FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case References	**:**	**LON/00AZ/LSC/2020/0343**
HMCTS Code (paper, video, audio)	**:**	**V - Video**
Property	**:**	**333 and 333a, Hither Green Lane, London. SE13 6TJ**
Applicants	**:**	**(1) Mr. G. Henderson-Begg** **(2) Mr. D. Harmer**
Representative	**:**	**Not Represented**
Respondent	**:**	**Mr. B. Hammer**
Representative	**:**	**Mr. J.J. Goldstein of J.J. Goldstein & Co. Solicitors.**
Type of Applications	**:**	**For the determination of the reasonableness of and the liability to pay service charges**
Tribunal Members	**:**	**Tribunal Judge S. J.Walker (Chairman)** **Tribunal Member R. Waterhouse MA LLM FRICS**
Date and Venue of Hearing	**:**	**27 May 2021 – video hearing**
Date of Decision	**:**	**9 July 2021 - corrected 16 July 2021**

DECISION

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: Video Remote. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The Tribunal's determination is set out below.

Decisions of the Tribunal

(1) The Tribunal determines that the following sums are payable by the First Applicant in respect of insurance costs in respect of the years ending on 1 September as follows;

2018	-	£302.50
2019	-	£317.50
2020	-	£333
2021	-	£350

(2) The Tribunal determines that the following sums are payable by the Second Applicant in respect of insurance costs in respect of the years ending on 1 September as follows;

2020	-	£333
2021	-	£350

(3) The application for 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 is refused as it is not necessary.

(4) The application for an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002, so that none of the landlord's litigation costs can be recovered as an administration fee is refused as it is not necessary.

(5) The application for an order under rule 13(2) of the Tribunal procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for the re-imbursement by the Respondent of the fees of £300 paid by the Applicants in bringing this application is granted. Payment is to be made within 28 days.

Reasons

The Application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by them in respect of the four years ending on 1 September 2018 to 1 September 2021 respectively.

2. The Applicants also seek an order for the limitation of the landlord's costs in the proceedings under section 20C of the 1985 Act and an order to reduce or extinguish their liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

3. The application was made on 6 November 2020 and it identifies one single item of dispute in each year, namely the charge made in respect of insurance.

4. Directions were issued on 3 February 2021 which, among other things, provided for the preparation of bundles of documents by the parties. These directions were complied with and the Tribunal had before it a bundle from the Applicants which comprised 155 pages and a bundle from the Respondent which consisted of a short statement of case and a further 49 numbered pages. Under cover of an e-mail dated 11 May 2021 the Respondent provided what was described as a supplementary bundle in three parts which included a lengthier statement of case and consisted of a total of 61 pages. These were not all numbered but were, in any event, largely the same documents as provided in the original bundle. In what follows references to pages preceded by "A" are to the Applicants' bundle and those preceded by "R" are to the Respondent's original bundle. The Tribunal also had a skeleton argument produced by the Applicants.

5. The relevant statutory provisions are set out in the Appendix to this decision.

6. The application is concerned only with the costs of insurance. The Tribunal had regard to the following authorities when approaching those costs. Firstly, there is the Upper Tribunal's decision in the case of Sinclair Gardens Investments (Kensington) Ltd. -v- Avon Estates (London) Ltd. [2016] UKUT 317. This confirmed that a landlord is not obliged to "shop around" for insurance. The Upper Tribunal stated the position as follows;

> "*So long as the insurance is obtained in the market and at arm's length then the premium is reasonably incurred. There is nothing to suggest that the insurance was arranged otherwise than in the normal course of business, and the appellant did not seek to adduce evidence to support such a contention. The appellant's complaint is that it might be possible to obtain a cheaper rate, but it is not for the landlord to establish .... that the insurance premium was the cheapest that could be found in order for the costs to have been reasonably incurred.*"

7. However, that approach was refined somewhat by the Upper Tribunal's decision in the case of COS Services Ltd v Nicholson [2017] UKUT 382 (LC). In that case the premiums charged were more than four times those relied on by the tenants for comparable policies and no explanation for the discrepancy was provided. The Upper Tribunal held as follows;

> "*It will not be necessary for the landlord to show that the insurance premium sought to be recovered from the tenant is the lowest that can be obtained in the market. However, the Tribunal must be satisfied that the charge in question was reasonably incurred. In doing so, it must consider the terms of the lease and the potential liabilities that are to be insured against. It will require the landlord to explain the process by which the particular policy and premium have been selected, with reference to the steps taken to assess the current market. Tenants may, as happened in this case, place before the Tribunal such quotations as they have been able to obtain, but in doing so they must ensure that the policies are genuinely comparable (that they "compare like with like"), in the sense that the risks being covered properly*

reflect the risks being undertaken pursuant to the covenants contained in the lease."

