10785

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AG/LSC/2014/0622**
Property	:	**Flat 5, 111-113 Hampstead Road, London NW1 3EE**
Applicant	:	**Mr M Lal**
Representative	:	**Mr Green, agent for Brady Solicitors, Nottingham**
Respondent	:	**Mr S-O Rajagopal Simdra Pather and Ms Renulka Devi Apm Vadivelu**
Representative	:	**Ms Rajagopal**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Tribunal Judge Richard Percival** **Ms S Coughlin MCIEH** **Mrs L West**
Date and venue of Hearing	:	**27 April 2015** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**8 June 2015**

DECISION

The application

1. The applicant seeks and following a transfer from the County Court the Tribunal is required to make a determination under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether service charges are payable and, under Schedule 11 to the Commonhold and Leasehold Reform Act 2002, as to whether administration charges are payable.

2. The service and administration charges in issue are those for the years 2008 to 2014, as set out in the Applicant's "clarification of period of service charges claimed" at page 131 of the bundle. For convenience, we refer throughout to "service charges", which includes "administration charges", to the extent that the issue of administration charges arose.

3. Proceedings were originally issued in County Court at Nottingham under claim number A0XV5199. The claim was transferred to this Tribunal, by order of District Judge Hale on 27 November 2014.

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

The hearing

5. The Applicant was represented by Mr Green, a solicitor agent for the Applicant's solicitors. Ms Rajagopal appeared for the Respondent. Ms Rajagopal is the daughter of the leaseholders, who are resident overseas. She has resided in the flat for the period under consideration. She represented her parents, the Respondents, and gave evidence for them.

The background

6. Flat 5 is one of six flats in a five storey development, built or converted by a company from whom the original lease was held. The lease was granted in 2001. No inspection was necessary.

7. The corporate and ownership structure within which the freehold is held only became apparent towards the end of the hearing. It is, however, helpful to set it out at this point in our decision. The freehold is held by a company called Macneel and Partners Limited. Mr Lal and his sister each own 50% of the shares in this company. It appears that the company owns the freehold of commercial premises included within or associated with the building, as well as the flats. Macneel leases all of the building except the commercial premises to Mr Lal and his sister jointly, as individuals. It is from them that the Respondents hold their lease. In addition, long leases of flats 1 to 4 have been granted

to Mr Lal's sister. She in turn lets those flats out on short assured shorthold tenancies.

8. The Respondents hold a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

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

   (i) Whether service charge demands had been accompanied by a valid summary of rights and obligations as required by the Service Charges (Summary of Rights and Obligations, and Transitional Provision)(England) Regulations 2007 ("the 2007 Regulations") and whether section 47 of the Landlord and Tenant Act 1987 ("the 1987 Act") had been complied with.

   (ii) Whether the parties had come to an agreement in 2010 settling the disputes between them. At a very late stage in proceedings, a consent order appeared relevant to this issue.

   (iii) Whether the arrangements for cleaning the common parts amounted to a qualifying long term agreement (1985 Act, section 20ZA(2)), and if so whether the requisite consultation process had been undertaken in accordance with section 20 of the same Act.

   (iv) The payability and reasonableness of the service charge relating to the cleaning of the common parts;

   (v) The payability and reasonableness of the service charge relating to maintenance costs;

   (vi) The payability and reasonableness of the service charge relating to management costs; and

   (vii) The reasonableness of the service charge relating to interest owed on arrears.

Procedure and evidence

10. The Tribunal considered each of these issues in turn, where necessary hearing evidence from Mr Lal and Ms Rajagopal, and submissions from Mr Green for the Applicant and Ms Rajagopal.

11. To some degree, the issues before us required us to choose between the competing evidence of Mr Lal and Ms Rajagopal. It is therefore convenient to set out our general conclusions on their credibility.

12. Mr Lal was inconsistent and evasive. Ms Rajagopal, by contrast, we found to be a straightforward, clear and honest witness. It follows that, when guided only by the credibility of the witnesses, we preferred the evidence of Ms Rajagopal to that of Mr Lal.

