12721

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AK/LSC/2017/0368**
Property	:	**20 Maplin Close, London N21 1NB**
Applicant	:	**Claygate Limited**
Representative	:	**Mr Hamed Zovidavi- Counsel instructed by Brethertons LLP**
Respondents	:	**(1) Sarah Cruden** **(2)Stuart Thompson**
Representative	:	**Stuart Thompson**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	:	**Judge Daley** **Mr T Sennett**
Date of hearing and Venue	:	**08 March 2018 at 10 Alfred Place, London WC1E 7LR**
Date of decision	:	**09 April 2018**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the sums set out under the headings insurance charges, gardening, repairs and maintenance and management fees are payable by the Respondents as set out below. In respect of the service charges for service charge arrears this is not reasonable or payable.

(2) The Tribunal has adopted the sum claimed in the Scott Schedule and finds the total sum of £1,885.85 for the sums claimed in (1) above.

(3) [The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985] [so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge]

(4) Since the tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Edmonton County Court.

(5) The Tribunal makes no order in respect of the counterclaim in respect of the Disrepair of the roof, so that this matter is referred back to the Edmonton County Court for a hearing on liability of the Applicant and if the landlord is liable to damages under section 11 of the Landlord and Tenant Act 1985, for an assessment and set off to be made by the county court of the sum found payable above.

The application

1. Proceedings were originally issued in the County Court Money Claims Centre Northampton under claim no D61YJ176. The claim was transferred to the Edmonton County Court County Court and then in turn transferred to this tribunal, by order of District Judge Lethem on 18 September 2017.

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

The hearing

3. At the hearing, the Applicant was represented by Counsel Mr Zovidavi and the second Respondent appeared in person.

Preliminary Matters

4. The Applicant's representative provided the Tribunal with a supplementary statement which provided some clarity of the claims period in issue, and the fact that a judgement had been obtained for the period up to 4 December 2015.

5. The start of the hearing was delayed while the tribunal considered this new document. The Tribunal also noted that although counsel was in attendance representing the Applicant, there was no one in attendance on the Applicant's behalf to answer any questions which might arise on the charges. As a result of an issue being raised on insurance, the Tribunal granted a brief adjournment to enable Counsel, Mr Zovidavi to take instruction as to whether a representative of the landlord's could attend, Counsel informed the Tribunal that it was not possible for anyone to attend and that he was instructed to seek an adjournment.

6. After hearing representations from Mr Thompson, the Tribunal determined that when taking into account the overriding objective of the Tribunal under rule 3 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 it was neither proportionate nor in the interest of justice and the requirement to deal with cases expeditiously to grant an adjournment under rule 6 J of the Tribunal Procedure Rules.

The background

7. The property which is the subject of this application is a 2 bedroom flat in a purpose built, two storey, block, of 14 flats. The Respondents premises are situated on the first floor. The Respondents' block is on a small estate which comprises two other blocks of flats. The other two flats are four storey flats. All of the flats share a communal garden.

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 and will be referred to below, where appropriate. The Respondents service charge proportion is as follows-: 1/14 of the block charges and 1/36 of the estate costs.

The issues

9. The Tribunal held a case management hearing on 19 December 2017 were the following issues were identified in paragraph (5):

   (i) The reasonableness and payability of insurance charges including consideration of whether the insurance is a qualifying long term agreement... The reasonableness and

payability of charges for gardening including whether the gardening is on a long term agreement...The reasonableness of management charges taking into account the level of fees charged and the quality of provision... Whether sums can be set off against the sums claimed for damages arising from the persistent roof leak which has been on-going from November 2014... whether an order under section 20c of the 1985 Act should be made..."

10. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Building Insurance

11. The landlord provided copies of the insurance certificates within the bundle. The insurance was provided by Aviva Insurance Limited for the period 2015/16 in the sum of £7,731.38 and £8,148.00 for 2016/17 for the block. The Tribunal was informed by Counsel for the Applicant that a broker Coppergate insurance services obtained insurance on the landlord's behalf. Mr Zovidavi had no information as to whether the brokers received commission for their services and if so the amount that was paid to them, however he was able to provide information concerning the nature of the agreement in that there was no arrangement with either the broker or the insurance company for their services to be provided for a period that exceeded a year, although the landlord had used Coppergate's services since 2010.

