13206

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AZ/LSC/2018/0434**
Property	:	**Flat 4, Eastdown Court, 1-11 Eastdown Park, Lewisham, London, SE13 5HU**
Applicant	:	**Mr Nathaniel Adoujutelegan**
Representative	:	**In person**
Respondent	:	**South London Ground Rent Limited**
Representative	:	**Pier Management Limited (managing agents)**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Judge Robert Latham** **Mr Stephen Mason FRICS FCIArb**
Venue and Date of Paper Determination	:	**10 Alfred Place, London WC1E 7LR on 6 February 2019**
Date of decision	:	**27 February 2019**

DECISION

Decisions of the Tribunal

(1) The Tribunal determines that the following sums are payable in respect of insurance premiums: £300 for the years 2013/4, 2014/5, 2015/6 and £350 for the years 2016/7, 2017/8 and 218/9.

(2) The Tribunal disallows the claim for an annual administration charge of £19.99 in respect of the demand for the insurance premium.

(3) The Tribunal allows an administration charge sum of £50 + VAT for giving notice of a subletting for to the Respondent's Solicitor for registration by the Lessor.

(4) The Tribunal determines that the Respondent shall pay the Applicant £100 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

The Application

1. By an application issued on 19 November 2018, the Applicant tenant 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 which he is obliged to pay. The application raises two issues:

   (i) The sums payable in respect of insurance for the service charge years 2013/4 to 2018/9. This raises two distinct points: (a) the overall cost of the insurance; and (b) the manner in which it is apportioned between the 21 tenants in the block.

   (ii) the administration charges payable in respect of the registration of a subletting.

2. In his application form, the Applicant stated that he was not making an order under Section 20C of the Act. He indicated that he required an oral hearing.

3. On 3 December, the Tribunal gave Directions. The Tribunal determined that a paper determination was the proportionate manner to determine this application. It notified the parties that we would determine the application on the papers, unless either party requested an oral hearing. Neither party has requested such a hearing. Both parties are legally qualified.

4. Pursuant to the Directions:

   (i) On 21 December, the Respondent filed its Statement of Case and disclosed a number of documents relating to the insurance as required by the Directions. This included the certificates of insurance for the years in dispute, a summary of the policy and its conditions, the claims history, and details of any commission that was received. Reference to this Bundle is prefixed by "R._");

   (ii) On 16 January 2019, the Applicant filed his Statement of Case. Reference to this Bundle is prefixed by "A1._");

(iii) On 31 January 2019, the Respondent filed Summary Submissions. No additional documents were attached.

(iv) On 4 February, the Applicant filed a Supplemental Statement of Case. The Applicant produced a number of additional documents, most of which are communications with his landlord. Reference to this Bundle is prefixed by "A2. _");

5. Steps (iii) and (iv) were not required by the Directions. However, these are submissions to which we have regard. The parties have also referred the Tribunal to six authorities. The parties have not provided copies of these authorities. It does not assist the Tribunal for the parties merely to select passages from judgments.

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

The Lease

7. The lease is dated 5 September 1983 and grants a term of 99 years from 24 June 1981. This is a tripartite lease between the Lessor (the interest now held by the Respondent), Eastdown Court Limited ("the Management Company") and the Lessee (the interest now held by the Applicant).

8. The following provisions are relevant to the claim in respect of the insurance:

(i) By Clause 5(iv), the Lessor covenants to insure and keep insured in the joint names of the Lessor and the Lessee the property against all the usual risks covered by a flat owner's comprehensive policy to the full value of the cost of rebuilding.

(ii) By clause 1, the Lessee covenants to pay by way of additional rent a sum or sums of money "being a proportion of the amount which the Lessor may expend in effecting or maintaining the insurance of the Property against loss or damage by fire or such other risks as the lessor thinks fit".

9. The Applicant also refers us to Clause 3(i) whereby the Lessee's Lessee is required to pay 4% of the service charges incurred by the Management Company.