Statements of rights and obligations/section 47 of the 1987 Act

13. The Applicant maintained that the service charge demands had been accompanied by the summary of rights and obligations required by the Regulations. He produced (at pages 47 to 63 and page 367 of the bundle) copies of the service charge demands from 2008 to 2014, in each case with a copy of the summary. The demands for 2008 to 2013 were in the same form. In two of the five cases, the period covered was wrongly recorded.

14. In his evidence, Mr Lal said that the service charge demands were both emailed and sent by post. The summary was not included in the emailed version of the demands, but was included in those posted to the leaseholders. Cross examined by Ms Rajagopal, Mr Lal said that the other leaseholders had not been sent the summary because "they did not need it". We took Mr Lal to be referring not just to the other leaseholders in the property relating to this case, but also to other leaseholders within his wider portfolio, when he referred to "leaseholders" in general. He started sending the summaries to the Respondents in 2010, or possibly 2009, it only being his practice to include the summary if a leaseholder objected to not getting it. When Ms Rajagopal asked why, in the bundle, the summaries were attached to earlier demands, he said that he had "backdated it". He elucidated this as meaning that he sent an additional copy of the earlier demands with the summary attached, but without changing the date on the demand.

15. Asked by the Tribunal if he was aware that it was a legal requirement to send the summaries with service charge demands, Mr Lal said that he was, and repeated that he did not send the summary if it was "not an issue". He appeared baffled by the suggestion that he should adhere to the law when not requested to do so by a leaseholder.

16. In her evidence, Ms Rajagopal said that she had received the demands both by email and by post, and they were identical in form between the two media. Neither had a summary attached.

17. The Landlord's address appeared on the copies of the demands in the bundle. Ms Rajagopal said that the address did not appear on the

emailed versions, but sometimes the postal version was printed on headed paper that did include the address.

18. In cross-examination, Ms Rajagopal said that she had only received the 2014 demand by email. She said that she was copied into the emails, which were addressed to her parents in Malaysia. She agreed that it was possible that the 2014 demand had also been posted, and been lost in the post. She agreed that she had not gone into the same detail in relation to 2014 in her witness statement (Mr Green referred her to paragraph 11, on page 396 of the bundle).

19. At this point, Ms Rajagopal said that she had copies of the demands sent by post, and asked us if we wanted to see them. Mr Green objected that, if they were to be received in evidence, they should have been exhibited to Ms Rajagopal's witness statement.

20. We asked Mr Green in what way the Applicant would be prejudiced by the reception of the copies. He said that he had been deprived of taking proper instructions, and might have been able to investigate other reasons why the summaries were not with the demands. He could, for instance, have considered who else has access to the area where the post was delivered, how secure it was and so forth. He confirmed that his instructions from Mr Lal were that the summaries were included as separate sheets, not attached to the demands, but in the same envelopes.

21. We said we would view the evidence provisionally, and come to a conclusion as to whether to formally admit it in due course. Some of the demands were in original or recycled envelopes, and none included or had attached the summary.

22. We have decided not to admit the evidence, which should, as Mr Green maintained, have been exhibited. We remark that, had we received them, they would not have assisted us in our decision one way or the other.

23. In submissions, Mr Green said that, even if the summaries were not attached, the effect would be only to suspend the requirement to pay the service charge until such time as they were provided. At the latest, they were provided on 26 March 2015, the date of the Applicant's witness statement in which the demands were exhibited.

24. Ms Rajagopal was not able to assist the Tribunal with submissions on the law.

25. The evidence amounts to a simple conflict between the witnesses. We do not think that his documentary evidence, in the form of the exhibited demands with copies of the summary, assists Mr Lal to any

great degree. It was only in cross-examination that he admitted that he had not, in fact, included summaries with the earlier demands, as the witness statement and exhibits appeared to show, because non-receipt had not been "an issue" before 2010. Quite apart from our general preference for Ms Rajagopal's evidence, in the event of conflict, it challenges plausibility that Mr Lal would have efficiently discriminated in including a copy of the summary in the demand sent to those leaseholders who required one and not to others.

26. ***Decision***: The Tribunal prefers the evidence of Ms Rajagopal to that of Mr Lal, and finds that the summary of rights and obligations required by the 2007 Regulations did not accompany service charge demands. However, we accept Mr Green's submission as to the effect of this omission. The obligation on the Respondents to pay the service charge was suspended, but that suspension was lifted by the inclusion of the demands with copies of the summary in the bundle served on the Respondent on 26 March 2015.

27. We make no separate finding in respect of section 47 of the 1987 Act. The effect of a failure to comply with this obligation, if there was one, would be the same as that in respect of the summary of rights and obligations.

The 2010 agreement

28. The Respondents argued that the parties had reached an agreement in 2010, at a point where the Applicant was taking proceedings against the Respondents in the county court. The contention, as argued before us, rested on an exchange of emails and on a county court order requiring a response from the Applicant to a letter from the court by a certain time, failing which the claim and counter-claim would be struck out without further order. That order was dated 30 March 2010. In argument, it appeared to be accepted by both parties that no further steps had, in fact, been taken after that date.

29. However, at a late point during the hearing, during the course of a brief adjournment to allow Mr Green to clarify another matter with Mr Lal, Mr Green became aware from his professional client (he was acting as an agent for Nottingham solicitors) that, in fact, there had been an earlier consent order in the same proceedings (dated 26 February 2010). Mr Green received a copy of the order by email during the hearing, and it is available to the Tribunal as a photograph taken on one of our electronic devices of the image on Mr Green's computer screen. It became apparent that Ms Rajagopal was unaware of the consent order, which was signed by her parents. Mr Lal was aware of it, and had signed it himself.

30. The county court claim related to the service charge (and ground rent) for the years 2007 and 2008, including, apparently, accrued arrears and amounted to £2,412.40 (plus interest).

31. The email exchanges start with a "without prejudice" communication from the Applicant offering to withdraw his claim if the Respondents were prepared to withdraw their counter-claim (we were provided with no details of the counter-claim). In response, the Respondents raised the then current service charge demand. The Applicant responded saying "once you request the court to withdraw your claim, then the bill will be amended for the fresh start". The Respondents replied on the same day (27 January 2010), requesting "the bill". The following day, the Applicant emailed as follows:

> "Please find enclosed the bill and accounts enclosures. The receipts have been given to your daughter.
>
> As mentioned in my email, our claim at county court for outstanding monies will be withdrawn once your counter claim is withdrawn. Please confirm that you are agreeable to this and please pay the balance £1,596.18 by return"

32. As we have said, the consent order was dated 26 February 2010. It was agreed that in 2010, the Respondents had paid £1,246.13 towards the service charge. It was further agreed that £350 of the figure of £1,596.18 represented the ground rent owed at that point (and paid), and which is excluded from the table set out in the bundle at page 131 which relates only to the service charge within our jurisdiction.

33. The consent order is in these terms:

> "The parties to these proceedings having reached mutual terms of settlement of their differences in this matter agree to the disposal of this action as follows.
>
> It is ordered by consent that:
>
> 1. The case is discontinued.
>
> 2. The counterclaim is discontinued.
>
> 3. No order as to costs."

34. At the point at which it had been argued, Mr Green had addressed arguments to us on the basis of the assumed striking out, which became irrelevant after the discovery of the consent order.

35. As to whether there had been a general agreement to settle matters on the basis of the email exchange and the payment made, Mr Green made three submissions.

36. First, he submitted that the email exchange on its own was not sufficiently certain to constitute a binding agreement. The certainty required for a contract was not present.

37. Secondly, he submitted that the Applicant's final email ended with a request that the Respondents "confirm that you are agreeable", and there is no email responding and so confirming.

38. Thirdly, the agreement, if agreement there was, was to pay £1,246.*18* in service charge (that is, the figure from the email, minus the £350 in ground rent). In fact, the payment had been £1,246.*13*.

39. After the discovery of the consent order, Mr Green submitted that the order itself was limited to 2007 and 2008. He further submitted that there was still insufficient certainty to constitute any more general agreement.

40. The email exchange is clear evidence that the parties engaged in a negotiation, the objective of which was to reach a "fresh start". It is also clear that the objective was to settle matters up to the point of negotiation, not confined to the subject matter of the county court action. While it is true that there is before us no final email confirming the terms set out in the email quoted at paragraph 31 above, the emails obviously do not constitute the sum total of communications between the parties (excluding, for instance, the mechanics of drawing up and signing the consent order), and the making of the consent order and the payment are clear evidence that agreement was, in fact, reached.

41. We reject Mr Green's argument that there was insufficient certainty. The terms of the agreement were that both parties would discontinue claim and counterclaim and that the Respondents would pay the agreed amount in settlement of the dispute between them.

42. We did not consider detailed submissions on what was covered by the consent order itself (Mr Green submitted that the order was confined to the service charge for the years which featured in the pleadings, that is 2007 and 2008). Nor are we in a position to throw light on the relationship between the consent order and the later order. However, our conclusion is that a broader agreement was clearly reached, of which the consent order formed a part, but only a part (cf the recital therein that "the parties to these proceedings having reached mutual terms of settlement of their differences ...").

43. Mr Green expressed some incredulity that he was making his third submission, and with that reaction we concur. The difference of 5p between the two sums cannot possibly be accorded significance.

44. The agreement in 2010 was based on the prospective service charge for the year 2010. It was made during the early part of the year. The outturn from that year exceeded the interim figure by £92.99. We consider that the agreement must have been made on the assumption that any excess would be payable by the Respondent.

45. The immediate context of the discovery of the consent order was a dispute as to whether a sum of £590 was payable as legal costs. The sum being first demanded in 2009 (see page 51 of the bundle), if falls within the remit of the agreement.

46. ***Decision***: The parties agreed in 2010 to settle the Respondent's indebtedness in respect of the service charge. No service charge for any period before 1 January 2011 is payable by the Respondent, except the sum of £92.99, representing the excess over budget for 2010.

The cleaning: a qualifying long term agreement?

47. The Respondent contended that the cleaning was a qualifying long term agreement for the purposes of section 20 of the 1985 Act, and accordingly was subject to the consultation requirements set out in that section and the associated regulations.

48. It was not contested that if the cleaning contract was a qualifying long term agreement, the formalities required under section 20 had not been complied with. The Applicant's case was that it was not such an agreement.

49. Mr Lal gave evidence. There was no formal contract with the cleaners, although the same provider had been engaged for a number of years. Cleaning was undertaken every two weeks. Mr Lal paid on a similar basis, every two weeks. While it was true that the invoices provided in the bundle were issued annually that was merely a matter of accounting convenience (pages 94, 101, 112 and 119 for 2009 to 2012).

50. In cross-examination, Mr Lal denied that he had a long term contract with the cleaner. The cleaner was a "one-man band". He regularly monitored the quality of the cleaning, but there was no written schedule setting out what was to be done. He agreed that Ms Rajagopal had suggested an alternative cleaner, but the company concerned was more expensive.

51. In submissions, Ms Rajagopal suggested that the invoices indicated a long term relationship, which must have constituted a contract.

52. In response, Mr Green submitted that it was clearly an on-going but ad hoc arrangement, not governed by a long term contract and accordingly not constituting a qualifying long term agreement.

53. We accept Mr Green's submissions.

54. ***Decision***: The arrangements for the cleaning of the common parts did not constitute a long term qualifying agreement for the purposes of section 20 of the 1985 Act.

The reasonableness of the service charge in relation to the cleaning of the common parts

55. The Respondent challenged the quality of the cleaning undertaken.

56. Mr Lal, in evidence, defended the quality of the cleaning. He described the routine cleaning undertaken, and the extent of the common parts – carpeted stairs and corridors. He said that he inspected the cleaning when he visited every two weeks. During the course of his evidence, it became clear that, although he visited every two weeks and the cleaning took place every two weeks, the two did not coincide. He said that he attended the property anyway for other reasons. He had not had occasion to withhold payment, and the cleaning did not in general raise problems.

57. In cross-examination, Ms Rajagopal put to him that the three tenants of one of the assured shorthold flats had stated that the cleaning of the communal areas was inadequate. He was referred to one signed witness statement supplied at page 397 of the bundle, and two further unsigned witness statements, all appended to Ms Rajagopal's own witness statement. He suggested that the tenants had confused the common parts and their own flat, and, being friendly with Ms Rajagopal, were trying to help her out. He agreed that Ms Rajagopal had emailed him about the quality of the cleaning "once or twice", but he had not had occasion to take any action.

58. Ms Rajagopal's evidence was that she rarely saw the cleaners, and the common parts were frequently damp, dusty and smelly. Rubbish and old furniture were frequently left in the corridors. She also stated that the phone number on the cleaning invoices was not active as she had tried to contact the cleaner on that number. In cross-examination, she agreed that the signed witness statement and the two unsigned statements were in identical terms. One of the tenants had prepared the statements and the other two had agreed with them. We interject that most of the statements did not concern the cleaning of the common parts. She also agreed that there was no sustained body of correspondence with Mr Lal concerning the quality of the cleaning or things left in the corridors. When it was put to her that the problems were with other tenants, not the quality of the cleaning, she responded that there was a lack of maintenance or supervision.

59. Some photographs were supplied. One showed a sofa in the corridor. The photocopied copies available to the Tribunal were of insufficient quality to allow us to come to an independent conclusion on the quality of the cleaning.

60. The Tribunal concludes that there may well have been problems, both with the quality of the cleaning and with the conduct of the tenants of the other flats. However, we are unable to conclude that the claims were made for cleaning that was not being done at all; or that the cost of the cleaning that Mr Lal claimed was excessive. In the light of that conclusion, it cannot be said that the charges made were excessive or unreasonable.

61. ***Decision***: The Tribunal does not find that the quality of the cleaning was such as to render the charge made in respect of cleaning in the service charge unreasonable.

Maintenance

62. The Respondent made a number of complaints about the charges for maintenance in the service charge. These included various items in relation to the front door and expenditure on light bulbs. After explanations were forthcoming from the Applicant, Ms Rajagopal did not persist with specific objections to these items. In any event, most related to the period prior to 2011, and were thus covered by the agreement we found above.

63. However, there was a dispute about the construction of a new cabinet in the common hallway.

64. Mr Lal's evidence was that the cupboard was used to store cleaning equipment for the cleaner responsible for the common parts. He used other cleaners to clean the assured shorthold flats between lettings, and they did not store things in the cupboard. Asked by the Tribunal what was in the cupboard, he mentioned a vacuum cleaner, buckets and a steam cleaner. He agreed that the cleaning of the common parts did not require a steam cleaner, and that the cleaning of the assured shorthold flats might do, but, on no very clear basis, continued to insist that the steam cleaner was not used for the other flats.

65. The Tribunal concluded that it was highly likely that the cupboard was used for equipment used in both the common parts and for the assured shorthold flats (for our conclusions as to Mr Lal's likely involvement in management of the assured shorthold flats, see paragraph 78 below). The cost should therefore be shared between the landlord of the assured shorthold flats and the leasehold flats, and the Respondent charged accordingly. The appropriate division is two thirds for the four assured shorthold flats and one third for the leasehold flats.

66. ***Decision***: The total cost of the construction of a cabinet charged as maintenance in 2012 should be divided such that one-third is attributable to the leasehold flats, and the amount charged to the Respondent calculated accordingly.

Management

67. The Respondent contested the charges attributable to management by the Applicant.

68. The starting point for the calculation of the fees charged in relation to management is a decision of the predecessor to this Tribunal in 2005. In that decision (LON/00AG/LIS/2005/0059, decision 27 October 2005), in which the leaseholders of flats 5 and 6 were the Applicants against Mr Lal, the Leasehold Valuation Tribunal disallowed the amount claimed for management and substituted its own calculation based on the actual costs which Mr Lal had incurred. It was that calculation that had been, the Applicant argued, only moderately updated over the years to represent inflation. He did not provide any evidence of his actual management costs for the period before this tribunal.

69. The Tribunal in 2005 considered that it was appropriate for Mr Lal's father, who, it was said, acted as caretaker, to visit the property every fortnight at the same time as the cleaner did so. The Tribunal allowed travelling expenses of £166.40 a year, and £52 for parking (£2 every fortnight). It also allowed a total of £500 annually for office expenses – telephone calls, faxes, postage, stationary, postage and copying.

70. In her evidence, Ms Rajagopal criticised the Applicant for failing to provide any itemisation of the bill for management, and for managing the property inadequately. It was difficult to contact Mr Lal, particularly after hours. She said the Respondents would be happy to pay a reasonable amount if the quality of the management provided was better.

71. In his evidence to us, Mr Lal said that what he did for the management fee was to monitor the cleaners and maintenance and check that the building was safe. That included insuring the building and checking the fire alarms. In answers to the Tribunal, he said he thought that visiting quarterly would not be sufficiently often, as problems could arise more frequently and he could not rely on being informed of them by the tenants.

72. Mr Lal denied that his visits were in any way related to the management of the assured shorthold tenancies. Mr Lal said that a managing agent had been engaged to manage the assured shorthold tenancies. We should mention that it was only during Mr Lal's evidence

on this issue that the corporate/ownership structure outlined in paragraph 7 above became clear.

73. It was shortly after that explanation that Mr Lal, in a revealing episode, referred to the assured shorthold tenants as "*my* tenants". Aware that he had said something wrong, he apologised and, seeking to correct himself, substituted "*our* tenants".

74. In answer to a question from the Tribunal, Mr Lal said he did not know how much parking at the property cost. Ms Rajagopal said that there was a bay allowing free on-street parking for 20 minutes immediately outside the property.

75. Things have changed since our predecessors assessed the reasonableness of the management costs in 2005.

76. In the first instance, technological developments make office administration much cheaper now than it was ten years ago. We consider that £100 a year is ample to cover those costs.

77. Secondly, in the light of Ms Rajagopal's evidence, we disallow any costs for parking.

78. Thirdly, in 2005, Mr Lal's father accompanied the cleaners, and, it appears, had greater caretaking responsibilities. We think that now, one visit a month should be quite enough, provided that Mr Lal makes appropriate arrangements for the leaseholders to contact him when the need arises. Although we are inclined to believe that Mr Lal does, in fact, have at least some responsibility for the management of the assured shorthold tenancies, we do not base this finding on that conclusion.

79. ***Decision***: The management fee currently charged in respect of the property is unreasonable. The reasonable charge would be £186.40 a year. This comprises travelling costs of £86.40 a year, calculated on the same basis as in 2005, but allowing 45p a mile rather than 40p, and £100 office expenses.

Interest

80. Mr Green accepted that, if we found against the Applicant in respect of the inclusion of the copies of the summary of rights and responsibilities, he could not argue for the addition for interest, as allowed in the lease, on sums that, by that finding, were not owed until the copies were provided. We have so found.

81. ***Decision***: Interest is owed under the lease from 26 March 2015.

Application under section 20C of the 1985 Act

82. At the end of the hearing, the Respondent made an application that we should make an order under section 20C of the 1985 Act that any costs incurred by the Applicant in connection with these proceedings should not be taken into account in calculating the service charge.

83. Ms Rajagopal submitted that it had been unfair of the Applicant to make the application in the first place. The Respondent had tried to settle proceedings, and had been open to mediation, but had been rebuffed by the Applicant.

84. The proceedings, she argued, had not been justified in any event, if we accepted her argument in respect of the absence of copies of the summary of rights and obligations.

85. Mr Green argued that the issue of costs would be best dealt with in the county court. He noted that the Respondent had made some concessions, so whatever findings we made, at least some sums would remain outstanding at the conclusion of the proceedings.

86. An application for an order under section 20C is not for an award of costs within the proceedings, but an order as to the treatment in a later service charge of whatever costs fall to be paid, which itself is determined by the nature of the forum concerned and any order made.

87. Although a successful application under section 20C does not necessarily follow when a leaseholder has been successful, the degree of success is part of the circumstances against which such an application should be considered. Before us, the Respondent has been largely successful in respect of the contested matters, which include the more important issues in monetary terms.

88. We broadly accept the submissions made by Ms Rajagopal. Taking into account all the circumstances, including the way in which Mr Lal has conducted himself in these proceedings, we consider it is just and equitable in all the circumstances to allow the application and make the order.

89. The application is allowed, however, only insofar as the costs concerned relate specifically to proceedings before the Tribunal, rather than before the county court.

Name: Tribunal Judge Richard Percival **Date:** 8 June 2015

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -

(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
   (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
   (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
   (a) an amount prescribed by, or determined in accordance with, the regulations, and
   (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with

proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

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

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

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

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

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

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

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

Schedule 11, paragraph 2

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

Schedule 11, paragraph 5

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

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

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

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

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

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

(b) on particular evidence,

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