FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/00ML/LSC/2019/0069
Property	**:**	83 Montpelier Road, Brighton BN1 3BD
Applicant	**:**	Mr Keith Wells
Representative	**:**	n/a
Respondent	**:**	83 Montpelier Road Brighton Limited
Representative	**:**	Ms Kat Ellerker of Redbrick Sales & Lettings
Type of Application	**:**	For the determination of the reasonableness of and the liability to pay a service charge
Tribunal Member(s)	**:**	Judge JA Talbot Mr K Ridgeway MRICS
Date and Venue of Hearing	**:**	7 November 2019, Brighton
Date of Decision	**:**	13 January 2020

DECISION

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Decisions of the Tribunal

1. The Tribunal determines that Mr Wells is liable to pay service charges in respect of the major works carried out during 2019 in the total sum of £15,008.33 (as broken down below) but only once those service charges have been validly demanded in accordance with the terms of the lease.

2. The Tribunal makes an order under Section 20C of the Landlord and Tenant Act 1985.

The application

3. The Applicant, Mr Wells, seeks a determination pursuant to Section 27A of the Landlord and Tenant Act 1985 ("the Act") as to whether service charges are payable by him in respect of major works and additional works carried out at the Property in 2019. The Application was dated 26/06/2019.

4. Directions were issued by Judge Tildesley OBE on 02/08/2019. He directed that the Respondent should provide a statement of case together with copy documents in support, including all invoices of the disputed charges, the service charge accounts, section 20 consultation documents in respect of the major works and all documents relied upon.

5. Initially the Respondent, represented by its managing agent Ms Ellerker, did not comply within the specified time limit and Mr Wells applied for a sanction. A Procedural Judge extended the time limits and reminded the Respondent of its obligations.

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

The hearing: 7 November 2019

7. The Applicant, Mr Wells, appeared in person at the hearing accompanied by his sister Ms J Boorsma. The Respondent was represented by Ms Ellerker from Redbrick Sales & Lettings.

The Inspection

8. The Tribunal inspected the property before the hearing in the presence of Mr Wells, Ms Boorsma, Ms Ellerker, and the builder, Mr Bob Leach. 83 Montpelier Road is a substantial mid-terraced building, built in the mid-19th century, of brick construction with stucco rendering to the sub-basement and ground floor, situated in a town v. It is comprised of six floors, including the sub ground and mansard roof and is converted into self-contained flats.

9. The Tribunal was firstly shown the front of the building, including areas of re-pointing, repairing of the rendered area and repairs to the steps up to the front door. Re-roofing works including to the dormer flat roofs, and the removed and capped chimneys, were noted. There was a rear

addition, with north, south and east facing walls, was seen to be all rendered and recently re-painted. The guttering had been replaced though the down pipes were largely original. The rear dormer and roof had been replaced with new tiles. The building appeared to be in good decorative order externally throughout.

The Lease

10. Mr Wells is the lessee of the lower ground floor flat. The lease provided with the Application appeared to be a draft, as it was undated and did not identify the term (other than to say it was 125 years from an unspecified date). Mr Wells is the original lessee and the grantor landlords were John Hugh-Jones and Gillian Marjorie Laurie. Mr Wells recalled that he purchased the flat some 20 years previously.

11. The Tribunal was told that the landlords owned the whole property and had previously let all the flats direct on short-term tenancies which were then eventually sold on long leases. Ms Ellerker said she thought the leases were not all in the same form. However, the Tribunal proceeded on the basis that the draft lease accurately reflected Mr Wells' rights and responsibilities.

12. Under clause 4(1) of the lease, the tenant is required to contribute his share of the annual maintenance cost, which is one sixth. Clause 4(2) provides that: "the Tenant shall on the 25th day of March and the 29th day of September in every year … pay in advance to the Landlord such sum as the Landlord or his managing agents shall in their absolute discretion consider appropriate on account of his contribution as aforesaid to the Annual Maintenance Cost".

