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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AW/LSC/2013/0442**
Property	:	**Flat 89, Sherborne Court, 180 – 186 Cromwell Road, London SW5 0SU**
Applicant	:	**Sherborne Court Management Limited (Landlord)**
Representative	:	**Mr N. Modha of Counsel**
Respondent	:	**Mr P. V. Soni and Mrs B.P, Soni (Leaseholder)**
Representative	:	**Mr Adam Gadd of Counsel**
Type of Application	:	**Section 27A Landlord and Tenant Act 1985 – Service charges (Court transfer)**
Tribunal Members	:	**Mr L. W. G. Robson LLB (Hons)** **Mr H. Geddes JP RIBA MRTPI** **Mr J. Francis QPM**
Date and venue of Hearing	:	**16th September 2013** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**8th October 2013**

DECISION

Decisions of the Tribunal

(1) That the sum of £9,358.34 in respect of service charges for the period from 25th March 2010 to 20th September 2012 is reasonable as demanded (ground rent being outside the Tribunal's jurisdiction).

(2) The Demands sent on 12th September 2013 comply with the legal requirements for such demands. All earlier demands are defective.

(3) The Tribunal made an order for reimbursement by the Respondent of the hearing fee of £190 paid by the Applicant under Regulation 9 of the Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

(4) The Tribunal makes the other determinations as set out under the various headings in this decision.

(5) This case shall now be referred back to the West London County Court to decide upon costs in the County Court action and any other outstanding matters not within the Tribunal's jurisdiction.

The application

1. The Applicant seeks a determination pursuant to Section 27A of the Landlord and Tenant Act 1985 and Schedule 11 of the Commonhold and Leasehold Reform Act 2002 as to the reasonableness of demands made for annual service charges between 25th March 2010, and 20th September 2012 pursuant to the terms of a lease (the Lease) dated 14th September 1979. The Tribunal noted that some items, notably professional fees payable in full by the Respondents, may more properly be described as administration charges pursuant to Schedule 11 of the Commonhold and Leasehold Reform Act 2002, but has made a substantive decision on such items on the basis that it has jurisdiction to do so, without requiring a formal reference to CLRA 2002 to be made.

2. This case was referred to the Tribunal by an order of District Judge Ryan dated 21st May 2013 at the West London County Court in case no. 2YN50601. The Tribunal's directions were given on 5th July 2013, noting that the Respondents' defence raised the following matters:

   a) That no demands for service charges had been made
   b) The Applicants had failed to serve a notice under Section 48 of the Landlord and Tenant Act 1985
   c) Some of the expenditure incurred was not recoverable under the terms of the Lease
   d) Some items of expenditure were unreasonable
   e) Statutory consultation provisions had not been complied with

3. The Directions also noted that the Respondents had applied to give evidence on a video link from Brazil, as they would find it difficult to attend a hearing. The Tribunal refused this request as it had no facilities for such evidence, but fixed the hearing timetable to allow the Respondents reasonable time to arrange to attend.

4. The Applicant made a formal statement of case with relevant documents annexed. The Respondents did not comply with Directions. They neither sent a statement of case nor completed the draft Scott schedule. Their defence in the County Court appeared to be a general form of defence without any specific complaints which the Applicant could answer. However a witness statement was received on 6th September 2013 and they instructed Mr Gadd to appear at the hearing with written legal submissions prepared by the Respondents themselves.

5. Extracts from the relevant legislation are attached as Appendix 1 below.

Hearing

6. Mr Gadd stated that his instructions were to deal with jurisdiction and service of proceedings only. He requested that matters of reasonableness and other matters be adjourned to another day. His clients had not seen the Company's accounts and service charge documents until the bundle arrived the previous week.

