FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AR/LAC/2020/0020**
HMCTS code (paper, video, audio)	**:**	**P: PAPER**
Property	**:**	**First floor flat, 94 Pretoria Road, Romford Essex RM7 7AT**
Applicant	**:**	**Fast Homes Limited**
Representative	**:**	**Fountayne Managing Limited**
Respondent	**:**	**Zaileen Hewins**
Representative	**:**	**In person**
Type of Application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Member	**:**	**Tribunal Judge Prof R Percival**
Date and venue of Hearing	**:**	**25 May 2021** **Remote**
Date of Decision	**:**	**26 May 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a paper determination. Neither party requested a hearing. The form of remote determination was P:PAPERREMOTE. The documents that I was referred to are in a bundle of 333 pages, the contents of which I have noted.

The application

1. The Applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the service charge years 2019 and 2020.

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

The property

3. The property is in a Victorian house which has been converted into two flats.

The lease

4. The lease is dated 30 November 2016, and is between the current parties. The term is 125 years. Each tenant pays half of the "insurance rent" (a service charge within the meaning of section 18 of the 1985 Act) and the service charge (clause 1).

5. By clause 1 (the interpretation clause), and schedule 6 (the landlord's covenants), paragraph 2 the tenant is required to pay insurance rent to cover the landlord's insurance obligation.

6. By way of definitions in clause 1 and the Landlord's covenants in schedule 6, paragraph 4, the service charge is payable in respect of a list of services such as maintenance of the structure, lighting of the common areas and so forth. In addition, the service charge includes the costs of

> "the reasonably and properly incurred costs fees and disbursements of any managing agent or other person retained by the Landlord to act on the Landlord's behalf in connection with the Building or the provision of the Services"

7. The mechanism for the demand of the service charge is provided by paragraph 4.2 of schedule 6, by which the landlord covenants:

> "To serve on the Tenant a notice giving full particulars of the Service Costs and stating the Service Charge payable by the Tenant and the date on which it is payable as soon as reasonably practical after incurring, making a decision to incur, or accepting an estimate relating to, any of the Service Costs"

8. The corresponding obligation on the tenant is

> "To pay to the landlord the Service Charge demanded by the Landlord under paragraph 4 of schedule 6 by the date specified in the Landlord's notice" (schedule 4, paragraph 2).

9. A similar obligation to pay on the date specified in the notice relates to the insurance rent (schedule 4, paragraph 3).

10. By paragraph 7 of schedule 4, the tenant covenants to

> "pay to the Landlord on demand the costs and expenses (including any solicitors', surveyors' or other professionals' fees, costs and expenses and any VAT on them) assessed on a full indemnity basis incurred by the Landlord (both during and after the end of the Term) in connection with or in contemplation of any of the following … (b) preparing and serving any notice in connection with this lease under section 146 or 147 of the Law of Property Act 1925 or taking any proceedings under either of those sections, notwithstanding that forfeiture is avoided otherwise than by relief granted by the court".

This covenant is, for reasons explained below, not directly relevant to the issues before the Tribunal on this application, but is included for completeness' sake.

The issues and determination

11. The Applicant asks the Tribunal to decide on the reasonableness – and I add, necessarily, the payability under the lease – of the service charges for the year to December 2019 and the year to December 2020. The sums involved are, according to the Applicant, £857.30 and £896.43 respectively.

12. In advance of this determination, the procedural judge, Judge Martynski, directed that, contrary to the Applicant's submission, the Respondent's witness statement and statement of case should be added to the papers and considered by the tribunal. They have been.

13. It is an unusual feature of these proceedings that the landlord is seeking a determination of service charges that the tenant has paid in full, albeit under protest. The terms of section 27A of the 1985 Act do not preclude such an application. However, this feature of the application has led to some potential lack of clarity as to what is before the Tribunal. The Scott schedule provided for in the directions has been separately filled in by each party, neither with regard to the entries of the other. The directions, in accordance with the Tribunal's usual practice, required the tenant to complete her column in the Scott schedule first. In completing the schedule, the Respondent has not directly addressed the issues that the Applicant identifies in its application form and statement of case. This is for the most part more a question of form than substance, but one further issue is identified by the Respondent. While the Respondent's approach is understandable, I am clear that the issues properly before the Tribunal are those identified in the application.