The Background

8. The property is a Victorian terraced property which is believed to have been purpose-built as two self-contained flats.

9. Although no evidence of title was produced by either party there was no dispute that the freehold of the property is owned by the Respondent and that the Applicants hold the two flats on long leases granted originally by Hurstway Investment Company Ltd. The lease in respect of 333, Hither Green Lane is at pages A23 to A50, that of 333a could not be located and was not held by the Land Registry but is believed by the parties to be in similar form.

10. The First Applicant is the tenant of 333a, Hither Green Lane – the upper flat – and has been a tenant since 2012. The Second Applicant is the tenant of 333, Hither Green Lane, the lower flat, which he bought in 2019.

The Lease

11. The lease contains no provision for the payment of service charges. However, by clause 1 of the lease the tenants covenant to pay, by way of further or additional rent from time to time;

    "*a sum or sums of money equal to one half of the amount which the Lessors may expend in effecting or maintaining the insurance of the building and other parts of the Mansion against loss or damage by fire and such other risks (if any) as the Lessors think fit as hereinafter mentioned*"

12. By clause 5(b) the lessors covenant to;

    "*insure and keep insured the said building against loss or damage by fire and such other risks (if any) as the Lessors think fit in some insurance office of repute in the sum of Four thousand pounds or such greater sum as the Lessors shall think fit.*"

The Hearing

13. Both Applicants attended the hearing. The Respondent did not attend – the Tribunal was informed that he is in his 90th year and was unable to attend – but he was represented by his solicitor Mr. Goldstein.

14. Neither party requested an inspection, and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

15. Immediately before the hearing the Tribunal arranged for a copy of the decision of the Upper Tribunal in the case of Howe -v- Mahamood [2019] UKUT 155 (LC) to be provided to the parties.

Matters in Dispute

16. The only matters in dispute between the parties relate to the charges made by the Respondent in respect of insurance cover. For the year ending 1 September 2018 the First Applicant was charged £514.94 for this. For the following years he was charged £535.54, £556.96, and £593.58 respectively. The Second Applicant was charged the same amounts for the years ending on 1 September 2020 and 2021. Invoices for the sums charged were issued by the insurance brokers directly to the Applicants. They are to be found at various places in the bundles. Those to the First Applicant are at pages A128, A131, A135 and A138. The invoices addressed to the Second Applicant are at pages A142 and A140.

17. The certificates of insurance in respect of the First Applicant's flat are at pages A126, A130 and A134 and those for the Second Applicant's flat are at pages A143 and A141. The certificate for 2021 for the First Applicant was not provided.

18. The Applicants' arguments are set out in their skeleton argument and are as follows.

19. The first argument put forward by the Applicants in the skeleton argument was that the insurance provided was not in accordance with the terms of the lease as the lease required the "building" to be insured and that this meant both flats together rather than, as they contended, separate insurance policies for each flat.

20. This issue is addressed in the case of <u>Howe</u>, which is why a copy of it was provided to the parties. In that case the relevant clauses of the lease required the landlord to insure the building which, in that case, comprised commercial premises on the ground floor and 3 flats. What the landlord did was to take out separate insurance policies for each of the flats and the commercial premises and the tenant argued that the insurance had not been provided in accordance with the terms of the lease. The Upper Tribunal concluded that so long as the entirety of the building was insured so that no parts were left uninsured then it did not matter whether this was done by means of one policy or several.

21. In fact, the evidence shows that the insurance provided is part of a block policy obtained through Lockton Real Estate and Construction ("Lockton") – the overall policy document is at pages R23 to R50 (though the documents provided do not include a schedule of the properties insured). Mr. Goldstein informed the Tribunal that the Respondent has a large portfolio of ground rents consisting of at least 100 units and that all are insured through the same block policy. Lockton obtain the insurance through the broker Primary Insurance Consultants who, the evidence shows, invoice the Applicants directly.

