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		**FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)**
Case reference	:	**LON/00AG/LSC/2015/0201**
Property	:	**Flat 66 Webheath, Netherwood Street, London NW6 2JS**
Applicants	:	**Michael John Kidd**
Representative	:	**None**
Respondent	:	**London Borough of Camden**
Representative	:	**Ms Etienne**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	:	**Judge T Cowen** **Mr Barlow JP FRICS**
Venue of hearing	:	**10 Alfred Place, London WC1E 7LR**
Date of hearing	:	**24 July 2015**

DECISION

Decision of the tribunal

(1) The Tribunal determines that the Applicant would be liable to pay the amount of no more than £15,000 by way of service charges, if incurred by the Respondents, in relation to the works specified in the notice dated 28 April 2014 served under section 20 of the Landlord and Tenant Act 1985.

(2) The Tribunal has decided to make an order under section 20C of the Landlord and Tenant Act 1985 so that the costs incurred by the Respondents in these proceedings are not to be regarded as relevant costs to be taken into account in determining any services charges.

(3) The Tribunal has decided not to make an order for costs under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules").

(4) The reasons for the orders made above are set out in the remainder of this decision.

The application

1. The Property is a two-bedroom flat in a purpose built block of 29 flats. The block is part of a larger estate comprised of 207 properties which share a communal heating system. The Applicant ("the Lessee") is the long leaseholder of the Property. The Respondent ("the Council") is the Applicant's landlord.

2. The Lessee made an application to this Tribunal in May 2015 seeking a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Lessee in respect of major works, namely the proposed replacement of the heating and hot water system. The works have already commenced, but the Lessee has not yet been invoiced in respect of them.

3. The relevant statutory provisions are set out in full in the appendix to this decision. In this case, sections 19, 20 and 27A(1) of the 1985 Act are particularly relevant.

The Leases and the Service Charge Covenants

4. By a lease of 4 October 2004, the Council demised the Property to Mr Mpezo Mpaku ("the Vendor") for a term of 125 years from the date of the lease, at a ground rent. The remainder of the term of the lease was assigned to the Lessee

5. The lease contains covenants requiring the Lessee to pay service charges and schedules specifying the mechanism for calculation and proportions. The items of expenditure for which service charges are recoverable under the lease are defined in paragraph 2 of the Fifth Schedule to include:

> "The cost of periodically inspecting maintaining overhauling repairing and where necessary replacing the whole of the heating and domestic hot water systems … serving the Block…"

6. The Lessee agrees that the service charges in question are recoverable under the terms of the lease, but challenges the payability of the sums in question for the reasons set out below.

7. The lease was assigned to the Lessee on 4 July 2012.

The Section 20 Notice

8. On 28 April 2014, the Council served a notice under section 20 of the Landlord and Tenant Act 1985 which stated the Council's intention to carry out "complete removal and replacement of communal heating and hot water system work". The proposed works were estimated to cost about £2.5 million and to commence in June 2014. The cost to the Lessee was estimated to be about £22,000.

9. There is no allegation that the Council failed to comply properly with the section 20 consultation procedure.

10. In circumstances set out in more detail below, the Council later agreed to cap the Lessee's contribution to the section 20 works at the figure of £15,000. It is that figure which is the subject of the Lessee's challenge before this Tribunal.

Evidence

11. The Tribunal heard evidence from the Lessee. The Council produced witness statements from Sarah Bahadoor and Stephen Platt neither of whom attended the hearing.

The Lessee's Case

12. The Lessee agrees that the works specified in the section 20 notice are necessary and also agrees that that the amount estimated is reasonable for the proposed work. The Lessee does not suggest that the work which has been done so far is not of a reasonable standard.

13. The Lessee's challenge to the payability of the sum specified in the section 20 notice is based solely on his allegation (a) that, at the time he purchased

the assignment of the lease, the Council failed to disclose that the proposed works were being anticipated and (b) that the Council had a duty to do so.