10. The following clauses are relevant to the claims for the administration charges.

(i) Clause 2(viii): "The Lessee shall not assign underlet or part with possession of part only of the demised premises nor during the last seven years of the term assign underlet or part with possession of the whole of the demise premises without the written consent of the Lessor first obtained such consent not to be unreasonably withheld in the case of a respectable and responsible tenant and pay the Lessors solicitors reasonable charges in respect thereof"

(ii) Clause 2(ix): "Within twenty one days of the date of every assignment underlease grant of probate or administration assent transfer mortgage charge or discharge or Order of Court or other event or document relating to the term hereby created produce and give notice thereof to the Lessors solicitors for registration and pay such solicitors a reasonable fee for the registration of such notice together with Value Added Tax in respect thereof"

11. Clause 2(xix): "The Lessee shall pay all costs charges and expenses (including Solicitors costs and Counsel's and Surveyor's fees) properly incurred by the Lessor for the purpose of or incidental to the preparation and service of a notice under Section 146 and 147 of the Law of Property Act 1925 notwithstanding that forfeiture may be avoided otherwise than by relief granted by the Court".

The Background

12. Eastdown Court consists of 21 flats. We are not told when the Applicant acquired Flat 4. He does not currently occupy the flat, but sublets it.

13. The flat was managed by Salter Rex LLP ("Salter Rex") on behalf of both the Lessor and the Management Company. The effect of this was that Salter Rex arranged the insurance on behalf of the Lessor and included this as part party of the management charges collected on behalf of the Management Company. Salter Rex required the Applicant to pay 4% of the insurance premium, the same proportion as for the service charge.

14. On 24 April 2013 (at A2.16), Pier Management Ltd ("Pier") wrote to the Applicant notifying him that the Respondent had acquired the freehold. The Respondent had appointed Pier to collect the ground rent and the insurance. It was stated that the renewal date was 8 July 2013. This was not correct as the current policy continued until 17 October 2013. The letter stated that Salter Rex would continue to manage the property (on behalf of the Management Company).

15. On 14 November 2013 (at R46), Pier write to the Applicant demanding payment of the yearly insurance in advance, namely £342.95 for the insurance and an administration fee of £19.99. The demand did not state that the Landlord was changing the manner in which the charge

was being apportioned. The Landlord had decided to apportion the premium equally between the 21 flats, increasing the Applicant's liability from 4% to 4.76%. Had it been apportioned on the previous basis, the Applicant's proportion would only have been £288.07. Neither was there any reference to the fact that Regis Group (Holdings) Limited ("the Regis Group") of which the Respondent is a subsidiary, was receiving a commission of 15%.

16. Over the subsequent five years, Piers made annual demands for payment of insurance which the Applicant paid (see (R.6)). The Applicant's share of the premium, excluding the £19.99 administration fee, has increased from £342.95 to £658.42. In June 2017, the Applicant sought a lease extension. This claim lapsed and there is an outstanding issue about the Applicant's liability for costs. This dispute is not before the Tribunal.

17. On 14 November 2018 (at A1.23), J B Leitch, solicitors acting on behalf of the Respondent, demanded payment of administration charges totalling £540 for failing to serve a requisite notice with regard to a subletting. Forfeiture proceedings were threatened. This letter seems to have led the Applicant to issue the current application.

Issue 1: Insurance

The Submissions of the Parties

18. The landlord has paid the following sums in respect of insuring the 21 flats at Eastdown Court:

(i) In 2013, £7,201.93 was paid to Covea for the period 18 October 2013 to 17 October 2014 (R.7). This included insurance tax of 6%.

(ii) In 2014, £7,55.54 was paid to Covea for the period 18 October 2014 to 17 October 2015 (R.9). The declared value of the buildings was £2.203m.

(iii) In 2015, £8,501.42 was paid to AXA for the period 18 October 2015 to 17 October 2016 (R.11). Whilst the declared value of the block had increased from £2.203m to £2.311m, the insured sum had increased from £2.864m to £3.467m as AXA apply a 50% uplift.

