12965

**FIRST-TIER TRIBUNAL**
**PROPERTY CHAMBER**
**(RESIDENTIAL PROPERTY)**

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| **Case Reference** | : | **LON/00BA/LSC/2017/0444** |
| **Property** | : | **Flat B, 75 Pelham Road, Wimbledon, SW19 1NX** |
| **Applicant** | : | **Mr E. Giroux** |
| **Representative** | : | **Mr S. Wright (Counsel)** |
| **Respondent** | : | **Chateau Pelham Ltd** |
| **Representative** | : | **Ms A. Hormache (Counsel)** |
| **Type of Application** | : | **For the determination of the reasonableness of and the liability to pay a service charge** |
| **Tribunal Members** | : | **Judge Abebrese, Mr W. R. Shaw FRICS** |
| **Date and venue of Hearing** | : | **10 Alfred Place, London WC1E 7LR** |
| **Date of Decision** | : | **17 September 2018** |

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**DECISION**

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## Decisions of the tribunal

(1) The tribunal makes the determinations as set out under the various headings in this Decision.

(2) The tribunal does make 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.

(3) The tribunal determines that the Respondent shall pay the Applicant £300 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant for the making of the application (£100), and the hearing (£200).

## The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") [and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act")] as to the amount of service charges and administration charges payable by the Applicant in respect of the service charge years.

2. The initial application of the applicant was in relation to service charges for the periods 2012-2017, however the period 1 January 2016 to 1 January 2017 was referred to the county court and is therefore not before us for a determination. It subsequently transpires that the 2016-17 has now been remitted back to the Tribunal for determination of the service charges at a later date.

3. The relevant service charge period before the tribunal is therefore the period **2012-2015** only and this was agreed by both parties at the direction hearing 9 January 2018 and 8 May 2018.

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

## The background

5. The applicant states he made the application after a dispute arose regarding the collapsing of the roof in 2012 and he maintains that after this the average annual service charge rocketed to £23,845 per annum which he claims is 3.5 times the average cost before 2012. The applicant at page 95 of the hearing bundle provides a chart showing the gradual increases.

6. The applicant also maintains that there have been various breaches of the RICS code of practice, the lease and the law by the respondent and

un-appointed managing agents. He maintains further that when the roof collapsed over his bedroom the respondent created a separate legal entity named 'Pelham Road (Wimbledon) Management Company which is now dissolved in order he says to evade scrutiny. He refers to meeting notes of the Pelham Road Management Company which states that "Woollens" the Managing Agents are not employed by Chateau Pelham who are the respondents in this application. In support of this he states another leaseholder of the building wrote to the respondent voicing his concern over the creation of the new legal entity.

7. The applicant maintains that the creation of the new Managing Company was not created by an under-lease and in any case there appears no right to do so. The creation of service charge demands by the new company according to the applicant raises important questions regarding the legality of the demands between the periods 2012-2017. The applicants states that he had always paid service charges directly to the respondent and not to a third party.

8. The applicant is of the view that if he were to be found to be wrong on the creation of the new company there are still service charges which are being disputed. However, the gardening, window cleaning, with the exception of 2015 are accepted. Insurance is accepted with the exception of 2102 where all of the other years he states have consistently averaged £2,729 per year. The accountancy is also not in dispute with the exception of the year 2015 where the additional expense of £300 has been incurred. Sundry expenses/bank charges and interest/secretarial fees are not in dispute.

## The hearing and the issues

9. The tribunal prior to the hearing did not make an inspection of the property as this was not considered relevant in respect of the issues to be determined at the hearing. It should also be noted that neither of the parties made a request for the tribunal to undertake an inspection of the property.

10. The tribunal were provided with copies of correspondence in respect of a previous claim made by the respondent in 2015 this claim has since been settled and was not an issue before the tribunal. The correspondences in relation to the abovementioned claim are enclosed as exhibits CHA14 and CHA15 in the hearing bundle. The respondents provided the tribunal with a copy of a letter dated 31 August 2018 relating to invoices which had been obtained from previous managing agents. It was noted that the respondent had sent a copy of these documents to the tribunal prior to the hearing.

