



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **CHI/43UF/LSC/2015/0017**

Property : **Flat 2, Approach House, Foxboro Road, Redhill, Surrey RH1 1TD**

Applicant : **(1) Neil Michael Hoare (Flat 2)
(2) Ravi Siddabathula (Flat 3)**

Representative : **In person**

Respondent : **Firstport Property Services Ltd**

Representative : **Ms Misbah Khan, legal consultant**

Type of Application : **Liability to pay service charges**

Tribunal Members : **Judge M Loveday (Chairman)
Mr R Wilkey FRICS**

Date and venue of Hearing : **9 July 2015, The Law Courts, Redhill**

Date of Decision : **31 July 2015**

DECISION

Introduction

1. This determination concerns the liability of the Applicants to pay service charges to the Respondent under the terms of leases of two flats at Approach House, Foxboro Road, Redhill, Surrey RH1 1TD. The First Applicant is the lessee of Flat 2, and the Second Applicant is the lessee of Flat 3. The Respondent is the Manager to whom the service charges are payable under the terms of the Applicants' leases.
2. On 3 March 2015, the First Applicant applied to the Tribunal to determine liability to pay service charges for the year ending 30 April 2013 and for the current service charge year ending 30 April 2015. Directions were given on 11 March and 9 April 2015. The Second Applicant was formally joined as a party on 4 June 2015.
3. A hearing took place on 9 July 2015. The Applicants both appeared in person, and the Respondent was represented by an in-house lawyer, Ms Misbah Khan. At the hearing, the parties identified the following service charge demands that were in dispute.
 - a. A demand dated 11 August 2014 in the sum of £621.73. This was for 'balancing' service charges for the 2012/13 service charge year.
 - b. A demand dated 9 March 2015 for £225.27. This was for 'balancing' service charges for the 2013/14 service charge year.
 - c. Demands dated 30 April 2014 and 1 October 2014, each for a sum of £1,331.27. These were both 'interim' service charges on account of the 2014/15 service charge year.

Although the balancing charges for the 2013/14 service charge year had not been demanded before the application was issued (and they did not therefore form part of the formal application itself), the parties quite sensibly agreed that liability for this could also conveniently be determined by the Tribunal.

Inspection

4. Approach House is part of a large modern residential development comprising mainly buildings of similar age and style. It comprises a detached three storey block of 11 self-contained flats, and a separate garage block which contains four garages. The premises were built in 2009. The roof is pitched and covered with slates. The elevations are brick/rendered and the windows are uPVC double glazed casements. The block as a whole appeared to be well maintained. There is some open on-site parking for residents and visitors.

5. Flats 1, 2, 3, 4 and 11 have their own external entrance doors. Access to the other flats in Approach House is by way of common hall, stairs and landings. The bin store is a small detached building on site. It was noted that the rubbish from Flat 2 (the First Applicant's flat) is deposited within a refuse container in this store. Attention was then drawn to the external television and satellite aerials which are fixed to the roof of the building and which feed all flats in the block. Close to the entrance to Approach House is a small brick element with a concrete slab on top. The Tribunal was informed that this contained a cold water booster pump but no inspection was possible and there was some doubt as to what purpose it served in relation to the block. A brief inspection was also made of the ground floor lobby and communal staircase which appeared to be in good order, although some ceiling panels were missing in the ground floor lobby.

The Lease and statutory provisions

6. The lease of Flat 2 is dated 18 December 2009 ("the Lease"). Under the Lease, the obligations to repair and maintain etc. are imposed on the Respondent Management Company rather than on the landlord and the lessee is obliged to pay its service charges to the Respondent. The material service charge provisions of the Lease are set out at Appendix A to this decision. The Lease itself describes the service charge as the "Tenant's Proportion", and it describes the Manager's relevant costs as the "Maintenance Expenses". However, in this decision the Tribunal prefers to adopt the labels given to these by s.18 of the Landlord and Tenant Act 1985.
7. The material statutory provisions are set out in Appendix B to this decision.

The Second Applicant

8. As explained above, the Second Applicant was joined at a late stage of the proceedings. He is of course the lessee of another flat, under a different lease. It appears likely the apportionments in the lease of Flat 3 are not the same as those in the lease of Flat 2 and it also appears the Respondent applied a different apportionment to both flats. Regrettably, when he was joined, no directions were given for the Second Applicant to provide a copy of his own lease or to produce the service charge demands he was challenging. Equally regrettably, at the hearing no-one seems to have appreciated that without these documents the Tribunal would be unable to determine the Second Applicant's liability to pay a service charge (despite the fact that the

Second applicant addressed the Tribunal on the merits of the application at the hearing). The difficulty only emerged when the Tribunal began to prepare this decision.

9. Rather than delaying matters further while this material is provided, the Tribunal directs that the Second Applicant's application be stayed generally, with liberty to either party to apply to have the Second Applicant's application restored. In the event that such an application is made, no doubt directions will be given for evidence to be served about the Second Applicant's potential liability. However, it is hoped it will be unnecessary to have the Second Applicant's application restored for determination in the light of the decision below.

2012/13 Service Charge Year – balancing charges

10. Facts. In relation to the 2012/13 service charge year, the facts were not in dispute and were apparent from the papers in the bundle.
11. For the purposes of the 2012/13 service charge years, the relevant costs which are in issue most clearly appear in the certified service accounts prepared by the Respondent's accountants and auditors John Needham & Co dated 1 August 2014. The Income and Expenditure part of the accounts was broken down into various headings, which included "Schedule -1 Development Costs", "Schedule 2A – Block Structure Costs" etc. These Schedules corresponded to the lists of recoverable relevant costs which appeared in the leases of properties on the estate. The material heading for the present application in the 2012/13 accounts is "Schedule 3B – Block Internal Costs – Approach House", which (as the heading suggests) sets out the Respondent's relevant costs incurred in relation to Sch.6 Part C of the Lease. This included nine heads of expenditure comparing the budget estimates with the actual expenditure by the Respondent, together with details of contributions to and from the reserves. These costs were given as follows:

<i>Item</i>	<i>Estimated costs</i>	<i>Actual Costs</i>
Concierge and on costs	£700.00	£580.49
Electricity	£1,000.00	£532.36
Communal Area cleaning	£1,000.00	£1,009.93
Fire equipment Maintenance	£500.00	£475.56

Lightbulb replacement	-	£36.94
Door Entry System Maintenance	£150.00	-
Aerial System Maintenance	£200.00	-
General Repairs	£850.00	£748.78
Health & Safety Costs	-	£5.53

The estimated net expenditure for Schedule 3B was stated to be £5,700 and the actual expenditure was given as £4,232.69.

12. The only interim service charge demand for the 2012/13 service charge year in the papers is dated 13 December 2012 and seeks payment of £388.21. It is common ground the Respondent did not apply the apportionment of 10.17% specified by clause 1 of the Lease to the estimated costs of £5,700 in order to arrive at this interim service charge. From time to time, the Respondent reviewed the apportionments and as a result of representations made by the lessees of Flats 1, 2, 3 and 11 (i.e. the flats which did not have access to the communal staircase) it purported to exercise the power in clause 7.13 of the Lease "to recalculate ... the percentage figure(s) comprised in the Tenant's Proportion". The Respondent then issued a memorandum dated 16 March 2012 which stated that the "Lessee's Part C Proportion" was formally being amended from 11.20% to 0%. It is therefore clear that the 'interim' service charges for 2012/13 on account of the Respondent's expenditure were calculated using an apportionment of 0% - in other words, the relevant lessees paid nothing towards the estimated costs in Sch.6 Part C of the Lease.
13. Once the 2012/13 service charge year expired, the Respondent was then in a position to prepare the annual service charge accounts. However, the accounts were late. As mentioned above, the accountants were only able to certify the accounts on 1 August 2014.
14. The issue turns on what happened next. Shortly before the accounts were circulated, the Respondent again purported to review the apportionments. On 14 February 2014, it provided another memorandum, this time amending the "Lessee's Part C Proportion" from 0% to 9.38%. Moreover, the memorandum purported to backdate the new apportionment to expenditure incurred since March 2012. The new apportionment was then applied to the actual expenditure of £4,232.69 for the Sch.6 Part C costs which appeared in the 2012/13 accounts.

15. The resultant £397.87 was used for the purposes of the 'balancing' service charges of £621.73 which were demanded on 11 August 2014.
16. It should be said that the above sequence of events relates solely to the First Applicant's service charges. No doubt a similar process was undertaken in relation to the Second Applicant's balancing charges. However, the Tribunal was not provided with any document relating to the Second Applicant's liability to pay (such as the service charge demands).
17. The Applicants' case. The First Applicant contended at the hearing that part of the 2012/13 service charges should not be payable. He relied on the application itself, a Statement of Response dated 26 May 2015 and oral submissions at the hearing
18. The First Applicant accepted that clause 7.13 of the Lease gave the Respondent the right to adjust the apportionments. But this right was subject to express provisos that the Respondent could only do so where it was "necessary or equitable to do so", when it was acting "reasonably" and where the new proportion was "on an equitable basis".
19. The First Applicant suggested the February 2012 memorandum did not satisfy any of these requirements because the new apportionment of 9.38% was retrospective in effect and it increased the apportionment from zero. However, the main contention was that the apportionment of 9.38% failed to reflect the fact that the lessees of certain flats had limited use for the services set out in Schedule 3B of the accounts. In particular, the lessees without access to the staircase gained no (or only "incidental") benefit from the decoration, lighting and fire safety equipment in the staircase and hallway of the main part of Approach House. They did not have physical access to those parts and they had their own separate doorways. The First Applicant accepted he obtained some benefit from cleaning of refuse stores, the tv aerial, domestic cold water booster pumps and cold water testing. It was however difficult to assess the element of these costs which benefitted the tenants who did not have access to the communal staircase.
20. The First Applicant submitted the Tribunal should determine a fair apportionment. Despite being pressed by the Tribunal to state a figure on more than one occasion, the First Applicant was unable to give one.
21. The Second Applicant made brief comments in support.

22. The Respondent's case. Ms Khan referred to the memorandum dated 14 February 2014. The Respondent denied the apportionment was retrospective in effect because the re-assessment of the apportionment only applied to balancing service charges. As to the suggestion that the Applicants gained no benefit from the services provided, the Respondent explained it had simply decided to return to the apportionment of 11.17% stated in the lease of Flat 2 (although this was adjusted to 9.38% to reflect the fact that Flats 1 and 9 had previously not contributed to the block costs). In fact, the reason for the 2014 review was that the Respondent considered the 2012 review had been unreasonable. When the Applicants' contributions were reduced to zero, other tenants had had to increase their service charges. This was unfair because the Applicants did in fact benefit from the costs charged under Sch.6 Part C of the Lease. The Applicants benefitted from the cleaning of bin stores, maintenance of fire equipment, maintenance of the communal TV system, domestic cold water booster pumps and cold water testing and related electricity charges. It was therefore reasonable to vary the percentages.
23. The Tribunal's decision. Clause 7.13 of the Lease expressly permits the Respondent to vary the service charge apportionment, subject to the provisos that it should act "reasonably" and that the apportionment should be on "an equitable basis". The Tribunal also referred the parties to the decision of the Upper Tribunal in *Windermere Marina Village Ltd v Wild and others* [2014] UKUT 163 (LC). In cases where the parties have left the question of apportionment to be determined by a third party at a later date, a tribunal is entitled to consider what was the fair proportion of the expenses payable by the lessees, because the contractual mechanism for identifying that fair proportion was rendered void by s.27A(6) of the Landlord and Tenant Act 1985. This Tribunal is also mindful of the cautionary advice given by the Deputy President of the Upper Tribunal (Lands Chamber) at paragraph 45 of that decision. The parties accepted the Tribunal had the power to revisit the apportionment – either under clause 7.13 of the Lease, or under the *Windermere Marina Village* decision.
24. The Tribunal rejects the First Applicant's argument that no apportionment should be made because it would be retrospective. It should be recalled that in relation to the 2012/13 service charge year, the February 2014 re-apportionment exercise only "bit" on the balancing charges for that year. Once an interim charge was demanded based on a particular percentage contribution, the retrospectivity argument could be raised as an objection to a reapportionment at any stage up to the demand for balancing charges. In effect, that would

preclude the Respondent from ever being able to reapportion the service charge contributions. Moreover, the Tribunal accepts the Respondent's argument that the re-apportionment was not retrospective in effect. The sum which the First Applicant was liable to pay under the Lease in respect of service charges was only fixed on 11 August 2014 – which was after the reapportionment exercise in February 2014. The interim charges for 2012/13 which had previously been demanded (we were not told the date) were merely advance contributions by the Applicants towards a potential liability which only crystallised in August 2014. There was therefore no retrospectivity there. The same conclusion can be reached in relation to any fresh apportionment the Tribunal might make under Windermere Marina Village. It would not be inequitable or unfair to make an apportionment of a balancing service charge part-way through the service charge year - even where that exercise left the Applicants' interim service charge liability untouched.

25. As to the Applicants' second argument, the Tribunal rejects the argument that the apportionment was unreasonable because they get no benefit from the services in Sch.6 Part C of the Lease:
 - a. First, the extent to which the Applicants benefit from the costs is not a relevant consideration. Sch.6 Part C of the Lease lists the items of the relevant cost which the tenant must contribute to. There is therefore a contractual obligation to pay a proportion of these costs – whether or not it is objectively reasonable to do so. It is not open to the Tribunal to alter this contractual obligation. For example, it is not open to the Tribunal to say it is not reasonable for the Respondent to incur the relevant costs of “maintaining ... the fire fighting appliances ... within the Maintained Property” since there is an express obligation to do so under Part C para 2.
 - b. The First Applicant's criticisms are in effect an attack on the wrong target. It may of course be that some items of relevant cost were not reasonably incurred under s.19 of the Landlord and Tenant Act 1985, but the Applicants do not advance any such argument. However, even if such criticism were made out, that is not a reason for adjusting the apportionment. Section 19(1) enables the Tribunal to limit the “relevant costs” that may be recovered by way of a balancing service charge – it does not purport to enable the Tribunal to adjust the apportionment.
 - c. The mere fact that a lessee derives no direct benefit from the services does not render it unreasonable or inequitable for the lessor to pass on a contribution towards those costs. The extent to which lessees personally benefit from a particular item of cost

will always vary and it will depend on the tenant and the expenditure involved. Management would become near impossible if lessees could challenge charges on this basis.

- d. The Tribunal considers the Applicants do achieve indirect benefit from a number of the services in Sch.6 Part C. Matters such as block cleaning, fire safety equipment and so on go to the general standard of safety, maintenance and appearance of the block. It is in every lessee's interest to have the premises well maintained.

26. In accordance with *Windermere Marina Village*, the Tribunal must make its own assessment of "the fair proportion of the expense of communal services payable by the" lessees for the 1012/13 balancing service charges. In this case, the Tribunal adopts the Part C Proportion of 9.38% which the Respondent has made. An apportionment based on the original figures stated in the Lease, but adjusted downwards to reflect the addition of the two new flats, is a fair proportion. For the reasons given above, it is reasonable for the Applicants to contribute to the Sch.6 Part C costs – and it would be unreasonable for the Applicants not to contribute to those costs. The Tribunal must also consider the position of the other lessees who would have to make up the shortfall if the position reverts to that under the 2012 memorandum, and for the same reasons it would be unreasonable for them to shoulder all the Part C costs by way of their service charges. Moreover, the Applicants were unable to advance any alternative % contribution or any suggested apportionment figure. There was simply no alternative to the method chosen by the Respondent in this case.
27. It follows that in respect of clause 1 and clause 7.13 of the lease of Flat 2, the Tribunal adopts a Part C Proportion of 9.38% for the 2012/13 balancing charge. The First Applicant is liable to pay the service charges of £621.73 demanded on 11 August 2015.

2013/14 Service Charge Year – balancing charge

28. Facts. Once again, the facts in relation to the 2013/14 balancing charges were not in dispute and were apparent from the papers in the bundle. The budget and for expenditure for 2013/14 under Sch.6 Part C of the Lease most clearly appear in the certified service accounts for 2013/14. These were again prepared by the Respondent's accountants and auditors John Needham & Co dated 3 March 2015:

<i>Item</i>	<i>Estimated costs</i>	<i>Actual Costs</i>
Concierge and on costs	£650.00	£574.34
Electricity	£1,500.00	£310.90
Communal Area cleaning	£1,250.00	£680.04
Fire equipment Maintenance	£400.00	£1498.84
Lightbulb replacement	-	£29.31
Door Entry System Maintenance	£150.00	£262.80
Aerial System Maintenance	£200.00	-
General Repairs	£650.00	£380.31
Health & Safety Costs	-	£120

29. Once again, the Respondent adopted the apportionment of 9.38% in the February 2014 memorandum to arrive at the balancing service charge demand for Flat 2 dated 9 March 2015.
30. The parties repeated the same arguments that were made in relation to the 2012/13 service charges.
31. For the reasons given above, the Tribunal again adopts a Part C Proportion of 9.38% for Flat 2 in the 2013/14 service charge year. The First Applicant is liable to pay the service charges of £225.27 demanded on 9 March 2015.

2014/15 Service Charge Year – interim charges

32. Facts. Once again, the facts in relation to the 2014/15 interim charges were not in dispute. The budget appears in a “Statement of Anticipated Service Charge Expenditure” dated 1 May 2014. The costs under Sch.6 Part C of the Lease are headed “S3B Internal 4-10 Approach House”:

<i>Item</i>	<i>Estimated costs</i>
Concierge and on costs	£650.00
Electricity	£1,000.00
Communal Area cleaning	£800.00
Fire Systems Maintenance	£500.00
Door Entry Systems	£150.00
TV Distribution System	£150.00
General Maintenance	£650.00

33. Once again, the Respondent applied the apportionment of 9.38% in the February 2014 memorandum to the estimated Sch.6 Part C costs, and incorporated them into its interim service charge demands for Flat 2 dated 30 April 2014 and 1 October 2014.
34. The parties repeated the same arguments that were made in relation to the 2012/13 service charges.
35. Where an issue arises as to whether interim charges are reasonable under s.19 of the Landlord and Tenant Act 1985. The test is not the same as the test for balancing charges. The issue is whether the service charges are reasonable under s.19(2), rather than whether the Respondent's relevant costs are reasonably incurred. However, subject to this point, the Tribunal reaches the same conclusions in relation to the 2014/14 interim charges. It again adopts a Part C Proportion of 9.38% for Flat 2 in the 2014/15 service charge year.
36. The First Applicant is therefore liable to pay the service charges of £1,331.27 demanded on 30 April 2014 and 1 October 2014.

SECTION 20C

37. The application sought an order under s.20C of the Landlord and Tenant Act 1985. However, during the course of the hearing the Respondent indicated it had no intention of adding the costs of or in connection with the Tribunal proceedings to the service charges of any of the flats. The Tribunal records this undertaking and need not make any order under s.20C.

CONCLUSIONS

38. In relation to Flat 2, the Tribunal adopts a Part C Proportion of 9.38% for the 2012/13 and 2013/14 balancing charges, and it adopts a similar Part C Proportion for the 2014/15 interim charges.
39. The First Applicant is therefore liable to pay the following service charges:
- a. The sum of £621.73 demanded on 11 August 2015.
 - b. The sum of £225.27 demanded on 9 March 2015.
 - c. The sums of £1,331.27 demanded on 30 April 2014 and 1 October 2014.
40. As far as Flat 3 is concerned, the Tribunal cannot determine liability to pay a service charge. The Tribunal directs that the Second Applicant's application be stayed generally, with liberty to either party to apply to have the application restored.

.....
Judge MA Loveday (Chairman)
31 July 2015

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Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

APPENDIX A: SERVICE CHARGE PROVISIONS

Clause 1

1. In this Deed unless the context otherwise requires:

...

“Maintenance Expenses” means the moneys actually expended or reserved for periodical expenditure by or on behalf of the Manager or the Landlord at all times during the Term in carrying out the obligations specified in the Sixth Schedule

...

Part “A” Proportion”	[means] 0.27% (Development Cost)
Part “B” Proportion”	9.38% (Block Structure Costs)
Part “C” Proportion”	10.17% (Block Internal Costs)
Part “D” Proportion”	0% (Passenger Lift Costs)
Part “E” Proportion”	0.28% (Private Courtyard Costs)
Part “F” Proportion”	9.38% (Biomass Heating System Costs)

SAVE THAT any of the said Proportions may be subject to variation from time to time in accordance with the provisions of Clause 7.13

...

“Tenant’s Proportion” means the proportion of the Maintenance Expenses payable by the Tenant in accordance with the provisions of the Seventh Schedule

Clause 3

AND ALSO paying on demand by way of further or additional rent the Tenant’s Proportion.

Sch.6

...

PART “C”

(Block Internal Costs)

1. Inspecting rebuilding repainting repairing cleaning renewing redecorating or otherwise treating as necessary and keeping the internal common parts of the Block comprised in the Maintained Property and every part thereof in good and substantial repair order

and condition and renewing and replacing all worn or damaged parts thereof

2. Inspecting maintaining renting renewing reinstating replacing and insuring the fire fighting appliances the electronic door entry system the telecommunication reception system and such other equipment relating to the internal common parts of the Block comprised within the Maintained Property by way of contract or otherwise as the Manager may from time to time consider reasonably necessary or desirable for the carrying out of the acts and things mentioned in this Schedule
3. The cost of consumption by the occupants of the Demised Premises of the metered domestic cold water provided to the Demised Premises together with associated drainage utilisation costs
4. Cleaning the external glazed surfaces of the external windows of the Communal Areas as frequently as in the opinion of the Manager it shall be necessary
5. Inspecting rebuilding repainting repairing cleaning renewing redecorating or otherwise treating as necessary and keeping the refuse storage facilities and every part thereof provided for use by the occupiers of the Dwellings in good and substantial repair order and condition and renewing and replacing all worn or damaged parts thereof and arranging if necessary for the emptying of refuse containers therein

Sch. 7

1. The Tenants Proportion means:
...
 - 1.3 The Part C Proportion of the amount attributable to the Block internal costs in connection with the matters mentioned in Part "C" of the Sixth Schedule and of whatever of the matters referred to in Part "G" of the said Schedule are [sic] expenses properly incurred by the Manager which are relative to the matters mentioned in "Part C" of the said Schedule
...

APPENDIX B: STATUTORY PROVISIONS

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, appropriate 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.

...

(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.

27A Liability to pay service charges: jurisdiction

(1) An application may be made to an 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 an 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.

...

(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).

...