7. Mr Modha stated that the Accounts for 2010-12 had been sent in accordance with the Directions on 22nd July. He was surprised that the Respondents had not received them. Mr Gadd then corrected his earlier submission. He stated his client had not said he had not received the accounts. Mr Modha then continued that his client objected to a hearing dealing with only issues relating to service of the demands. The Directions had been made to give the Respondents reasonable time to deal with matters and attend the hearing. The witness statement of 6th September was served only on the 11th September and did not deal with all aspects of the case. There were no specific points made. The Scott Schedule was ignored. The Respondents chose only to deal with technical points. The Applicant's witness statement of 12th September had been used to reply to the witness statement of 6th September.

8. Mr Gadd referred to the Respondent's statement that he had not had time to deal with the matter due to the ultimately fatal shooting of his mother-in-law on 28th July 2013. Mr Modha pointed out that it was now mid-September.

9. The Tribunal adjourned to consider the application to adjourn part of the hearing. When the parties returned the Tribunal stated that it had decided to hear all matters that day. While it had sympathy for the Respondents' loss, it seemed that Mrs Soni's mother had died prior to 5th August 2013. The Directions were clear that the Respondents should make their statement of case by 2nd August, and should have started preparation of their case prior to 28th July. The statement produced on 6th September was very inadequate, particularly since Mr Soni had been legally trained.

10. The Tribunal then considered the late supply of documents. Mr Modha requested that Mr Beasley's witness statement be admitted as it was intended to be a reply to Mr Soni's witness statement. He would not press for Mr Soni's statement to be excluded, but the Tribunal should give consideration to doing so.

11. Mr Gadd stated that the reasons for the lateness of Mr Soni's statement were clear. The matters mentioned there were short and unlikely to be disputed. He accepted that Mr Beazley's statement was in reply, and that Mr Beazley was present to answer questions. He asked the Tribunal to note that Mr Soni had only seen that statement last Friday.

12. The Tribunal again adjourned to consider whether to admit the various late documents. When the parties returned it informed them that it would allow all these documents.

13. Mr Gadd then raised a point on the Tribunal's jurisdiction to hear the case. He submitted that the Tribunal could not determine the case until the Court disposed of the Rule 6.15 application made to it (relating to service of proceedings). Mr Beasley in his statement stated that the application had been made. No order had yet been made.

14. Mr Modha submitted that the case had been transferred to the Tribunal and that no order could be made until it was returned. Further, the Respondents had requested the Transfer to the Tribunal, the Applicant had merely agreed to it. The matter had not been raised at the Directions stage. It was a completely new point. The County Court had sent the case to the Tribunal and the query on jurisdiction was not one for the Tribunal.

15. Mr Gadd submitted that the County Court had no jurisdiction to send the case to the Tribunal if the claim made was defective. The initial proceedings were defective and an application for alternative service had had to be made.

16. Mr Modha submitted that in fact the jurisdiction question had been waived by the Respondent and that the Tribunal had its own jurisdiction. Mr Gadd disputed the question of waiver. He submitted the transfer was defective. He agreed with the Tribunal that the order relating to CPR6.15 and to Transfer were conflicting orders, but by making an application the Applicant had effectively accepted the proceedings were defective. Mr Modha noted that District Judge Ryan had made both orders. If the Court had no jurisdiction, then this Tribunal had no jurisdiction to refer it back. A defective claim could be remedied retrospectively. Everything pointed to the jurisdiction question being dealt with after this Tribunal's decision. The matter was for the County Court to decide.

17. The Tribunal adjourned to consider the matter. When the parties returned it informed them that it had decided to continue with the case. Its reasons were:

a) The Court had transferred the question of reasonableness of the service charges on 10th June, after the decision dated 21st May on the Rule 6.15 point. That decision had been made on 10th May 2013. District Judge Ryan had made both decisions.
b) No challenge on jurisdiction had been made to the Tribunal until today, but the Respondents had requested the transfer to the Tribunal on 14th May after the Court decision relating to Rule 6.15. This appeared to be inconsistent.
c) The Tribunal considered that the cost to the public purse and to the parties was also a relevant factor. Whether or not the Court had been able to refer potentially defective proceedings to the Tribunal was a matter for the Court, not this Tribunal. Referring the matter back to the Court without making a decision would merely increase costs for no discernible advantage. If the Court decided the proceedings were incurably defective then the Tribunal's decision made in those proceedings would have no force. The common sense course was to proceed, and allow the Court to deal with the matter once the case had been referred back to it.