11. Ms Hormaeche informed the tribunal that the directions issued by the tribunal had not been complied with by both parties and this placed her in a difficult position regarding the conduct of cross examination.

Neither party she submitted had provided witness statements. Mr Burrows was also here from the respondents but she could not call him to give evidence because he could only deal with matters concerning the period 2016/17 that was not an issue before the tribunal today.

12. It was also submitted by Ms Hormaeche that the issues in the application could be dealt with by written submissions and that this could include the claim for the period 2016/17 and that this would be in line with the overriding objective under Rule 3 of the Procedural Rules. She also pointed that she had received the majority of the papers relating to the application only a few days prior to the hearing.

13. Mr Wright on behalf of the applicant opposed the suggestions of the respondent's representative and he submitted that the respondent had not made an application for an adjournment prior to the hearing and that it was possible to proceed on the basis of the statement of case which had been prepared by the applicant and the respondent. Alternatively, the matter could proceed on the basis of submissions only in respect of the relevant service charge periods of 2015/16 and no witnesses would be called and hence no cross examination.

14. The tribunal after a careful consideration of the submissions of the representatives determined that the matter would proceed on the basis of submissions only and no witnesses would be called to give evidence.

15. **The tribunal proceeded to hear the submissions of both representatives.**

**Submissions**

16. Mr Wright on behalf of the applicant made the following submissions. There are he submitted 3 headline issues in this application and these are the forming of the new company ; The serving of Section 20 notices in respect of long term qualifying periods ; the works and the threshold which is to be applied.

17. The tribunal was referred to provisions of the lease and it was submitted that the relevant clauses are 4 and 5. Clause 4 sets out the landlord's obligations and clause 5 deals with the tenant's obligations. We were referred to The Fifth Schedule on page 629 of the hearing bundle which lists the outgoings, expenses of the landlord and the proportion which is payable by the applicant by way of service charges.

18. Mr Wright submitted that the respondent had set up a management company to collect service charges which had been incurred. The registration of the company at Companies house is shown at page 120 of the hearing bundle. The management company was dissolved on 14 November 2017. He contended that the actions of the new management

company were unlawful because it had no legal status and the respondent had not provided the legal documents to show that they were properly formed in other words there is no legal nexus between the new management company, the managing agents and the respondent/freeholder. The applicant claims that he was frozen out of the discussions in respect of the setting up of the new company. Mr Wright referred us to various parts of the hearing bundle. The respondent's statement of case at page 219 of the hearing bundle paragraph 42 state: "The decision to create Pelham Road (Wimbledon) Management Company is well documented decision by the majority of the members. Pelham Road was set up to ring fence the service charge funds on behalf of the leaseholders which were kept separately from the freeholders own funds. This was a sensible decision as Woollens were unable to provide a separate client account. Once Lauristons took over management the ring fencing was achieved using their internal client accounts which meant the new management company became redundant. The management company was subsequently closed".

19. Mr Wright also referred us to paragraph 43 (page 220) of the respondent's statement of case where they state that Woollens were instructed by the respondent and the Pelham Road Company. It was submitted that the statement of case of the respondent is contradicted by the documents in the hearing bundle. At page 124 minutes of a meeting held by the new management company on 31 October 2013 where at paragraph 8 of page 125 under the heading Chateau Pelham it states : "in order to decide on the account and the funds it was decided that a meeting should take place. Woollens are not employed by Chateau Pelham and therefore could not comment further".

20. The minutes of the Annual General Meeting of Chateau Pelham dated 6 November 2012 at page 161 states that Chateau Pelham continues to own the freehold of 73-77 Pelham Road. Furthermore that Chateau Pelham has appointed Woollens to manage the property and represent Chateau Pelham to the leaseholders. To enable this to occur that Chateau Pelham has created a subsidiary company. We were also referred to an email from Cathy Allen of Withers LLP to the applicant where she states that she has checked the freehold title and no under lease appear to have been granted to a management company i.e. an intermediate company to sit between the freeholder and the flat owners. The flat owners all sit directly beneath the freeholder and there is no power in the lease to grant an under lease.

21. The new management agents sought to recover service charges which had been incurred and the applicant received letters from Solicitors for example at pages 172 and 346 of the hearing bundle. It was submitted by Mr Wright that the cost incurred by the new managing agents is not recoverable because of the lack of documentation and legality to create the company.

22. It was also submitted that there is an absence of a section 20 notice as consultation was required as there was a long-term qualifying management agreement and because of this the recoverability of any charges should be capped (£100).

23. The following submissions were made in respect of the items of works in dispute outlined in the Scott Schedule. It was conceded by Mr Wright that the calculations are inaccurate in respect of the amount stated at page 88. The respondent it was submitted should have served section 20 notices on several sets of works and the fact that he has failed to do so means that the cost recoverable should be capped at £250. The respondent has also not been able to provide all the invoices and therefore it is not possible to ascertain if the works are separate pieces of works or aggregated pieces of work.

24. In respect of the qualifying works on page 92 the applicant states that he had not received a section 20 notice and that the notice which has been provided relates to a Mr and Mrs Young.

25. The applicant in respect of the insurance claim for the period 1 January 2012 until 31 December 2012 makes the following points. The respondent it was submitted has not been able to provide the documents relating to the insurance for this period and the applicant has only been provided with an insurance policy document which commenced on 17 March 2012. The document from MFS Checkland to the freeholder dated 13 March 2013 indicates that the AXA policy was due to expire on 16 March 2012. The second paragraph of this letter it is submitted is relevant in that it states that: "they have offered a new quotation on their Residential Landlords insurance as per the attached quotation". It was suggested that the indications from the letter is that the insurance policy that was in place was not residential landlord insurance.

26. It was submitted that if there was insurance cover then the respondent should have made a claim for the repairs of the flat roof. Similar argument is made in respect of the boiler fan, cupboard repairs and decorations. The applicant in the Scott Schedule states that at the time of the disrepair he requested from the company secretary Mr Paul Young that he provide him with the insurance documents and this request has still not been complied with.

27. In respect of the damaged repairs water leaks in flat 77 as stated earlier the applicant has calculated this part of his claim wrongly and the works should not be aggregated.

28. The applicant maintains that he is not liable for a claim in respect of pest control because he did have issues in 2014 and he was under the impression then it was not his responsibility. He has not been provided with all of the invoices. The applicant referred the tribunal to a letter

that he received from the respondent on page 136 which acknowledges that there was a problem but the letter states that at the time it appeared to be localised to individual flats and therefore it should be dealt with by leaseholders. However, it goes on to add that if the problem became much more widespread throughout the building then the respondent would intervene. The respondent relies on the terms of the lease under clauses 6 of the 4th schedule.

29. The applicant did not raise any challenge to the Juliet Balconies and only made the point that it is found that there was no consultation then the service charge due should be capped at £250.

30. The applicant conceded the item regarding legal cost of the lease extension. Mr Wright made the point that the applicant had not received the sum of £580 credit due to all leaseholders this he states is evidenced in minutes of the AGM of Chateau Pelham dated 6 November 2012. He added further that this is also not stated in the statement of accounts at page 387 of the hearing bundle.

31. Mr Wright in respect of the reserve/sinking fund submitted that the notes of the AGM Meeting of Chateau Pelham dated 6 November 2012 makes it clear at page 162 first paragraph that there is no provision in the lease for a sinking fund. It was also submitted that the argument regarding qualifying works earlier also apply to the works mentioned above and the same argument is relied upon by the applicant.

32. The applicant objects to the cleaning charges due to the fact that they have he claims increased substantially in 2015 and he referred the tribunal to the invoice from Clapham Window Cleaners dated 17 March 2015(£150) and Knights Pro Cleaning(£65) dated 4 August 2015.

33. In respect of the transfer of the sinking fund reserve it was submitted that there is no provision in the lease for a sinking fund.

34. Ms Hormaeche made the following submissions on behalf of the respondent. It was submitted that through the passage of time and changes of managing agents invoices have gone missing but they have made efforts to retrieve as many as possible. Some previously missing invoices have been provided to the tribunal at the hearing. It was submitted that the provisions of the lease is binding on the applicant.