14. The Respondent has, in particular, raised an issue relating to invoices submitted by the Applicant in respect of legal fees. These are administration charges demanded under paragraph 7 of schedule 4. They are not the subject matter of an application for costs from the Tribunal under rule 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, but a contractual matter under the lease. I do not consider that this issue is, on this application, before the Tribunal. Should the Respondent wish to contest these administration charges, it is open to her to make her own application to the Tribunal. The Applicant states that these fees are currently £3,652. Although the Applicant has included its invoices to the Respondent for these sums, there are no invoices supporting these charges. I note in passing that there is no obvious evidence of the Applicant having received legal advice in the papers before me.

15. The Applicant landlord is, in these proceedings, represented by Fountayne Managing Ltd, a managing agent. That same managing agent managed the property on behalf of the Applicant during 2018, and until 1 August 2019, when that arrangement ceased. At that point, as related by the Respondent, the landlord agreed that the tenants could "self-manage" the property.

16. It will be evident that the service charge machinery provided for in the lease is straightforward, even minimal. Service charge demands can be made as soon as practicable after a relevant cost is incurred, or when it is decided to incur such a cost, or when an estimate is accepted. The landlord has chosen to use a service charge year – the calendar year – and make advance demands. This is presumably on the basis that, at the start of the year, the Applicant decides to incur the following year's expenditure. While there is no express process for reconciliation of advance and actually incurred expenditure, the landlord would not be entitled to retain an excess payment (as not applied to the Service Costs under the lease), and could demand (as actually incurred) any under-

claim. I note that in the correspondence, claims are made by the Applicant as to the requirements of the lease which are not accurate (for instance, that the lease requires that service charge accounts are finalised at the end of the financial year).

17. The costs put in issue by the Applicant for 2019 are insurance premiums, bank charges, fees for accounts, the management fee and a fee for an out of hours service ("Professional Property Services").

18. In respect of 2020, the costs are those relating to a fire risk assessment ("Fire Prevention System Services"), general maintenance, insurance premiums, bank charges, accounts fees, the management fee and the out of hours service.

19. I consider each of these in turn. In doing so, I consider such arguments as are advanced by the Respondent. In addition, there is a burden on the Applicant landlord to provide sufficient material to demonstrate that a service charge is reasonable and, if relevant, payable under the lease, as there is when an applicant landlord seek determinations on service charges in the absence of any engagement by a tenant.

20. Unless stated otherwise, the sums referred to relate to the total Service Costs under the lease. The Respondent's liability is half of that.

Insurance premiums

21. The insurance policy on the house runs from 31 July each year. In the bundle, there is an invoice from an insurance broker dated 3 July 2018 for £461.37, presumably referable to the accompanying certificate of insurance from Allianz covering 31 July 2018 to 30 July 2019. The next invoice from the broker is dated 1 July 2019 for £475.22. That dated 1 July 2020 is for £491.85.

22. Insurance premiums amounting to a total of £936.59 were charged in respect to the 2019 service charge year. According to the Applicant, the house was insured with Allianz until 31 July 2020, but the landlord had omitted to charge for insurance in 2018, so that year's insurance was added to the charge for the year 2019.

23. The estimated charge for 2019 is shown as £425.00 in the budget attached to a letter dated 23 October 2018.

24. On 22 May 2020, a schedule of actual expenditure for 2019 accompanied an associated service charge demand. This included a column giving the estimated figures. That for the insurance premium was given as £425 The actual figure was £936.59. On the evidence before me, this is the first demand to include the missed premium chargeable in 2018. The figure demanded comprises the two actual figures in the invoices of 3 July 2018 and 1 July 2019.

25. Judge Pittaway drew attention in the directions to section 20B of the 1985 Act. That provides that

> "If any 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."

Subsection (2) provides for a notice of costs to be given within the 18 month period. There is no suggestion that such a notice was served in this case.

26. In general, a cost is "incurred" for the purposes of a service charge when an invoice is proffered (*OM Properties Ltd v Burr* [2013] EWCA Civ 479, [2013] 1 W.L.R. 3071). The demand made on 20 May 2020 was over 18 months after the invoice of 3 July 2018. Accordingly, it cannot be charged to the Respondent.

27. There is no challenge to the reasonableness of the amounts otherwise charged for insurance.

28. *Decision*: The sum of £461.37 in respect of the insurance cover running from 31 July 2018 to 30 July 2019 cannot be recovered in the service charge. Otherwise, the service charges made in respect of insurance are payable and reasonable in amount.

