FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AG/LDC/2022/0138**
HMCTS code (paper, video, audio)	**;**	**In person**
Property	**:**	**Bevan House, Boswell Street, WC1N 3BT**
Applicant	**:**	**Bevan House Management Company Limited**
Representative	**:**	**Corker Clifford LLP**
Respondents	**:**	**All tenants of Bevan House, Boswell Street, WC1N 3BT**
Representative	**:**	**Mr Alex Sharp for Mr Jye Chen. Mr Becker of Flat 15 represented himself**
Type of application	**:**	**To dispense with the requirement to consult lessees about major works**
Tribunal members	**:**	**Judge H Carr** **Ms Fiona Macleod MCIEH**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**2nd December 2022**

DECISION

Covid-19 pandemic: description of hearing

This matter was originally listed for a paper determination and was relisted as an in person hearing as requested by the applicant. The documents that the tribunal was referred to are in the bundle of 122 pages the contents of which the tribunal has noted. The order made is described at the end of these reasons.

Decision of the tribunal

1. The Tribunal determines that the works which are the subject of the application do not require statutory consultation

The application

2. Mr Michael Corker of Corker Clifford LLP on behalf of the freeholder of the premises, applied on 6th July 2022 under s.20ZA of the Landlord and Tenant Act 1985, for a declaration that the works which are the subject of the application comprise two different sets of qualifying works and therefore do not cross the threshold for compensation, or alternatively for dispensation from the consultation requirements contained in Schedule 4 to the Service Charges (Consultation Requirements) (England) Regulations 2003.

3. The applicant explained that the reason that it considered that the threshold for consultation was not crossed is that the works in dispute were works contracted remedy two distinct problems of entirely different characters.

4. In the alternative the applicant explained that it was seeking dispensation because compliance with the consultation regulations would have resulted in a delay of three months at least in completing the works which would have meant additional expense being incurred which would have to have been met by the leaseholders.

The property

5. The property is a purpose built block of 33 flats, The individual contributions of the lessees vary. The application indicated that the freeholder has been carrying out extensive works to the exterior of the property at a cost of more than £600, 000 plus professional fees and VAT. The contractor carrying out the works was Grangewood Builders Limited.

Procedure

6. The Tribunal held a case management review of this matter on 15th August 2022 and issued directions on the same date.

7. In those directions the Tribunal determined that the matter be determined remotely on the basis of the papers provided.

8. The directions gave an opportunity for any party to request a virtual hearing. The applicant applied for the matter to be determined in person and the tribunal set a hearing date.

9. The hearing took place on 15th November 2022. Mr Corker attended the hearing and represented the applicant. The two lessees who objected to the application attended. Mr Denis Becker of flat 15 represented himself and Mr Jye Chen of flat 1 was represented by Mr Alex Sharp. Other lessees also attended the hearing.

10. At the commencement of the hearing Mr Sharp, for Mr Chen, asked that new material be submitted. He asked that the tribunal consider

    (i) A building survey dated 2015 which he argued provided extensive and useful background to the dispute

    (ii) Correspondence between Mr Nathan Muruganandan the leaseholder of Flat A who is currently the director of the applicant which he argued reflected upon the character

    (iii) Correspondence dated 2017 with the managing agents about penetrating damp in the property

    (iv) Correspondence about the leaks in Flats A and B dated 2021.

11. Mr Corker said that the building survey was extensive and did not appear to him to be relevant. If the survey was to be admitted then he would ask for an adjournment to consider its contents as it was commissioned prior to him taking responsibility for the property.

12. He said that the correspondence between Mr Nathan Muruganandan and Bevan House Management Company Limited was not relevant to the issue in hand.

13. The tribunal took time to consider Mr Sharp's request

The decision of the tribunal

14. The tribunal determined to allow the correspondence with the manging agents about penetrating damp in the property dated 2017 and the correspondence about the leaks in Flats A and B dated 2021 into the proceedings but to exclude the other documentation.

The reasons for the decision of the tribunal

15. The correspondence that the tribunal agreed to consider was already familiar to Mr Corker. The other documentation and correspondence did not appear to the tribunal to be relevant and was unfamiliar to the Applicant and was therefore excluded.