22. At the hearing the Applicants, having considered the case of <u>Howe</u> decided not to pursue the argument. In any event, there was no evidence that any part of the building in this case was not insured as required by the lease, and so the Tribunal was satisfied that the insurance that was provided was in accordance with the lease.

23. It was also argued by the Applicants that the insurance amounted to a qualifying long term agreement as defined in section 20ZA(2) of the Act and that there had not been any statutory consultation. The Tribunal rejected that argument. It is obvious that insurance is provided on an annual basis as annual policy statements are produced. The insurance itself never extends beyond one year. Whilst any agreement between the Respondent and Lockton's may be of longer duration, there was no evidence that the Respondent was making any charge in respect of that agreement and, indeed, it is doubtful whether the lease would permit the passing on of any such charge.

24. The Applicants' main contention was that the insurance costs were not reasonably incurred because the cost was excessive. They relied on a number of other insurance quotes in support of that argument. In response, Mr. Goldstein, on behalf of the Respondent, argued that the quotes relied on by the Applicants were not genuinely comparable and should not be relied upon.

25. The Tribunal began by considering the insurance situation in the context of the case of <u>Sinclair Gardens</u>. There was nothing to show that the insurance had been obtained other than at arms length. The Tribunal accepted that the Respondent had in place a large block policy which covered very many buildings. In the absence of any other evidence this would lead the Tribunal to conclude that the actual costs incurred were reasonable as there is no duty on the landlord to shop around for insurance.

26. However, the evidence before the Tribunal, which will be considered in more detail below, suggested a considerable disparity between the sums charged to insure the whole building and alternative sources of insurance. The Tribunal bore in mind that the total premium for the building was £1,029.88 for cover in 2018 rising to £1,187.16 for cover in 2021. In the view of the Tribunal this was a very high sum and called for an explanation.

27. Unfortunately, the Respondent was unable to provide very much at all by way of such an explanation. In the directions made by Judge Latham (page A54) the Respondent was directed to explain how the premium was apportioned if it formed part of a block policy and to explain whether the block policy took account of the claims history of other properties (direction 3(i)). The Respondent was also directed to provide any alternative quotes for the property, a copy of the last valuation, details of indexing, and information about steps to test the market including, if done by a broker, their report (directions 3(j), (k), (l) and (m)). Despite these directions Mr. Goldstein was unable to inform the Tribunal as to how the total sum charged for the Respondent's block policy was allocated between his numerous properties. The Respondent's full statement of case merely stated;

> "*the brokers say that the properties are brokered as part of a portfolio but the rate is primarily on the individual property. The insurer charges the premium for each property individually. However, they also say that experience of the overall landlord portfolio also has a bearing*"

28. There was no evidence from the Respondent's broker or from Lockton. Although it was asserted that the portfolio was offered to 6 underwriters every 1 to 3 years and was last done in 2019, there was no evidence of this and there was no evidence of any other attempts to test the market.

29. Overall, the Tribunal was presented with a picture of a portfolio of over 100 properties with no explanation as to how the sums allocated in respect of this property were arrived at.

30. In the circumstances, the Tribunal concluded that the situation was similar to that in COS Services Ltd. It was not satisfied that the Respondent had adequately explained the process whereby the policy and premium in question were chosen. It considered, therefore, that it was appropriate to consider comparable insurance quotations in order to determine whether the insurance charges made were reasonably incurred.

31. The evidence before the Tribunal showed the following. From the certificates of insurance it is clear that the insurance policy put in place remained largely unchanged throughout the relevant period. All references to the policy refer to the same policy number in respect of both flats. The cover included the cost of rebuilding, which sum changed over time, and property owner's liability of £10m. The perils insured were fire, lightning, aircraft, explosion and earthquake – for which there was no excess - riot, civil commotion, malicious damage, storm, flood, escape of water, impact and theft - for which the excess was £350 - subsidence, landslip and/or heave - for which the excess was £1,000 - and all other damage - for which the excess was £350 (see page R22). There was no terrorism cover.

32. The rebuilding costs quoted were for each flat which, when combined, produced a total for the building in each year as follows;

2018	-	£351,200
2019	-	£365,248
2020	-	£379,858
2021	-	£399,250

33. The evidence relied on by the Applicants was as follows. Firstly, there is a quote from More Than with a premium of £125.71 (pages A62 to A68). This is stated to include buildings cover up to £1m, with an excess of £300, though the excess for subsidence is £1,000 and that for escape of water is £350. Also included is property owner's liability cover of up to £1m and various other cover including damage by emergency services (page A65). The quote is stated to be for 333 Hither Green Road only and there is no indication what was stated to be the likely cost of rebuilding and no indication is given as to what information was provided in order to generate the quote.

34. There is then a print-out from Confused.com giving a range of premiums ranging from £262.07 quoted by Endsleigh Insurance to £315.13 from One Insurance (pages A69 to A72). No information is given as to the extent of the cover offered or the information provided in order to generate the quotations.

35. Next is a quote obtained from AXA – the current insurers – in respect of 333a. Three options are given ranging from £177.45 to £319.46 per annum with varying degrees of cover (page A73 to A75). Information about excesses and the information used to generate the quotes is again not given.

36. There is then a more detailed quote obtained from Choice Insurance, an insurance broker (pages A79 to A89). This is by far the most detailed quotation provided and gives much more information about the basis of the quote. The extent of the cover is similar to that provided by the Respondent and the quotation is for an annual premium of £210.48. There is also a quote from AXA landlord insurance for the two flats together of £287.38 (pages A90 to A93). There is also a further quotation obtained through Choice Insurance brokers (pages A111 to A121) which is very similar to the one already referred to. The quotation is for a premium of £226.38. On this occasion the declared value of the buildings is only £200,000

37. However, and importantly, these quotations are based on a declared rebuilding cost of £218,000 (pages A80 and A92 – where the sum is split in two) or less. It is part of the Applicants' case that the Respondent's cover is excessive because it is based on a total rebuilding cost for the two flats of just under £400,000 which, they argue, is too high. They place reliance on a RICS Home Buyer Report (pages A105 to A109). This, they argue, shows that the rebuilding cost is only £218,000. The report gives a valuation of £430,000 as at 17 October 2018 and gives a re-instatement cost of £218,000 (page A108). This conclusion, though, is subject to the note which is at the bottom of the page. This states that the reinstatement cost is;

> "*the cost of rebuilding an average home of the type and style inspected to its existing standard using modern materials and techniques*"

The report relied on is a valuation for the purposes of obtaining a mortgage for the ground floor flat only. In the light of the note, therefore, the re-instatement figure given is not an indication of the actual cost of re-instating the whole building itself, but merely the cost of building a notional average flat of the kind being valued. In the Tribunal's expert professional opinion the re-instatement figure quoted is not realistic for the whole building and a more accurate figure for a property of this type and this location would be in the region of £400,000. This, therefore, reduces the extent to which reliance can be placed on the quotations obtained from these brokers.

38. The Applicants also rely on insurance obtained for neighbouring properties. There is a schedule in respect of 329a, Hither Green Lane which quotes a premium of £329.39 for a sum insured of £500,000 but which also includes contents cover (pages A94 to A96). There is also an invoice for insurance of 331a, Hither Green Lane in 2018 for £389.39, though this includes £97.41 for terrorism cover. The premium for the same property in 2019 was £359.36, though the amount for terrorism reduced to £56. In 2020 the premium for the same property was £326.49, of which £46.95 was terrorism cover (pages A97 to A100). There was then an example of insurance in respect of 337 and 337a, Hither Green Lane where the total premium was £445.98 (pages A101 to A104). However, in this instance the buildings cover is stated to be £239,879 (page A102) which is again considerably below the Tribunal's expert view of the likely reinstatement cost for the whole building.

39. Finally, there was evidence of an insurance policy obtained by the Second Applicant from More Than with an annual premium of £216.29 (pages A145 to A153). This was in respect of only 333, Hither Green Lane but included contents insurance.

40. The Respondent's case in respect of these various quotations was that none of them were genuinely comparable as they were not comparing like with like. The Tribunal largely accepted that argument, which was particularly relevant in respect of the quotations obtained through brokers which relied on reinstatement costs considerably lower than what the Tribunal considered to be appropriate. As is made clear above, none of the other policies relied on were direct comparisons either. In addition, the Tribunal bore in mind the underlying approach, which is that landlords cannot be required to shop around every year to obtain insurance.