13. Clause 4(3) then provides that "as soon as practicable after the 25th day of March … the Landlord or his managing agents shall serve on the tenants … the Annual Maintenance Account" and certify the actual amount of the Tenant's aforesaid liability for the period in question and the Tenant shall forthwith pay or be entitled to receive from the Landlord the balance (if any) by which the Annual Maintenance Account shows that such amount falls short of or exceeds the sums already paid by the tenant in respect of the period in question".

14. The Annual Maintenance Cost is defined at clause 4(5) as "the total of all sums actually spent by the Landlord during the period to which the relevant Annual Maintenance Account relates in connection with the management and maintenance of the property" which includes, at clause 5(2), the roofs, pipes and drains, the main structure of the Building, foundations and exterior walls, and the internal common parts.

The issues

15. The Tribunal at the hearing heard evidence and argument from both Mr Wells and Ms Ellerker on the issues raised in the Application, which were:

- The cost of major works specified in a Section 20 Notice of 18/10/2018, Mr Wells's share being £11,000.22
- The cost of parking of £160
- Additional chimney works (25/05/2019) of £2,005.04
- Additional strapping and rear works (25/05/2019) of £1,343.35.

16. Mr Wells also asked the Tribunal to consider some further questions, namely: why no structural survey was carried out; why the Section 20 works for roof repairs, external wall repairs, re-painting and external window repairs had apparently been extended so that the "roof flat" was "cosmetically enhanced at the leaseholders' expense"; why work was given to the maintenance company before the tender process; and why no receipts had been provided for any work completed.

17. At the start of the hearing the Tribunal explained that it had no jurisdiction to consider other matters raised by Mr Wells in connection with the running of the tenant-owned management company.

The major works, section 20 consultation and structural survey

18. It is convenient to deal with these items together, as Mr Wells' objections to the nature, extent and cost of the major works seemed to be mainly predicated on the lack of a recent survey by a qualified RICS surveyor, as opposed to a structural engineer.

19. The initial Section 20 Notice of Intention to carry out works was issued on 02/02/2018. The specified works were: "required repairs to main roof and 3 x dormas [*sic*] of building to stop leaking roof and improve long term structure of whole building, to include erecting scaffold; repairs to blown rendering and repaint rear of building and repairs to external window frames".

20. The 2nd stage Notice was issued on 18/10/2018. The description of works was repeated. The agents Red Brick had obtained 3 quotes, the lowest of which was from Bob Leach Building for £66,000. Mr Wells was informed his share would be £11,000.22 which is one-sixth of that figure. On 06/11/2018 Ms Ellerker provided a breakdown of the Leach quote as £13,000 for the external painting and £53,000 for the external and structural roofing, this latter sum to include scaffolding.

21. Mr Wells objected in writing on 09/11/2018. He contended in summary that Red Brick had already chosen the contractor without providing all the quotes, that the external painting was non-essential and therefore unnecessary. He had not been sent a surveyor's report but only structural engineer's calculations by Mitchinson Macken, which was not the same thing. He said that external works had been carried out in 2013/14 by Brickhurst Construction at a cost of "£27,000+" with scaffolding to the north elevation costing £1,250 but the nature and extent of these works was not known.

22. The Tribunal noted that a 3-page tender document from Bob Leach dated 26/02/2019 was in fact un-costed. At the hearing Ms Ellerker admitted she could not provide a more accurate breakdown of the Bob Leach quote, but that he was selected as having a track record of good quality building and maintenance work for the agents.

23. There was in the papers a 10-page structural survey report by Peter D King FRICS dated 12/02/2015 (this is most likely an error for 2016, as the instruction letter is dated 27/05/2015 and the report states that the inspection was carried out on 10/02/2016). The report is headed: "Report upon the Property known as 83 Montpelier Road for the Current Lessees". Under "Scope of Instructions" Mr King said he was "instructed to provide a survey of certain parts of this property for the current lessees of the six flats (the client) who are intending to buy the freehold". Mr Wells is listed as one of the current lessees along the 5 others.

