope of the issues had narrowed and was as set out above.

Service charge item & amount claimed

18. At the hearing the Tribunal were referred to the witness statement of Philip Sherreard, the background to this matter was set out in paragraph 4 of his witness statement which stated as follows-: *"... Until 30 September 2006 the building was managed by Wood Management Property Management Limited when the Application appointed SEM as managing agents. There was a handover period and certain handover charges were levied. 5. It is the case that a number of residents, including the Respondent, in the building resented paying management charges and on 24th March 2009 a "Right to Manage" company was appointed to manage the building. The dispute in this case concerns the management charges for the period when SEM was the manager and also an element of the unpaid balance due from the time that Wood Management was the manager..."*

19. The Tribunal were provided with a copy of the Respondent's statement of account which set out the service charge demands for the relevant period which were as follows-:

Dates	***Item***	***Amount***
30.9.06-24.03.07	Half yearly service charge	*£593.91*
25.03.07-29.09.07	Half yearly service charge	*£737.46*
30.9.07-24.03.08	Half yearly service charge	*£652.46*
25.03.08-29.09.08	Half yearly service charge	*£443.70*
30.9.08-24.03.09	Half yearly service charge	*£443.70*
25.03.08-24.03.09	*End of year balancing charge*	*£241.32*

20. In addition to the service charge demands, there were a number of credits to the account which were as follows-: For the period 25.03.07-29.09.07 there was a credit due to a reduction in the cleaning budget in the sum of £85.00, For the period 30.09.06-24.03.07, there was a credit of £23.64, For 2008 a year end balancing credit of £464.18.

21. The Service charge account also showed demands in respect of the following items a management handover fee in the sum of £50.00 and two sums described as Late Payment Lease Interest Charges in the sums of £181.54 (25.03.09) and £266.07 (22.12.11). There was also a further amount on the account in the sum of £1971.71 for service charge amount which had been demanded prior to SEM taking over the management of the building.

22. The Service charge items for the period included management fees, Building insurance, cleaning, minor repairs, accounts, water and fire safety equipment (see service charge expenditure for 2007). The Applicant's stated that there had been no challenge to the service charges on the grounds of reasonableness. This was the position that was adopted by the Respondent throughout the hearing, the challenges were on the grounds that these sums were not owed or alternatively were not payable.

23. Mr Jacobsberg, denied that the sums were outstanding, and in his evidence, he stated of the first sum, that is the £1971.71 payable by

reference to Woods Managements management, of the building that this sum was not payable without a certified account, he stated that he had been asking for sight of the accounts for nearly ten years. He also asserted that he had paid £500.00 upon purchase of the property which had not been accounted for.

24. Although it was not initially advanced by him in his statement of case, he stated that the managing agents had agreed not to pursue the outstanding balance prior to their taking over management of the building. In support of this assertion, the Respondent placed reliance upon a letter dated 5.09.2006 from Sterling Management (the bundle copy was addressed to David & Patricia Seex.)

25. In this letter which set out the arrangements for transfer from Woods Management to SEM, in the fourth paragraph of the letter SEM Management stated-: *"...Please note it is not our intention to assume the takeover of any balances outstanding prior to the current service charge period. Depending on our discussion with the previous agents we may have to incorporate the service charge billed at the beginning of the current service charge period. But we will not be pursuing any outstanding balances from previous periods, should any exist. If such exist you will need to liaise with the previous agents. Furthermore should there be any dispute this will need to be followed up with the previous agents. It is our intention to start fresh..."*

26. The Respondent relied upon this letter as a waiver, in respect of the "*brought forward*" service charges. The Respondent also referred two emails written by other leaseholders, in which these issues had been raised.

27. One of the emails dated 10.03.2005, which had been written by Peter Votkjaer (a leaseholder at the premises) made it clear that Mr Votkjaer had raised issues concerning the work undertaken by the management company including water charges, leaks at the property, and work to the electronic gates and the Bicycle stands. There was also a letter from Mr S Patel sent on behalf of all of the leaseholders at 40 Hackney Road. The Respondent stated that although he had not personally raised these issues they were raised on his behalf, accordingly there were issues being taken with the quality and standard of the work for which service charges were payable.

28. The Tribunal asked for details of whether there had been any follow up action as a result of these matters, or further queries raised on behalf of the leaseholders, Mr Jacobsberg did not have any details of any further matters having been raised, or follow-up action having been taken by the Landlord.

29. Mr Sherreard stated that when SEM Management took over the management of the premises, there had been an agreement with the

landlord that they should start afresh, this did not mean that the sums owed were being written off, it meant that Woods Management would continue to manage the arrears, and ensure that payment was made. The position changed when the landlord dis-Instructed Woods Management and subsequently instructed SEM Management to recover the arrears.