14. The facts relied upon by the Lessee can be summarised as follows

14.1. In early 2012, the Vendor was considering an assignment of the lease to the Lessee.

The Assignment Pack

14.2. On 8 March 2012, the Vendor's solicitors wrote to the Council requesting an assignment pack.

14.3. On 10 April 2012, the Council supplied the Vendor's solicitors with an assignment pack. The assignment pack contained (a) an outline of service charges, (b) a statement that no payments were outstanding or accounts anticipated for major works which were completed or underway, (c) disclosure of one existing section 20 notice relating to "Integrated Reception Systems & Associated Works" for which the Property's estimated liability was £270.08.

14.4. The part of the assignment pack which is relevant for this dispute is the section headed "Future Major Works".

14.5. It contained a table of "current works scheduled at this moment in time" which contained the following information:

Description	Date	Programme cost
External works & redecorations possible	Not yet known	£15,000.00 estimated cost for this flat
Cavity Wall insulation programme	Within 12 months	£250.00 estimated cost for this flat
	SubTotal	£15,250.00

14.6. The note relating to "External works and redecorations possible" contained the following:

> "This flat has not recently received external works or redecorations. It is possible that the flat will be included in a future programme of works over the next five years. The precise cost of the works will depend on what the flat requires, however, external works usually require a budget of £15,000 per flat."

14.7. The text of the assignment pack then continued to state (a) how the £15,000 was calculated as an average and (b) that the Council would conduct statutory consultation before works were done.

Completion

14.8. We know that the Vendor's solicitors showed the Assignment Pack to the Lessee's solicitors. The Lessee told the Tribunal that he understood from the Assignment Pack that he could expect a possible bill for £15,000 for "external work and redecorations" in the next 5 years. He says that he discussed the matter with his solicitor and looked at the exterior of the flat and together they formed the view that it was likely that no external works would be done at all within the next 5 years but that any such works were likely to cost him no more than about £5,000

14.9. On the basis of that understanding and in reliance on the implied representation by the Council that no other works were being contemplated at the time, the Lessee completed the purchase of the property which was assigned to him on 4 July 2012.

Section 20 Notice and subsequent correspondence

14.10. When the Lessee received the section 20 notice in April 2014, he complained that he had not been notified of the possibility of the works at the time he purchased the lease in 2012. The Council responded on 28 May 2014 saying that they had no specific information about a proposal for heating works prior to November 2012 and no cost estimate prior to December 2013. The Council were therefore accepting that they had not disclosed the proposed heating works in the Assignment Pack and were explaining why. The Lessee continued the correspondence and lodged an official complaint. In response to that complaint, the Council wrote on 12 March 2015 and agreed to cap the cost to the Lessee of the heating works at £15,000 and offered him the sum of £50 by way of compensation for his time and trouble. The Council rejected the Lessee's request that the entire cost of the works should be written off. A further letter from the Council dated 31 March 2015 said that the definition of external works in the Assignment Pack includes work to heating systems.

14.11. The Lessee rightly points out that there is a contradiction in the Council's responses as to whether (1) the proposed heating work was not disclosed in the Assignment Pack because it was not anticipated (28 May 2014) or (2) the proposed heating work was included within the definition of external work in the Assignment Pack and therefore was disclosed (31 March 2015).

14.12. This leads to the final part of his case which is an investigation into what the Council did know about the heating at the time of the Assignment Pack.

The Council's Survey of the Heating System

14.13. The following is clear from the documents disclosed by the Council during these proceedings.

14.14. On 13 January 2012, an engineer inspected the communal heating system. He reported (about one month later) that various parts of it were either poor or satisfactory, that they had a remaining life of between 5-10 years and that the cost of replacement would be about £550,000.

14.15. The Lessee says that this means that the Council knew at the time of the Assignment Pack that the replacement of the heating system in the next 5 years was being contemplated and should have been disclosed.

14.16. He rightly points out that the £15,000 estimate in the Assignment Pack for external works and redecoration was in respect of works which were only regarded as "possible" and for which no date had been set. He makes the fair point that the possibility of replacement of the heating system (in the light of the 13 January heating inspection) was just as "possible" at that time, if not more so.

14.17. The actual recommendation to the Council to replace the communal heating system came in an Options Appraisal carried out by the NIFES Consulting Group. There are at least 3 versions of this report. The Lessee had been served with version 3 dated late November 2012. Version 2, dated 27 September 2012, appeared in our hearing bundle. There is no evidence as to the existence or date of version 1. We have no material on which to find that the Council would have seen version 1 before the Assignment Pack.

14.18. The inspection and options appraisal were carried out by outside contractors/consultants. The actual decision to replace the communal heating system was made by the Council at a cabinet meeting on 24 July 2013.

15. Founded on those allegations, the Lessee's case before this Tribunal is as follows:

15.1. As a result of having omitted to disclose that £15,000 of heating system works were being contemplated at the time of the assignment, the Council is estopped from charging that sum to this Lessee; and/or

15.2. The Lessee is entitled to damages against the Council for negligent misstatement which he can set off against the service charges anticipated by the section 20 notice.

The Council's Case

16. The Council denies that the Assignment Pack contained any misstatement or that it contained any express or implied representation that the Lessee would not be charged for heating works in the first five years or at all.

17. They say that the Assignment Pack contained all relevant information which the Council had at the time.

18. They also say that the £15,000 cap was imposed by what is known as "Florrie's Law", a government policy adopted in response to the death of Florence Bourne and enacted into the Social Landlords Mandatory Reduction of Service Charges (England) Directions 2014. Florrie's Law applies a £15,000 cap on service charges to any individual lessee for major works within a 5 year period. It applies only to "costs of repair, maintenance or improvement which have been or are to be undertaken wholly or partly with relevant assistance".

19. At the hearing, the Council confirmed that the Florrie's Law 5 year period would apply to the Lessee as from the date when his contribution to the heating works becomes payable and that, as a gesture, they would not charge him more than a total of £15,000 during that 5 years for any major works. In other words, if he is charged exactly £15,000 for the heating works, then they will not charge him anything within that 5 year period for any other major works (such as external redecoration) and if he is charged less than £15,000 for the heating works, then they will only charge him a maximum of the difference between that sum and £15,000 during the 5 year period for any other works.

20. The content of the witness statements of the Council's witnesses can be summarised as follows:

    20.1. Sarah Bahadoor, Assignment and Sales Principal for the Council: When the Council received the request for the Assignment Pack, the assignments team consulted the contract support team on the question of future works. The contract support team provided an email in which they stated that they we currently conducting a stock condition survey and that external works of an estimated £15,000 were possible. Other programmes of work were specified (as appear on the Assignment Pack), but no mention was made of heating system replacement or repair.

    20.2. Stephen Platt, Planned Works Delivery Manager for the Council: At the time of the Assignment Pack, Camden knew that the heating work was being considered and that a condition survey was undertaken in 2012 "as such a figure was advised after that date within the assignment and sales pack."

The Tribunal's reasoning

21. Considering the evidence first, there was a clear possibility of an inconsistency in the evidence between the two witnesses for the Council. Sarah Bahadoor's evidence was based on an email she had received which seemed to suggest that no heating work was anticipated. Stephen Platt's witness statement seems to be capable of being read to mean that the Council did anticipate heating replacement work at the time and that a

figure was included in the Assignment Pack to reflect that. We appreciate that other possible interpretations could be placed on what are two very short statements That is one of the reasons why it is important for witnesses to attend the Tribunal hearing to answer questions about their evidence. Neither of these witnesses attended the hearing. We therefore cannot place any reliance on their evidence and it would unfair to the Lessee for us to draw anything other than inferences from their evidence adverse to the Council's case.

22. In considering the question whether the Assignment Pack contained a misstatement or an implied representation, the first question is to determine to whom the Assignment Pack was addressed. It is true that the Assignment Pack was requested by and addressed to the Vendor's solicitors, so in a literal sense the statements and any representations contained in it were not made directly to the Lessee. But viewed in its context and with an eye on its purpose, the only reason why the Vendor would have requested such information would be to show to a potential assignee. The Council would therefore have known that anything contained in the Assignment Pack would be seen by potential assignees and that one of them would be likely to enter into an assignment in reliance upon the information contained in it.

23. The next question to address is whether the statements in question in the Assignment Pack were misstatements; in other words, whether they were untrue. There is evidence that, as at 10 April 2012, the Council knew that the heating system had been inspected by an outside contractor and that the contractor had reported that there were parts of the system which were in "poor" condition. The contractor had also reported that the system had a remaining life of 5-10 years. We also have evidence that the Council had not yet taken any decision on the basis of that information other than (possibly) to commission a more detailed report into the options available. This resulted in the Options Appraisal prepared by NIFES which recommended replacement, but we do not know the date of the first version of the NIFES report. We certainly have no evidence that it pre-dated the Assignment Pack.

24. We are unable to conclude, on the basis of the evidence before the Tribunal, that the Council knew that the lessees would be charged for the replacement of the communal heating system within 5 years of the date of the Assignment Pack. We do conclude that the Council knew that such replacement was a possibility, based on the content of the report of the 13 January 2012 inspection, but that finding should be read in the wider context that many other major works may have been possible in the next 5 years about which we had no evidence.

25. So armed with those findings, we next address the issue as to what (if anything) was stated or implied about the possibility of replacement heating works in the Assignment Pack. The first part of the opening paragraph of the "Future Major Works" section read as follows:

"The table below is an accurate reflection of the current works scheduled at this moment in time. Please note, this schedule and costs may be subject to amendment as these works have not been finalised. The amounts listed are based on budget forecasts."

26. These words indicate, as they say, that the table (including any omissions from it) reflect what was actually scheduled at the time and that they may be subject to amendment. Looking at it on that basis, there was no obligation upon the Council to include anything about the possible heating replacement works because they were certainly not "scheduled" at that time.

27. On the other hand, we now have evidence that the "external works and redecorations possible", which were disclosed, were not actually scheduled at the time either. The Council therefore seem to have taken an inconsistent approach to completing the information in the Assignment Pack. So, while claiming in the Assignment Pack that the information disclosed related only to works which were scheduled, the Council in fact disclosed work which were only "possible" and were not scheduled. Does that give rise to an obligation upon the Council thereafter to disclose all works which are merely "possible" within the next five years? In our judgment, it does not. Otherwise, we would have to make a decision that the Council by implication took upon themselves a very wide obligation to disclose all possible works and that any omission in their carrying out that duty would amount to a misstatement or an implied representation capable of founding an estoppel. We do not think the evidence supports any such conclusion.

28. It is also important to consider the contents of the Assignment Pack from the point of view of the reasonable reader of the document (rather than from the point of view what was in the minds of people within the Council as expressed in internal emails). That is especially true when considering whether the Lessee reasonably relied upon its contents when entering into the assignment.

29. What was a reasonable understanding of the "Future Major Works" section of the Assignment Pack at the time it was received by someone with the Lessee's state of knowledge at that time?

30. In addition to the sections of the Future Major Works section of the Assignment Pack we have already referred to, there is a paragraph in which the reader of the assignment pack was referred to an attached leaflet "for further information on works which may be included in the above programme".