Potential adjournment

16. The other procedural matter that should be recorded is that the tribunal offered the parties the opportunity for an adjournment on the basis that the applicant did not have its witnesses present and the leaseholders who objected needed to consider the law more carefully and consider whether they should make a s.27A application alongside or as an alternative to objecting to the current application. Whilst Mr Sharp sought an adjournment, Mr Becker indicated to the tribunal that he wished to proceed and the applicant asked for a brief adjournment to take instructions. During that brief adjournment it appeared that Mr Becker changed his mind, but the applicant sought to proceed.

17. The tribunal decided not to grant an adjournment; it was only an appropriate way forward if all the parties were agreed.

The issues

18. There were two issues requiring determination by the tribunal

    (i) Does the work carried out by the applicant require statutory consultation?

        (a) Is the work one project or two distinct projects?

        (b) Should professional fees be included when calculating the value of the works for the purposes of the consultation threshold?

(ii) If the answer to the first issue is yes then, is it reasonable to dispense with the statutory consultation requirements

19. **The tribunal made it very clear to the parties that it was not considering the issue of whether the service charge costs demanded in connection with the works are reasonable or indeed payable.**

Determination

The Evidence

20. Mr Corker relied on the witness statements in the bundle to explain the background to the works which are the subject of the application. During the course of the external repair project it was discovered that water was leaking into one of the flats. The applicant therefore instructed Grangewood Builders as they were already on site to waterproof the affected flat and make good any damage. The applicant refers to this as a distinct work project, the flat waterproofing repair project. The two lessees who oppose the application disagree that it can be disaggregated from the subsequent project.

21. The subsequent project arose because the waterproofing of the flat required removing a false ceiling in the flat. The applicant says that behind the false ceiling was a steel reinforced concrete beam which it transpires, supports part of the rear façade of Bevan House. Water had penetrated the steel reinforcing bars causing the beam to degrade and weaken.

22. A structural engineer was instructed to inspect the beam and specify repairs which that applicant says have since been carried out. The applicant refers to this project as the structural beam repair project. The lessees who opposed the application were not satisfied that the work was the appropriate work to resolve the problem that had been identified and/or were not satisfied that it had been carried out as the items for which they were invoiced did not appear to correlate with the prescribed works.

23. The applicant says that each of the projects required some significant expenditure and both were unforeseen in the context of the external repairs project. The respondents considered that the works should have been foreseen in the light of the claims history and the continuous damp problems experienced by the flat.

24. The tribunal notes from the witness statement of Mr White a senior employee with Grangewood the builders who were on site that

(i) He is an experienced and well-respected builder and was site manager at the property employed to oversee a £700,000 building project, 'the external repair project'.

(ii) On or around 6th January 2022 he was alerted to water damage in the vicinity of the bay window of flat A by Mr Thomas Leeming, the Applicant's agent and charted surveyor. He instructed Mr White to investigate the origin of the water.

(iii) The flat is entirely below ground level and at one end of the building.

(iv) The following day Mr White inspected the flat, took photographs and summarised the findings in an email to Mr Leeming dated 7th January 2022. .

(v) It was not obvious where the water damage originated, but Mr White considered that on balance it was likely to be from a crack in the walkway above the bay window which was scheduled to be waterproofed as part of the external repair project. Mr White asked for authority to carry out further investigative work.

(vi) Further investigative work showed that the walls were sodden because there was no waterproofing/damp prevention on or around the bay window or the wall immediately adjacent to it. Mr White concluded that the source of the water was in fact ground water which had made its way in flat A laterally.

(vii) Mr White agreed with Mr Leeming that the best way forward was to waterproof the affected areas of the flat and make good any damage.

(viii) The applicant obtained a quotation from Grangewood to waterproof the bay window area and remedy damage to flat A. The quote was for £5206 plus VAT; the applicant accepted the quote.

(ix) Work started in late March 2022. As part of the waterproofing work it was necessary to remove a

larger section of plasterboard ceiling. It then became apparent that the concrete beam behind it was severely damaged due to spalling. Mr Leeming and Mr White inspected the beam and agreed the damage justified a structural engineer's involvement.

(x) Mr Shortt of Harrison Shortt Structural Engineers inspected the beam on 6th April 2022 and following further exposure of the beam, Mr Harrison of the same firm inspected it on the 27th April 2022. He reported the condition via email on 28th April 2022 and specified requisite repairs.

(xi) Grangewood provided a quotation of £1,077.50 plus VAT to carry out the structural beam repairs specified by the structural engineers. Grangewood also provided a quote of £2,735 plus VAT to make good.

(xii) The costs of the work are as follows, £5,206 plus VAT for the waterproofing repairs and £5,142.50 plus VAT for the structural beam repairs. The latter costs include a sum for professional fees. Without that inclusion the cost would be £3,942.50.

(xiii) The total costs for both projects was £10,348.50

The arguments of the applicant

(a) in relation to whether the two projects are distinct projects

25. The applicant submits that the two projects are distinct for the purposes of s.20ZA of the Landlord and tenant Act 1985 for the following reasons

(i) They are intended to remedy distinct problems of entirely different characters: the waterproofing repair project is intended to waterproof flat A and make good association damage and the structural beam repair project is intended to remedy the structural inadequacies of the structural beam and make good associated damage.

(ii) The need to carry out the repair projects arose at different points in time; a contract for the waterproofing repair project was agreed in or around

February 2022 and a contract for the structural beam repair project was agreed in or around April 2022.

(iii) At the point of agreeing to the waterproofing repair project, the need to undertake the structural beam repair project was unknown and unforeseeable.

(b) in connection with dispensation from consultation

2. The applicant's starting point is the Supreme court case of *Daejan Investments v Benson* where the Supreme Court held that the main and often sole question for the tribunal when considering how to exercise its jurisdiction is the extent to which tenants are financially prejudiced by noncompliance with the consultation requirements

3. The applicant argues that even though only one quote was obtained for both the waterproofing repair and the structural beam repair this did not prejudice the respondents.

4. First it says it was not practical to obtain more than one quote as it was a condition of the exterior repairs project contract that Grangewood had control/possession of Bevan House for the duration of the project. It was therefore not open to the applicant to unilaterally invite other contractors to tender for the waterproofing repair and structural beam repair projects.

5. The applicant points out that Grangewood completed much of the waterproofing repair and structural beam repair projects 'in-house' except where specialist waterproofing work was required. For this work they obtained quotations from two subcontractors and opted to use the least expensive of the two.

6. The external repairs project was consulted upon in accordance with s.20 of the 1985 Act and the consultation requirements, and was subject to a competitive tendering process. Grangewood were the best overall choice in that context. It would therefore be logical to assume that they would remain so for the waterproofing and structural beam repair projects.

7. The work was quite bitty. For example, after the structural engineer's first visit he asked for some more of the beam to be exposed. It was not practicable to obtain quotations for every aspect of the repairs.

8. Second the applicants point to the requirement to pay compensation to the owner of Flat A which was unusable from February 2022 as a result of the waterproofing repair and structural beam repair projects. The

applicant is obliged to compensate the tenant of the flat for the period it is unusable. The rate of compensation was agreed at £650 per month subject to the structural beam repair project commencing without delay, which it did. Had the repairs been delayed for the purpose of complying with the consultation regulations the agreed rate of compensation might have been higher.

9. Consulting tenants takes about three months or more. Furthermore the structural beam repairs would themselves have taken three months. In consequence compliance with the consultation requirements would have resulted in the tenant of flat A not having the use of the flat for an additional six months and at potentially a higher rate of compensation.

10. The applicant points out that if professional fees and compensation were excluded, the maximum contribution of any tenant to the waterproofing repair project would be £205.53 and the maximum contribution to the structural beam repair project would be £203.03.

11. In summary the applicant argues that the respondents have not been financially prejudiced by non-compliance with the consultation requirements. Rather the opposite is true. By proceeding expeditiously additional compensation has been saved.

The arguments of the leaseholders who oppose the application

12. There are two leaseholders who oppose the application. The first is Mr Jye Chen of flat 1 who is represented by Mr Sharp.

13. Mr Chen argues that the works to remedy water ingress are normally covered by property insurance. He asks why the applicant has not attempted to seek to bring an insurance claim.

14. He also asks why the leak was not identified whilst organising the exterior works project. It appears to him that the leak was significant enough and prolonged enough if it caused the damaged referred to.

15. Mr Chen further argues that the structural beam repair project is clearly an integral part of the waterproofing repair project. It therefore is a matter where there should have been a consultation with the tenants.

16. Mr Chen argues that the applicant chose to press ahead with works without consulting or giving any opportunity for the respondent or others to review the situation and determine how matters arose. He suggests that the applicant is implying without expressly saying so, that this was a matter of urgency but does not produce any evidence of this apart from an assertion that compensation was due and payable for the duration of the works.

17. Mr Chen also says that there is no proper documentary evidence of the situation and that it is unclear why the works were not foreseeable.

18. Mr Chen submits that the purpose of the consultation requirements is to enable tenants to ensure that works are reasonable and fair and the costs involved are fair.

19. At the very least says Mr Chen the applicant could have notified the tenants and given 21 days for responses.

20. The second leaseholder who objects to any dispensation from consultation is Mr Denis Becker leaseholder of Flat 15 Bevan house.

21. Mr Becker says that professional fees and compensation payments should have been included in the calculation of the figures to be consulted on.

22. Mr Becker argues that the projects are connected because the waterproofing repair project was intended to waterproof flat A and make good associated damage. The corrosion of the steel reinforcement is caused by water and it is reasonable to assume that the visible water damage and damage to the beam directly above are caused by the same ingress water. Therefore, the associated damage must include the repair of the beam even if the extent of the work is greater than anticipated.

23. Mr Becker considers that the projects cannot be disaggregated as neither the water proofing nor the repair of the beam would have existed or be carried out individually.

24. Mr Becker says that the project was invoiced as one project.'

25. Mr Becker also disputes that it was not practicable to obtain more than one quote. He points out that Grangewood obtained quotations from two subcontractors and they themselves issued at least three quotes.

26. Mr Becker thinks that obtaining a lower quotation for work would have been possible as of the initial three competitors tendering for the work Grangewood were the most expensive choice.

27. Mr Becker also points to a conflict of interest as Flat A is owned and occupied by Mr Nathan Muruganandan who is the Director of Bevan House Management Company Ltd.

28. Mr Becker says that it would not have taken an additional six months to complete the work. It would have taken only the additional three months of the consultation period. That means that the delay would have cost an additional £1,950. Mr Becker says that the leaseholders have been

financially prejudiced with potentially higher repair costs than necessary, payments for additional management, preparation of legal documentation, FTT fees and similar.

29. Mr Becker argues that the tribunal should look at the Oxford Language Dictionary definition of reasonable ie having sound judgement, fair and sensible.

30. Mr Becker draws the attention of the tribunal to the history of water leakage at the property. This has led to a number of insurance claims of various scale over the years. The last and by far largest claim in excess of £140,000 was made by Flat A in 2017/18. Following that claim the insurance premium was increased and the excess for incidents involving water damage rose from £2,300 to £50,000 (then lowered to £40,000 in May 2020).The extraordinary increase of the insurance premium made property in Bevan House unsellable or mortgageable which caused discontent and anxiety amongst leaseholders. Mr Becker includes correspondence to demonstrate the lack of trust. He also points to the lack of communication with the leaseholders and the lack of leaseholder meetings.

31. He observes that considering the frequency of water leakage at Flat A, despite undergoing substantial refurbishment and water tanking, one would expect that an expert surveyor would have assessed this damage and produced a report of the origin of the leakage.

The applicant's reply

32. The applicant argues that whether water ingress is an insured risk depends upon the nature of the ingress. Bevan House's insurance policy provides that 'escape of water' and ' flood' are insured risks. In the case of the works in dispute, the water ingress is believed to be from ground water which has resulted in damp and the gradual deterioration of building elements in the form of rust, corrosion etc. These are not insured risks. Even if the works were covered by the insurance the excess is £10,000.