Bank charges

29. In its statement of case, the Applicant says

> "In accordance with Leasehold and Tenant Act in order to carry out proper accounting, it is required that there is a service charge account for each individual property, we currently incur a charge of £7.50 per month for each Service Charge account."

30. This is given as the only reason for incurring bank charges. In context, "account" must mean bank account.

31. The statement continues "Due to privacy reasons it is very difficult for us to disclose the banking charge receipts".

32. I assume that "Leasehold and Tenant Act" means the Landlord and Tenant Act 1987, and that the reference is to section 42. That section creates a statutory trust for service charge moneys. It does not require a separate bank account for each property. As far as I am aware, there is no general practice of doing so. The usual practice is for those holding service charge moneys to set up a client account for the purpose, following the guidance provided in the current edition of the RICS

Service Charge Residential Management Code, 3rd edition ("the RICS code").

33. I also note that the Applicant's agent's service charge demands give the name of the account into which service charge payments may be made as "Fountayne/Client Account". It would be surprising if the agent would have an account with that name only for the two flats at 94 Pretoria Road.

34. I further note that it is difficult to understand why it should be difficult to disclose banking charges by means of a copy of the summary of charges provided by the bank, or the entry on a bank statement relating to the withdrawal of the fee (with, if necessary, the redaction of personal matter which might otherwise also be visible).

35. It is not necessary for me to come to a conclusion as to whether the Applicant's statement that it is charged a monthly sum for a separate account for the house is dishonest or not, and it would not be appropriate for me to do so without hearing the Applicant or its agent on the question.

36. Since the only reason given for holding a separate account, and charging for it, is misconceived, it cannot be reasonable for the charge to be passed on to the leaseholders.

37. *Decision*: The service charge, in both years under consideration, for bank charges is not reasonably incurred.

Accountancy fee

38. The actual accounts for 2019 show a figure of £120 for "accounts". The corresponding figure for 2020 is £420. The explanation given by the Applicant in its statement of case is that the earlier fee was a "beneficial discounted" rate, after which the fee "reverted to original, higher fee".

39. J Teller, a chartered accountant, presented invoices of £120 for "professional fees in connection with the preparation of service charge accounts" for 2019 on 15 May 2020, and for £420 on 2 September 2020, for the same service in respect of 2020.

40. It is good practice, endorses by the RICS code, for there to be an "annual examination by an independent accountant" of service charge accounts (RICS code, paragraph 7.13). The passage continues "[t]he form of examination will depend on the requirements in the lease and should be proportionate to the circumstances of the property".

41. There are no requirements for service charge accounts at all in the lease – see the simple structure described in paragraph 16 above. The property is a two flat converted house with minimal common areas (a small hall of, the Respondent says, about three metres by one metre).

42. The RICS code also sets out a list of what should normally be carried out by a managing agent for an annual fee. This includes to "produce and circulate service charge accounts that comply with [the relevant accountancy requirements]" (paragraph 3.4(f)).

43. There is, then, a division of responsibility between managing agent and accountant in the context of the preparation of service charge accounts. A managing agent in receipt of an annual fee should normally expect to prepare the accounts, but subject to proportionate external examination. We do not know what services were provided for in the contract between the managing agent and the Applicant, but in any event the precise contractual arrangements are not determinative of the reasonableness of a service charge referable to a fee under the contract. It is not the case that we can say determinately that it is never proportionate for an accountant to prepare the service charge accounts from scratch – as appears from the invoice to be the case here. Rather, the balance of tasks between what the accountant does and what is done under the annual management fee should result in a reasonable outcome.

44. As I note below, the annual management fee of £234 per unit per year is within the reasonable range in London. So the question is what could reasonably be considered to be within the range of proportionate fees for preparing these accounts, in the context of a reasonable management fee?

45. My conclusion is that the original "discounted" fee is proportionate. Even if it was, in that year, in fact a discounted fee for full preparation, if one looks at the management fee and the £120 as a fee for appropriate independent examination, the overall result is reasonable.

46. However, the same cannot be said of the £420 fee. As a fee for independent examination, it is very substantially greater than the whole of the management fee. As a test, we can ask if the combination of the management fee and the accountants independent examination fee is reasonable. I do not consider that £654 for management plus proportionate independent examination is within the reasonable range.

