HM Courts & Tribunals Service

7809

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 & SCHEDULE 11 TO THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002

Case Reference:	LON/00BJ/LSC/2012/0007
Premises:	1 & 11 Norroy Road, London SW15 1PQ
Applicant(s):	Miss M McDonnell Mr J McGrane, Mr C Girvan
Representative:	Miss M McDonnell Mr C Girvan
Respondent(s):	Abaris Limited
Representative:	Mr Berger – Feldgate Ltd Mr Spitz – Antlow Properties Ltd
Date of hearing:	19.4.12
Appearance for Applicant(s):	n/a
Appearance for Respondent(s):	n/a
Leasehold Valuation Tribunal:	Ms Naomi Hawkes (Lawyer Chairman), Mr Peter Roberts DipArch RIBA, Miss Rosyln Emblin JP
Date of decision:	

Decisions of the Tribunal

(1) The Respondent having (by a written demand dated 11.10.11) demanded the sum of £1,713.58 per flat by way of service charge for the year 2011, the Tribunal determines that the sum payable by Miss McDonnell and Mr McGrane of Flat 1 Norroy Road in respect of the work to which this demand relates is limited to a contribution of £250 by section 20 of the Landlord and Tenant Act 1985 and regulation 6 the Service Charges (Consultation etc.) (England) Regulations 2003 because the statutory consultation requirements were not complied with in relation to the relevant works and have not been dispensed with by the Tribunal.

(2) The Respondent having (by a written demand dated 11.10.11) demanded the sum of £1,713.58 per flat by way of service charge for the year 2011, the Tribunal determines that the sum payable by Mr Girvan of Flat 11 Norroy Road in respect of the work to which this demand relates is limited to a contribution of £250 by section 20 of the Landlord and Tenant Act 1985 and regulation 6 the Service Charges (Consultation etc.) (England) Regulations 2003 because the statutory consultation requirements were not complied with in relation to the relevant works and have not been dispensed with by the Tribunal.

(3) The Tribunal determines that no administration charge is payable by Miss McDonnell and Mr McGrane for the year 2011 (the sum of £480 having been claimed).

(4) The Tribunal determines that no administration charge is payable by Mr Girvan for year 2011 (the sum of £480 having been claimed).

(5) The Tribunal makes 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 Applicants through any service charge.

(6) The Tribunal determines that the Respondent shall pay the Applicants £250 within 28 days of this Decision, in respect of the reimbursement of the Tribunal fees paid by the Applicants.

The application

1. The Applicants seek 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 Applicants in respect of the service charge year 2011.

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

The hearing

3. The Applicants appeared in person at the hearing and the Respondent was represented by Mr Berger of Feldgate Limited ("Feldgate") instructed by Mr Spitz of Antlow Properties Limited ("Antlow Properties"), who also attended the hearing.

4. Antlow Properties are the Respondent's managing agents. Mr Spitz explained that Antlow Properties had instructed Feldgate to act on their behalf because of Mr Berger's experience in dealing with Leasehold Valuation Tribunal proceedings.

The background

5. The properties which are the subject of this application comprise two of sixteen flats in a row of converted period properties ("the freehold property") in respect of which Abaris Limited ("Abaris") is the landlord. Long leases have been granted in respect of eleven of the sixteen flats and the remaining five flats have been retained by Abaris.

6. The Tribunal did not consider that an inspection was necessary, nor would it have been proportionate having regard to the Tribunal's finding that the consultation requirements have not been complied with and that the contribution payable towards the service charge is limited to £250 payable by Miss McDonnell and Mr McGrane and £250 payable by Mr Girvan.

7. The Applicants hold long leases of flats 1 and 11 Norroy Road which require the landlord to provide services and the tenants to contribute towards their costs by way of a variable service charge. The specific provisions of the leases and will be referred to below, where appropriate.

The issues

8. At the start of the hearing the parties identified the relevant issues for determination as follows:

   (i) Whether, on a true construction of the leases, the leases potentially allow the landlord to recover the sums claimed by way of a service charge.

   (ii) Whether the landlord has complied with the consultation requirements pursuant to the provisions of the Service Charges (Consultation etc.) (England) Regulations 2003 ("the 2003 Regulations").

   (iii) If the landlord has not complied with the consultation requirements in accordance with the provisions of the 2003 Regulations, whether or not the Tribunal should grant the landlord dispensation.

(iv) Whether the administration charges relating to the service of notices pursuant to section 146 of the Law of Property Act 1925 are payable by the Applicants.

(v) Whether the Tribunal should make an order pursuant to section 20C of the Landlord and Tenant Act 1985 ("the 1985 Act") that all or any of the costs incurred, or to be incurred, by the landlord in connection with these 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 Applicants.

(vi) Whether or not the Tribunal should require the landlord to reimburse the fees paid by the Applicants in these proceedings and/or the Applicants' expenses.

9. 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.

Service charge item & amount claimed

10. In 2011, the landlord issued service charge demands claiming the sum of £1,713.58 from Miss McDonnell and Mr McGrane and the sum of £1,713.58 from Mr Girvan in respect of the partial renovation and redecoration of the exterior of the freehold property.

The Tribunal's decision

11. The Tribunal determines that the amount payable by Miss McDonnell and Mr McGrane is limited to £250 and that the amount payable by Mr Girvan is also limited to £250 in respect of the work to which these 2011 service charge demands relate.

Reasons for the Tribunal's decision

The true construction of the lease

12. The first matter which fell to be considered by the Tribunal was whether or not the sums claimed are potentially recoverable pursuant to the service charge provisions of the Applicants' leases.

13. The Applicants argued that the work to the exterior of the freehold property had not been completed and that the service charge was irrecoverable because the leases do not allow the landlord to recover the cost of work yet to be undertaken.

14. Clause 3(4) of both leases provides that *"the Lessor will so often as it is necessary rebuild repair decorate cleanse point maintain support and replace the exterior of the said property..."*. It was not in dispute that the work to the exterior to which the 2011 service charge relates was necessary.

15. Clause 2(6) of both leases provides that the Lessee covenants with the Lessor: "*At all times during the said term (upon proper evidence of expenditure being provided by the Lessor) to pay to the Lessor on demand one-sixteenth of the reasonable cost including surveyors' fees and legal costs and any other expenses reasonably incurred including administration expenses by the Lessor in carrying out in particular its obligations under clause 3(4)(5) and (6) hereof...*".

16. The Respondent argued that the costs were incurred when they became payable and that the service charge demands are based upon invoices received from Bellville Decorators (the contractor which was awarded the contract); John Lee the Contract Administrator; the Building Surveying Consultancy; and by Antlow Properties.

17. Applying its expert knowledge and experience the Tribunal notes that it is not unusual for a landlord to be invoiced for a job in stages before all of the work has been completed.

18. The Tribunal accepts the Respondent's argument that, on a true construction of the lease, costs are "incurred" when they become payable by the Respondent whether or not the work which has been commissioned has been completed.

The consultation requirements

19. The Applicants' primary cause for concern as regards the consultation requirements is that the Respondent failed to make all of the estimates which it received from contractors available for inspection by the Applicants in breach of regulation 11(5)(c) and regulation 11(9)(a) of the 2003 Regulations.

20. By letter dated 28th July 2011, Antlow Properties on behalf of the landlord set out the amounts specified in estimates given by four different contractors and stated: *"All of the estimates obtained may be inspected at the surveyors office, John W Lee Associates, Beaumont House, Lambton Road, London SW20 0LW, Tel 020 8544 1112, by direct arrangement with them. The summaries may be inspected at our office, 15 Healthland Road, London N16 5PD Monday to Thursday between 1.30 and 4.30 pm. Although not required, we suggest that you phone our office prior to visit in order to avoid unnecessary waiting. Inspection outside of these hours is by appointment only."*

21. Following receipt of this letter, the Applicants attempted to view the estimates at the surveyor's office. They state that they were unable to do so and this is confirmed by an email dated 18th August 2011 from the surveyor to Miss