12. Mr Zovidavi stated in relation to the decision to place the insurance with Aviva, the landlord had used Aviva because they had come up with a competitive quote for 2016/17 that took into account the somewhat difficult history of the building. There had been a subsidence claim in 2003 which had resulted in a payment of £250,000. There had also been three incidents of water damage. Unfortunately the previous broker had at the time of the subsidence arranged the insurance through a scheme. Paragraph 24 of the Statement of Claim stated-: Aviva were unable to confirm the claims experience from their own database. As a result to avoid any concern of any cover arrangement with an alternative insurer being voidable through non disclosure the first period of cover arranged via Coppergate was with the existing insurer Aviva.

13. The landlord also wanted to use the same insurer for the three buildings on the estate.

14. Mr Thompson was concerned about the lack of information held by the landlord. He was also concerned that the insurance was not competitive he had approached alternative brokers for a quotation and had been provided with one for the building of £1272.60.

15. The Tribunal asked whether Mr Thompson had used the declared value of the building and whether he had provided details of the claims history. Mr Thompson stated that he had not provided the full details of the claims history in relation to the declared value of the building, he had had a conversation with the broker and the insurance quotation had been provided by using the index for build costs. He had also informed the broker than the building was a mix of privately rented and leased owner occupier dwellings. The excess that had been quoted was £350.00.

The tribunal's decision

16. The tribunal determines that the amount payable in respect of [service charge item] is £1,134.29 .

Reasons for the tribunal's decision

17. The Tribunal has noted that the wording of the lease provides that clause 5 (c) provides an obligation on the landlord to insure in joint names and to keep insured against loss of rent, loss and damage by fire all of the premises and any erections and of an insurable nature up to their full value. The clause also requires the landlord to insure for the full value with an insurer of repute.

18. In order to provide for the premises to be insured under the terms of the lease, it is not a requirement that the landlord obtain the cheapest insurance.

19. The Tribunal are satisfied that Aviva are an insurer of repute, and that given the lack of a full claims history, (albeit that this is regrettable) the Applicant has obtained insure for a reasonable cost. The Tribunal also finds that the use of Coppergate and Aviva does not amount to a long term qualifying agreement, as there is no agreement to continue to use the services of either beyond a year.

20. The Tribunal had regard to the quotation obtained by the Respondent however in the absence of confirmation that the broker was able to obtain like for like cover. The Tribunal cannot be satisfied that the premium indicated is achievable.

21. The Tribunal are concerned that there is a lack of transparency concerning the use of Coppergate. The Applicant should provide information as to whether commission is payable to Coppergate for placing insurance, and may wish in future years to tender for the brokerage service to ensure the cost of insurance is competitive. The

Applicant should also ask the broker to obtain and show details of alternative quotations prior to the placing of insurance.

Repairs and Maintenance

22. Mr Thompson informed the Tribunal that he had gone through the invoices and had worked out his share of the repairs and maintenance costs by dividing the building costs by 1/14 and the estate costs by 1/36. The Tribunal satisfied itself that the total sum of £203.53 that was disputed by Mr Thompson related to repairs and maintenance.

23. Mr Thompson stated that there were several invoices which did not provide a full description and appeared to relate to clearing the gutters and hopper heads from CAN Drainage Ltd. He stated that it did not specifically identify his block as it stated the site address as 1-36 Maplin Close. He was also concerned to note that the invoice stated-: "...The usual service which is due in mid November will go ahead unless we are advised not to do so..."

24. Mr Thompson was concerned about the cost of this annual rolling arrangement.

25. This was also the case for the drains which appeared to be inspected on a regular six monthly basis by the same contractor. He stated that he would want to see details of the contract with the contractor. There were also ad hoc invoices from an electrician, Paul Murrell Electrician.

26. Counsel for the Applicant stated that on the basis of the sums claimed it was reasonable to infer that this was just in relation to the building rather than the whole estate.

27. In answer to questions from the Tribunal, Mr Thompson agreed that the sums were not unreasonable for inspecting the drains; he also accepted that it was reasonable for periodic inspection and clearing of the gutter for the flat roof. He also did not take an issue with the costs of the electrical repairs.

The tribunal's decision

28. The tribunal determines that the amount payable in respect of repairs and maintenance is £203.53

Reasons for the tribunal's decision

29. The Tribunal noted that the premises was a flat roof premises which was situated in an area that had many mature trees, and that part of the work involved clearing the roof gutter to prevent blockage.

30. The Tribunal also noted that the managing agents appeared to have put in place a system of regular inspections of the roofs and drains and that there had been no major item of work in relation to the premises.

31. The Tribunal consider that it is a reasonable approach to provide for a system of ensuring that the anticipated, areas of potential repair, are dealt with at the property on a proactive basis rather than waiting for a drain to become blocked or the roof hopper head to become blocked and then dealing with it as a repair. Accordingly having considered the costs involved and having noted that there were no major items of disrepair at the premises the Tribunal is satisfied that the costs are reasonable and payable as set out above.

Gardening

32. Mr Zovidavi was not able to provide the Tribunal with a contract/agreement for gardening at the premises. The Tribunal inspected the invoices and noted that there was a monthly invoice for gardening.

33. Mr Zovidavi stated that it was carried out on an ad hoc basis; however the Tribunal noted that this was not the evidence provided by the invoices.

34. Mr Thompson stated that gardening was carried out monthly and that once a month two to three people attended the premises who spent roughly half a day cutting the lawn and clearing the grounds and that this happened all year round.

35. In answer to a question from the Tribunal, he confirmed that they brought their own equipment and that they also took away any cuttings or rubbish with them for disposal. Mr Thompson also did not query the standard of workmanship. His concern was that as a result of the agreement between the landlord and the contractor RUI M Gardening Services Limited, the leaseholder may have been overcharged. He had also raised the issue of whether this amounted to a long term qualifying agreement

The tribunal's decision

36. The tribunal determines that the amount payable in respect of [service charge for the gardening] is £262.50.

Reasons for the tribunal's decision

37. The Tribunal having noted the description of the services provided and the fact that the service involved a number of operatives for a half a day period who used their own equipment. In the absence of alternative quotations and based on the Tribunal's knowledge and experience of the costs of such work, the Tribunal was satisfied that the sum claimed for gardening was reasonable and payable.

38. In respect of the issue concerning long term qualifying agreements, the Tribunal has noticed that the Applicant has used the services of RUI M Gardening Services Limited for a number of years. The Tribunal would have been assisted by details of a contract or oral evidence . However notwithstanding this, the Tribunal accepted that it was not uncommon for services to be provided for periods that exceeded a year on a rolling month by month contract.

39. There is nothing about the way in which the gardening services are provided that gives rise to a suggestion that the service is provided as part of a long term qualifying agreement.

Tree work

40. The Applicant provided an invoice in relation to this work in the total sum of £2,952.00 together with an invoice in relation to a survey/inspection that was undertaken prior to the work being carried out. The invoice provided a long list of variety of trees such as Birch Walnut, Ash and Laurel trees with details of the work that had been undertaken in relation to the trees concerned. This invoice was useful as it provided some indication of the scope of the garden

41. Mr Thompson conceded that the costs, in relation to this work, were reasonable and payable.

The tribunal's decision and reason for the decision

42. The tribunal determines that the amount payable in respect of tree work is £82.00, on inspection of the invoice and upon the respondent's concession. On the basis that the cost of the work is conceded as reasonable and payable by the Respondent.

43. The Tribunal also noted that the invoice was very detailed and provided a comprehensive list of all of the work that had been undertaken in relation to the trees at the premises, this assisted the Tribunal both in understanding the extent and scope of the work that had been undertaken, and it also provided some context for the size and scope of the gardening and the need for the hopper heads to be cleared on the

flat roof on a regular basis so as to prevent the leafs from causing a blockage.

The Management fees

44. The Tribunal was referred to the fourth and fifth schedule of the lease which provided that the lessor could make a charge for the management and the administration expenses. Clause 4 of the fourth Schedule dealt with expenses and outgoings of which the lessee was to contribute one equal fourteenth part.

45. Clause 4 stated as follows-: "The Lessors shall be entitled to add the sum of Ten per centum to any of the above items for administration expenses of the lessors and their managing agents and where any repair decorations or renewals are carried out by the Lessors they shall be entitled to charge as the expenses or costs thereof their usual charges (including profit) in respect of such work. Clause 4 of the fifth schedule is worded in similar terms in relation to the estate costs.