33. The applicant also argues that Mr Chen has misunderstood the consultation requirements as taking 21 days. The most speedy consultation would take two months but generally compliance usually takes at least three months.

34. The applicant argues that professional fees are not qualifying works but services. Therefore the consultation requirements do not apply to professional fees.

35. The applicant also strongly refutes that Grangewood ought to have foreseen that the water damage to the wall had also caused damage to

the structural beam because that beam was concealed behind an undamaged false ceiling.

36. The applicant did not seek to avoid its legal obligations. The purpose of grouping the projects together in one invoice was for the convenience of the tenants and the applicant could perfectly well have provided two separate invoices.

37. The applicant says that the relationships between the applicant and the respondent is good save for a few exceptions.

The Law

(i) The statutory starting point for the determination of this application are sections 20 and 20ZA of the Landlord and Tenant Act 1985. In summary the statutory provisions require that a landlord planning to undertake qualifying works, where any one leaseholder will be required to contribute over £250 towards those works, to consult the leaseholders in a specified form

(ii) Section 20ZA (2) makes it clear that the consultation requirements that apply to a one-off contract (as opposed to a long term agreement) refer to 'qualifying works' and that this means works on a building or any other premises.

(iii) The meaning of qualifying works was considered in *Paddington Walk Management Ltd v Peabody Trust* Case No: CHY08440. The judge considered whether window cleaning were works on a building for the they were was not, because window cleaning was, whilst works to a building, ' not works that one would naturally regard as being "building works".

(iv) The question of whether works carried out are all part of one planned single set of works or a series of disparate pieces of work is according to Tanfield Chambers Service Charges and Management 5th edition a matter of fact or degree. It says at paragraph 11.11 that relevant factors are likely to include

a. where the items of work are to be carried out (whether they are contiguous to or physically far removed from each other);

b. whether they are the subject of the same contract;

c. whether they are to be done at more or less the same time or at different times; and •

d. whether the items of work are different in character from, or have no connection with, each other.

(v) The exercise of discretion to dispense with consultation requirements is set out under s.20ZA of the Act. Subs (1) provides

'Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreements, the tribunal may make the determination **if satisfied that it is reasonable to dispense with the requirements'** (emphasis added).

38. The Supreme Court in *Daejan Investments v Benson* [2013] UKSC 14 provides important guidance to tribunals on the exercise of their discretion under s.20ZA. It considered that the purpose of the consultation requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate.

39. It made clear that the correct legal test on an application to the LVT for dispensation is: "Would the flat owners suffer any relevant prejudice, and if so, what relevant prejudice, as a result of the landlord's failure to comply with the requirements?"

40. Importantly the factual burden of identifying some relevant prejudice is on the leaseholders. Once they have shown a credible case for prejudice, the tribunal should look to the landlord to rebut it.

The tribunal's decision

41. The tribunal determines that the works are two different projects and therefore do not require statutory consultation.

Reasons for the tribunal's decision

42. The tribunal agrees with the arguments of the applicant that the works comprise two distinct projects. It notes and agrees with the factors that are identified in Tanfield Chambers Service Charges and Management 5th edition as relevant to its decision. In making its determination the tribunal has taken into account that the works were the subject of two separate contracts, that the works were carried out at different times and there was a different focus to the works. In particular it considers that it would not have been possible for the applicant to anticipate that works

were needed to the structural beam at the point when the works to dampproof the flat were contracted for. On that basis it determines as a matter of fact that the works were two different projects neither of which triggered statutory consultation requirements.

43. It notes the arguments of those leaseholders who objected to the application, that the works should have been foreseen and therefore consulted about at the time of the external works project. However it considers that the external works were distinct from the works that are the subject of this application and that there is no evidence that the works were in the contemplation of the applicant at the time of the consultation on the major works. It also notes the argument of the leaseholders who opposed the application that the second project evolved from the first project, the waterproofing works. However the tribunal does not accept that the second set of works was the natural or inevitable consequence of the first set of works which is what the word 'evolved' implies. On the contrary the works have quite different origins; if the false ceiling had been removed for another reason the need for work to the structural beam would have been revealed and been required to be carried out.

