1160S

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AP/LSC/2016/0129**
Property	:	**Flat 3 Burlington Court, 43 Burlington Road London N17 9UF**
Applicant	:	**Mrs Ruby Gilkes**
Representative	:	**Mr Charles Abumujor**
Respondent	:	**Burlington Road Management Co Ltd**
Representative	:	**OCK Chartered Surveyors- Mr Heimann FRICS and Mr Lewin**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Judge Daley** **Mr Geddes** **Mrs L Walter**
Date and venue of Hearing	:	**4 August 2016 at 10 am 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**26 September 2016**

DECISION

Decisions of the tribunal

The tribunal makes the determinations as set out under paragraphs 45-60 onward in this decision.

The application

1. The Applicant sought a determination under s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether service charges are payable.

2. The service charge year had been operated as if it ran from 1 January to 31 December. The applicant sold the flat. Completion took place on 30 November 2015. The Applicant sought a determination in respect of 2014 and 2015, as a result of charges that she had paid prior to completion. These charges were paid in order to complete the sale of the premises; however she did not agree that the charges were outstanding.

3. Directions were given on 19 April 2016, at the case management conference, where the Tribunal noted that the following issues needed to be determined.

    (i) Liability for and reasonableness of service charges for the years 2014 and 2015

    (ii) Whether an order under section 20c of the 1985 Act should be made

    (iii) Whether an order for reimbursement of application/hearing fees should be made

4. The Tribunal noted that the following matters were not in dispute-:

    "*...Liability for and reasonableness of service charges for 2013 because they have been determined by the tribunal by a decision dated 24 July 2014 (Lon/00AP/LSC/2014/106). Liability and reasonableness of service charges for repair works to the drains at the development determined by a decision of the Tribunal dated 28 November 2014 (Lon/00AP/LSC/2014/470 and also service charges for 2010 which were determined under (Lon/00AP/LSC/2010/854.*"

The Hearing

5. At the hearing Ms Gilkes was represented by Mr Charles Abumujor. The Respondent was represented by Mr Heimann who was assisted by Mr Lewin. Mr Abumujor accepted that although there had been a determination for 2014, there had been additional charges (the balancing charges), accordingly he wished the periods 2014 in respect of the additional charges and the service charges for the period 2015 to be considered by the Tribunal.

6. The background to this application was set out in the skeleton argument for the claimant dated 3 August 2016. In the skeleton argument, Mr Abumujor set out that in October 2015 the claimant decided to sell her flat; he states that this decision was as a result of yearly service charge disputes. In relation to the service charges, he stated that the Respondent produced service charge demands, which had to be settled, prior to the sale of the property. He states that as the Applicant was under contract to sell the property the effect on her was that although she disputed the charges, she nevertheless paid the charges to avoid the sale falling though.

7. Mr Abumujor also criticised the Respondent for producing an anticipated/future works estimated charges in the sum of £6250.00. As a result of this the buyer of her property refused to pay the asking price and negotiated a reduction which reflected the future work charges.

8. The Applicant considered that these anticipated future charges were incorrect as they did not reflect the decision of the Tribunal on the costs of the major work, and considered that the Respondent was liable for the reduction in the sale price.

9. On behalf of the Respondent, Mr Heimann, informed the Tribunal that there was a difficulty concerning the service charge period in that although the lease stated that the service charge year was from 1 April to 31 March. The previous managing agents had used the period 1 January to 31 December as the service charge year, with an interim payment payable on 30 June. This meant that although the service charges had originally been calculated on the basis of the calendar year, they had been recalculated to take into account the actual service charge year.

10. Therefore the Tribunal decided that in order to consider the service charges, it was necessary to consider the demand served on the Applicant for the period 1 July 2014 to 31 March 2015, as the Respondent's accounts had been prepared in this way. The first item in this demand was the cleaning. The Applicant's share was 1/12, (which

was demanded) in the sum of £117.60.The Applicant was asked whether she objected to the reasonableness of the charge for cleaning. Mr Abumujor stated that she did on the grounds that the cleaning was not carried out on a reliable basis, and to an appropriate standard. Mrs Gilkes stated that she had had to clean the ground floor of the property, herself, on more than one occasion.