35. The decision of the respondent to form a new company was lawful because the decision was taken by the majority of the leaseholders and it was done in the interest of all them. The new management company were acting as agents of the respondent and the formation of the company is lawful.

36. The respondent accepts that the applicant has made numerous requests for insurance documents for the period 2011-2012; however, it appears that the documents have not been found due to the changing of managing agents. A claim was made by the applicant and the accounts show that payments have been made and this is confirmed by the bank statements and the reference "AXA Insurance".

37. The applicant has conceded the legal cost in respect of the lease extension. The respondent is of the view that the issues raised by the applicant in respect of the flat roof replacement are misplaced. At para 59, page 223, it is made clear that the roof repair was a maintenance item and as such was not covered by insurance. The works were carried out on the terms of the lease and the applicant participated in the process as he nominated and instructed the contractor.

38. In respect of the boiler fan, cupboard repairs and decoration it was submitted that the statement of case was being relied upon fully in particular paragraph 57, 59 and 60. The applicant accepted the charges in respect of the damage repair water leaks in 77 and no further submissions were made by the respondent representative.

39. It was submitted that the issue regarding pest control falls under Clause 6 of 4th Schedule and the respondent is required to keep the premises clean and the applicant nominated the contractor who carried out the works.

40. The respondent also contends that the Juliet Balconies charges form part of the service charges as they arise from Clause 4(a) of the lease. Whilst this item is now accepted by the Applicant, the cost to him is not.

41. The respondent representative in respect of the qualifying works relies on the comments made in the Scott Schedule and the contents of the Statement of Case. In respect of the cleaning cost it was submitted that the charges have not altered and that they are reasonable. It was further submitted that the respondent under Clause 6 (c) (ii) of the lease authorises they may put in place a sinking fund.

42. Following an incorrect assertion in the Respondent's Statement of Case the respondent's representative was informed that the RICS Service Charge management Code has the authority of statute, SI 2016/518 for the current third edition and SI 2009/512 for the second edition, which covers the service charge years in question.

## THE TRIBUNALS DECISION

### Insurance claim 2011/2012

43. The tribunal notes that at the directions hearing on 8th May 2018 the respondent was directed to provide to the applicant by 29 May 2018 a copy of the insurance policy for 2011/2012 the respondents have not complied with this direction. The applicant in addition to the directions has made numerous requests to the respondent for the production of a copy of the insurance policy. The tribunal accepts that the only insurance policy which he has received from the respondent started on 17 March 2012.

44. The letter referred to us by both parties dated 13 March 2012 at page 353 of the hearing bundle supports the claims of the applicant that there was a policy in place but that it was not an appropriate policy. The policy that was in place was due to expire on 16 March 2012. The tribunal finds that it is significant that the letter in the second paragraph states that they have offered a **new quotation** for Residential Landlords insurance. The tribunal have also given some weight to the fact that the respondent in the Scott Schedule where they state they have not been able to locate the insurance policy. The tribunal also finds that the correct charge in respect of the insurance to 16 March 2012 is £847.74 and that this is **NOT** payable by the applicant for reasons provided.

### Forming of Pelham Road (Wimbledon) Management Company

45. The tribunal finds for the respondent on this issue. The reason for the formation of the new company according to the respondent was to ring fence the service charge funds on behalf of the leaseholders which were kept separate from the freeholders own funds. This they claim was sensible governance as Woollens were unable to prove a separate client account. Once Lauristons took over the management the ring fencing was achieved using their own internal client account which meant that the management company became redundant and they were subsequently closed. A letter was sent to the respondent explaining this to him and this letter is exhibited at CHA9 of the hearing bundle.

46. The applicant claims that he was frozen out of the process after a falling out with the other leaseholders but there is insufficient evidence before us to determine that the new company was set up for no other reason than in the best interest of leaseholders. The tribunal does not find that the appellant was frozen out and indeed he was written to and was treated like any other leaseholder and he was all times kept informed of the process. The applicant clearly had disagreements which the respondent but this does not suggest that he was frozen out by the other leaseholders regarding the forming of the new management company.

47. There is a lack of documentation by way of a formal written agreement setting out the terms of the arrangement and the links between the respondent, managing agents and the new company which would have assisted all concerned but it is the case that all of the leaseholders except for the applicant and possibly one other leaseholder agreed and consented to the arrangement. The majority of the leaseholders appear to have consented to the arrangement.

48. The tribunal also finds that due to the lack of a written agreement there was confusion regarding the position and status of the new company and Woollens and the respondent but this does not in our view amount to evidence that there was no consent or oral agreement emanating from the other leaseholders for the new company to be formed.

49. The new management company were therefore entitled to pursue the applicant and other leaseholders for charges which had been incurred.

50. The creation of the new management company we find not to have been created unlawfully for the reason set out above. However, it would appear that during the years in question, the standard of management fell well short of that required. This has been borne in mind in the Tribunal's decisions. There is no evidence of any written agreements with the managing agents.

**Flat roof repairs**

51. The tribunal finds that these charges arise from the terms of the lease as the respondents are obliged under the terms of the lease to keep the roof in sufficient repair or renew and replace when necessary and these charges we find are payable under Clause 4 (a) of the lease.

52. The tribunal finds that the applicant nominated and instructed the person who carried out the works and was therefore aware of the charges regarding the cost of the works and had the opportunity to indicate whether the charges of the contractor were reasonable or not. Therefore, there can be no prejudice. The tribunal notes the points raised by the applicants regarding the insurance of the building but there is an obligation on the respondent to repair and maintain the building when they fall in a state of disrepair

**Boiler fan, cupboard repairs and decoration**

53. The tribunal finds that these charges do form part of the service charge because the respondent is required under the lease to keep the development in sufficient repair or renew or replace when necessary. The charges fall under Clause 1 of the Fifth Schedule of the lease.

54. The tribunal again finds that irrespective of the insurance issues raised by the applicant and because the obligations arise from the lease the respondent is entitled to claim for them as legitimate service charges.

**Damage repairs and water leaks**

55. The tribunal determines that these charges also form a part of the service charges as they arise from an obligation by the respondent to keep the development in sufficient repair or renew and replace when necessary and these charges are also payable under Clause 1 of the Fifth Schedule of the lease. The cost in this instance fall below the threshold required for a section 20 consultation bearing in mind the cost per property being £140.

56. The tribunal finds that the applicant was not prejudiced by the works being carried out by the respondent even if the section 20 provisions were to apply. The tribunal notes that it was the applicant who chose the contractor who carried out the works. The request by the applicant for more information on the cost has been considered by the tribunal but we find that the charges in this instance are reasonable and they arise directly from the provisions of the lease.

**Pest Control**

57. The tribunal finds that these charges also form a part of the service charges because of the obligations which the respondent has under the lease in respect of repairing, maintaining, renewing and replacing. The obligations of the respondent falls under Clause 6 of the 4th Schedule of the lease.

58. The tribunal finds that the charges are reasonable in this instance as the applicant instructed and nominated the contractor who carried out the works. The tribunal also finds that the works were agreed by all the leaseholders that the there should be a collective payment as there was found to be an influx of ants in the building.

59. The tribunal prefers the submission of the respondent that the decision was taken to pay the charges collectively and we do not accept that the applicant was informed by a representative of the respondent that he was not responsible to manage the issue of pest/ants in the building. The applicant's assertions are not supported by any of the other leaseholders.

**Juliet Balconies**

60. The tribunal finds that there is a requirement here for consultation under section 20 which has not been followed. There was no

application for dispensation and the contribution of the applicant is therefore limited to £250.

61. The tribunal note that the obligation to pay for service charges arises under Clause 4 (a) of the lease.

**Legal cost-lease extension**

62. This item was conceded by the applicant at the hearing. We noted that these charges form a part of the figure that was agreed by the leaseholders so that their leases could be extended.

**Refund of the sum of £580**

63. The tribunal noted that the AGM notes of Chateau Pelham dated 6 November 2012 page 160 of the hearing bundle states that leaseholders are entitled to a refund of £580 because there had been some disparity in the payments made and with Woollens taking over the role of block management as agents for the respondent from 1st October 2012. The refund should be less any amount of underpayment/plus any amount of overpayment made.

64. The tribunal however, concluded that we could not make an award sanctioning the amount of the refund because we had not been provided with the statement of accounts for period 2011/2012 and therefore could not determine if there had been an overpayment or an underpayment. It was not clear if and when the other leaseholders if any had received the refund. However, the applicant should be refunded the overpayment if due.

**Qualifying works : General Maintenance Repairs, Roof Repairs and Agent Arrangement Fees**

65. The tribunal determined that the charges are allowable as they constituted 3 separate pieces of work. These charges are allowable on the basis of Clause 4 and the services listed in the 4th Schedule of the lease. The tribunal do not regard the works as one group of works and the section 20 notice provisions do not apply and we consider the amounts being claimed as reasonable.

**Management Commission Fees**

66. These charges arise from the provisions of Clause 8 of the Fifth Schedule of the lease. The Tribunal has not been provided with any written management agreements. Oral agreements that continue

beyond one year are Long Term Qualifying Agreements and require consultation. There was none, so amount limited to £100.

**Qualifying Works: General Repairs and Maintenance, External Decorations and Repairs**

67. The tribunal finds that these charges emanate from separate pieces of works and are payable. They arise from the provisions of the lease under Clause 8 of the 4th Schedule. A one-ninth proportion of the charge for general repairs and maintenance of £1956 is payable. The charge of £2994 for external decoration and repair is limited to £250 as there was no consultation.

**Management Commission Fees**

68. As indicated in paragraph 66 above these charges are payable under Clause 8 of the 4th Schedule of the lease and it is limited to £100 per leaseholder.

**Qualifying Works General Repairs and Maintenance, Removal of Decking and Repave, Refurbishments of Common Area and Communal Area Carpet.**

69. As indicated in previous paragraphs these charges arise from Clause 4 of the Fifth Schedule of the lease where the services are listed. The charges are also payable under the terms of Clause 8 of the Fifth Schedule. The sum of £2040 for removing the decking and paving is under the limit in relation to consultation and is payable in full. The other charges are above the limit and we have determined that they are capped at £250 because the tribunal accepts the evidence of the applicants that the section 20 procedures were not complied with. We referred ourselves to pages 408 and 410 of the hearing bundle and conclude that the applicant may not have been served with the notices (those in the bundle are for Mr & Mrs Young) and the stage 1 notice finishes and stage 2 notice starts on the same day.

**Management Commission**

70. As indicated above this item was agreed by the representatives and is limited to £100 per leaseholder.

**Cleaning**

71. These service charges relate the sum of £1,170 for cleaning and £150 for window cleaning. The tribunal finds that these sums form part of the

service charges because there is an obligation on the part of the respondent to keep the common areas clean and they are payable under Clause 4 (d) and Clause 1 of the Fifth Schedule of the lease. The tribunal after careful consideration of the various charges presented find that the charges in this instance are reasonable. The applicant's portion of the total sum of £1320 is 1/9.

**Legal Fees**

72. The Tribunal finds that there is no provision within the lease for these fees to be paid. The tribunal also found that the evidence relied on by the respondent was confusing as two different figures were presented at pages 93 and 419 of the hearing bundle this further undermined the respondent's claim.

**Funding Reserve/ Sinking Fund**

73. The tribunal preferred the evidence of the applicant in respect of this item that the **lease makes no provision for a reserve fund**. A voluntary arrangement would be good practice.

**Application under s.20C and refund of fees**

74. At the end of the hearing, the Applicant made an application for a refund of the fees that he had paid in respect of the application/ hearing. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the Respondent to refund the cost of the application (£100) and his hearing cost (£200) paid by the Applicant within 28 days of the date of this decision. The tribunal finds that the applicant has for the most part acted as a litigant in person and that he had reasonable grounds to bring the application to the tribunal even though he has not succeeded on all of the grounds.

In the application form and at the hearing, the Applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the decisions 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 Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

**Name:** Judge Abebrese

**Date:** 19 September 2018

## 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).