18. It was now 12.45pm. The Tribunal indicated that it would deal with substantive matters in the application after a break for lunch and adjourned. Mr Gadd returned with Mr Modha very shortly afterwards to inform the Tribunal that he had been instructed by his clients not to remain for the rest of the hearing. He only asked to press the points made in the Respondent's submissions and witness statement. Mr Gadd hoped the Tribunal would not see his withdrawal as discourteous. The Tribunal accepted that no discourtesy had been intended by Mr Gadd. Mr Gadd then withdrew.

Applicant's Case

19. When the hearing resumed, Mr Modha clarified the service charge claim. In fact the Ground Rent was paid to a 3rd party, it was merely collected by the Applicant. The claim for service charges and administration charges amounted to £9,358.34 plus costs allowed by the Lease and contractual interest under the Lease. He called Mr Beasley, the Finance Director of C.A. Daw & Son Ltd, the managing agents. He was examined on his witness statement and answered questions from the Tribunal, following points made in Mr Soni's statement.

20. Mr Beasley stated that the Applicant had decided to re-serve the relevant service charge demands. Paper copies had been served that morning at the property. He had copies with him which were handed up to the Tribunal. The only differences were the name of the lessee and the landlord's details to ensure that Section 48 of the Landlord and Tenant Act 1987 was complied with.

21. Mr Beasley stated that he had been in charge of this account since 2004. In reply to Mr Soni's statement that "Mr A. M. Priestley is unknown to me" and that there had been a notice of assignment registered for the Respondents, He stated that Mr Priestley was the previous lessee, to his certain knowledge. He handed up a copy of his mortgagee's enquiry dated 5th February 2013, and he confirmed that no notice of assignment to the

Respondents had been received. Referring to the Respondent's payment record from 2010 onwards, Mr Beasley noted that there had been significant previous arrears, and that the Applicant had obtained an order for sale of the property. The sum of £6,488 received on 29th February 2012 had been put towards that claim, on the basis that it was used to settle the oldest debts first. The Respondents had six payments in 2011 The Tribunal worked through the various claims for costs to satisfy itself that these were properly payable. Some costs on the file had not been to hand when the claim was made.

22. The Tribunal then considered the 2010 and 2011 accounts. Mr Beasley confirmed that they were checked by the Accountant. The reserve fund was a contractually agreed item (p.16 of the Lease). It was treated as a contingent fund, and this was allowed by the terms of the Lease. The estimated service charge was calculated by reference to the costs of previous years, and any proposed major or other large works. He agreed that the documents the lessees received did not clearly show how their contribution related to the whole service charge.

23. Relating to the service of demands, Mr Beasley confirmed that since 2011 the statutory summary of tenants' rights and obligations was always attached. If it had been sent in an electronic form it was part of the file. If sent as a hard copy the summary was attached. He was not certain if this procedure had been used since 25th March 2010, but the previous procedure had been to use a scanner to copy documents into an email. If lessees wanted both electronic and hard copies, they could have them. He confirmed that demands had been served on three dates; the original dates as shown in the particulars of claim for the purposes of claiming interest; the fresh demands made in 2012 (on which no interest was yet calculated), and the demands made on 12th September 2013, in which case there would be no interest.

24. Mr Modha submitted that the original demands were valid. The demands naming A.M. Priestley did not in his view fall foul of Section 196 of the Law of Property Act 1925. If the Respondents had not served a notice of assignment they should not be allowed to profit from their breach of the Lease. Also Mr Soni had asked for them to be sent by email. The Respondents were estopped from relying upon the statute. He accepted that the original demands only named one Respondent, but he considered that this was only relevant to the payment of rent, not service charges. Mr Soni's witness statement made no mention of a failure to supply the statutory notices relating to the service charge. He just had not dealt with it.

25. Relating to compliance of the demands with Section 48, Mr Modha submitted that the Respondents' submission alleged that the address of the landlord had not been provided, but there was no witness evidence to that effect. In reply to the Tribunal's question about this matter as stated at paragraph 11 in the Applicant's skeleton argument, Mr Beasley stated that if a lessee asked for the information it would be provided.

26. On the question of consultation requirements, Mr Beasley gave evidence that no major works or qualifying long term agreements had been charged for in the demands in dispute.

27. Mr Modha submitted that in relation to costs paid for specific items the Lease was quite comprehensive. In particular, professional fees were mentioned.

28. For clarity, the parties' respective legal submissions are summarised below. As the Respondents failed to particularise their case in accordance with Directions, their submissions are stated first.

Respondents' Case

29. A (1) The Rent and Service Charge Demands are not in accordance with Section 166 of the Commonhold and Leasehold Reform Act, or Section 21B of the Landlord and Tenant Act 1985 (i.e. relating to the Summary of Rights and Obligations and Transitional Provision (England) Regulations 2007)
(2) The service charges were not demanded in accordance with the Lease
(3) The Applicants failed to seek the Court's permission to serve proceedings out of the jurisdiction, and other related breaches.

B(1) None of the service charge demands were addressed to the Respondents. They were addressed to "A.M. Priestley c/o Mr Pritesh Soni" with no mention of the Second Respondent.
(2) By virtue of failure to comply with A(1) above, the Respondents are not liable to pay rent or service charges unless a notice is so compliant.
(3) No rent or service charge is due until compliance with the above, thus no interest on such payments, or legal costs are payable.

C(1)Clause 13 of the Lease binds the landlord to follow the rules for service of notices contained in Section 196 of the Law of Property Act 1925
(2) Thus any notices must be served at the last known address of the tenant.
(3) The Applicant knows that the Respondents have never lived at the property, and since 2008 have been emailed confirming that the Respondents live in Brazil. No notices have been served in accordance with Section 196 on the Respondents' residential address in Brazil. Neither the Lease nor statute allow the landlord to contract out of this requirement.

D(1) On 12th September 2013 the Applicant served new amended and backdated rent and service charge demands by email "for the avoidance of doubt", containing statutory notices and a summary of tenant's rights.
D(2) The new demands are basically "doctored" versions of the previous defective demands. This acknowledges that the original demands were defective.

29. In reply the Applicant's skeleton argument submits:
A(1)The Respondents have given no evidence as to the service charge amounts in dispute but contest service and validity of demands

(2) Mr Soni's witness statement was served significantly in breach of Directions. It was emailed to the Tribunal 5 days after it was signed and only 2 working days before the hearing. The Applicant reserved its right to object and seek an adjournment if it was prejudiced in responding to the statement.

B(1)The issues raised in the Defendants Legal Submissions are:

(a) Is there any issue as to service of proceedings?

(b) Have service charges been demanded in accordance with the Lease?

(c) Do the demands comply with Section 21B of the LTA 1985 and Section 166 of CLRA 2002.

C(1) As to B(1)(a) Issues over service of the County Court proceedings have no relevance to this application.

(2) As to B(1)(b) Clause 4(i) of the Lease provides for payment by the lessee of a proportion of an "Annual Maintenance Cost". The proportion is 33/4445 by clause 4(iv). Clause 4(ii) requires reconciliation after 25th March in each year and clause 4(vi) requires payment towards a Reserve Fund.