41. Nevertheless, the Tribunal noted that the evidence produced by the Applicants showed that broadly similar insurance which met the obligations contained in the lease could be obtained considerably more cheaply than that obtained by the Respondent, who had failed to explain what he had done or why. It also bore in mind its own professional knowledge of the insurance market.

42. Bearing those factors in mind the Tribunal concluded that the sum charged by the Respondent was indeed excessive and so the insurance costs incurred were not reasonable. It decided that the appropriate approach was to consider the likely market cost of insuring the whole building, rather than two individual flats, with a level of cover sufficient to include re-instatement costs of about £400,000 and with cover of a kind obtained by the Respondent. At today's costs it would expect the total premium to be in the region of £700, and it decided that this was an appropriate figure for the insurance cover for the year 2020/2021. Thus, the sum payable by each of the Applicants for that year would be £350.

43. The Tribunal acknowledged that the premiums for the earlier years would be slightly lower. The evidence of the actual sums paid by the Respondent over the years in question showed that on average the year-on-year increase in the insurance costs between 2018 and 2021 was roughly 5%, which the Tribunal considered to be reasonable. That being the case, the annual premiums for the previous years should be reduced to the following rounded sums.
2019/2020 - £666
2018/2019 - £635
2017/2018 - £605

44. It follows that the Tribunal concluded that the sums reasonably payable by the First Applicant in respect of insurance for each of the years in question are £302.50, £317.50, £333, and £350 and that the sums payable by the Second Applicant are £333 and £350.

45. There remains one further issue as regards payability. When the application was first made the Applicants contended that the sums were not payable because the demands had not included the necessary statements of rights nor

had they set out the Respondent's name and address for service. They argued that by virtue of section 47(2) of the Landlord and Tenant Act 1987 the sum demanded was deemed not due because of this failure. The invoices in the bundle clearly do not include that information.

46. The Respondent's case was that it was proposed to send revised demands to the Applicants. It was accepted that this had now been done.

Applications under s.20C of the 1985 Act and Para 5A of Schedule 11 of the 2002 Act

47. In their application the Applicants applied for an order under section 20C of the 1985 Act and for an order under para 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

48. The Tribunal concluded that there was no basis for making an order under either provision because there was no provision in the lease which would enable the Respondent to recover his costs incurred in these proceedings either as service charges or administration charges. Such orders were, therefore, unnecessary.

Application for Re-imbursement of Fees

49. The Applicants also sought an order under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for the re-imbursement of the fees paid for bringing the Application. The Tribunal concluded that, given that the Applicants had achieved some success it was just and equitable to make such an order.

Name:	Tribunal Judge S.J. Walker	**Date:**	9 July 2021

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.

- If a party wishes to appeal against 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.

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.

Section 20ZA

(1) Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements

in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

(2) In section 20 and this section –
"qualifying works" means works on a building or any other premises, and
"qualifying long term agreement" means (subject to subsection (3) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement –
(a) if it is an agreement of a description prescribed by the regulations, or
(b) in any circumstances so prescribed.

(4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord
(a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,
(b) to obtain estimates for proposed works or agreements,
(c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements

(6) Regulations under section 20 or this section
(a) may make provision generally or only in relation to specific cases, and
(b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
  (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
  (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
  (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
  (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
  (a) specified in his lease, nor
  (b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate Tribunal for a determination whether an administration charge is payable and, if it is, as to—
  (a) the person by whom it is payable,
  (b) the person to whom it is payable,
  (c) the amount which is payable,
  (d) the date at or by which it is payable, and
  (e) the manner in which it is payable.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate Tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—
  (a) has been agreed or admitted by the tenant,
  (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  (c) has been the subject of determination by a court, or
  (d) has been the subject of determination by an arbitral Tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
  (a) in a particular manner, or
  (b) on particular evidence,
of any question which may be the subject matter of an application under sub-paragraph (1).

Schedule 11, paragraph 5A

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

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

(3)In this paragraph—

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

(b)“the relevant court or Tribunal” means the court or Tribunal mentioned in the table in relation to those proceedings.