



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

Case Reference : **CAM/26UB/LIS/2020/0044**

County Court Claim No.: **G3CH2A90**

HMCTS : **CVP**

Property : **10, Portland Court, Brocket Road,
Hoddesdon, Herts, EN11 8FB**

Applicant (Landlord) : **Fairfield Rent Limited**
Representative : **Howell-Jones LLP**
Managing Agent : **Urbanpoint Property Management Limited**

Respondent (Tenant) : **Mr Jay Townsend**

Type of Application : **To determine the reasonableness and
payability of Service Charges (Section 27A
Landlord and Tenant Act 1985) and
Administration Charges (Schedule 11
Commonhold and Leasehold Reform Act
2002**

Tribunal : **Judge JR Morris
Mr D Barnden MRICS**

Date of Transfer Order : **25th November 2020**
Date of Directions : **21st December 2020**
Date of Hearing : **30th March 2021**
Date of Decision : **6th May 2021**

DECISION

Covid-19 Pandemic: Remote Video Hearing

This determination included a remote video hearing together with the papers submitted by the parties which has been consented to by the parties. The form of remote hearing was Video. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing/on paper. The documents referred to are in a bundle, the contents of which are noted.

Pursuant to Rule 33(2A) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and to enable this case to be heard remotely during the Covid-19 pandemic in accordance with the Practice Direction: Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal the Tribunal has directed that the hearing be held in private. The Tribunal has directed that the proceedings are to be conducted wholly as video proceedings; it is not reasonably practicable for such a hearing, or such part, to be accessed in a court or tribunal venue by persons who are not parties entitled to participate in the hearing; a media representative is not able to access the proceedings remotely while they are taking place; and such a direction is necessary to secure the proper administration of justice.

Decision

1. The Tribunal determines the following Service Charge costs to be reasonable and payable by the Respondent to the Applicant for the years ending 31st December:
2018 £844.58
2019 £1,199.72
2020 £893.00.

As the County Court only transferred the matter of Service Charges to be determined by the Tribunal and as the Applicant has not agreed to the Tribunal Judge sitting as a County Court Judge to make an order for payment of the Service Charge, interest and costs the case is transferred back to the County Court to decide these outstanding matters.

Reasons

Application

2. This application commenced as claim no. G3CH2A90 in the County Court Business Centre Money Claim Centre on 18th September 2020. A Notice of Defence was served on 11th October 2020. Deputy District Judge Wright sitting at the County Court at Hertford transferred the matter to the First-tier Property Tribunal on 25th November 2020. The file was received on 14th December 2020.
3. The Applicant seeks and, following a transfer from the County Court, the Tribunal is required to make a determination under section 27A of the Landlord and Tenant Act 1985 as to whether service charges are reasonable and payable and under Schedule 11 Commonhold and Leasehold Reform Act 2002 as to whether administration charges are reasonable and payable.

4. The particulars of claim on the Claim Form stated that £5,707.05 is due in respect of service charges. The claim was issued for a total of £6,270.84 to include interest, court fees and costs. Of the amount the Defendant/Respondent has admitted £570.29. He has queried the quality of the services provided and charges which he says are not connected with his property.
5. Although the Judge in the County Court has only asked the Tribunal to consider the reasonableness and payability of the service charges and administration charges, the Tribunal Judge is able to deal with all the issues listed at the same time as deciding the payability of the service charges. The judge is empowered to do so as a result of amendments made to the County Courts Act 1984, by which judges of the First-tier Tribunal are now also judges of the County Court. This means that in a suitable case, a tribunal judge can also sit as a judge of the County Court and can decide issues that would otherwise have to be separately decided in the County Court and this might result in savings in time, costs and resources. The parties' consent is required to enable a tribunal to do this.
6. The Applicant stated that it would like the Tribunal to determine the reasonableness of the service charges and administration charges only and for the County Court to determine the remainder of the Claim. Therefore, the Tribunal Judge did not exercise the powers under the County Courts Act 1984, as amended.
7. Only the Tribunal will make a determination under section 27A of the Landlord and Tenant Act 1985 as to the reasonableness and payability of service and administration charges. The matter will then be returned to the County Court for an order regarding payment, interest and costs.
8. No application was made to the Tribunal by the Respondent for an order for the limitation of the Respondent's costs in the proceedings under section 20C of the Landlord and Tenant Act 1985 and/or an order to reduce or extinguish the tenant's liability to pay an administration charge in respect of the litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002. As the matter of costs is to be decided by the County Court an application in respect of paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 should be made to that Court.
9. Directions were issued on 21st December 2020.