46. Mr Thompson was critical of the way in which the property was managed. He stated that there was no regular inspection carried out of the premises by the landlord's managing agents. The Tribunal noted that contractors had been engaged and that the managing agents appeared to be proactive in that maintenance work was carried out which then meant that the premises and estate was kept in repair. The Tribunal asked him whether he objected to the level of the costs incurred. The Tribunal noted that even though the costs were on a percentage basis the overall expenditure was not high accordingly the 10 % charge did not appear to be inflated.

47. Mr Thompson stated that although he was not suggesting that the overall costs were high his issue was the level of service provided.

48. The Tribunal noted that in 2015 the charges for the estate were £984.77 and in relation to the block the costs were £1849.95. The respondent's total share was approximately £160.00. The Tribunal asked whether Mr Thompson had any comparable quotes for the management of the premises. He stated that he did not.

The tribunal's decision

49. The tribunal determines that the amount payable in respect of management fees is £203.53.

Reasons for the tribunal's decision

50. The Tribunal noted the total costs of the management fee, although the sum was based on the percentage of expenditure, the Tribunal was able to use its knowledge and experience to compare the total sum to the per unit costs employed by other managing agents. The Tribunal noted that the RICS code of guidance recommended a per unit charge in preference to a percentage. However the lease provided for the management fee to be chargeable by reference to a percentage. Based on the Tribunal's knowledge and experience the overall sum is reasonable and payable.

Arrears Management fees

51. The Tribunal was provided with a statement of account for the Respondents. Listed on the account were a number of items which were listed as Arrears Management fees, these items varied in costs from £36.00 to £150.00, although 7 items were listed at £72.00.

52. No real explanation was provided for how these costs had been incurred. Counsel stated that this related to the costs of writing to the Respondents concerning the outstanding service charge.

53. The Applicant's statement of claim did not address these charges directly. In paragraph 34 of the Statement of Case, the Applicant stated that "Any costs or administration charges are payable by the Respondent under clause 3(b) and 3 (d) of the lease. It is imperative that all tenants pay their service charge to allow services to be carried out."

54. The Applicant in their statement of case further stated that the reminder letters were sent to the Respondents with a view to forfeiting the Lease. This cannot be correct as accepting payment would be inconsistent with an intention to forfeit the lease.

55. Mr Thompson stated that he had not received the letters purportedly sent by the landlord's agent. In his Statement of Case he stated-: "I would also like to raise the issue of the charges being made that relate to the Arrears Management Fee. There are seven lots shown as being applied on the 11th February 2016 which total £523, then three further lots all for different amounts from £36 to £150. I realise that the account is in arrears but I have no detail on how the amounts are being applied to the account. I believe that I should have received some form of explanation of these charges as they have not been presented to us previously..."

The tribunal's decision

56. The tribunal determines that the sums claimed in respect of arrears management fees are not reasonable or payable.

Reasons for the tribunal's decision

57. The Tribunal has carefully considered the wording of the lease, in particular clause 3 (d) which refers to forfeiture. Clause 3(d) states-: *"To pay all costs charges and expenses (including solicitors' costs and surveyors' fees incurred by the Lessors for the purpose of or incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925."*

58. Nothing in the wording of the lease provides for the sending of copious arrears letters. Further although the Applicant in their statement of case has stated that a number of letters were sent, Mr Thompson stated that he did not receive the letters sent.

59. Further the Tribunal is not satisfied on the wording of the lease that the letters can be considered on their own to be *"served for the purpose of or incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925"*

60. It the Tribunal is wrong concerning this, the Tribunal has heard the submissions of Mr Thompson and has noted his willingness to accept items of expenditure and to provide information which tended to support the Applicant's case. The Tribunal found him to be credible and reliable in his recollection. The Tribunal had no additional evidence from the Applicant to support the assertion that letters were sent. Accordingly on a balance of probabilities the Tribunal are not satisfied that the sum claimed are reasonable or payable under the terms of the lease.

Application under s.20C and cost payable under clause 3 d of the lease refund of fees

61. At the hearing, the Respondent applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Applicant may not pass

any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

The next steps

62. The tribunal has no jurisdiction over any county court costs and has remitted the issue of any counter claim for determination in the county court. This matter should now be returned to the Edmonton County Court.

Name: Judge Daley **Date:** 09 April 2018

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

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 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).