(3) The accounts for the year ending 25th March 2010 show expenditure of £348,048, resulting in a (collected) surplus of £14,141 which was applied to the Reserve Fund. For the year ending on 25th March 2011 the accounts show expenditure of £377,707 with a surplus of £42,350 for the Reserve Fund, and for the year ending 25th March 2012 expenditure of £428,299 and a deficit of £23,168. There was no doubt that service charges were payable by the Respondents.

(4) The Respondents adduced no evidence on the alleged failure to comply with Section 48 of the LTA 1987 (landlord's address for service of notices)

(5) Service charges were provided by email with summaries in the statutory format in compliance with Section 21B LTA 1985

(6) The initial demands were addressed to Mr A. M. Priestley c/o Mr Pritesh Soni" and served by post at the property and by email to Priteshsn3@googlemail.com. Neither the Respondents nor their predecessor supplied any notice of assignment of the Lease. The Respondents cannot take advantage of their own failures. Mr Soni on behalf of the Respondents requested service by email. The demands specify that the intended recipient is to be Mr Soni. There is no requirement that demands be opened and read by the tenants before they become payable. They were served on the property

(7) The Applicant has complied with Section 196 LPA 1925 because:

(a) The demands are in writing (s.196(1)

(b) There is no requirement to name the Respondents specifically

(c) There is no requirement to serve on any address outside the UK (s.196(3) and (4). The Respondents have notified the Applicant of an alternative address for service within the UK.

(d) The Respondents are estopped from denying service in circumstances in which Mr Soni invited service by email.

D(1)If the initial demands were invalid, fresh demands were served on 12th September 2013, as acknowledged by the Respondents in their submissions. It was denied that the fresh demands were "doctored" versions of previous demands. They were served openly. The Respondents accept that these new demands contain "statutory notices and a summary of tenants' rights. No issue was raised over the content or service of these demands.

E(1) The Respondents have taken technical points in relation to service of the demands while failing to make a case for unreasonableness of charges or quality of services provided. There is no reason for the Respondents to continue to withhold payments.

30. The Tribunal considered the evidence and submissions. Dealing with the Respondents submissions;
(i) the Tribunal found no evidence of failure to serve documents as alleged in 28(A)(1) and (2).
(ii) 28(A)(3) has already been decided by the Tribunal above.
(iii)28(B)(1) was not disputed by the Applicant
(iv) 28(B)(2) and (3) The legal position is not as clear as suggested by the Respondents. Section 196(2) does not even require address by name, but some address by designation (e.g. lessee) or at least generally "to the persons interested" is required. The real test appears in this case to be whether the recipient is prejudiced by an error or omission. The Respondents received the notices. Despite Mr Soni's protestation to the contrary it seems almost incredible that he did not know the name of his predecessor in title, and must have recognised the property address. The notices may therefore be compliant in this respect. However see further below.
(v) 28(C)(1) is not seriously in dispute.
(vi) 28(C)(2) and (3) proceed on a mistaken view of Section 196, i.e that notices can only be served by post. Section 196(3) provides:
"Any notice required or authorised by this Act to be served shall be sufficiently served if it is left at the last known place of abode or business in the United Kingdom of the lessee... or in the case of a notice required or authorised to be served on a lessee or mortgagor, is affixed or left for him on the land or any house or building comprised in the lease or mortgage..."

Section 196(4) makes similar provisions for service by post. Thus the Respondent's submissions are misguided.
(vii) 28(D)(1) is not disputed
(viii) 28(D)(2) The service of fresh notices may suggest doubt, but of itself is not an admission that the initial notices were invalid.

