FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AN/LSC/2020/0366**
Property	**:**	**46 Auriol Road, London W14 0SR**
Applicant	**:**	**Mr M Kingsley**
Representative	**:**	**In person**
Respondent	**:**	**Ms D Becher**
Representative	**:**	**In person**
Type of Application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	**:**	**Judge Prof R Percival** **Ms Alison Flynn MA, MRICS**
Date and venue of Hearing	**:**	**28 April 2022** **10 Alfred Place**
Date of Decision	**:**	**9 May 2022**

DECISION

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 charge payable as an interim service charge for the service charge year 2020/21.

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

The property

3. The property is a large detached house converted into four flats (lower ground, ground floor, first floor and second floor).

4. There is an extensive passage describing an inspection of the property in an earlier case before the Tribunal which is quoted at paragraph [4] of the case mentioned in paragraph [8] below. It is not necessary to set that out here.

Background and previous proceedings

5. The Applicant is the Tribunal-appointed manager of the property. The Respondent is the leaseholder of the first and second floor flats. The freeholder is Auriol Management Ltd, a company owned by the leaseholders.

6. There have been a number of previous proceedings involving the property before the Tribunal. Those with some relevance to the instant case are referred to below.

7. In a decision dated 27 January 2017 (LON/00AN/LAM/2016/0031), Mr A McKeer was appointed to manage the building under Landlord and Tenant Act 1987, section 24, for a term of five years from 27 January 2017. On 12 March 2020 (LON/00AN/LVM/2019/0018), the Tribunal varied the order, replacing Mr McKeer with Mr Kingsley, the Applicant, and making some amendments to the terms of the Management Order.

8. On 21 October 2021, Judge Bowers, sitting with Mr Johnson and Ms West, issued a decision on an application under section 27A of the 1981 Act by Ms Becher concerning the service charges demanded in respect of the service charge years 2017 to 2019 (LON/00AN/LSC/2020/0067) ("the 0067 case"). The instant case had been stayed pending the determination of the 0067 case.

9. It was not disputed that the Applicant was empowered by the Management Order initially made in 2017 and varied in 2020 to collect an interim or advance service charge (and Judge Bowers so found in the 0067 case).

10. On 1 February 2022, Judge Bowers refused an application to strike out the application, and gave further directions.

The issues and the hearing

11. Both parties appeared in person.

12. The Tribunal deprecates the way in which the parties prepared for the hearing. The Tribunal received a combined bundle of documents amounting to over a thousand pages. The vast majority of this material was irrelevant to the application, which was confined to the interim service charge demanded for the service charge year between April 2020 and March 2021. Further, the Applicant's "statement of case" of 44 pages consisted of copies of correspondence (not in chronological order). There was no narrative statement of the Applicant's case.

13. With the agreement of the parties, we proceeded by considering each of the elements in the Applicant's budget, which formed the basis of the interim service charge, in turn. Given the delays in the hearing of the case, the interim sums had been over-taken by the end of year reconciliation, that had already taken place.

14. In this decision, therefore, we use the figures from the budget for each item, which relate to the building as a whole. We did not understand there to be any dispute between the Applicant and the Respondent as to apportionment of the service charge (which varied between the heads of the service charge).

Accountancy and secretarial fees: £700

15. Mr Kingsley said that £500 of this demand represented his estimate of the cost of accountancy fees to prepare the service charge accounts, the other £200 representing an estimate for fees for company secretarial services.

16. Mr Kingsley said that, in respect of the accountancy fees (and his estimates more generally) he relied on his experience of similar properties. The mainstay of his practice, he said, was blocks of between five and twenty units. This was the first year that this building was under his management, which meant there was some uncertainty, which he had taken into account in setting the figure. The outturns from the year in respect of accountancy fees was now available, and showed that the cost had been £510, including VAT, which suggested that the estimate was realistic.

17. As to fees for work as a company secretary, the Applicant was aware that the Respondent had said that she would continue to act as company secretary for the freehold company, and not charge any fees, but he thought it was appropriate to make sensible provision, and she could have claimed fees. She had not.

18. The Respondent questioned the relevance of the Applicant's experience – this was a house of just four units, and a period property in a conservation area. She produced quotations from cheaper service charge accountancy services – one for £150 plus VAT, another for £300 including VAT.

19. We consider that £500 is within the reasonable range of estimates for accountancy services. As the Applicant argued, there is usually a minimum charge that any accountant would charge, and some leeway was appropriate in the first year. We note the outturn figure, as an indication that the estimate was a realistic one. We add that the fact that the outturn figure is available (and that we can take it into account in this way) does not amount to a decision that it is reasonable, and a challenge on the basis of the quality of work undertaken, for example, would be possible in an application under section 27A of the 1985 Act.

20. We asked the Applicant what provision in the leases or the Management Order entitled him to recover the internal costs of the freehold company. He referred to paragraph [29] in the variation decision by which he was appointed, which referred to his proposal that someone other than the Applicant act as company secretary, and the cost (about £200) be recovered through the service charge.

21. We do not consider that the reference in that paragraph was a finding made by the Tribunal that a company secretary's fees could be recovered through the service charge. Rather, it was a factual account of the Applicant's proposal, offered without assessment.

22. We do not consider that there is any clause in either the leases or the Management Order which would allow the recovery of the company secretary's fees. Accordingly, an estimate based on the mistaken assumption that there was is not payable.

23. *Decision*: A sum of £500, representing the accountancy fees element, was a reasonable estimate for the purposes of the interim charge. The additional sum of £200 was not reasonable (as not payable under the leases or management order).

Building and terrorism insurance

24. The interim service charge was £2,700.

25. The Applicant said that the figure was based on the previous year's permium. He had considered the cover in place, and had seen no reason to change either broker or cover. The outturn figure was £2,712.

26. The Respondent said she had withheld her service charge, because the Applicant had failed to tell her how a sum of £3,000 she had paid was being held. This represented the initial payment, referable to the service charge, to the Applicant of £1,500 per flat that was provided for in the Management Order.

27. The Respondent also said that she had not been able to inspect invoices and other documents – she referred specifically to documents relating to insurance claims – because of the conditions imposed as a result of the Covid-19 pandemic. In these circumstances, she considered that it would have been reasonable for the Applicant to have copied documents to her.

28. In respect of the insurance coverage, she also said that she objected to the limitation of coverage for loss of rent to one year, when she considered three years more appropriate. It was her belief that the longer period of loss of rent coverage would not have increased the cost of the insurance. She noted that she had been making this point since 2016.

29. The Respondent's concerns with the initial payment has no relevance to the insurance, and they do not provide a good reason to withhold payment of the service charge relating to insurance.

30. The Applicant contested the Respondent's claim that she had asked for invoices or other documents after the service charge demand was made.

31. We do not consider it necessary to determine whether a request for these documents was made or not. If there had been such a request, it may be that it would have been helpful for the Applicant to have accommodated the Respondent by providing a reasonable number of properly specified documents in the context of the Covid-19 lockdowns, but he was not required to do so, and doing so was certainly not a condition precedent for the payment of this element of the service charge.

32. We do not consider that it was unreasonable to limit loss of rent cover to one year; but in any event, even if it were, on the Respondent's case this would not have made any difference to the premium. If she were wrong about this, it could only have increased the service charge. Either

way, this consideration did not render the amount of the service charge element unreasonable.

33. In the event, there was no effective challenge to the quantum of the charge relating to insurance, which we concluded was reasonable.

34. *Decision*: The sum of £2,700 was a reasonable estimate to cover insurance.

Building reinstatement report

35. The sum of £500 was included in respect of the estimated cost of a report for insurance purposes on the cost of reinstatement. The report had not, in fact, been commissioned, so there was no expenditure. Although she made some criticisms of the Applicant's approach, the Respondent made no challenge to the estimated charge.

36. Our task is to determine whether an estimate was reasonable at the time at which it was made. If nothing was expended in respect to of an estimated charge, the leaseholders would be appropriately credited on reconciliation. It was reasonable to include this estimate in the interim service charge.

37. *Decision*: The sum of £500 was a reasonable estimate for a building reinstalment report.

Communal cleaning

38. The interim service charge was for £500. In the event, no expenditure was made under this heading.

39. The Applicant agreed that the Respondent had said she would clean the (small) communal area and not make a charge, but, he said, other leaseholders had expressed dissatisfaction with this solution and he therefore included the estimate. It was based, he said, on one visit a month by a cleaner, with some provision for materials. The Respondent considered the sum to be too high, given the size of the communal area.

40. We consider that the estimate was reasonable. It was properly open to the Applicant to conclude that a professional cleaner should be employed. A per-visit cost of a little over £40 (including materials) is not unreasonable for a professional cleaning company, even given the size of the communal area.

41. *Decision*: The sum of £500 was a reasonable estimate for communal cleaning.

Entryphone system

42. The interim service charge was £100.

43. The Applicant said that there was an entryphone system, so it was appropriate to make an allowance for any call-out necessary for maintenance, and the sum was a reasonable one for such a service. No expenditure had in fact been made.

44. The respondent said that the entryphone was rented by her, and had been in her name since 1965. She paid £65 a year, and was content to continue to do so.

45. The Applicant said that he was content for her to continue to pay. Our understanding was that he was not aware of this arrangement when the estimate was made.

46. The Applicant's decision to make this allowance was reasonable at the time it was made.

47. *Decision*: The sum of £100 was a reasonable estimate for entryphone maintenance.

Electricity

48. The estimated charge was £100. In the event, there was no expenditure, the Applicant not having received a bill for the electricity consumed by the one light on a time switch in the communal area.

49. The Respondent explained that the communal light was wired to her system, and she was happy to pay for it. It was a marginal cost.

50. Since it is physically impossible, without works of doubtful reasonableness, for the electricity to be paid by means of a separate bill, we consider that this element of the service charge falls into a different category to the other elements in respect of which no expenditure was in fact incurred. Given that the wiring was as it is, we do not consider that it was reasonable for there to have been any estimate for expenditure. We note that the allowance was in any event excessive.

51. *Decision*: The sum of £100 was not a reasonable estimate for communal electricity. No estimated sum would have been reasonable.

Emergency lighting

52. The interim charge was £100.

53. Emergency lighting had been installed after a report in 2016 for the whole building. The Respondent said she checked it every month by turning the lights on.

54. The Applicant said that it was necessary for the emergency lighting to be checked annually by a qualified electrician in accordance with the domestic electrical installation report, not just checked by turning it on every month as the Respondent, as he acknowledged, did.

55. There was initially a dispute as to whether expenditure had been incurred on an electrician's check in the relevant year, but, when taken to the invoice, the Applicant agreed that it had not been incurred in that year, but in the subsequent year.

56. Our conclusion was that, at the time it was made, the estimate was a reasonable one, even thought no expenditure was in fact incurred.

57. *Decision*: The sum of £100 was a reasonable estimate for checking the emergency lighting.

General repairs

58. The interim charge was £2,000. The Applicant said that the sum was reasonable for a building of this size and nature. The outturn figure was £1,739, which he relied on as indicative of the reasonableness of the estimated figure.

59. The Respondent argued that the estimated sum was not reasonable. She relied on the fact there was no general management plan in place, that it was not clear what the money had been spent on, and on the lack of trust between her and the Applicant.

60. Insofar as the Respondent's arguments have any force (a matter on which we make no finding), they could only possibly be directed at the year-end final service charge, not the estimated charge.

61. We are satisfied that the estimate for reactive general repairs was a reasonable one.

62. *Decision*: The sum of £2,000 was a reasonable estimate for general repairs.

Health and safety

63. The interim service charge was £700.

64. The Applicant said that the sum was to cover a health and safety risk assessment and an asbestos survey. The health and safety assessment was periodically necessary (it appeared that the last one had been undertaken in 2015). He considered that the appropriate period between such reports, in a property of this size and nature, would be two to three years. He was not aware that an asbestos survey had been undertaken previously.

65. Both reports had been secured during the year. The Applicant told us that the overall cost was £516. It appears to the Tribunal from the invoices referred to that the costs were, in fact, £288 for the asbestos report and £228 for the health and safety fire risk assessment.

66. The Respondent said that, as well as a health and safety report, an asbestos report had been obtained in 2015, a time when she had been managing the building.

67. The Respondent obtained cheaper quotations, at £95 for a fire risk assessment and £84.00 for an asbestos report.

68. The Applicant suggested that the alternative quotations were not to be relied on. He had not heard of the companies concerned, and thought that it looked as if the Respondent had just googled the estimates without proper care as to what was covered. The company that he had used was that used by the Respondent in 2015.

69. We do not come to any conclusion as to the Applicant's criticism of the Respondent's methodology. Nonetheless, applying the Tribunal's general knowledge of the market for such reports in London, we consider the costs quoted by the Respondent are far lower than we would expect for an appropriate report. We note (although it does not provide the basis for out decision) that that for an asbestos report includes a number of elements boasting a "100% discount", so it may be that the company were submitting the estimate on a loss-leader basis, which would be inappropriate for a comparator.

70. On the basis of the Applicant's turnout figures, the estimate was on the high side, but to be reasonable, it need only be within the reasonable range. Considered at the time it was made, we conclude that the estimate was, indeed, within that range.

71. *Decision*: The sum of £700 was a reasonable estimate for the reports covered by the heading health and safety.

Professional fees

72. The Applicant said that a reasonable allowance for professional fees was appropriate, given the history of the building. It was clear that relations between the leaseholders themselves, and between the Respondent and the Applicant, had been poor. In the event, only £120 had been expended, and that for Land Registry searches.

73. The Respondent argued that the estimate was too high, and that the actual expenditure had not been necessary.

74. We consider the estimate, in the particular circumstances of this property, was reasonable. At the time that the estimate was made, it was prudent for the Applicant to have funds in hand to enable him to, for instance, consult a solicitor.

75. Whether the actual expenditure, as opposed to the estimate, was reasonable or not is not a matter for us.

76. *Decision*: The sum of £700 was a reasonable estimate for professional fees.

Management fees

77. The allowance for management fees was determined by the Management Order, and was not substantively contested by the Respondent (save to correct a typographical error).

78. *Decision*: The management fees are reasonable.

Reserve fund/non-annual expenditure

79. The interim demand was for £2,000.

80. The Respondent argued that Judge Bowers had found that £250 per flat was reasonable in 0067 case, and that we should follow that.

81. The Applicant said that the interim estimates had been made before the decision in the 0067 case. While he did not seek to disagree with Judge Bowers, he considered £500 per flat to be appropriate when he drew up the estimates.

82. In the previous case, the Tribunal found that higher claims made in respect of the first year there under consideration (2017) were unreasonable, and considered that the charge made in subsequent years of £250 per flat was reasonable. The tribunal said (paragraph [54]) that "overall we think that this is a reasonable level for the reserve funds and determine that for each year the reasonable sum for the reserve fund should be £250 per flat". We consider that, for the years

concerned there, the Tribunal was giving a figure for the reasonable sum for a contribution to the reserve fund, not merely endorsing that figure, such that a higher figure might also have been reasonable.

83. We are not bound by the determination in the 0067 case, which concerned different years, and a charge within the discretion of the manager. However, we respectfully agree with Judge Bowers that the reasonable level of contribution to the reserve fund is £250 per flat. If there had been some particular reason why the contribution to the reserve fund should be increased, it might be reasonable for that to happen, but the Applicant did not urge on us any such reason for the year under consideration.

Issue 5: Application for orders under Section 20C of the 1985 Act/Commonhold and Leasehold Reform Act 2002, schedule 11, paragraph 5A

84. The Respondent applied for orders under section 20C of the 1985 Act that the costs of these proceedings may not be considered relevant costs for the purposes of determining a service charge; and an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 extinguishing any liability to pay an administration charge in respect of litigation cost in relation to the proceedings.

85. The Applicant said that he would not seek to charge the costs of the application to either the service charge or an administration charge. We accordingly make the orders to secure that helpful concession.

86. *Decision*: The Tribunal orders:

(1) under section 20C of the 1985 Act that the costs incurred by the Respondent in proceedings before the Tribunal are not to be taken into account in determining the amount of any service charge payable by the Applicant; and

(2) under Commonhold and Leasehold Reform Act 2002, schedule 11, paragraph 5A that any liability of the Applicant to pay litigation costs as defined in that paragraph be extinguished.

Rights of appeal

87. 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.

88. 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.

89. 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.

90. 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:** 9 May 2022

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).