31. The leaflet in question (entitled "Investing in Camden's homes – An overview") set out the Council's plans to invest in their homes which was in line with the government's Decent Homes standard, which covers kitchens and bathrooms. The leaflet went on to say: "we will also focus on

improvements to wiring, windows, lifts **and heating systems**" (our emphasis added). The rest of the leaflet contained more detail about works which might be carried out. One paragraph in particular related to external works on flats which had not had external works in the previous five years. That paragraph stated that such properties "could receive external works under Decent Homes. Previous experience has shown that external works require at least £15,000 per property." Immediately after that paragraph, the following appeared:

> "Other key elements of our investment strategy are set out below.
>
> Works to improve mechanical and electrical equipment
>
> The mechanical and electrical programme includes work to equipment such as lifts, **communal heating systems**, electrical supply, water supply, gas mains and door entry systems."
>
> (our emphasis again)

32. There was some discussion at the hearing about the Council's inconsistent definitions of external works throughout various documents and we have already noted the potential discrepancies on that issue between the Council's two witnesses. However, for the purposes of the present question, we have decided that it was at least unclear to the reasonable reader (after reading the attached leaflet) what was included in the definition of "external works" in the Assignment Pack. Repairs to a communal heating system are certainly capable of coming within the phrase "external works" as the meaning of the words used – most of the communal heating system is "external" to the Lessee's property. It was also possible to understand, from the reference to the leaflet, that the works "which may be included" in the programme might involve works to the communal heating system.

33. If the Lessee was really concerned to know exactly what the £15,000 estimate in the Assignment Pack was likely to include, he (or his solicitors) could have raised further enquiries with the Council. He did not do so. The fact that he and his solicitor (without any surveyor or contractor) took it upon themselves to estimate that the proposed works were unlikely and would cost a maximum of £5,000 is a matter for him and was not encouraged or caused by the Council, in our judgment.

34. In order for the Lessee to succeed, he would have to show that he understood unequivocally from the Assignment Pack that there was no possibility of the charges which are now the subject of the 28 April 2014 section 20 notice. In our judgment it would not have been reasonable for him to reach that conclusion for the reasons stated above. Stated another way, we find no evidence of an actual representation or statement by the

Council that there would not be major works to the communal heating system within the next 5 years.

35. Finally, we note that the value of the information in the Assignment Pack to the Lessee was to warn him of the possibility of large expenditure within the next few years to assist him to decide whether or not to go ahead with the purchase or to renegotiate the price. It is therefore important to bear in mind that the expenditure for which he was warned (namely a possible liability for £15,000 within 5 years) is exactly what he is now likely to be charged. We do not think it is material that the £15,000 invoice will be for something different from that which the Lessee anticipated. He was warned that he may have to pay that much and he chose to take that informed risk.

36. The Lessee sought to counter the last point by arguing that he was still at risk of a further bill for £15,000 external works and redecorations within the first five years, in addition to the estimated capped £15,000 heating replacement work costs. The Council responded to that point by making an open offer (which they described as a "gesture") during the hearing before the Tribunal not to charge him more than £15,000 total for major works as set out in more detail above. We make no finding to what extent that "gesture" is binding on the Council.

37. We find overall that the Council did not clearly set out the likely liabilities in the Assignment Pack, and they have recognised that failure in the response to the Lessee's official complaint. But that failure by the Council fell well short of being either (a) a negligent misstatement for which damages would reduce or extinguish the service charge debt or (b) a representation upon which the Lessee reasonably relied so as to estop the Council from charging the proposed cost to the Lessee.

38. We have therefore come to the decision that the Lessee cannot make out a counterclaim or set-off and that the estimated capped cost of £15,000 of the proposed major works in the 28 April 2014 section 20 notice is payable if incurred and duly invoiced in due course.

Application for costs

39. There is an application under section 20C of the 1985 Act. The Council indicated at the hearing that it was not proposing to pass on the costs of these proceedings as service charges and was not contesting the section 20C application. We therefore make the order under section 20C.

40. The Tribunal has decided not to make an order for costs under rule 13 of the 2013 Rules as there is no evidence that either party has acted unreasonably in bringing, defending or conducting these proceedings. There are no grounds for ordering the Council to reimburse the Lessee for any fee paid by him as the Lessee has not succeeded in his case. There is

no application by the Council for reimbursement of any fee it may have paid.

Dated this 5th day of August 2015

JUDGE T COWEN

Appendix A - 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).