31. Turning to the Applicant's submissions:
29(A)(1) – The Tribunal decided that the Respondents had only effectively contested service and validity of the demands. Apart from some very general assertions there was no evidence to support the Respondents objections to the reasonableness of the service charges.
(2) The Tribunal did not consider that either party had been prejudiced by acceptance of Mr Soni's witness statement. It was relatively brief and raised no significant new issues.
B(1(a) and C((1) - This matter has already been decided by the Tribunal above.
(b) and C(2) – The Tribunal decided that the Lease provisions satisfactorily covered the individual items of expenditure charged for. After some examination the Tribunal decided that the supporting accounts were sufficient, although if a more detailed challenge had been made, the Applicant might have struggled to convince the Tribunal that the accounts

were adequate. The Applicant might usefully consider producing a short summary demonstrating how the total service charge figure for the estate is broken down to arrive at the tenant's proportion, which is standard practice in the industry.
(c) (and C(5) Section 166 is not relevant to service charges. Section 21B effectively requires any service charge demand to contain a Summary of the Tenant's rights and obligations. The copy demands appended to the County Court Claim did not show the Summary. The Respondents denied that the summary was attached to the demands. Mr Beasley believed they would have been there, but was slightly vague on the point. The further copy demands in the bundle served in 2012 also did not show the Summary, although by then the Applicant should have been aware that the demands were likely to scrutinised in proceedings. The demands served on 12th September 2012 did show the Summary, and even the Respondents acknowledged this. The Tribunal was not satisfied on the balance of probabilities that the demands prior to the 12th September 2013 were valid. The Respondents succeed on that point, thus no claim for contractual interest prior to 12th September is appropriate. The Applicants made the point that the issue was not further canvassed in Mr Soni's statement, but once a point has been clearly raised, the Tribunal should deal with it.

(4) Section 48 of the LTA 1987 (landlord's address for service of notices) – The Tribunal noted that the service charge demands were not made by the landlord. The terms of the Lease required the demands to be made by the Management Company. However, any demand which included ground rent would require details of the landlord. It is an uncertain point as to whether the Management Company is obliged to provide its address for service of notices relating to service charges. Perhaps the better view is that it should. However, the Respondents raised no point against the Applicant on this issue, and so it does not need to be decided.

(6) The initial demands were addressed to Mr A. M. Priestley c/o Mr Pritesh Soni" and served by post at the property and by email to Priteshsn3@googlemail.com. The demands sent on 12th September 2013 correctly described the Respondents. However the Tribunal did not consider that the initial demands were defective by using the name of the registered lessee. It agreed that the Respondents cannot take advantage of their own failures. However in the light of the Tribunal's finding on the question of Summaries, this does not affect the invalidity of the earlier notices.

(7) The Tribunal has already stated its decision on the effect of Section 196 of the LPA 1925. However this does not validate the earlier notices for the reasons noted above.

D(1) The Tribunal has already considered in detail and decided upon the validity of the various notices. Little more need be said, but it is correct that the Respondents accepted in writing that the latest demands contained "statutory notices and a summary of tenants' rights" and no issue was raised over the content or service of these demands.

E(1) The Tribunal is satisfied that the notices served on 12th September 2013 were valid, and that the sums incurred were demanded in accordance with the terms of the Lease and any relevant statutes. The sum of £9,358.34 is now due and owing.

32. For completeness, the Tribunal considered that a general challenge had been made by the Respondents to the service charges on the basis of lack of consultation, although the matter appeared not to have been further elaborated or argued. The Tribunal could see nothing in the accounts which suggested charges requiring Section 20 consultation had been demanded. It thus accepted Mr Beasley's evidence on that point.

Costs and Fees

33.
The Tribunal considered that no Section 20C application had been made.

34. At the hearing the Applicant made an application for reimbursement by the Respondents of the Applicant's fees payable to the Tribunal, totalling £190 under Regulation 9 of the Leasehold Valuation Tribunals (Fees)(England) Regulations 2003. The Tribunal exercised its discretion and granted this application. While the Respondents had been successful on one point, they had put the Applicant to a great deal of unnecessary trouble and expense raising many technical and other points without any supporting evidence.

Chairman: L. W. G. Robson LLB (Hons)
Tribunal Judge

Signed: Lancelot Robson
Dated: 8th October 2013

Appendix 1

Landlord & 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.

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).

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.

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).