24. Ms Ellerker told the Tribunal the managing agents were aware of this report, and as no work had been carried out to the property since it was written, it was reasonable to assume the report's findings were still relevant and so it was not deemed necessary to incur the expense of a further report before starting the section 20 consultation process. In addition, the works were urgently required because of damp in the top flats caused by the poor condition of the roof and dormers.

25. Mr Wells claimed not to have seen the report until it was disclosed by Reb Brick in these proceedings, but in this he may be mistaken, given that he was one of the client lessees who commissioned the report, and a member of the tenant-owned management company which subsequently purchased the freehold, in which he was involved.

26. Further, there is an email from Paul Vanstone, lessee of Flat 1, dated 20/12/2018 headed "additional costings", to all the other lessees including Mr Wells, in which he refers to this survey which "flags general poor exterior condition that was in need of work at that time and some potential roof issues". From all this evidence, on the balance of probabilities, the Tribunal concluded that at the very least Mr Wells must have been aware of Mr King's report before these proceedings.

27. At the hearing the Tribunal took the parties through Mr King's report, as it was the best available evidence of the condition of the property before the major works, and therefore shed light on the nature and extent of the major works and whether they were reasonably necessary.

28. At para.15 of the report Mr King reported that "the timber framed roofs are covered with very old and basic replacement sand-faced interlocking concrete tiles" and that "the ridge to the roof over the main part of the building where the front and back slopes meet has sunk slightly". He also observed that "the replacement tiling to the back-addition roof has been badly laid and poorly amended following the removal of a chimney stack at its eastern end". Other defects included narrow guttering and incorrect edge tiling which could be contributing to internal dampness.

Mr King concluded: “the only proper way to solve these shortcomings will be to strip off and renew the roof covering including the timber battens and waterproofing felt”.

29. In relation to the 3 dormers, Mr King reported that the cement waterproofing was cracked and loose and in need of repair, that nailed-on bitumen felt might be inadequate to prevent water damage, that there was rotted timber to the front dormer, and that the flat roof covering had a limited life. He recommended that a sinking fund be put in place to cover the cost of eventual replacement.

30. Mr Wells did not agree that this meant the whole roof needed to be replaced or that extensive works to the dormers were required. He commented that Mr King had simply said that improvements would be “worthwhile” rather than essential. He thought work had been carried out to the dormers some 4 years previously and therefore replacement should not be necessary, but he was unable to specify what those earlier works were.

31. In relation to rendering and brickwork, Mr King reported that there were cracks to the render for which the best long-term remedy was hacking off and renewing rather than patch repairs. At the front there was damaged brickwork in various locations and badly eroded mortar pointing which required repair to avoid internal damp problems.

32. Again, Mr Wells did not accept these repairs were essential and commented that these comments were vague. He and his sister said that the structural engineer from Mitchinson Macken had told them the repairs were not essential. He said that he had been told by previous managing agents that external repairs and redecorations would only be needed every 7 years so was not yet due.

33. In terms of the works covered by Section 20 consultation, Mr Wells contended that he was told his liability would be £11,002, which led him to believe the agents had already decided to award the contract to Bob Leach Builders, which he regarded as unfair.

Additional Works

1. Once the works had been commenced in May 2019, it became apparent that further works were urgently needed to the rear roof and fire wall, which were in poor condition, and that the chimney stacks were leaning dangerously. Red Brick instructed Mitchinson Macken, who having accessed the roof, reported on 19/05/2019 that the state of the chimney stack was “alarming” and “showing severe outward leaning towards the neighbour’s roof and dormer space … the stack cannot be braced and as such we would recommend that it is carefully removed”.

2. They also stated in their site survey report of 14/05/2019 that it would be “prudent” to install new joists as the rafters were susceptible to rot.