47. *Decision*: The accountancy fee in 2019 was reasonably incurred. That in 2020 was not reasonably incurred. A fee of £120 would have been reasonably incurred and should be substituted.

Management fee

48. I consider that the management fee of £234 inclusive of VAT per unit per year is within the reasonable range.

49. This conclusion is based on my knowledge of the prevailing market for the services of managing agents in London, gleaned from sitting on service charge cases with surveyors or other professional members. It is knowledge of a general nature, not based on specific disclosable material. In an oral hearing, I would expect to put this to the parties and ask if there were any objection to the Tribunal taking account of such knowledge. Because this case is being determined on the papers, at least in part as a result of conditions resulting from the current pandemic, I am unable to do so.

50. If I am wrong to do so, or if one of the parties would object (a first in my experience), then I would still conclude that the management fee is reasonable on the basis that there is nothing to contradict the Applicant's assertion to that effect.

51. However, this conclusion holds good for an annual fee. It is common ground that Fountayne Managing Ltd ceased to be responsible for the property from 1 August 2020. Fountayne invoiced the Applicant for £468 (ie for both flats) on 1 January 2020, and the full year was charged as actual expenditure on the service charge.

52. The lease allows the reasonable costs of a managing agent "retained by the Landlord to act on the Landlord's behalf in connection with the Building or the provision of the Services". There is no evidence as to the contractual arrangements between the managing agents and the Applicant as to notice requirements. So there is no evidence that the Applicant could not recoup the relevant parts of the fee invoiced on 1 January 2020. But in any event, I do not consider that the clause in the lease can justify paying a managing agent to *not* act on the Landlord's behalf in the specified ways. Any risk that early termination would result in the payment of fees for a longer period must fall on the Applicant.

53. Accordingly, the management fee for 2020 should be limited to seven twelfths of the annual fee.

54. *Decision*: The management fees for 2019 were reasonably incurred. For 2020, the reasonable charge would be £273 for both flats, or 136.40 for the Respondent.

Professional Property Services

55. The Applicant states that this charge relates to an out of hours emergency call centre. It appears to be a misnomer for the services (described as "professional property services") for which a firm called Walthem Maintenance invoiced on 1 June in 2019 and 2020.

56. There is nothing to contradict the Applicant's assertion that such a service was available, it was paid for, and is on its face reasonable in amount.

57. *Decision:* The charges relating to "professional property services" were reasonably incurred.

Fire prevention system services

58. In 2020, a fire risk assessment was carried out at the premises in relation to the common area, by a firm called Sterling Bank, and charged at £207. Although the Applicant's statement of case erroneously states that a fire safety assessment is an annual requirement, a fire safety should have been conducted, and thereafter kept up to date. Commissioning the assessment was reasonable, and the charge is within the reasonable range.

59. *Decision*: The service charge relating to a fire risk assessment in 2020 was reasonably incurred.

General maintenance

60. In 2020, a charge of £16.00 was made in respect of the purchase of keys, to allow access to the common area if necessary. The invoice is dated 2 March 2020.

61. *Decision*: the service charge relating to the cutting of keys was reasonably incurred.

Rights of appeal

62. 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 London regional office.

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

64. If the application is not made within the 28 day time limit, the 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 these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

65. The application for permission to appeal must identify the decision of the Tribunal to which it relates, 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.

Name: Tribunal Judge Professor Richard Percival **Date:** 26 May 2021

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 provision 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.

(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 of an application under subsection (1) or (3).

(7) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

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 20ZA

(1) Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

(2) In section 20 and this section—

"qualifying works" means works on a building or any other premises, and

"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

(a) if it is an agreement of a description prescribed by the regulations, or

(b) in any circumstances so prescribed.

(4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord—

(a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,

(b) to obtain estimates for proposed works or agreements,

(c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,

(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and

(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6) Regulations under section 20 or this section—

(a) may make provision generally or only in relation to specific cases, and

(b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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 tribunal2 or leasehold valuation tribunal or the First-tier Tribunal3 , or the Upper Tribunal4 , 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 the county court ;

(aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;

(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

(ba) in the case of proceedings before the First-tier Tribunal, to the tribunal;

(c) in the case of proceedings before the Upper Tribunal4 , 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 the 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]1 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).