30. Mr Sherreard also criticised the Respondent as not having raised these issues before, Mr Jacobsberg referred to the emails sent by the leaseholders on 10 March 2005. Mr Jacobsberg stated that the leaseholders had limited their communication with the landlord so that one leaseholder responded on their behalf, in order to establish clear lines of communication. The Tribunal queried whether there had been any follow up as a result of the email having been sent, the Respondent confirmed that this had not happened.

31. The Respondent also provided witness statements of David Seex and Yeda Yun (signed). These pro-forma statements confirmed that the Respondents had had issues with the management of the premises which lead to the decision taken by the leaseholder for the right to manage.

32. Mr Jacobsberg referred to an email (page 48) of the bundle, in which he tried to establish what was outstanding in respect of the arrears. Mr Jacobsberg stated that he had made arrangements for his father to pay what he considered to be the full amount of the arrears £2003.42. This sum was for ground rent of £225.00 (he stated that in total £300.00 had been paid in total, £75.00 had been paid in error) Mr Jacobsberg considered this, save for the disputed sum of £1971.71, (which represented the brought forward arrears) this was the full amount of money outstanding.

33. The Respondent also referred to a sum of £409.00 which he had withheld in relation to proposed major works, he stated that this sum had been withheld with the full knowledge of the landlord.

34. In reply the Mr Sherreard firstly dealt with the £500.00, this was a sum paid on account (of the service charges on completion). Mr Sherreard stated that these sums had been used up on the initial service charges; one such example would have been insurance.

35. Of the brought forward balance of £1971.71 and the issue of waiver, Mr Sherreard stated that the service charge accounts had been managed by Woods Managing agents, as a result he did not have the certified accounts, to provide copies to the Respondent. He also could not deal with each of the heads of charge.

36. The Applicant's representative stated that Mr Jacobsberg had not set out his issues prior to the hearing and as a result it was difficult for the Applicant to respond as they did not know which charges were in issue.

37. The Tribunal were taken through the statement of account. The first item was the proposed major works were described as "Fire Works" in the total sum of £6200.00. Mr Sherreard stated that the works had not gone ahead and as a result the leaseholders had been re-credited with the sum into their account, this sum was shown on the statement as a credit item in the sum of £464.18. This was shown on the statement.

38. The Tribunal were referred to the statement of account referred to above, in which service charges had been shown as payable on a half yearly basis between the periods 30 September 2006 until 24 March 2009. The last payment made by the Respondent had been for a shorter period based on his understanding that the leaseholders would be taking over the management of the premises on a certain date, as this had not happened, as a result, there had been a service charges shortfall, of £241.32, no query having been raised concerning the payability of the service charges.

39. The sums due during that period 2006 to 2009 (referred to above) had totalled £2668.85. To this sum the Applicant had added the brought forward balance of £1971.71, and costs which the Applicant asserted were payable as a result of late payment and action take to recover the service charges.

40. The Applicant referred the Tribunal to a previous decision of the Tribunal *re: Flat 13, 40 Hackney Road ref Lon/00BG/LSC/2011/0314*, in which this issue had been raised in support of the Applicant's position. In this case the Tribunal had determined that a handover fee could be charged in relation to the Transfer of management, and the Tribunal had awarded £50.00 (to reflect this decision the sum of £50.00 had been claimed on the Respondent's account) The Tribunal had also determined that a waiver did not apply in respect of the brought forward balance as this had not been expressed unequivocally.

41. The Tribunal considered additional written submission in relation to the Respondent's Section 20C Application and in relation to the late payment fees charged by the Applicant. Submissions dated 30 October 2013 (sent by the Applicant) and on 21 November 2013, sent by the Respondent in reply. Save for a copy of the certified accounts for the year ending 24 March 2006; the submissions relate to the issue of cost and section 20C of The Landlord and Tenant Act 1985 which is considered below.

42. Having heard evidence and submissions from the parties and having considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

The tribunal's decision and Reason for the decision

The Liability to pay and the reasonableness of the Brought forward balance, prior to SEM Management taking over the management of the premises,

43. The tribunal had sight of a copy of the certified accounts for the year ending 24 March 2006, these accounts had been certified by Lawrence Wong and co, and from these accounts the Tribunal noted that there was a problem with leaseholder arrears for 2005 in the sum of £3459.00 and for 2006 in the sum of £5,035.41. There was a credit in the sinking fund of £700.00 however there were works carried out in excess of this sum. The Tribunal noted that there were a number of heads of charge, management, insurance, light and heating, cleaning for which no issues appear to have been raised.

44. The Tribunal also noted that the Respondent had not raised any specific issues in respect of the charges at the time. The Tribunal also noted that the Respondent had not relied on any partial payments having been made by him, or on his behalf, save for the £500.00 paid on completion. This would not have covered the shortfall of the 2006 period. The Tribunal accordingly find on a balance of probabilities that the sum of £1971.71 is payable subject to the determination below.