3. The chimney problems had previously noted by Mr King, who reported that the very large chimney stack shared with 84 Montpelier Road was leaning "quite considerably to the south". Whilst he did not "rule out the possibility that it will have to be rebuilt at some point", he recommended that that the position should be monitored.

4. Mr Wells did not appear to object that these works were necessary. He argued that if a full RICS survey had been carried out, the need for these works should have been known in advance and costed accordingly. As a result, the cost of the works had increased to an unexpected and unreasonable level.

5. There were some further minor works carried out with the agreement of the lessees, to carry out repairs to the front path (a temporary repair) and to the front canopy. Mr Wells had not specifically objected to these but he said he did not derive any direct benefit from them as he lived in the basement flat.

Scaffolding

6. Ms Ellerker said the estimate for scaffolding was included in Bob Leach's original £53,000 estimate for the external and structural works. It transpired once the invoices were provided that the actual initial cost was £11,400 for the main roofing works paid direct to Pavilion Scaffolding Ltd total £14,160. An additional cost of £2,760, according to Ms Ellerker, was paid to Pavilion, but there is no separate invoice for this and additional scaffolding costs appears to be included in Bob Leach's invoices (see below).

7. Mr Wells' objection to the scaffolding was not entirely clear. He thought the cost was initially going to be £27,000, because in her email of 06/11/2018, Ms Ellerker had said the cost to the front would be £15,000 and for the rear £12,000. This was considerably more than the eventual actual cost.

8. At the hearing his sister gave an estimate of £7,000-8,000 but this was unsupported by any evidence. He said scaffolding to the north elevation in 2013/14 had cost £1,250. However, the Tribunal noted that there is only one north elevation at the property, namely, the north-facing flank wall to the back-addition, which is a relatively small part of the overall building so is not directly comparable to the Pavilion cost.

Party Wall Agreement, Parking Spaces, Building Control

9. A Party Wall Agreement was prepared by Leo Horsfield Surveying at a cost of £600, which was necessary for the chimney stack works. Mr Wells did not dispute that this was needed but said he had not previously been informed it had been done.

10. Two parking spaces in a yard at the rear of the property were hired for use by the contractors and a skip to remove rubbish from the site. Mr

Wells objected that this had not been done before. Ms Ellerker said it was necessary as there was no street parking or other access to the rear.

11. The actual cost as evidenced by written agreements with Langton Property was £320 per month, total £960 for 13 May to 12 August 2019 and a further month at £320 from 13 August to 12 September.

12. A Building Control fee of £300 was evidenced by a receipt from Total Building Control. This was not in dispute.

Cost of Works and Service Charge Demands

13. Mr Wells' objections to the costs, as set out in the Application and at para.9 above, are essentially based on the only information he had available to him, contained in service charge demands as follows:

07/03/2019	£5,500.11	Section 20 initial works payment 16.667%
25/05/2019	£1,343.36	Additional strapping & rear roof works £8060 (16.667%)
25/05/2019	£2,005.04	Additional chimney works £12,030 16.667%
25/05/2019	£100.00	Party Wall Agreement, Leo Horsfield Surveying £600 (1/6)
25/05/2019	£160.00	Parking for 2 spaces £960 (1/6)
19/07/2019	£113.54	Parking extension £320 (1/16)
19/07/2019	£5,500.11	Section 20 remaining payment

14. The main basis for his Application, apart from the fact that he did not consider most of the works to be reasonable or required, was that the costs had escalated from the initial estimate, and that had there been a proper survey, the full extent of the works should have been known in advance with no need for the additional costs.

15. Mr Wells also objected on grounds that he understood an email from Ms Ellerker of 02/02/2018 sent with the initial Section 20 Notice to mean that the total cost of the works was likely to be £20,000, but then turned out to be much higher. The wording was: "as the cost of these works will be in the region of £20,00 each leaseholder will need to contribute to the works in addition to the annual service charge and so a Section 20 Notice process is required".