McDonnell which states: *".. confirm that I have the priced tender returns from each contractor, but as I explained on the telephone, they cannot be viewed at the address given by Antlow because it is my postal address as I basically work from home and am out and about most of the time. However, I attach a copy of the schedules of work and the tender comparison which shows the prices tendered and this should give you all the information you require."*

22. The Applicants then attempted to obtain copies of the estimates from Antlow Properties. By letter dated 23rd August 2011, Miss McDonnell and Mr McGrane state *"... You advise that the Belleville Decorators quote is fully costed with resulting clarity on final price. Are all other quotes not fully costed? Is this the final price for the contract. The estimates were not available for inspection at your office and I have requested permission from John W Lee Associates to inspect the estimates at their office at Beaumont House Lambton Road SW 20 as per your letter of July 28th but have been told this is not possible."*

23. The Applicants point out that there is no response from Antlow Properties disputing that this was the position and Antlow Properties did not suggest to the Tribunal that the Applicants had been provided with the contractors' estimates (save for that from Peter Burton & Co Ltd which appears in the bundle). Antlow Properties stated that their surveyor had informed them that he had archived the estimates and that, despite requests which they had made to him, he had failed to produce them.

24. The directions made at an oral Pre-trial Review which was held in these proceedings on 25th January 2012 provide that by 8th February 2012 the Respondent shall send to the Applicants copies of a number of documents including "All estimates received". However, even by the date of the hearing, these documents had not been provided. In addition, notwithstanding that the Respondent had entered into a contract with Bellville Decorators no contractual documents had been provided and there was no priced specification of works from Bellville Decorators.

25. Mr Berger explained that he had been told at the Pre-trial Review that he need only comply with what had been discussed orally (which was to be confirmed in writing) and that the matters set out in the written directions had not been discussed. He maintained that, on the basis of what had been said at the Pre-trial Review, the Respondent did not have to comply with the written directions. The Tribunal rejects this evidence as unlikely on the balance of probabilities.

26. Mr Berger was unable to satisfactorily explain why the estimates from the contractors had been archived when the work is still ongoing (the work is due to be completed in 2012); why the estimates which had been archived could not have been recovered and shown to the Applicants and to the Tribunal; and why further copies of the estimates could not have been obtained from the contractors concerned in the event that the surveyor was unable or unwilling to retrieve the archived copies.

27. Notwithstanding that it would have been a very late stage at which to receive further documentation, the Tribunal gave the Mr Berger the opportunity to have copies of the relevant documents faxed to the Tribunal both during the course of the morning of the hearing and over the lunchtime adjournment. By 2 pm when the parties were making their closing submissions the Applicants and the Tribunal had still not had sight of the estimates or contractual documents.

28. The Tribunal informed the Respondent during the course of the afternoon of the hearing that (the missing documents having not been provided that morning or over the lunch adjournment) it was too late for any further documents to be received by the Tribunal. Notwithstanding this, following the hearing and after the Tribunal had reached its decision but before the written decision had been sent out, the Respondent sent some further documents to the Tribunal.

29. Having expressly stated on the afternoon of the hearing that no further documents would be received and having already reached its decision the Tribunal declines to admit this further documentation.

30. Mr Berger initially argued that the Respondent had complied with the consultation requirements pursuant to the 2003 regulations because, on 18th August 2011, it sent the Applicant a comparative schedule of the various estimates by email.

31. However, where copy estimates are to be provided, it is not sufficient for the landlord to provide a schedule of the various estimates; the landlord must provide copies of the actual estimates (see Richmond Housing Partnership v Smith and Rickman Lands Tribunal LRX/10/2005). In Richmond Housing Partnership v Smith and Rickman, the Lands Tribunal stated that the apparent purpose (of providing estimates) is to provide evidence in the form of a copy of a signed document that the estimates required to be obtained have in fact been obtained.

32. The Tribunal finds that the consultation requirements relating to the provision of estimates have not been complied with because the copies of the actual estimates obtained by the Respondent from three of the contractors listed in Antlow Properties' letter of 28th July 2011 have not been shown to the Applicants.

Whether dispensation should be granted

33. The Respondent accepted the Tribunal's invitation to apply for dispensation from the consultation requirements in the event that the 2003 Regulations had not been complied with.

34. The Respondent explained that, following a discussion as to whether or not the lessees would take over the management of the freehold property, it had

been agreed that the managing agents would continue to act but in a reduced capacity in order to keep their costs down.

35. Mr Berger argued that the Applicants were not prejudiced by the fact that they were not able to see the estimates because they had been provided with all the relevant figures twice. During the course of the hearing, he produced an email dated 19th July 2011 from another leaseholder providing a comparative schedule of the various estimates and, secondly, he relied upon the fact that on 18th August 2011 the Respondent had also provided the Applicants with a schedule of the various estimates by email.

36. In response, the Applicants stated that these documents were a poor substitute for seeing the actual estimates from the contractors on the contractors' headed paper. They doubted the accuracy of the figures in the schedules and stated that the emails were difficult to read. Part of the first column is missing from the copy of the schedule of estimates at pages 44-45 of the bundle (the schedule provided by the Respondent). The Applicants stated that the emailed version of this schedule which they received from the Respondent was similarly incomplete. Miss McDonnell stated that she had found the comparative schedule attached to the email of 19th July 2011 from the leaseholder difficult to read and that she did not have the facilities to print it out.

37. Further, the Applicants stated that, notwithstanding the Respondent's refusal to show them copy estimates, they had never given up hope that they would ultimately see the copy estimates because they were aware that they were legally entitled to see these documents. They had had no forewarning of the date on which the Respondent was intending to enter into a contract with Bellville Decorators, in October 2011. Accordingly, they did not realise that the only opportunity that they would have to comment on the figures would be the opportunity to comment on the tender comparisons until after the contract with Bellville Decorators had already been entered into. The Tribunal accepts this evidence. The Applicants emphasised that, in any event, they doubted the accuracy of the figures in the schedules of estimates.

38. In Daejan Investments v Benson [2011] EWCA Civ 38, the Court of Appeal stated that, in deciding whether to grant dispensation, significant prejudice to the tenants is an important factor and that the LVT was right to find that there had been significant prejudice to the tenants because they had been denied the opportunity to make representations on the estimates.

39. The Court of Appeal emphasised that a proper consultation process is of the essence of this statutory scheme, devised as it is to protect the interests of tenants, and stated that the LVT was entirely right to treat the curtailment of the consultation process as a serious failing.

40. In the present case, it would have been difficult, if not impossible, for the parties to have speculated as to what might have been the outcome had the

consultation process been allowed to run its proper course because, by the time of the parties' closing submissions, copies of the estimates of three of the contractors (including Bellville Decorators with whom the Respondent entered into a contract in October 2011) had still not been disclosed.

41. In any event, the Tribunal finds that, as in Daejan Investments v Benson, the Applicants' loss of the opportunity to make representations in respect of the estimates and to have these representations considered itself amounted to significant prejudice.

42. Accordingly, the Tribunal refuses to grant the Respondent dispensation from the consultation requirements and so, by section 20 of the 1985 Act and regulation 6 of the 2003 Regulations, the contribution payable by Miss McDonnell and Mr McGrane in respect of the work to which the 2011 service charge demand relates is limited to £250 and the contribution payable by Mr Girvan is similarly limited to £250.

Administration charge item & amount claimed

43. The Respondent claims an administration charge of £480 per flat relating to the preparation and service of notices pursuant to section 146 of the Law of Property Act 1925 ("section 146 notices").

The Tribunal's decision

44. The Tribunal determines that no administration charge is payable by Miss McDonnell and Mr McGrante for year 2011 (the sum of £480 having been claimed).

45. The Tribunal determines that no administration charge is payable by Mr Girvan for year 2011 (the sum of £480 having been claimed).