44. The tribunal does not find the fact that the applicant invoiced for both works at the same time significant in determining whether there was one or two work projects.

45. The leaseholders who objected to the application also argued that even if the works were separate projects the consultation threshold was crossed if professional fees and compensation payments are taken into account. The tribunal relies on the decision in *Paddington Walk Management Ltd v Peabody Trust* to determine that neither professional fees nor compensation can be works to a building and therefore are not relevant to the issue of statutory consultation.

The dispensation application

46. Although it is not necessary to determine the application for dispensation as a result of its determination about the works being two separate projects the tribunal would have determined to grant the application for dispensation. Although it notes that the leaseholders who objected suggested that the works carried out to the structural beam were not appropriate, the applicant followed the advice of a structural engineer. Similarly, the applicant relied on advice from its experienced builder with regards to the waterproofing works.

47. The leaseholders provided no evidence in their objections to the application in connection with prejudice. Mr Becker made assertions during the hearing that the works were inappropriate and that therefore the leaseholders had suffered relevant prejudice but there was no evidence in support. Importantly the leaseholders agreed that some works were necessary. The leaseholders also raised issues about whether

the works they had been billed for had in fact been carried out. Again this was not raised prior to the hearing and there was no evidence in support. Moreover, in the tribunal's view the matter of whether works have been carried out or not is not a decision to be made in connection with the application before it. It could, if properly argued and evidenced, form the basis of a s.27A application.

48. Most significantly the leaseholders did not demonstrate that they had suffered any financial prejudice as a result of the applicant's failure to consult. They suggested in their submissions that if the works carried out failed then they would suffer financial prejudice. However the tribunal can only consider actual financial prejudice relating to the application before it – the failure to consult – and none was argued or demonstrated. It may be that if leaseholders are charged for works relating to damp proofing Flat A in the future, the works at issue here may be relevant to a reasonableness claim. But at this moment in time any claim for prejudice is only speculative and is not relevant to a decision about the exercise of the tribunal's discretion.

49. The tribunal is more persuaded by the Applicant's argument that by acting quickly the Applicant saved the Respondents money as compensation to the leaseholder for the fact that Flat A was uninhabitable was limited.

Other matters

50. The tribunal had some concerns about the conduct of the application. The Respondents were correct in saying to the tribunal that being unrepresented should not be a bar to being heard at the tribunal. On the other hand unrepresented parties are required to accept that the tribunal is bound by judicial interpretations of statutory requirements and that there is some responsibility on unrepresented parties to make themselves familiar with the area of law that is being challenged. Nor does being unrepresented mean that the forum is a free-for-all. Procedural requirements are there to ensure that the hearing operates in the best interests of justice and in particular to ensure that all parties are heard. Shout outs and interruptions cannot be tolerated particularly when there is the potential for intimidation.

51. The tribunal was also concerned about the applicant's behaviour. It found it difficult to understand why the applicant requested an oral hearing when it did not bring its witnesses along to that hearing to answer appropriate concerns of the respondents which had been raised in responses to the application. The applicant should also be aware that there is a need to take especial care when leaseholders are being asked to bear costs for works that superficially at least appear to benefit one leaseholder, when that leaseholder is the director of the applicant company.

Costs

52. The applicant requested and the tribunal agreed that it should be given the opportunity to prepare submissions on costs after the decision was issued. The tribunal therefore directs that it sends to the Respondents its submissions on costs and a schedule of costs within 14 days of receipt of this decision copied to the tribunal. The leaseholders who objected to the application are directed to respond with a further 14 days, copying their response to the tribunal. After receipt of submissions and costs schedule the tribunal will decide what costs if any are payable by the leaseholders.

Name: Judge Carr **Date:** 2nd December 2022

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

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

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

   and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
   (a) the person by whom it is payable,
   (b) the person to whom it is payable,
   (c) the amount which is payable,

(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 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).