16. Ms Ellerker explained she had meant that each leaseholder would be liable to pay £20,000, but she accepted that the wording could have been clearer and was potentially misleading. In the event, however, the total cost per leaseholder, even with the additional works, was less than £20,000.

17. The difficulty faced by both Mr Wells and the Tribunal was the lack of any evidence in the Respondent's Statement of Case and the papers to give a full breakdown of all the actual costs incurred. Ms Ellerker had failed to comply with the Tribunal's earlier Directions to supply copies of

invoices of all the disputed charges. The service charge demands gave only partial information, there were no service charge accounts covering the period of the works (May-August 2019), no fully costed estimates or detailed breakdown of the initial £66,000.

18. At the hearing, therefore, it was necessary for the Tribunal to require Ms Ellerker to obtain this information, which she was able to do, as it was stored digitally. She first produced internal spreadsheets showing the sums demanded from each lessee with dates of payment, and a brief table setting out the works, contractor, amount and date paid. However, the heading for some works was unclear e.g. £10.045 for "strapping". It was not clear what this related to.

19. Ms Ellerker finally produced copies of the receipted invoices from each contractor. There were 4 from Bob Leach Builders, 2 from Pavilion Scaffolding Ltd, 2 from Langton Property, 1 from Leo Horsfield Surveying and 1 from Total Building Control.

20. The Tribunal based its determination on the actual costs, as evidenced by the receipted invoices and explained further below.

21. Turning to the service charge demands, the Tribunal observed that these were not demanded in accordance with the lease terms, which only allow the landlord to demand payments on account of anticipated expenditure twice a year, on 25 March and 29 September, with any remaining balance due after production of the annual maintenance accounts, required as soon as practicable after 25 March each year.

22. Ms Elleker admitted that the service charge demands had been served on each lessee as and when the costs were incurred, with the main Section 20 works of £11,000.22 demanded in 2 equal amounts of £5,500.11 at the start and end of the works, together with extra demands in between for the additional works. Although this did not comply with the lease, it enabled the ongoing costs to be defrayed and the other lessees had not objected. She also admitted that since Red Brick took over in 2017 there had been no plan to set up a reserve fund, which had been recommended by Mr King.

Consideration

23. The Tribunal carefully considered all the written and oral evidence. In relation to the major works and additional works, the Tribunal was satisfied that these were necessary. It was clear from Mr King's survey report of February 2016 that the property was even at that time in need of extensive repairs and redecoration, in particular to the roof, dormers, external render and brickwork, and the leaning chimneys were at risk.

24. Whatever work was done in 2013/14, it must either have been limited in scope (as suggested by scaffolding only to the north elevation) or of poor quality, or given the age and overall condition of the property, reasonably needed to be carried out again.

25. In the Tribunal's view, it was both reasonable and necessary for the additional works to be carried out, as the removal of the chimney stacks was urgent to prevent imminent collapse, and the replacement of roof rafters and roof tiles was also necessary and the most efficient way of achieving a long-term solution in the best interests of the property and the lessees.

26. The need for these works could only reasonably have been discovered once the contractors were in situ on the rear roof with an opportunity to inspect it closely. Mitchinson Macken also accessed the roof and the Tribunal accepted the accuracy of their report as to the state of the chimney stacks and the roof rafters.

27. The Tribunal rejected Mr Wells' argument that there should have been a further full survey report before the works were tendered for. It agreed with Ms Ellerker that the cost would have been disproportionate, especially as scaffolding would have been needed for a surveyor to access the roof.

28. The Tribunal considered it was reasonable for the extra minor works to the front path and canopy to be carried out and charged for. These were structural works to the exterior of the property and therefore fall within Mr Wells' service charge liability.

29. The invoices from Bob Leach Builders (referred to as BLB1, 2, 3 & 4) gave a detailed and helpful breakdown. BLB1: headed main roofing works, repairs to render, repainting and new guttering, cost £54,600, including £11,400 for scaffolding which was to be paid direct. BLB2: headed additional works, first item "strapping of moving brickwork" and also including inspection of chimney stack, further roof works and leadwork, cost £8,060; BLB3: headed structural failing firewall and chimney stack works, cost £12,030; BLB4: headed canopy and path works, cost £1,620.