11. The Tribunal asked for details of the cleaning contract. Mr Heimann accepted that in the past there were two occasions when the cleaning had not been carried out and as a result the contractor had been changed, However, he denied that this related to this period. The cleaning was carried out by *Secureclean Solutions*. The cleaning was carried out in the common parts bi-monthly.

12. Mr Heimann stated that the cleaning had been carried out to the required standard by SecureClean; he provided a number of invoices and also stated that he had inspected the premises on a quarterly basis He also referred to the lack of complaint from other leaseholders.

13. In reply Mr Abumujor stated that the paper work which should show invoices for the complete period had not been disclosed.

14. In respect of the gardening, Mr Abumujor stated that the charges were objected to on the grounds that gardening had not been undertaken on a regular basis. He referred to an email dated 21.04.2015 from Ms Gilkes daughter, complaining about the gardening, in support of his contention. He stated that the sum claimed was too high as there were periods when the gardening simply was not carried out.

15. In reply, Mr Heimann referred to the invoice dated 25.06.15. This charge was made up of £969.60 for an initial sum to represent the work required to bring the garden up to standard thereafter a charge of £322.99 was payable for repairs to the gate and £218.40 per month.

16. The Tribunal was informed that the work was carried out by one of the leaseholders, the appointment had been made by directors of the management company; Mr Heimann considered that this represented good value for money as the leaseholder had carried out additional work, for example repairs had been carried out to a very large set of gates at the property.

17. The Applicant referred the Tribunal to photographs of the garden in support of her complaint about the condition of the garden.

18. In respect of the Repairs, the Tribunal were provided with copies of invoices for drain repairs that had been carried out in April 2014 where the invoice was not paid until April 2015. There was also an invoice from Grenadier drainage dated 23.04.2015. Mr Abumujor queried why

this work was necessary given the earlier Tribunal decision dated November 2014. He submitted that if the drainage work had been carried out as found to have been the case by the Tribunal in decision LON/00AP/LSC/2014/0470 in accordance with the Tribunal's determination, additional costs would not have been incurred.

19. He also referred the Tribunal to a letter written by solicitors who acted for Ms Gilkes dated 28 April 2015, where they suggested that post works inspections ought to be carried out rather than merely relying on the contractors invoices.

20. Mr Heimann stated that there were over 20 metres of drains at the property (old Victorian drains) and given this once a section of repair had been undertaken, another section of the drains would present with problems. It was accordingly not surprising that problems still existed with the drains at the property.

21. Mr Heimann stated that although the sum of £990.00 appeared as a repair, this was an invoiced sum which had occurred as a result of a condition survey that had been carried out at the property by OCK Surveyors dated 11 May 2015. There was also an invoice which related to an investigation to find the source of a leak on 27/08/15, in the sum of £141.00.

22. Mr Heimann considered that notwithstanding the repairs to the drain which had been the subject of a previous tribunal determination, the costs that had been incurred during this period were for additional work, rather than an attempt to recover sums which were not due in accordance with the Tribunal's decision.

23. The Tribunal noted that there were invoices for an inspection of the premises and also repairs to the drain major works in the sums of £456.00 and £1008.00.

24. The next item on the accounts was insurance for directors and officers in the sum of £248.80, Mr Abumujor referred to the previous decision of the Tribunal LON/00AP/LSC/2010/0854, paragraph 20 of the decision stated-: *"... However the Tribunal was concerned that the lease did not entitle the Respondent to charge company secretary fees, insurance premiums and management fees. 21. The Respondent argued that Part VI of the Schedule to the lease entitled it to make those charges. Mr Godbold considered that the Respondent was entitled to make those charges. The Tribunal disagreed. In the absence of specific clauses in the lease entitling the Respondent to charge for management fees and company secretarial services it considered that the Respondent was not entitled to charge these to the service charge account although the Applicant may be liable as a director of the company..."*

25. Mr Heimann referred to clause 7 of the lease, he stated that the costs of running the company should be considered reasonable and payable. It was fair and logical that the need for insurance for directors and officers must have been contemplated by the parties to the lease.

26. The Tribunal were referred to clause (4) of the lease which states-: " *...The company has been incorporated with the object(inter alia) of providing certain services to and for the Lessees of the said flats."*

27. Mr Lewin asserted on behalf of the Respondent that the Tribunal had been wrong in reaching its earlier decision.

28. In respect of other charges such as £600.00 paid to the managing agents as set up fees when OCK Chartered Surveyors were appointed, this had been agreed with two directors of the company. The other management charges were for managing the premises capped at £225.00 per flat

29. Mr Abumujor stated that the Applicant was also concerned about the costs of auditing and accountancy in the sum of £780.00. He referred to an earlier decision of the Tribunal in which the sum of £300.00 was found to be reasonable and payable for the costs of auditing and accountancy. Mr Heimann acknowledged that this sum was higher than usual; this was in part reflective of the need to align the accounts to the accounting year in the lease. However he stated that the costs of accounting and auditing in the sum of £350.00 had been charged for the year ending 2016; the Applicant's share of this was 1/12.

30. The final amount in dispute related to the major works. Mrs Gilkes in her Application before the Tribunal had stated that a Determination was sought in respect of Major/Future works in the sum of£6250 although there was reference to the sum of £6000.00 which was the discount that the Applicant had given to the purchaser as a result of concerns they raised about the future cost of major work.

31. The issue was "... *whether the major or future work charge represented in the 2015 service charge was reasonable and payable in light of the Tribunal decision on major works in 2014...as settled in the amount of £3,750.00."*

32. In the Applicant's schedule of disputed items they stated that the sum of £6250.00 was disputed in relation to major works.

33. Mr Abumujor referred to the decision relating to the major works. In the decision of Judge Robson dated 24 July 2014, the Tribunal were asked to determine the reasonable estimated sum on account of contemplated major works. Judge Robson determined that £3750.00 was payable. However in the *Buyers Leasehold Information Summary*:

at point 4.6 the questionnaire asked "... *Does a Reserve Fund apply to the Managed Area?*" The managing agent replied "*No*" " *But £3750.00 has been paid by the previous Lessee toward the decoration work*" In answer to the question of whether this was considered sufficient to cover the Section 20 expenditure, the reply was in the negative, at 4.6.3 stated " *the cost per flat is in the region of £9,000-£10,000.*"

34. The Tribunal were also referred to an email dated 10 November 2015 from Hillei Broder of OCK Chartered Surveyor, to Tony Kourmourou of Knights Group. In this email, Hillei Broder stated -: "*...As explained we have only just completed the schedule of work and have not gone out to tender. I have calculated a budget figure only which cannot be relied upon and has to be treated as such ... Each flat pays 1/12 of the cost which amounts to £6250.00...*"

35. It was Mrs Gilkes case that as a result of the statement in the *Buyer's information*; she had been forced to reduce the asking price for her flat by £6000.00, Mrs Gilkes appeared to be under the impression that at that stage had she failed to reduce the price, then she would have been in breach of contract.

36. The Tribunal noted that at that time no contract had existed, as a contract would imply that the price had already been set. The issue was whether the sum of £6250.00 could be considered to be for major works, and whether the reduction of the sum payable by the purchaser could be considered as a service charge for major works.

37. It was Mrs Gilkes contention that she had to reduce her sale price to cover the costs that the Respondent had indicated were likely to be incurred as major works. On her behalf Mr Abumujor stated that no major work had been carried out at all up until the point of sale. As a result she had not benefitted from the major work.

38. At the hearing, and in the bundle, it was stated that the Respondent did not know where the Applicant's figure for the major works in the sum of £6250 had come from, However, it was clear to the Tribunal that the figure had come from this letter. The Applicant contended that as a result of this information, the purchaser had asked for a discount on the agreed sale price for the premises to reflect the "additional sum" over and above the £3750.00 which had been paid by the Applicant as her contribution towards the costs of the major work.

39. In a letter dated 13 November 2015, Antony Koumourou Sales Director of Knights Residential had written to Mrs Gilkes stating-: " ... *the buyers are now only happy to proceed with a reduced amount of £6,000 (six thousand pounds) on the purchase price in order to exchange contracts.*"

40. Mr Heimann stated that he wanted to clarify the actual sum paid by Mrs Gilkes prior to the landlord agreeing to the assignment of the lease. He referred the Tribunal to an email of 30 November 2015 in which the Respondent noted that Mrs Gilkes had said the sum of £7461.32 had been paid by her mortgage lender which represented an overpayment of £2031.03 as the sum of £5379.98 was the amount outstanding. Mr Heimann stated that Mrs Gilkes had yet to give instructions for how this money was to be repaid; it was therefore still held by the managing agents.

41. In respect of the sums for the period 2014, Mr Heimann stated that the Applicant had only been charged £759.50 as the Applicant's service charge contribution had been capped at this sum by reference to the Tribunal decision dated 24 July 2014.

42. The Tribunal noted that the Applicant in her application had sought reimbursement of her fees and had made an application under section 20 C. In reply Mr Heimann stated that Mrs Gilkes ought to be considered a vexatious litigant as she had made multiple applications to the Tribunal and had not recovered anything.Accordingly she ought to bear the costs of this application and ought not to have an order under section 20C.

43. Mr Abumujor refuted this and referred to the previous decisions of the Tribunal; it was the Respondent's failure to implement the decision which had led to this application and the fact that the sum claimed for service charges for major works and the other sums were excessive that had led to this application being made.

44. The Tribunal queried the provisions in the lease which provided for legal costs to be paid by the leaseholders; the Tribunal noted that unless there was an express term in the lease then the legal costs could not be recovered as service charges.

The tribunal's decision

45. The tribunal having carefully considered the submissions of both parties and the documentary evidence finds that in respect of the service charges for 2014, the reasonable sum payable is £759.50 as the Applicant's service charge contribution had been capped at this sum by reference to the Tribunal decision dated 24 July 2014.

46. In respect of the service charges for 2015, the Tribunal finds the sums challenged by the Applicant in respect of cleaning and gardening, are reasonable and payable. The Tribunal noted the evidence of Mr Heimann that there had been problems in respect of the cleaning in the

past and that since taking over and changing the cleaning the problems have been resolved. The Tribunal noted that there was no evidence of on-going problems in respect of the cleaning. The Tribunal also noted the photographs of the garden and the extensive photographs that had been taken as part of the condition survey dated 11 May 2015.

47. The Tribunal finds that although the garden was not perfect it was kept to a reasonable standard. The Tribunal therefore find that the sums payable for gardening were reasonable.

48. The Tribunal noted that repairs had been carried out at the property in respect of the drains, which had also been the subject of a Tribunal determination (LON/00AP/LSC/0470). In this decision the Tribunal had found that the sum of £3450.00 was reasonable and payable for works to the drains. Although this sum was determined as reasonable and payable, in the decision of Judge Hewitt it was noted that the work carried out was not as extensive as had first been envisaged.

49. The Tribunal noted that the most recent condition survey noted at 13.1 that a CCTV Survey of the drains internal rainwater pipes and soil vent ought to be undertaken, The Tribunal noted that the cost of the drain work for the period 2015 was supported by invoices, accordingly in the absence of proof that the work was not carried out or was carried out unnecessarily the Tribunal finds that the sums paid for the repairs was reasonable and payable.

50. The Tribunal noted that the costs of the survey were included under the heading of a repair. The Tribunal having had sight of this survey finds that the sum incurred was reasonably incurred.

51. The Tribunal noted that in the Tribunal's decision, LON/00AP/LSC/2010/0854, it was found that there was no specific clause that enabled service charges to be made in respect of the costs associated with running the company; this includes the directors insurance. Accordingly in applying this principle, the Tribunal also finds that the sum charged for Directors insurance, and management fees, is not reasonable and payable as currently there is no provision in the lease for these fees and in accordance with the previous decisions of the Tribunal these sums are not payable.

52. The Tribunal has had no evidence which undermines the reasonableness of the sum charged for auditing and accounts and accordingly finds the sums charged by the Respondent to be reasonable and payable.

53. The Tribunal does not have jurisdiction in respect of the sum set out in the Buyer's enquiry as major work. However the Tribunal has taken

some time to set out the evidence in a manner which it hopes will assist both parties.

54. The Tribunal noted that Mrs Gilkes was aggrieved (not without some justification) that the Respondent, notwithstanding a decision that the sum of £3750.00 was reasonable and payable for major works had not carried out the works. This meant that Mrs Gilkes did not have the benefit of the works which may have enhanced the value of her property.

55. The Respondent had also replied to a buyer's enquiry that the cost of the work might well be in the region of another £6250.00. However the Tribunal noted that it was part of their responsibility to be cautious when undertaking such an assessment. The Tribunal noted that as a result of this information the buyer's solicitor approached Mrs Gilkes solicitor for a further discount.

56. The Tribunal in the bundle had sight of an email from Ingram Winter Green LLP (whom the Tribunal presume to be the solicitors for purchaser) in relation to the sale of the property. In response to a request from Mr Abumujor the solicitors' state-: *"...It is suggested in your correspondence that pressure was put on the seller following exchange of contracts, for a reduction to reflect this figure {£6250.00},with an allegation that she was in breach of contract. That was not the case. This was an issue raised in the normal course of pre-contract negotiations"*

57. The Tribunal have also seen a copy of a reply to the solicitors, referred to above, from Mrs Gilkes solicitors an email, dated 11.11.2015 from Samantha Burrows of Premier Property Lawyers in which Ms Burrows states on Mrs Gilkes behalf-: *" ...The works have not been commenced and will not be commenced for a while. The works will be for the improvement of the property whilst your client is owner of the property and he will see the increase in the value of the property..."*

58. Accordingly from this correspondence the Tribunal has determined that the decision to reduce the property price was made by Mrs Gilkes in the full knowledge that she did not have to agree as there was no binding contract; accordingly, this decision was made by Mrs Gilkes in circumstances where she was in possession of advice and a decision was made that this was a price worth paying in order to achieve a sale of the property on a timely basis.

59. The Respondent should produce a schedule setting out what has actually been paid by Mrs Gilkes, the reduction due based on the Tribunals finds, and the sum due for service charges. Any surplus should be paid to Mrs Gilkes within 56 days of this decision.

Application under s.20C and refund of fees

60. At the hearing, the Applicant 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 in all the circumstances it is just and equitable for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Name: Judge Daley **Date:** 26 September 2016

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal 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.

2. 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.

3. 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.

4. 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

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 20C

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

(2) The application shall be made—
(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
(aa) in the case of proceedings before a residential property tribunal, to that tribunal;
(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are

taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

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

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

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

Leasehold Valuation Tribunals (Fees) (England) Regulations 2003

Regulation 9

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

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

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,

(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,

(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an

administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

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

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

Schedule 11, paragraph 2

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

Schedule 11, paragraph 5

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

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

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

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

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

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).

Schedule 12, paragraph 10

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

(2) The circumstances are where—

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

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

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

(a) £500, or

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

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