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HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTIONS 27A & 20C OF THE LANDLORD AND TENANT ACT 1985

Case Reference:	LON/00AH/LSC/2012/0350
Premises:	2 St Ann's Way, South Croydon, Surrey SR2 6DN
Applicant:	At Ann's Way Residents Association Ltd
Representative:	Mr J Wragg (Counsel)
Respondent:	Mr A Sangari-Abolvardi
Representative:	N/A
Date of hearing:	12/11/2012
Appearance for Applicant:	Mr Tejada, Mr Coate and Ms Oliver of H M L Andertons, Managing Agents appointed by the Applicant
Appearance for Respondent(s):	Mr Sangari-Abolvardi appeared and represented himself with the assistance of Mr Horne of 213 Pampisford Road and a former director of St Ann's Way Residents Association Limited
Leasehold Valuation Tribunal:	Miss J E Guest (solicitor) Mr K M Cartwright FRICS (Chartered Surveyor) Mr J Francis QPM (lay member)
Date of decision:	20/12/2012

Decisions of the Tribunal

(1) The Tribunal found that the Respondent liability amounted to £47.81.

(2) The Tribunal made various determinations as set out under the various headings of this decision.

(3) The issue of costs is to be dealt with when this matter is remitted back to the County Court.

The Application

1. The Tribunal is required to make a determination pursuant to section 27A of the Landlord and Tenant Act 1985 as to the payability and/or reasonableness of service charges in respect of:

A. Service charge arrears for 2008	£265.00
B. Service charge arrears for 2009	£375.00
C. Service charge arrears for 2011	£10.00
D. Service charges for 2012	£77.94
E. Arrears collection fee	£96.00
F. Instruction fee	£108.00
G. Debt collection fee	£168.00
TOTAL	£1,099.94

2. On 15/03/2012, St Ann's Residents Association Ltd brought a claim at Bedford County Court in respect of the above service charges. The Respondent defended the action and, on 17/05/2012, District Judge Bishop ordered the case to be transferred to this Tribunal.

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

The Hearing

4. The hearing lasted half a day. The Applicant was represented by Counsel, Mr Jonathan Wragg, instructed by HML Andertons (*"the managing agents"*) appointed by St Ann's Residents Association Ltd. The Respondent represented himself with the assistance of Mr Horne, another leaseholder at St Ann's Way and a former director of St Ann's Residents Association Ltd.

The background

5. St Ann's Way is an estate consisting of 8 blocks of flats constructed in about the 1960's. Each block of flats contains 4 two-bedroom maisonettes each with a separate entrance. There are a total of 32 maisonettes. In addition, the estate also has separate blocks of garages that are part of a separate demise.

6. The freeholder owner is St Ann's Way Residents Association Ltd. The leasehold interest of 2 St Ann's Way was acquired by the Respondent, Mr Ashfar Sangari-Abolvardi, in 2004. The Lease is dated 07/05/1969 and is made between New Ideal Homesteads Ltd (1) and Sidney Edwin Piper and Hilda Rose Piper (2) for a period of 999 years commencing on 25/12/1968.

7. St Ann's Way Resident's Associations Ltd is a tenant owned freehold company that was incorporated in 1991. The Applicant managed the estate until December 2011. All the former directors resigned in 2011 and the new company directors subsequently appointed managing agents following a majority vote at an EGM in December 2011.

8. At the pre-trial review hearing *("PTR")* on 20/06/2012, the parties were informed by the Tribunal that an inspection was not considered necessary. At the hearing, neither party requested an inspection and the Tribunal took the view that an inspection was not required.

9. The Respondent challenged both the reasonableness of the charges and also the Applicant's entitlement to recover the sums. He had refused to make any payments at all since 2007.

10. The Respondent did not attend the PTR and he did not comply with the directions. The Respondent claimed that he was only aware of the directions ordered at the PTR when the Applicant served the bundle prepared for the hearing.

11. The Respondent attended the hearing with Mr Horne of 213 Pampisford Road (part of St Anns Way estate). The Respondent informed the Tribunal that Mr Horne would be representing him and that he also wished to call Mr Horne as a witness. Mr Wragg did not object to this since the managing agents had requested company records believed to still be held by Mr Horne and also required information from him about the management of the estate before Mr Horne resigned in 2011. The Respondent indicated that he also needed assistance from Mr Horne as English was not his first language. However, the Respondent confirmed that he did not require an interpreter and the Tribunal was satisfied that the Respondent understood the proceedings.

12. Mr Horne informed the Tribunal that he only held documents that related to him personally. Mr Horne faces similar proceedings as he has also refused to pay any service charges. Mr Horne sought to give evidence that related to his own dispute with the Applicant. Mr Horne informed the Tribunal that he held none of the documents relating to the Applicant's previous management of the estate. In view of this, the Tribunal directed that Mr Horne's involvement be limited to assisting the Respondent to put his case.

13. A bundle of documents was prepared on behalf of the Applicant that was considered fully by the Tribunal prior to the hearing. Two additional documents were produced by the Applicant at the hearing, namely (1) the Memorandum and Articles of Association of St Ann's Way Residents Association Ltd and (2) AXA schedule of insurance for the period 21/04/2012 to 21/04/2012 (policy number LP FLT 6765044) taken out by the Applicant.

14. The Tribunal's decision was made on the basis of the evidence before it and what follows is a summary of the evidence heard.

2008 : Service charge arrears £265.00

15. The Applicant relied upon an invoice for service charge arrears sent to the Respondent on 09/12/2011 in support of this amount. The Applicant was unable to produce the actual demand and alleged that Mr Horne had retained the records, which Mr Horne denied. The arrears figure was based on a spreadsheet held by the Applicant. The Applicant stated that proper demands had been delivered by hand to the Respondent. The Respondent agreed that he had received letters each year requesting an amount. The

Respondent believed that these letters did not constitute valid demands since he said there was no breakdown as to the costs incurred.

16. Save for the balance sheet for 2008, the Applicant had no evidence of the expenditure incurred. The balance sheet listed the sums incurred by the Applicant as follows:

(1) building insurance	£4,279.20
(2) directors insurance	£294.00
(3) company expenses	£199.42
(4) electricity charge (garage area)	£137.70
(5) maintenance expenses (garage fascias)	£2,270.00
(6) legal fees/surveyor	£1,739.10
(7) petty cash withdrawals	£80.00
(8) interest tax	£36.47

17. The Lease contains no precise method for calculating the service charge proportion. Under clause 2(g) of the Lease the Lessee covenants with the Lessor to,

> *"At all times during the said term to pay and contribute the said part share or proportion or if not hereinbefore specifically mentioned a rateable or due proportion of the expenses of making repairing maintaining supporting rebuilding and cleansing all ways passageways pathways sewers drains watercourses pipes cisterns gutters and wires party walls party structures fences easements and appurtenances used or capable of being used by the Lessee in common with the Lessor or the tenants or occupiers of the premises near or adjoining the demised premises or of which the demised premises forms part such proportion in the case of difference settle by the surveyor for the time being of the Lessor whose decision shall be binding And to keep the Lessor indemnified against all costs and expenses as aforesaid"*

18. The Applicant has apportioned the service charges according to the number of flats, i.e. 1/32 (or 3.125%) of the expenditure. There was no dispute between the parties that this was an appropriate way to apportion costs.

19. The Tribunal considered the various heads of expenditure listed on the balance sheet.

Building insurance

20. Mr Wragg informed the Tribunal that the Applicant had purchased the buildings insurance on behalf of the leaseholders and that this was a reasonable amount. Mr Wragg stated that individual leaseholders benefited from a discount as the insurance was acquired on a block basis for the estate.