(iv) In 2016, £9,774.24 was paid to AXA for the period 18 October 2016 to 17 October 2017 (R.12).

(v) In 2017, £11,974.20 was paid to AXA for the period 18 October 2017 to 17 October 2018 (R.13).

(vi) In 2018, £13,826.82 was paid to AXA for the period 18 October 2018 to 17 October 2019 (R.14).

19. In each of these years, the Applicant were required to contribute:

(i) 14 November 2013: £342.95 (4.76%) + an administration fee of £19.99 (R.46).

(ii) 29 August 2014: £359.79 (4.76%) + an administration fee of £19.99 (R.47);

(iii) 24 August 2015: £404.82 (4.76%) + an administration fee of £19.99 (R.49);

(iv) 6 September 2016: £465.44 (4.76%) + an administration fee of £19.99 (R.51);

(v) 31 August 2017: £570.20 (4.76%) + an administration fee of £14.99 (R.53);

(vi) 31 August 2017: £658.42 (4.76%) + an administration fee of £19.99 (R.55);

20. The Respondent makes the following points on the overall sums charged:

(i) Insurance is placed by the freeholder on a portfolio basis and not by individual property.

(ii) A broker tests the market. The selection is not based solely on price, but also the policy that best meets the needs of the landlord's portfolio. The Applicant responds that no details have been provided of these alternative quotes.

(iii) The Regis Group receive a commission of 15%. In return for this, the Regis Group undertakers work to ease the administrative burden on both broker and the insurer, for example giving instructions for reinstatement valuations/health and safety valuations and keeping accurate records for the portfolio on the claims experience. The Applicant contends that the Respondent has failed to justify this commission.

(iv) The Respondent does not receive any separate commission.

(v) The Respondent notes that Salter Rex used to apportion the insurance premium according to the service charge apportionment. The Respondent contends that it is reasonable to split the premium equally

between the 21 tenants as all benefit from the same policy. The Respondent does keep an open mind as is willing to review this in in the light of the wishes of the tenants. No complaint had previously been made as to the method of apportionment.

(v) Pier, the Respondent's managing agents, have charged an "insurance administration fee" or £19.99 per annum. The Applicant contends both that the lease does not permit the landlord to levy such a charge and that it is unreasonable. The Respondent has taken a commercial view and decided to concede this charge.

(vi) The Respondent refer us to *Avon Estates (London) Ltd v Sinclair Gardens Investments (Kensington) Ltd* [2013] UKUT 264 (LC) ("*Avon Estates*") at [30]; *Berrycroft Management Company Limited v Sinclair Gardens Investments (Kensington) Limited* (1996) 29 HLR 444; *Forcelux Limited v Sweetman and Another* (2001) 2 EGLR 173 ("*Forcelux*"); and *Havenridge Limited v Boston Dyers Limited* [1994] 49 EG 111; [1994] EG 53.

21. The Applicant make the following points in support of his contention that the sums claimed are unreasonable:

(i) The Applicant relies on the insurance cover provided by AXA for 6 residential flats at 17 Eastdown Park, where the premiums were £1,484.46 (2015/6); £1,540.47 (2016/7); £1,629.81 (2017/8) and £1,406.99 (2018/9). The current premium is £234 per flat. The Respondent responds that this is not comparable. The neighbouring building is a semi-detached conversion with a small side extension. Eastdown Court is rather a large purpose-built block with a flat roof.

(ii) Quotes which he has obtained in respect of Flat 4 from "confused.com" which range from £122.46 to £167.76. The Respondent contends that these are not fair comparison for a policy for Eastdown Court. Lockton and AXA are reputable companies controlled by the FCS. The Respondent have documentary evidence to confirm that it had it approached Almilin, Aviva or QBE (see R.37 and R.39).

(iii) The Applicant disputes that it is an "all-risks policy". In particular, it excludes loss of rental income if a flat becomes uninhabitable. The Tribunal notes that it would normally be for the leaseholder to insure against the loss of rental income if he decides to sub-let his flat.