Reasons for the Tribunal's decision

46. During the course of the hearing the Tribunal informed the Respondent that section 81 of the Housing Act 1996 ("the 1996 Act") provides:

"81.— Restriction on termination of tenancy for failure to pay service charge.

(1) A landlord may not, in relation to premises let as a dwelling, exercise a right of re-entry or forfeiture for failure by a tenant to pay a service charge or administration charge unless—

(a) it is finally determined by (or on appeal from) a leasehold valuation tribunal or by a court, or by an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, that the amount of the service charge or administration charge is payable by him, or

(b) the tenant has admitted that it is so payable.

....

(4A) References in this section to the exercise of a right of re-entry or forfeiture include the service of a notice under section 146(1) of the Law of Property Act 1925 (restriction on re-entry or forfeiture)."

47. Mr Berger accepted that, if section 81 of the 1996 Act includes these terms, the section 146 notices should not have been served (there having been no final determination and no agreement) and that it would therefore not be reasonable for the Respondent to charge the Applicants for the preparation of the section 146 notices. However, he contended that he had obtained a different version of section 81 of the 1996 Act from the Internet and that the Tribunal's version might be out of date or otherwise inaccurate.

48. The Tribunal is satisfied that section 81 of the 1996 Act includes the terms set out above and that the section 146 notices should not have been served on the Applicants. Accordingly, the Tribunal finds that it is not reasonable for the Respondent to charge the Applicants anything by way of an administration charge for the preparation and/or service of the section 146 notices.

Application under s.20C and refund of fees

49. At the end of the hearing, the Applicants made an application under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for a refund of the fees that they had paid in respect of the application. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal orders the Respondent to refund the fees in the sum of £250 paid by the Applicants within 28 days of the date of this decision. The Tribunal does not order the Respondent to pay any additional expenses incurred by the Applicants.

50. At the end of the hearing, the Applicants also applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines that it is just and equitable in the circumstances to make such an order so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal on to the Applicants through the service charge.

Chairman: _____

Naomi Hawkes
(Lawyer Chairman)

Date: 9th May 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 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 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 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
(aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
(c) in the case of proceedings before the Upper Tribunal, to the tribunal;
(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Service Charges (Consultation Requirements) (England) Regulations 2003/1987

6. Application of section 20 to qualifying works

For the purposes of subsection (3) of section 20 the appropriate amount is an amount which results in the relevant contribution of any tenant being more than £250.

Schedule 4 CONSULTATION REQUIREMENTS FOR QUALIFYING WORKS OTHER THAN WORKS UNDER QUALIFYING LONG TERM OR AGREEMENTS TO WHICH REGULATION 7(3) APPLIES

Part 2 CONSULTATION REQUIREMENTS FOR QUALIFYING WORKS FOR WHICH PUBLIC NOTICE IS NOT REQUIRED

4.—

(1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.

(2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.

(3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate–

(a) from the person who received the most nominations; or

(b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or

(c) in any other case, from any nominated person.

(4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate–

(a) from at least one person nominated by a tenant; and

(b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).

(5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)–

(a) obtain estimates for the carrying out of the proposed works;

(b) supply, free of charge, a statement ("the paragraph (b) statement") setting out–

(i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and

(ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and

(c) make all of the estimates available for inspection.

(6) At least one of the estimates must be that of a person wholly unconnected with the landlord.

(7) For the purpose of paragraph (6), it shall be assumed that there is a connection between a person and the landlord–

(a) where the landlord is a company, if the person is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(b) where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;

(d) where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or

(e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.

(8) Where the landlord has obtained an estimate from a nominated person, that estimate must be one of those to which the paragraph (b) statement relates.

(9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by–

(a) each tenant; and

(b) the secretary of the recognised tenants' association (if any).

(10) The landlord shall, by notice in writing to each tenant and the association (if any)–

(a) specify the place and hours at which the estimates may be inspected;

(b) invite the making, in writing, of observations in relation to those estimates;

(c) specify–

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(11) Paragraph 2 shall apply to estimates made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

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).