21. Mr Wragg relied upon clauses 2(b) and 3(b) of the Lease in support of the Applicant's claim for building insurance.

22. Clause 2(b) states,

> *"To pay and discharge all rates taxes duties and easement charges and outgoings whatsoever whether parliamentary or parochial or of any other description which now are or during the term hereby granted shall be imposed or charged on the demised premises or the Lessor or the Lessee or occupier in respect thereof"*

23. Clause 3(b) states,

> *"That if so required by the Lessee the Lessor will enforce the covenants for repair and insurance and any covenants the breach whereof adversely effects the Lessee or the demised premises entered into by the other lessees on the said Estate on the Lessee's indemnifying the Lessor against all costs and expenses in respect of such enforcement and providing such security in respect of all costs and expenses as the Lessor may reasonably require"*

24. Mr Wragg also relied upon the Court of Appeal decision in the case of *Embassy Court Residents Association Ltd –v- Lipman [1984] EGLR 60* to imply a term that the freeholder was entitled to recover the insurance costs and he submitted the Tribunal should not consider the Lease in isolation but also have regard to the Memorandum and Articles of the freehold company. Mr Wragg also indicated that, if all else failed, then the Applicant would seek to rely upon the principles of estoppel, acquiescence and/or unjust enrichment.

25. The Respondent's position was that the Lease provided that the Lessee should insure the premises using insurers recommended by the Applicant. The Respondent admitted, however, that he had not done so. The Respondent informed the Tribunal that he had no objection to paying for insurance but that the sum incurred by the Applicant was too high.

Tribunal's decision

26. The service charge provision of the Lease is found at Clause 2 (g). This clause lists the items of expenditure to which the Lessee is liable to contribute (see paragraph 17 above). The insurance provision of the Lease is at Clause 2(n) and this requires the Lessee to -

> *"Forthwith to insure and at all times during the said term to keep insured the demised premises and all buildings erections and fixtures of an insurable nature which are now or may at any time during the said term be erected or placed upon or affixed to the demised premises against loss or damage by fire and other perils normally insured under a Householders Comprehensive Policy in the opinion of the Surveyor to the Lessor represents the full value thereof (including Architect's Surveyors' and Civil Engineers fees of such value at the current scales for the time being of the Royal Institute of British Architects the Royal Institution of Chartered Surveyors and the Institution of Civil Engineers) in the joint names of the Lessor and the Lessee whether or not in conjunction with the name or names of any person or persons legally or beneficially interested in the demised premises And also to insure such other risks for such amounts which in the opinion of the Surveyor to the Lessor may from time to time be considered necessary And whenever required to produce to the Lessor or its agents the policy for every such insurance and the receipt for the last premium thereof And in the case of the demised premises or any part thereof shall at any time during the said term be destroyed or damaged by fire then and as often as the same shall happen with all convenient speed to lay out all moneys received in respect of such insurance in rebuilding repairing or otherwise reinstating the demised premises in a good and substantial manner to the satisfaction of the surveyor for the time being of the Lessor and in the case the moneys received in respect of the said insurance shall be insufficient for the purpose to make good the deficiency out of the Lessee's own money"*

27. The Lease, therefore, clearly states that building insurance is the responsibility of the Lessee. The Lessor is to be named as a joint party on the policy. As the above clause expressly places the responsibility of insurance on the Lessee, any implied term that the Lessor shall recover the costs of insurance would directly conflict with the express term.

28. The Tribunal considered the Court of Appeal judgment in the case of *Embassy Court* and also considered the Memorandum and Article of St Anns Way Residents Association Ltd, which provide that the company may place and maintain policies of insurance. In *Embassy Court*, the leases contained a provision enabling the landlord to recover a proportion of the costs of providing certain services, but not expressly permitting him to recover costs that had to be incurred in providing administration of those services. There had been a tripartite agreement in which the responsibility of those services had been passed to a management company under an intermediate lease. The Court of Appeal implied a term that the costs of administration incurred by the managing agents could be recovered to give the lease business efficacy. Such a situation was not contemplated under the terms of this Lease. The cost of insurance is not an expense that the Lease intended the Lessor to incur.

29. The Respondent has not complied with Clause 2 (n) of the Lease since he has not obtained insurance for the premises. Although the Applicant has obtained building insurance on behalf of the Respondent, the Applicant has not done so as enforcement to remedy the Respondent's breach but it has obtained a block policy on behalf of all residents. The Applicant has not taken any action against the Respondent in relation to his failure to insure the premises so Clause 3(b) of the Lease does not apply.

30. The Tribunal also found that Clause 2(b) of the Lease was of no relevance as this relates to taxes/duties imposed by central or local government (or similar).

31. The Tribunal considered that the amount of the insurance was reasonable but, in view of the above, the sum was disallowed in full. Whether the Applicant has other causes of action as suggested by Mr Wragg to recover the cost of the insurance is outside the scope of this Tribunal's jurisdiction.

Directors insurance and Company expenses

32. The Applicant again relied upon the decision of the Court of Appeal in *Embassy Court* and invited the Tribunal to imply a term that the directors insurance was recoverable through the service charges. Mr Wragg argued that the directors of the freehold company required insurance and that the company incurred expenses and, therefore, the residents should contribute towards such costs.

33. The Respondent's position was that these expenses were not recoverable under the terms of the Lease.

Tribunal's decision

34. The Tribunal considered the sums to be reasonable but the Lease makes no provision for such expenditure to be recovered. The Lease is a contract between the parties and the Tribunal can only imply that such costs are to be recoverable if that was the intention of the parties. There is, however, no basis upon which to imply that the parties intended a proportion of such costs to be paid by the Lessee as it was not required to give the Lease business efficacy or obvious that it was intended under the Lease. Further, directors'

insurance is not a necessary expense – if the directors require insurance, then they should pay for it themselves unless the lessees wish to make a voluntary contribution.

35. Accordingly, the sums were accordingly disallowed in full.

Electricity charge (garage area)

36. The Respondent objected to paying for the cost of electricity to the garages. He said that there was no electricity supply and that he has to use an extension lead from the premises to provide electricity to his garage. The Applicant position was that such costs had been incurred

Tribunal's decision

37. The garages are separately demised and they are not mentioned in the Lease. Any costs relating to the garages are, therefore, not recoverable. The sum was, accordingly, disallowed in full.

Maintenance expenses (garage fascias)

38. The Respondent was of the view that the costs of the works were disproportionately high but that, in any event, the garages were separately owned. The Applicant had no evidence regarding the works that had been carried out as they did not hold the documents.

Tribunal's decision

39. The sum was disallowed in full for the reasons set out at paragraph 37 above.

Legal fees/surveyor

40. The Applicant had no knowledge of why legal fees had been incurred since it had no documents. Mr Horne informed the Tribunal that the costs related to forfeiture proceedings brought against the leaseholder of 211A St Anns Way under section 146 of the Law of Property Act 1925. Mr Horne believed that the costs had been recovered from the leaseholder concerned.

Tribunal's decision

41. It appeared to the Tribunal likely that the legal costs related to an administration charge against the leaseholder of 211A St Anns Way and as such the sum was not recoverable from the Respondent through the service charges. In any event, the Applicant was unable to produce any evidence to establish that this was an expense to which the Respondent had to contribute so the amount was disallowed in full.

Petty cash withdrawals and Interest tax

42. The Applicants position was these were expenses of the freehold company to which the Respondent should contribute. The Respondent disputed the Applicant entitlement to recover such expenses.

Tribunal's decision

43. The Tribunal considered such sums to be reasonable but there was no provision for the recovery of such expenses under the terms of the Lease and no indication at all that the parties to the Lease intended such expenses to be recovered through service charges. Further, it was the view of the Tribunal that interest tax should be set off against gross interest but, in any event, was also not an item of expenditure recoverable as service charges.

44. The sums were, accordingly, disallowed in full.

2009 : Service charge arrears £375.00

45. Save for a balance sheet and an 'application' for payment of arrears, the Applicant again had no evidence of the expenditure incurred. The balance sheet for 2009 listed the sums incurred by the Applicant as follows:

(1) building insurance	£4,412.43
(2) directors insurance	£294.00
(3) legal fees (solicitor)	£115.00
(4) petty cash withdrawals	£250.00
(5) interest tax	£1.04

46. The position of the parties was the same in respect of the above items of expenditure save that there was no information regarding why legal costs had been incurred in 2009.

Tribunal's decision

47. The Tribunal disallowed all sums in full for the reasons stated in relation to the previous service charge year for 2008.

2011 : Service charge arrears £10.00

48. Mr Coates on behalf of the managing agents thought that the former directors had decided that there would be no payment in 2010 and also that it might have been possible that that there had been funds available to pay the charges in 2011. The Respondent and Mr Horne had very little idea either about this amount other than Mr Horne thought it possible that this was not arrears but a credit brought forward.

Tribunal's decision

49. There was no evidence regarding this amount. Accordingly, the sum was disallowed.

2012 : Estimated service charges £77.94

50. The Applicant estimated its expenditure for the service charge year ending 24/12/2012 as follows:

(1) grounds maintenance	£300.00
(2) drainage	£500.00
(3) buildings insurance	£4,200.00
(4) directors and officers insurance	£350.00
(5) re-build valuation survey	£450.00

(6) company secretarial	£450.00
(7) accountancy	£450.00
(8) legal fees (not related to arrears collection)	£500.00
(9) managing agents fee	£2,776.00
(10)contingency and disbursements	£280.00

Grounds maintenance

51. The Respondent objected to contributing towards the maintenance of the estate grounds. He stated that he cut the grass outside his premises and that the Lease did not provide for such expense to be recovered in any event. The Applicant position was that there were two communal areas of land and there had to be some provision for maintenance.

Tribunal's decision

52. The Respondent's liability towards contributing to the grounds maintenance is provided for at Clauses 2 (g) of the Lease. The Tribunal relied upon its own knowledge and expertise and considered the estimated sum to be reasonable. Accordingly, the sum was allowed in full. The Respondent is liable to contribute the sum of £9.37.

Drainage

53. Mr Coates on behalf of the managing agents informed the Tribunal that there were various problems with the drains around the estate and that the agents were trying to establish with Thames Water the responsibility for various drains as the layout was different around the estate. The Respondent objected to paying the sum as he said he does all the maintenance required to his premises.

Tribunal decision

54. The Respondent's liability to contribute towards the drains is also provided for at Clause 2 (g). Relying upon its own expertise, the Tribunal considered that this estimated sum was reasonable and the sum was allowed in full. The Respondent is liable to contribute the sum of £15.63.

Directors and officers insurance

55. The position of the parties is as set out at paragraphs 32-33 above.

Tribunal's decision

56. The sum was disallowed in full by the Tribunal for the reasons set out in paragraph 34 above.

Rebuild valuation survey

57. The Applicant had undertaken this survey for insurance purposes. The Respondent objected on the basis that the sum was not recoverable under the Lease.

Tribunal decision

58. Clause 2(n) of the Lease includes a provision that the Lessor's surveyor must be satisfied that the sum insured represents that full value of the premises. The Tribunal, therefore,

considered that such an expense was contemplated by the parties to the Lease and it should, therefore, be implied that the Lessee should contribute. The Tribunal considered that this sum was reasonable given that the valuation related to 32 properties. Accordingly, the estimated expense was allowed in full. The Respondent is liable to contribute the sum of £14.06. It is, of course, in the Respondent's interests that the premises are adequately and properly insured.

Company secretary and accountancy

59. The Respondent's view was that such expenses were not required and also not recoverable under the terms of the Lease. The Respondent's position was that such costs were necessary and pointed out that the freehold company had previously been badly organised with the company being subject to fines for late filing of returns at Companies House.

Tribunal's decision

60. For the reasons set out at paragraph 34 above, the Tribunal disallowed these costs in full. As these types of expenses were not contemplated at the time the parties entered into the Lease, the Applicant may need to consider whether there should be an application to vary the Lease so that it takes into account such matters.

Legal fees

61. The Applicant relied upon Clause 2(r) of the Lease, which states that the Lessee is -

> *"To pay all expenses (including solicitors' costs and surveyors' fees) incurred by the Lessor incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925 notwithstanding forfeiture is avoided otherwise than by relief granted by the Court"*

62. The Applicant again relied upon *Embassy Court* and considered that such a term must be implied for business efficacy as legal costs were incurred as part of the normal functions of a management company. In addition, the Applicant also relied upon the decision of the Court of Appeal in *Freeholders of 69 Marina Close [2011] EWCA Civ 1258*. The Applicant informed the Tribunal that no decision had been made as to whether forfeiture proceedings would be pursued against the Respondent. It was noted that the Applicant had sought a money judgement in the County Court under the small claim procedure.

Tribunal's decision

63. There is no provision in the Lease for the recovery of legal costs save in those circumstances set out in Clause 2(r). The Tribunal considered the cases of *Embassy Court* but the Tribunal was not prepared to imply such a term, as it did not consider that the parties to the lease intended legal costs to be recovered save under the express terms of the Lease.

64. In the case of *Marina Close*, the Court of Appeal held that such a clause allowed for the recovery of proceedings before this Tribunal that had similarly been necessitated by the lessees' refusal to pay service charges. In that particular case, the disputed service charges related to repairs that were ultimately found to be the lessees' responsibility and section 146 notices were subsequently served. Although in principle the Tribunal considered that legal costs could be recoverable as service charges in the circumstances

as laid down in the *Marina Close* decision, such costs would nevertheless be subject to the test of reasonableness under section 27A of the Landlord and Tenant Act 1985. The decisions of the Tribunal have largely been in favour of the Respondent, i.e. that he is not liable in fact to pay for the majority of the service charges he has refused to pay. The legal costs were considered to be excessive in view of the fact that the Respondent has largely been successful. Therefore, the sum was disallowed.

Managing agents' fees

65. The Applicant relied upon the decision in *Embassy Court* to imply a term that managing agents' fees were recoverable. The managing agents' fees are £65.00 (plus VAT) for each flat. The Tribunal was informed that the Applicant made a decision at an EGM on 13/12/2011 to appoint managing agents. Mr Coates of the managing agents also owns Flat 15 and he stated that he declared his interest at the EGM. New directors were appointed at this meeting as all the former directors had resigned and the company was without any officers. Mr Wragg stated that the previous situation had been unmanageable so that managing agents had to be employed.

66. The Respondent's position was that the Applicant was not entitled to claim managing agents' fees under the terms of the Lease. Mr Horne informed the Tribunal that the Applicant had taken legal advice in the 1990's and been advice that the Applicant could only enforce the terms of the Lease and had no rights of management.

Tribunal's decision

67. There is no explicit provision in the Lease regarding the costs of managing agents. The Tribunal could not imply such a term. Although the Tribunal considered the decision in *Embassy Court*, the Tribunal found that this was not applicable to this case. The decision *Embassy Court* was that the residents' company was entitled to incur proper expenditure imposed upon it under the terms of the lease. The functions carried out by the managing agents, such as in relation to insurance, were not functions imposed on the Applicant under the Lease. The Tribunal refers to the comments made in paragraph 60 as to whether the parties need to consider a lease variation.

Contingency and disbursements

68. These amounts had been estimated by the Applicant. The Respondent's position was that these sums were not recoverable under the terms of the Lease.

Tribunal's decision

69. The Tribunal considered that these were estimated sums and could relate to repairs and maintenance recoverable under the terms of the Lease. The estimate of £280.00 was reasonable and, therefore, the sum was allowed in full. The Respondent is liable to pay a contribution of £8.75.

Arrears collection fee, instruction fee and debt collection fee : £372.00 (total)

70. The Applicant has incurred expenses in relation to the action it has taken to recover the service charges. The Tribunal heard about the procedure for recover service charge arrears from Mr Tejada of the managing agents. He informed the Tribunal that there were three stages. Firstly, the managing agents wrote a letter with an invoice in relation to the unpaid charges requesting payment within 14 days. If no response, then a reminder

would be sent requesting payment within 10 days. The managing agents charge £80.00 plus VAT in relation to this first stage. If no response, the managing agents instruct a debt collection agency. The managing agents charge a further £90.00 plus VAT for this second stage. The third stage is the debt collection agency take action to recover the debt. They charge £140.00 plus VAT.

71. The Respondent said that he returned any demand sent to him by the managing agents as he did not recognise them nor did he accept that he was in arrears as the sum were not payable under the Lease.

Tribunal's decision

72. The Tribunal noted that Clause 2(r) of the Lease provides that the Lessee must pay *"all expenses"*, which would include the costs of debt recovery. However, the Tribunal disallowed these costs in full since the sums that were being pursued were in the main not recoverable under the terms of the Lease.

Next steps

73. This matter should now be returned to the County Court for determination of any outstanding matters.

Chairman: Miss J E Guest

Date:20/12/2012

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 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;

(b) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;

(c) 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;

(d) in the case of proceedings before the Upper Tribunal, to the tribunal;

(e) 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.