Whether a letter sent by SEM Management on 5.09.2006 amounted to a waiver of the brought forward balance

45. The Tribunal considered this letter in detail, and in doing so, were assisted by the decision LON/00BG/LSC/2011/0314, in which the Tribunal briefly considered the issue of waiver.

46. The Tribunal noted that this letter dealt with the change in management from Woods to SEM, and that the managing agent referred to a "fresh start". In the letter the managing agents stated-... *we will not be pursuing any outstanding balances from previous periods, should any exist.* ***If such exist you will need to liaise with the previous agent...***

47. The Tribunal noted that the letter invites the Leaseholders to liaise with the previous agents; this does not suggest that the arrears were being "written off". The managing agents were subsequently instructed to pursue the arrears. This confirms that there was no decision on the part of the landlord to write off the outstanding balance. **Accordingly the Tribunal determined that the sum of £1971.71 is payable and was not written off.**

Liability to pay and reasonableness of the service charge demand for the years from 30 September 2006 to 24 March 2009

48. The Tribunal noted that the Respondent had raised no issues concerning the reasonableness of the sum claimed in respect of the periods referred to above; the sole issue appeared to be the difference in accounting.

49. In the absence of the Respondent raising queries concerning the reasonableness of the charges, the Tribunal considered the information put forward by the Applicant on how the charges had been raised.

50. The Applicant referred the Tribunal to clauses 5.01 and 5.02 of the lease which provided for the payment of a service charge at half yearly intervals. The Tribunal noted that service charges were demanded in accordance with the terms of the lease. Accordingly the Tribunal find the service charges payable for the period 2006-2009 reasonable and payable.

Liability to pay and reasonableness of the management hand over fee of £50.00

51. The Tribunal noted that little information was provided concerning the management hand over fee. The Applicant relied upon the tribunal decision in respect of flat 13 Hackney Road, referred to above.

52. In the decision the Tribunal found that the wording in clause 7.01 (b) was sufficient wide to enable such cost to be incurred in paragraph 39 of the decision (referred to above) the Tribunal stated-: *"... If a landlord needs to change managing agents (as a landlord may quite properly, need to do) then the reasonable cost of organising the handover would seem comfortably to be covered by the wording of these provisions..."*

53. The Tribunal accordingly find that the charge of £50.00 is reasonable and payable.

The Liability of the Respondent to pay administration/ late interest charges in the following sums Late Payment Lease Interest Charges in the sums of £181.54 (25.03.09) and £266.07 (22.12.11).

54. The tribunal noted that no evidence was presented by the Applicant's representative in support of this charge, the Tribunal in order to determine whether this charge was reasonable and payable had to consider the exact wording of the lease. The Applicant provided an additional copy of the lease (as pages were missing from the lease included in the bundle). The Tribunal having considered this document, were not able to find any clause which supported the

provisions in the lease which supports the charges for late payment being payable as an admin charge.

55. The Tribunal also noted that such a charge, if it was supported by the lease, would be considered an administration charge, which of itself would not be payable unless properly demanded. In the absence of a clause providing for this payment and supporting evidence setting out how this sum was demanded, the Tribunal determine that this sum is not reasonable and payable.

Application under s.20C and refund of fees

56. At the Tribunal hearing, the Respondent provided a copy of an application under section 20C. The Applicant stated that he had considered the tribunal to be unnecessary as he had wanted to mediate, and that cost would have been avoided if the landlord had acted fairly and reasonably over the last ten years

57. The Tribunal had asked the Applicant to provide details of the provisions of the lease which enabled the cost to be recovered as a service charge item. The nub of the Applicant's submission is contained in paragraph 5 in which the Applicant refers to clause 5.01 of the lease in respect of the clause the Applicant states-: *The question in this case is whether the expression "proper management of the Building" can reasonably be interpreted as including the costs of enforcing or attempting to enforce payment of service charges from a defaulting tenant. As the clause is not clear or at best ambiguous, it is submitted that it cannot be construed as giving the Applicant power to charge legal costs of enforcing payment of service charges through the service charges..."*

58. The Applicant seeks to rely upon clause 3.04 which relates to the Applicant's right to recover legal costs against a specific tenant limited to those incurred in connection with the preparation of a Schedule of Dilapidations or section 146 Law of Property Act 1925.

59. The Applicant in their submissions state that it is their intention to recover the charges directly from the tenant.

60. In his reply dated 21 November 2013, Mr Jacobsberg refers in support of his request for mediation, to the form generated by the county court, however the Tribunal in considering this application need to consider all of the circumstance including the limited findings which have been made in support of the Respondent.

61. Having read the written submissions from the parties and taking into account the determinations above, the tribunal determines that it is not just and equitable in the circumstances for an order to be made

under section 20C of the 1985 Act, accordingly no order is made under section 20C

The next steps

62. The tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the County Court.

Ms MW Daley (Chair) 3.01.2014

Appendix of relevant 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 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) a leasehold valuation 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.

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.