30. The Tribunal decided, taking an overall view, and using its knowledge and expertise, that the total cost of these major and complex works was reasonable, and that the works to which they related were necessary and of a reasonable standard, as observed at the inspection.

31. Mr Wells is therefore liable to pay 1/6 of the total cost as service charges, as set out in the table below.

32. In relation to scaffolding, the Tribunal was satisfied that the cost of £11,400 invoiced directly by Pavilion was reasonable, given the size complexity of the property, and that the additional scaffolding costs to the chimney stacks were reasonably incurred. Mr Wells is therefore liable to pay 1/6 of this cost.

33. The Tribunal was further satisfied that the costs of parking, building control and party wall agreement were reasonably incurred and reasonable in amount. Mr Wells is therefore liable to pay 1/6 of this cost.

34. As to whether the lessees of the top flats had benefitted unfairly from the new roof, the Tribunal accepted Ms Ellerker's evidence that those flats had experienced damp problems from both the roof and dormer defects. If any internal ceilings or walls had to be made good as a result of invasive works then this would be consequential to the external works. However, there was no evidence in the breakdown of Bob Leach's work that suggested this had been done or charged to the maintenance account. The Tribunal therefore did not agree with Mr Wells that those flats had been "cosmetically enhanced at the other leaseholders' expense".

35. Turning to the service charge demands, the Tribunal concluded that these had not been properly served as they were not in accordance with the terms of the lease. Service charges are not lawfully due unless or until they are validly demanded. In this case, the works were carried out in the current accounting year ending 25 March 2020. What the managing agents should strictly have done was demand payment on account on 25 March 2019 in anticipation of the cost of the planned works. It might also have been prudent to build up a reserve fund from 2017, as recommended by Mr King.

36. Although in practical terms it may have assisted the lessees to spread the cost over the period of the works and at the start and end of the works, and the others did not object, this is not what the lease provides.

37. The result is that Mr Wells will be liable to pay the balance of any service charges due once the annual maintenance accounts showing the total expenditure have been prepared and served as soon as practicable after 25 March 2020.

Determination

38. Mr Wells is liable to pay a total of £14,991.66 for the major works. This will fall due to be paid once validly demanded after 25 March 2020.

39. The breakdown is as follows:

Invoice	Amount	1/6 Tenants share
BLB Invoice 1	£54,600.00	£9,100.00
Pavilion Scaffolding	£11,400.00	£1,900.00
BLB Invoice 2	£8,060.00	£1,343.33
BLB Invoice 3	£12,030.00	£2,005.00
BLB Invoice 4	£1,620.00	£270.00
Party Wall	£600.00	£100.00
Parking	£960.00	£160.00
Parking	£320.00	£53.33
Building Control	£360.00	£60.00
	Total	**£14,991.66**

Application under S20C and refund of fees

40. At the hearing, Mr Wells applied for an order under Section 20C of the 1985 Act. The Tribunal makes an Order, which prevents the landlord from including costs incurred with these proceedings as part of a service charge.

41. Despite the fact that Mr Wells was not successful in his challenge to the necessity for and cost of all the works, the Tribunal considered it would be just and equitable to make an order. This was because the Respondent had failed to provide any satisfactory breakdown of the cost of the works, had failed to comply with the Tribunal's previous Directions, and did not produce the necessary evidence of the total actual expenditure and relevant invoices until during the hearing itself. Mr Wells had only partial information in the headings on the service charge demands. In addition, some of the expected sums given by Ms Ellerker in her emails were inaccurate and some of her wording was unclear and potentially misleading. Had all the information been accurately provided at the time, this might have addressed Mr Wells' concerns and the Application might not have been necessary.

Name: Judge JA Talbot

Date: 13 January 2020

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).

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking