**Y TRIBIWNLYS EIDDO PRESWL**

**RESIDENTIAL PROPERTY TRIBUNAL**

**LEASEHOLD VALUATION TRIBUNAL**

**Reference: LVT/0048/01/20**

**In the Matter of Flat 3, 14 Richmond Road, Uplands, Swansea, SA2 0RB**

**And in the Matter of a transfer from the Swansea County Court under section 176A of the Commonhold and Leasehold Reform Act 2002**

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|---|---|
| **Applicant:** | **C21 Freeholds Limited** |
| **Applicant's Representatives:** | **Adam Lowe, Shelley Tidbury** |
| **Respondent:** | **Mrs Ivana Baltic** |
| **Tribunal:** | **Colin Green (Chairman)**<br>**Andrew Lewis FRICS**<br>**Angie Ash FRSA** |
| **Date of Hearing:** | **23 July 2020** |

**DECISION**

**(1) Subject to the service of a valid demand and compliance by the Applicant with the provisions of sections 47 and 48 of the Landlord and Tenant Act 1987 and section 21B of the Landlord and Tenant Act 1985, the following service charge sums by way of insurance rent will then be due from and payable by the Respondent to the Applicant:**

**a. in respect of the period of insurance 19 October 2018 to 2 July 2019, the sum of £56.71;**

**b. in respect of the period of insurance 2 July 2019 to 1 July 2020, the sum of £121.61.**

**(2) None of the administration charges demanded by the Applicant are payable by the Respondent under the terms of the Lease.**

**(3) No order is made under section 20C of the 1985 Act as there is no right under the Lease to recover costs as part of a service charge in respect of any of the matters that are the subject of the court proceedings between the parties or that have been determined by the tribunal.**

**REASONS**

## Preliminary

1. This matter arises out proceedings brought by the Applicant against the Respondent in the Swansea County Court, Claim Number F8QZ5V6Y, seeking payment of £688.05 in respect of alleged rent arrears, service charge payments, administration charges, and interest pursuant to statute. On 15 January 2020, an order was made by the County Court pursuant to s. 176A of the Commonhold and Leasehold Reform Act 2002 transferring to this tribunal the determination of the service charge and administration charge issues.

2. The tribunal's jurisdiction in that regard is conferred by section 27A of the Landlord and Tenant Act 1985 and paragraph 5 of Part 1 of Schedule 11 to the 2002 Act. Directions were made by the tribunal on 27 January, paragraph 2 of which provides:

> *"2. The tribunal has identified that the issues to be determined include (though these may be amplified by the parties in their statements of case):*
>
> *a) The service and administration charges payable for the service charge years in question.*
>
> *b) Whether the service and administration charges have been properly demanded in accordance with the law and the lease.*
>
> *c) Whether the service and administration charges incurred are reasonable in amount and the services provided or works undertaken are of a reasonable standard.*
>
> *d) Whether an order under section 20C of the 1985 Act should be made."*

Accordingly, rent arrears are not an issue that falls to be determined by the tribunal although, for the reasons set out below, it has to be addressed both as part of the relevant

history of invoices raised by the Applicant and in respect of the apportionment of payments made by the Respondent.

3. Paragraph 4 contained detailed directions in respect of the Applicant's case, to which further reference will be made below.:

> *"4. By 12 noon on 20th February 2020 the Applicant shall send to the Respondent and file at the tribunal (four hard copies) a statement setting out the relevant service and administration charge provisions in the lease, and exhibiting copies of all demands for the service and administration charges claimed in the case of F8QZ5V6Y in the Swansea County Court. The statement is to explain how the demands comply;*
>
> *i. With the lease and*
>
> *ii. With the statutory requirements of the Landlord and Tenant Act 1985 section 21B, and sections 47 and 48 of the Landlord and Tenant Act 1987.*
>
> *iii. With the requirements of paragraph 4 (1) of Part 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.*
>
> *iv. The witness statement is to set out clearly by reference to each service charge year for which service charges and administrative charges are claimed, the year, the amounts claimed, and how such amounts have been calculated.*
>
> *v. The witness statement is also to exhibit copies of all relevant invoices relating to the matters disputed by the Respondent and to include any submissions on the reasonableness of the costs incurred and where relevant the reasonableness of the standard of any work undertaken.*
>
> *vi. The statement is, to make clear where administration charges are being claimed precisely how much is being charged for what (for example if there are charges for a letter, then that letter must be exhibited). The statement is to provide the authority under the lease for the administration charges.*
>
> *vii. The statement is to explain how the legal costs incurred in the tribunal proceedings are payable by the Respondent under the lease.*

*viii. The statement is to include any submissions on whether the tribunal should make an order under section 20C of the Landlord and Tenant Act 1985."*

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

4. Statements of the parties' respective cases were served, and a hearing took place on 23 July 2020 using a Virtual Hearing Room which the parties attended by telephone. The Applicant was represented by Adam Lowe, its property manager (assisted by Shelley Tidbury) and the Respondent appeared in person. The tribunal is grateful for their co-operation in such a hearing and to those who provided technical support to allow it to proceed. During the hearing, the parties confirmed their statements and answered questions asked by each other and members of the tribunal. Their evidence will be referred to where appropriate.

## The Lease

5. Before considering the sums claimed by the Applicant it is necessary to set out the relevant provisions of the lease dated 25 November 1988 of Flat 3 ("the Lease"). Flat 3 is the top floor flat of 14 Richmond Road, a three-storey building with areas front and rear and two parking spaces.

6. By clause 1 of the Lease, Flat 3 was demised for a term of 99 years from 25 March 1988,

> *"yielding and paying therefor the yearly rent of £25.00 by equal half yearly payments on the twenty fourth day of June and the twenty fifth day of December in every year free of all deduction whatsoever…and also paying by way of further or additional rent from time to time a sum or sums of money equal to Fifteen percent of the amount which the Lessors may from time to time expend in effecting or maintaining the insurance of the building and other parts of the house against loss or damage by fire and such other risks (if any) as the Lessors may from time to time think fit in accordance with the provisions of clause 5(b) hereof such last mentioned rent to be paid without any deduction on the half yearly day for payment next ensuing after the expenditure thereof."*

Clause 5(b) of the Lease contains the following covenant to insure by the Lessors:

> *"That the Lessors will at all times during the said term (unless such insurance shall be vitiated by an act or default of the Lessee) insure and keep insured the said Building the garages and the boundary fences of*

> *the House against loss or damage by fire and such other risks (if any) as the Lessors shall from time to time think fit in some insurance office of repute under a comprehensive policy in the sum of £ or such greater sum as the Lessors shall think fit to include the full cost of rebuilding together with Architects and Surveyors fees and whenever required (but not more frequently that once very twelve months) produce to the Lessee the policy or policies of such insurance and the receipt for the last premium for the same and will in the event of the Building or the boundary fences of the House being damaged or destroyed by fire or other insured risks as soon as reasonably practicable lay out the insurance moneys received in the repair rebuilding or reinstatement of the said building or the said boundary fences and shall when requested produce to the Lessee a copy of the said policy and receipt for last payment of the premium."*

Since no figure is mentioned there is no minimum amount of cover for the insurance provided for by the covenant.

7. Clause 3(i) contains the Lessee's covenants with the Lessors. Clause 3(i)(b) contains a covenant:

> *" to pay all rates taxes assessments charges impositions and outgoings which may at any time during the said term be assessed charged or imposed upon the demised premises or the owner or occupier in respect thereof and in the event of any rates taxes assessments charges impositions and outgoings being assessed charged or imposed in respect of premises of which the demised premises form part to pay the proper proportion of such rates taxes assessments charges impositions and outgoings attributable to the demised premises"*

Clause 3(ii) provides:

> *"If the Lessors and Lessee shall fail to agree what constitutes the proper proportion of the rates taxes assessments charges impositions and outgoings under sub-paragraph (b) of sub-clause (i) of this Clause the matter shall be determined by the Lessors but if the Lessee or the Lessees or [sic] Lease of any other flats comprised in the House shall be unwilling to accept the determination of the Lessors he or they shall be entitled to have the matter determined by an independent Surveyor nominated in default of agreement by the President of the Royal Institute of Chartered Surveyors whose fees shall be paid by the person or persons requiring such determination to be made. Such last mentioned Surveyors determination shall be final and binding on the parties"*

8. Clause 4 contains covenants by the Lessee with the Lessors and the Lessees of the other flats. Clause 4 (ii) provides that the Lessee will at all times

> *"contribute and pay Fifteen per cent of the costs expenses outgoings and matters mentioned in clause 5(d) hereof"*

Clause 5(d) is a covenant by the Lessors to maintain, repair, decorate and renew certain parts of the building. The Lessee's obligation to contribute 15% in respect of such matters has no application here as none of the sums claimed by the Applicant arise from any such works.

9. Finally, clause 3(i)(d) contains the following covenant by the Lessee:

> *"to pay all costs charges and expenses (including Solicitors costs and Surveyor's fees) incurred by the Lessors for the purpose of or incidental to the preparation and service of Notice under Section 146 of the Law of Property Act 1925 notwithstanding forfeiture may be avoided otherwise than by relief granted by the Court"*

10. The Respondent has been the registered proprietor of the Lease at the Land Registry since 14 January 2003. The Applicant purchased the freehold reversion to 14 Richmond Road on 21 November 2018 and was registered as proprietor on 30 November 2018.

## Sums claimed

11. The first issue to be addressed is whether the sums claimed are payable under the terms of the Lease. To the extent that they are not that will be an end of the matter so far as those sums are concerned.

12. *Rent demands:* as seen above, the ground rent of £25.00 is payable by equal instalments of £12.50 on 24 June and 25 December each year. During the period in question the Applicant demanded rent of £12.50 by invoice 543 dated 9 January 2019 for rent for the period 25 December 2018 to 23 June 2019, and rent of £12.50 by invoice 862 dated 5 June 2019 for the period 24 June to 24 December 2019.

13. *Insurance demands*: There have been two insurance demands.

(1) Attached to the Applicant's statement is a certificate of insurance dated 26 October 2018, effective from 19 October 2019, for building insurance of £517,500.00 (declared value £450,000.00), at a premium of £720.22. There is also an attached policy certificate of terrorism insurance at a premium of £39.28, producing a total premium of £760.00, 15% of which is £114.00. Invoice 481

dated 28 November 2018 ("the First Insurance Demand") was sent to the Respondent at Flat 3, for the sum of £114.00 in respect of building insurance for the period 19 October 2018 to 2 July 2019. The Applicant exchanged contracts for the purchase of the freehold on 19 October and due to the number of freeholds it owns it has a block insurance policy to which properties can be added with a common renewal date of 2 July each year. The period in question was less than a full year however, and as a result the insurers rendered a fresh invoice on 26 October for a premium of £544.77, 15% of which is £81.71. By a letter dated 28 January 2019 the Applicant wrote to the Respondent explaining the error and provided a credit note of £32.29 dated 25 January, reducing the Respondent's contribution from £114.00 to £81.71.

(2) There is also a certificate of insurance in respect of 14 Richmond Road issued on 3 July 2019, effective from 2 July, at a premium £753.15, and a certificate of terrorism insurance at a premium of £57.59, a total of £810.74, 15% of which is £121.61. The Applicant rendered invoice 966 dated 27 June 2019 for that sum – building insurance for the period 2 July 2019 to 1 July 2020 ("the Second Insurance Demand"). The invoice states that it is due for payment within 15 days although under Clause 1 of the Lease it is due on the next rent payment date after expenditure. There is no evidence of payment of the 2019/20 insurance premium before the rent date of 24 June 2019, and the invoice is after that date, so that it would seem that the contribution was actually due by 25 December 2019, though it was always open for the Respondent to pay before that date.

14. The Respondent's challenge to these insurance contributions is based on her contention that the activities of, and damage caused by, Helen James (the lessee of Flat 1 on the ground floor) are such that the property is uninsurable and/or that the insurance is void. The Respondent is also concerned that damage caused by Helen James, not resulting from negligence but intentional, would fall outside the cover provided by the insurance. The Respondent wrote to the insurers claiming that the policy is void but received no reply. The Respondent has offered nothing in support of her claims concerning the insurance policies other than her assertions and the tribunal is not satisfied that either

policy is void, or that they did not cover the risks to be insured against set out in clause 5(b) of the Lease.

15. In relation to the question of reasonableness under section 19 of the 1985 Act, since the Applicant is under an obligation to insure the insurance must have been reasonably incurred. The Respondent has raised no issue concerning whether the premiums were of a reasonable amount and the tribunal is satisfied that they were reasonable.

16. Therefore, subject to any further adjustments as a result of payments made by the Respondent, and consideration of the statutory provisions dealt with below, the Respondent is obliged to pay the 15% contributions demanded by the First Insurance Demand (as adjusted by the credit note) and the Second Insurance Demand, under the terms of the Lease.

17. *Other demands*: Both the First and Second Insurance Demands also included a sum in addition to the 15% contribution to the premium, being an "administration fee" calculated as 10% of the insurance contribution. In respect of the First Insurance Demand this was a figure of £11.40 (adjusted to £8.17 after the credit note) and in respect of the Second Insurance Demand, £12.16. Mr Lowe explained that under cover of a letter dated 28 November 2018 the flat owners had each been sent a schedule setting out the Applicant's standard fees and charges in respect of various matters, designed to cover the costs of administration. It is easier to charge a set fee, whether by percentage or a fixed sum, rather than calculate an appropriate figure each time a demand is sent and in respect of an insurance contribution demand, a figure of 10% was considered more than reasonable.

18. There is the issue however, of whether the Lease contains any provision that allows the Applicant to charge such administration fees. The Applicant relies on clause 1 of the Lease (set out in paragraph 6 above) and the words "the amount which the Lessors may from time to time expend in effecting or maintaining the insurance of the building". The Applicant argues that this is not limited to the insurance premium and includes an administration fee to reflect the work and expense in identifying a suitable policy and securing the same, which amounts to something expended in effecting the insurance. The difficulty with this is that there is no invoice or other evidence of a charge being

made to the Applicant concerning the insurance other than the premium. In addition, the tribunal considers that the words relied on do not cover any expenditure other than the premium itself as it is that which effects the insurance.

19. The Applicant also relies on the provisions of clause 3(i)(b) (set out in paragraph 7 above) in support of its right to raise charges against the Respondent generally. The tribunal does not consider that those provisions allow the Applicant to raise an administration charge in respect of insurance, or any other charge. Clause 3(i)(b) is concerned with the tenant's liability for third party charges, assessments etc. – such as liability to the local authority for council tax – and an appropriate apportionment between landlord and tenant where necessary. The clause does not confer on the landlord a right to raise charges against the tenant.

20. In addition, the Applicant has from time to time raised invoices for a sum of £48.00 – 01.03.19 (invoice 543), 10.04.19 (742), 17.05.19 (789), 01.08.19 (1084) and 02.09.19 (1130). The invoices describe the charge as "Building insurance and/or Ground Rent arrears" though they are not for arrears as such but are intended to cover, according to the schedule of standard charges mentioned above, the time and expense incurred in dealing with the arrears. There is also a correspondence charge of £40.00 (invoice 1107 of 14.08.19) and a charge of £100.00 as an "administration fee for issuing County Court Judgment claim" by invoice 1203 of 16.09.20, produced on the same basis. In the tribunal's view, there is nothing in the Lease that allows the Applicant to make such charges. For the reasons set out above, clause 3(i)(b) does not confer on the Applicant the right to impose them and the scope of the provisions of clause 3(i)(d) (set out in paragraph 9 above) is limited to preparation and service of a section 146 notice. Accordingly, none of these sums are payable by the Respondent under the terms of the Lease.

## Payment and appropriation

21. It is not disputed that prior to the issue of proceedings the Respondent had made payments of £25.00 and £12.50 in respect of which the Applicant has debited the sum of £32.50 against invoice 591, the first of the invoices for £48.00. It is also accepted that in October 2019 the Respondent made a payment of £12.50, which does not so far appear to have been appropriated to any particular debt by the Applicant.

22. The Respondent states that she intended these payments to be in respect of ground rent, and although only two payments of ground rent fell due during the period in question (a total of £25.00) she has overpaid by a further £25.00 because she was unsure of the precise position concerning the rent account, the previous landlord never having sought payment of the ground rent.

23. Clearly, the Applicant cannot have validly appropriated the £32.50 against the charge of £48.00 as the tribunal has found that this is not a charge provided for under the Lease. How then should the payments be dealt with? The relevant law in respect of such matters is as follows. The allocation of payments to one particular debt out of two or more owed by a debtor to the same creditor belongs in the first instance to the debtor, so that if the creditor accepts the payment it must be appropriated as required by the debtor. If the debtor does not make an appropriation at the time of payment, whether expressly or impliedly, then the creditor may do so and apply the payment to whichever debt it chooses. In the present case the Respondent does not appear to have expressly provided that her payments were in respect of ground rent. Nevertheless, appropriation by the debtor can be inferred from the circumstances known to both parties. In the present case, the amounts paid by the Respondent clearly correspond to amounts of ground rent, which she has never disputed, and not to the figures in any of the insurance demands, which have been in dispute. Therefore, the payments made should have been appropriated by the Applicant in the first instance to the outstanding ground rent of £25.00. This still leaves an overpayment of £25.00 by the Respondent and Mr. Lowe accepted that if the only other debt was in respect of the insurance rent it would have to be applied to that, and the oldest debt first. This means that the £81.71 under the First Insurance Demand (as adjusted) will be reduced by £25.00 to £56.71.

## Statutory requirements

24. Although paragraphs 4 ii and iii of the Directions made on 27 January required the Applicant's statement to address certain statutory provisions, no mention has been made of them in the Applicant's statement. According to Mr. Lowe this was due to an oversight. Therefore, during the hearing the tribunal went through each of the provisions which Mr. Lowe was able to locate and read for himself using Google and comment upon as he thought fit.

25. Sections 47 and 48 of the Landlord and Tenant Act 1987 – the First and Second Insurance Demands comply with section 47(1) as they contain the Applicant's name and an address in England.

26. There was no evidence that the Applicant has ever served a notice on the Respondent which satisfies the requirements of section 48(1). Mr. Lowe sought to rely on a notice served pursuant to section 3 of the 1985 Act notifying the Respondent of the assignment of the landlord's interest, sent under cover of a letter dated 28 November 2018. A copy of the letter and notice is with the papers filed at the County Court but although the address of the Applicant's registered office is given, nowhere does the notice, or letter, state that this address, or any other address, is an address at which notices (including notices in proceedings) may be served on the Applicant by the Respondent.

27. The definition of "service charge" in section 48 of the 1987 Act is that contained in section 18(1) of the 1985 Act and includes an amount payable as part of or in addition to the rent which is payable "for insurance". Therefore, by reason of the provisions of section 48(2) of the 1987 Act the sums mentioned above in respect of the Respondent's insurance contribution are to be treated as not being due from the Respondent to the Applicant at any time before the Applicant complies with section 48(1). Once an appropriate notice is served the sums will be treated as falling due, subject to any other limitation, which the tribunal now turns to consider.

28. Section 21B(1) of the 1985 Act requires that a demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges, the form and content of which is prescribed by regulations made under section 21B(2). In the present case, the relevant provisions are the Service Charges (Summary of Rights and Obligations, and Transitional Provisions) (Wales) Regulations 2007. Neither the First Insurance Demand nor the Second Insurance Demand was accompanied by the prescribed information. In consequence, by virtue of section 21B(3) the Respondent is entitled to withhold payment of the sums demanded relating to insurance rent until a demand is served which complies with the statutory requirements.

29. As regards the administration charges, for the reasons given above, the tribunal does not consider that such charges are payable under the terms of the Lease so that the issue of compliance with the relevant statutory requirements as to notice do not arise. Nevertheless, for the sake of completeness, it should be pointed out that none of the demands for such sums, which fall within the definition of "administration charge" provided by paragraph 1(1) of Schedule 11 to the 2002 Act, satisfy the notice requirements of paragraph 4 of Schedule 11. The form of content of the accompanying information is prescribed by the Administration Charges (Summary of Rights and Obligations) (Wales) Regulations 2007.

## Other matters

30. There are other matters raised by the Respondent which the tribunal has not addressed as it is considered that they have no relevance to the issues that it has had to determine, and which fall outside its jurisdiction.

(1) Complaints concerning the purchase of the freehold by the Applicant.

(2) Alleged infringements of Data Protection law by the Applicant.

## Section 20C of the 1985 Act

31. This gives the tribunal jurisdiction to order that all or part of the costs incurred or to be incurred by the landlord in 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. It is a precondition of making such an order that such costs would otherwise be capable of being included in a service charge. The tribunals' view is that there is nothing in the Lease that would allow the Applicant to do so. As has already been noted, clause 4 (ii) and the provisions of clause 3(i)(d) will have no application to either the court proceedings or these proceedings and clause 3(i) would not allow the Applicant to raise such a charge. Accordingly, no order can be made under section 20C.

DATED this 11th day of August 2020

C Green
Chairman

APPENDIX

Statutory Provisions

**Landlord and Tenant Act 1987**

**46 Application of Part VI, etc.**

(1) This Part applies to premises which consist of or include a dwelling and are not held under a tenancy to which Part II of the Landlord and Tenant Act 1954 applies.

(2) In this Part "service charge" has the meaning given by section 18(1) of the 1985 Act.

(3) In this Part "administration charge" has the meaning given by paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

**47 Landlord's name and address to be contained in demands for rent etc.**

(1) Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely—

(a) the name and address of the landlord, and

(b) if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.

(2) Where—

(a) a tenant of any such premises is given such a demand, but

(b) it does not contain any information required to be contained in it by virtue of subsection (1),then (subject to subsection (3)) any part of the amount demanded which consists of a service charge or an administration charge ("the relevant amount") shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.

(3) The relevant amount shall not be so treated in relation to any time when, by virtue of an order of any court or tribunal, there is in force an appointment of a receiver or

manager whose functions include the receiving of service charges or (as the case may be) administration charges from the tenant.

(4) In this section "demand" means a demand for rent or other sums payable to the landlord under the terms of the tenancy.

**48 Notification by landlord of address for service of notices.**

(1) A landlord of premises to which this Part applies shall by notice furnish the tenant with an address in England and Wales at which notices (including notices in proceedings) may be served on him by the tenant.

(2) Where a landlord of any such premises fails to comply with subsection (1), any rent, service charge or administration charge otherwise due from the tenant to the landlord shall (subject to subsection (3)) be treated for all purposes as not being due from the tenant to the landlord at any time before the landlord does comply with that subsection.

(3) Any such rent, service charge or administration charge shall not be so treated in relation to any time when, by virtue of an order of any court or tribunal, there is in force an appointment of a receiver or manager whose functions include the receiving of rent, service charges or (as the case may be) administration charges from the tenant.

**Landlord and Tenant Act 1985**

**18 Meaning of "service charge" and "relevant costs".**

(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.

**19 Limitation of service charges: reasonableness.**

(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.

**20C Limitation of service charges: costs of proceedings.**

(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 leasehold valuation tribunal or the First-tier 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 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 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 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.

**21B Notice to accompany demands for service charges**

(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

(5) Regulations under subsection (2) may make different provision for different purposes.

(6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**27A Liability to pay service charges: jurisdiction**

(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.

**Commonhold and Leasehold Reform Act 2002**

**176A. Transfer from court to First-tier Tribunal**

(1) Where, in any proceedings before a court, there falls for determination a question which the First-tier Tribunal or the Upper Tribunal would have jurisdiction to determine under an enactment specified in subsection (2) on an appeal or application to the tribunal, the court—

(a) may by order transfer to the First-tier Tribunal so much of the proceedings as relate to the determination of that question;

(b) may then dispose of all or any remaining proceedings pending the determination of that question by the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal, as it thinks fit.

(2) The enactments specified for the purposes of subsection (1) are—

(a) this Act,

(b) the Leasehold Reform Act 1967,

(c) the Landlord and Tenant Act 1985,

(d) the Landlord and Tenant Act 1987,

(e) the Leasehold Reform, Housing and Urban Development Act 1993, and

(f) the Housing Act 1996.

(3) Where the First-tier Tribunal or the Upper Tribunal has determined the question, the court may give effect to the determination in an order of the court.

(4) Rules of court may prescribe the procedure to be followed in a court in connection with or in consequence of a transfer under this section.

## SCHEDULE 11

## Administration charges

### Part 1

### Reasonableness of administration charges

#### Meaning of "administration charge"

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.

Reasonableness of administration charges

2 A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Notice in connection with demands for administration charges

4(1) A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.

(2) The appropriate national authority may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.

(4) Where a tenant withholds an administration charge under this paragraph, any provisions of the lease relating to non-payment or late payment of administration charges do not have effect in relation to the period for which he so withholds it.

5(1) An application may be made to [F2the 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 [F3the 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).