(iv) The Applicant suggests that the Respondent should have obtained a separate quote for Eastdown Court.

(v) The Applicant refers us to *Hounslow v Waaler* [2017] EWCA Civ 45; [2017] 1 WLR 2817 at [37] and *COS Services Ltd v Nicholson [2017] UKUT 382* (LC); [2018] L&TR 5 ("*Cos Services*").

22. The Tribunal notes the following:

(i) The Applicant has provided no details of the insurance premiums payable before the Respondent acquired the freehold interest and arranged a block insurance policy.

(ii) Over this period of 6 years, the insurance per flat had increased from £342 to £658, an increase of 92%.

(iii) Had the Applicant's contribution remained at 4%, his contribution would have increased from £288.07 to £553.07.

(iv) Part of this increase was due to insurance premium tax which increased from 6 to 12 %.

(v) The Respondent has provided details of the claims history. There were six claims over this period. Five were relatively modest, not exceeding £1,800. However, one claim was for £46,914. This was for storm damage on 23 June 2016 and would have had an impact on the premium payable.

(vi) The cover includes terrorism, which can be a significant item.

The Relevant Authorities

23. The Respondent refers us to *Avon Estates,* where HHJ Walden-Smith in the Upper Tribunal ("UT"), after reviewing various decisions, concluded that there is no implied term that the costs of the insurance should be fair and reasonable, and that the landlord is not required to "shop around" to find the most competitively priced insurance. It was sufficient for the landlord to show either that the cost of the insurance was representative of the market, or that the contract was negotiated at "arm's length".

24. In *Forcelux,* Mr Paul Francis FRICS decided that a landlord whose brokers after canvasing a limited number of nationally known insurance companies then arranged the insurance of its property portfolio under one policy, had acted reasonably albeit that it had adopted a different approach than in *Avon Estates.* The UT concluded that the issue was not whether the service charge item was the cheapest available, but whether the charge was reasonably incurred. To answer that question, two distinct matters had to be considered: (1) were the landlord's actions appropriate in accordance with the lease, the RICS code and the 1985 Act; and (2) was the amount charged reasonable in light of that evidence. The UT concluded that the premiums incurred under this block policy were reasonably incurred.

25. In *Cos Services,* HHJ Stuart Bridge concluded that the burden of proving that the costs were reasonably incurred lay with the landlord. But as to the issue of whether the landlord had reasonably incurred the costs of insuring the building, there appeared to be a conflict with the Avon Estates and *Forcelux* decisions. This is because, according to *Avon Estates,* it appears that a landlord who has incurred high insurance costs can recover them as having been "reasonably incurred" provided either the cost was representative of the market or negotiated in the market at arm's length. In *Forcelux,* it was decided that, first, the landlord must show its actions in arranging the insurance were appropriate and lawful and, secondly, that the costs involved were reasonable.

26. In seeking to reconcile these two authorities, the UT analysed the case of *Waaler v Hounslow LBC* where the Court of Appeal considered the reasonableness of the costs incurred by a local authority landlord in carrying out repair works. Whether costs have been reasonably incurred is not simply a question of process; it is also a question of outcome.

27. Having reviewed these authorities, HHJ Stuart Bridge concluded that a tribunal must go beyond the issue of rationality and consider whether the sum challenged is, in all of the circumstances, a reasonable charge. This requires the application of the two-stage test formulated in *Forcelux.* Whilst it is not necessary for the landlord to show the cost is the lowest that can be obtained in the market, it must show that it was reasonably incurred. The tribunal must consider the terms of the lease, the steps taken by the landlord to assess the current insurance market and any evidence of quotations obtained by the leaseholders provided they are genuinely comparable in terms of the risks to be insured against. Moreover, a landlord who owns a number of properties is entitled to negotiate a block policy. The Judge concluded at [49]:

> "It is however necessary for the landlord to satisfy the Tribunal that invocation of block policy has not resulted in a substantially higher premium that has been passed onto the tenants of a particular building without any significant compensating advantages to them."

28. In *Cos Services,* tenant owned one of 16 flats in a block. The landlord insured under a block policy and sought to pass on to the tenants as a service charge one-sixteenth of the insurance premium for the block for the years 2014, 2015 and 2016. Those premiums ranged from £12,598 to £13,562. The tenants called Mr John Blain FCII to give evidence. Mr Blain was not called as an expert witness and it was conceded that he lacked impartiality, having acted in a professional capacity on behalf of the tenant for a number of years. Mr Blain challenged the landlord's contention that the "advantageous terms" offered by the block insurance policy could possibly justify the differential in premium

between that charged by NIG and that charged by other insurers for similar policies (offered by Covea and by AXA). It was his case that the NIG policy was not very different from the policies with which he sought to compare premiums. The First-tier Tribunal concluded that the sums charged where not reasonable and reduced these to £2,803, £2,819 and £3,018 (namely an average of £180 per flat). After rehearing this evidence, the UT upheld this decision. HHJ Stuart Bridge concluded that it remained a mystery why there was such a discrepancy between the premiums charged to tenants under the landlord's policy and the premiums obtainable from other insurers on the open market. Accordingly, the landlord had failed to satisfy the tribunal that the amounts sought to be charged were reasonably incurred.

29. In *Williams v Southwark LBC* (2001) 33 HLR 22, Lightman J considered the position where a commission of 20% was payable to the local authority landlord for the authorities handling and administration of the insurance policy. Zurich, the insurer, assigned to Southwark the responsibility for local claims handling and paid the council 20% of the premium in return for these services. The cost of claims handling in the relevant year was £88k. The Judge was satisfied that this was a payment for services which the council was entitled to retain.

30. The Tribunal has also had regard to the recent authority of *Atherton v M B Freeholders Limited* [2017] UKUT 497 (LC). In this case, the lessee covenanted to insure the demised premises in the joint names of the lessor and the lessee. Martin Rodger QC, the Deputy Chamber President, held (at [58]) that on the facts of this case full compliance with the terms of the lease was an indispensable condition of the right to recoup the cost of insurance.

31. The Tribunal also refers to the RICS Management Code. Section 12 deals with insurance. The Tribunal notes the following:

(i) Part 12.4 provides that there is a need for regular reviews of the level of insurance and reinstatement value. The managing agent must ensure there is adequate insurance and that leaseholders are not paying for excessive or unnecessary coverage.

(ii) Regard must also be had to the insurance company's record of handling claims in addition to the level of premium.

(iii) Part 12.6 provides that any insurance fees (including commission received) should be declared to the client and leaseholders on an annual basis and should reflect the work carried out.

<u>The Tribunal's Determination</u>

32. Applying the two-stage test formulated in *Forcelux,* the Tribunal concludes that the sums incurred by the Respondent have not been reasonable. We have regard to the following matters:

(i) The landlord has not taken out a policy in the joint name of the lessor and lessee as required by the lease. The Applicant has not sought to argue that this is a condition precedent to the insurance becoming payable. However, he does take the point that the Respondent has failed to obtain a policy specifically for Eastdown Court.

(ii) There has been a lack of transparency. Pier did not notify the Respondent either that (a) that the method of apportionment was being changed; and (b) that the Regis Group was receiving a commission of 15%.

(iii) Whilst the Respondent was not obliged to apportion the insurance premium in accordance with the service charge apportions, it should reflect the respective values of the Eastdown Court. It the landlord was minded to change the apportionment, the tenants should have been notified of the change. Good practice, as is conceded by the Respondent, would have been to consult the tenants on any proposed change. The Respondent notes that no tenant has complained about the manner in which it has apportioned the insurance premium. However, it did not notify its tenants that it was changing the method of apportionment!

(iv) We are not satisfied that the 15% commission paid to the Regis Group has been justified. It is not suggested that the Regis Group handle claims. It is a separate legal entity from the Respondent. It is in its interest to ensure that properties owned within the group are properly insured. Why should the tenants have to pay for this?

(v) Whilst the comparables produced by the Applicant are not strictly "like-for-like" they do suggest that the premiums charged are unduly high.

(vi) It is for the landlord to satisfy the tribunal that the premiums are reasonable. It has produced very limited evidence of the steps taken to test the market. It has not provided particulars of any alternative quotes that have been obtained. Neither has any evidence been adduced as to how the premium has been apportioned within the portfolio. There is no evidence that the block policy has secured economies of scale.

33. We have concluded that the following sums are payable in respect of insurance premiums: £300 for the years 2013/4, 2014/5, 2015/6 and £350 for the years 2016/7, 2017/8 and 218/9. In reaching this decision, we have regard to the following factors:

(i) The premiums charged are unreasonably high having regard to the comparables adduced by the Applicant. This confirms our assessment as an expert tribunal.

(ii) The Respondent has not satisfied us that the 15% commission payable to the Regis Group was reasonable.

(iii) The Respondent should have notified the tenants and justified its decision to change the manner in which the insurance premium is apportioned. It has not done so. His share should therefore have remained at 4%.

(iv) We increase the sum payable for the later years to reflect three factors: (a) inflation; (b) the increase in insurance tax; and (iii) the claims history.

34. Piers has claimed an additional annual administration charge of £14.99 in connection with the demand of the insurance premium. The Tribunal agrees with the Applicant that the lease does not permit the Lessor to levy such a charge. The Respondent has conceded this claim.

Issue 2: The Administration Charge

35. The Tribunal is satisfied that in construing Clauses 2(vii) and 2(ix) of the lease, the Lessee is not required to seek the consent of the Lessor if he wishes to sublet part of the flat. The Lessee would only require the Lessor's consent if he wished to sublet the whole of the flat in the last seven years of the term. This now seems to be accepted by the Respondent.

36. However, in respect of any subletting, whether of the whole or part of the flat, the Lessee is obliged to give notice to the Lessor's solicitor and provide a copy of the tenancy agreement, so the letting can be registered. The Lessor has a legitimate interest in knowing if a flat is sublet.

37. The Respondent has adduced no evidence of the relevant procedure whereby a lessee is obliged to give notice to their solicitor of a subletting which is to be registered. The Tribunal has rather been provided with a copy of letter from J B Leitch, dated 15 November 2018 (at A1.23) in which £540 (inc VAT is demanded) namely (i) a registration fee of £120; (ii) an administration charge of £180 and (iii) legal fees of £240. The Solicitor also requires information to which the landlord would be entitled were its consent to be required for the subletting, but which is not required be the terms of the lease. It may be that the tenant is willing to provide these as a matter of good practice. It is in the interests of all parties that the landlord should have emergency

contact details for both the lessee and the subtenant. However, these are not particulars which the tenant is obliged to provide.

38. The Respondent is willing to concede 50% of its fee of £540. We consider that £270 is excessive for merely registering a notice of subletting. We allow £50 + VAT.

Application for Refund of Fees

39. The Respondent states that it has attempted to engage with the Applicant in settlement negotiations without success and would appreciate the opportunity to provide the Tribunal with copies of this correspondence before the Tribunal makes any order on costs or reimbursement of fees. The Respondent also refers to an outstanding claim for legal fees in connection with an abortive lease extension.

40. The claim for costs in respect of the lease extension is not before this tribunal. A separate application will be required if this cannot be agreed. The Applicant has not applied for an Order for costs under section 20C of the Act. The parties were invited to make written representations on the refund of fees. It would be disproportionate, and would incur additional costs, if the parties were to be invited to make further written representations.

41. The Applicant makes an application for a refund of the fees that he had paid in respect of the application pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Having regards to our determinations, the tribunal orders the Respondent to refund the fees of £100 paid by the Applicant within 28 days of the date of this decision.

Judge Robert Latham
27 February 2019

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).