The Law

10. A statement of the relevant law is attached to the end of these reasons.

Description of the Property

11. The Tribunal did not inspect the Building in which the Properties are situated due to Government restrictions and sets out the following description based upon the Statements of Case and documents annexed thereto and the Lease.

12. The Property is one of similar flats in a purpose-built block of 10 flats (the Building) over two floors. The Building is constructed of brick with cavity walls, a pitched roof with artificial tile covering. The floors are of concrete, there are PVCu windows and timber doors.
13. There is one entrance for 8 flats. The other two flats have their own front doors. There is a bin store, an electric cupboard with dry riser and a water main cupboard with wet riser.
14. There is a passageway (the Passageway), with flats over, leading to a car park with designated parking.

The Lease

15. A copy Lease for the Property was provided. The Lease dated 12th December 2008 was between (1) Waterlaw Developments Limited and Ashgan Developments Limited (the Landlord) and (2) Jay Townsend (the Tenant) for a term of 125 years from the 24th June 2007. The Reversion was subsequently assigned to the Applicant.
16. The relevant terms of the Lease are as follows:

Clause 1 contains the Definitions:

1.10 defines “Services” as the services facilities and amenities in specific in the First Schedule.

1.14 defines the “Service Charge Percentage” as 1/10th.

1.22 defines “the Rents” as the Rent, Insurance Rent and the Service Charge.

Clause 2 states that the Tenant shall hold the Premises subject to paying to the Landlord the Service Charge in accordance with the Second Schedule.

Clause 3 the Tenant covenants to pay the Rents.

Clause 4 the Landlord covenants to observe and perform the obligations contained in the First Schedule

The First Schedule defined the Services which are, amongst other things:

To maintain and keep in good and substantial repair and condition and renew or replace when required the Main Structure and the Common parts;

To decorate the external parts of the Building and the Common Parts;

To keep the Common Parts clean and tidy and where appropriate lit and decorated;

To employ a firm of managing agents.

The Second Schedule states that:

The Landlord shall as soon as convenient after the end of each Financial Year prepare an account showing the Annual Expenditure.

The Tenant shall pay a provisional sum calculated upon an estimate of what the Annual Expenditure is likely to be for that Financial Year by 2 equal half yearly instalments on 1st January and 1st July.

If the Service Charge for any Financial Year exceeds the provisional sum the excess shall be due to the Landlord on demand and if the Service Charge for any Financial year is less than such provisional sum the overpayment shall be credited to the Tenant against the next payment of the Service Charge.

Service Charge

Applicant's Claim

17. The Applicant's Managing Agent stated in written representations that they had issued service Charge demands for the years in issue which were the years ending 31st December 2014, 2015, 2016, 2017, 2018, 2019 and 2020. They stated that each year a service charge estimate is prepared at the beginning of the period and is charged in advance twice yearly on 1st January and 1st July. The respondent's contribution towards the Service charge is 1/10th.
18. The Applicant's Managing Agent said that the Respondent's payment history had been poor and that Service Charges were outstanding. Reminder letters have been sent but without response. The Respondent has filed a defence as a result of which the matter was transferred to the First-tier tribunal to determine the reasonableness of the Service Charge.
19. The Applicant's Managing Agent provided:
 - The running statement of the Respondent's account from 1st January 2014 to 7th August 2020;
 - The Service Charge estimates
 - The Interim Service Charge demands (two for each year)
 - The Year End Accounts and
 - The Expenditure Breakdownfor the years ending 31st December 2014, 2015, 2016, 2017, 2018, 2019 and 2020 (for this year only the Service Charge estimate and the Interim Service Charge demands were provided as the Year End Accounts had not yet been completed).
20. In addition, the Applicant's Managing Agent provided a copy of a Stage 1 Notice in respect of the consultation procedure for major qualifying works under Section 20 of the Landlord and Tenant Act 1985.
21. The Applicant's Managing Agent also provided a spread sheet setting out the estimated and actual costs of the Service Charge for all the years in issue. The

Tribunal determines the reasonableness of the actual costs incurred where they are available and the estimated where the actual costs are not. Therefore, it has reproduced the spread sheet with the actual costs incurred for the years ending 31st December 2014 to 2019 and the estimated costs to be incurred for the year 2020 as the actual figures are not available for this year at the time of the hearing.

Flat 10 Portland Court Brocket Road Hoddesdon EN11 8FB							
Years ending 31 st December	2014 Actual Costs £	2015 Actual Costs £	2016 Actual Costs £	2017 Actual Costs £	2018 Actual Costs £	2019 Actual Costs £	2020 Estimated Costs £
Audit and Account- ancy	180.00	180.00	180.00	180.00	180.00	180.00	180.00
Bank Interest			- 0.27	-0.55	-0.94	-1.33	
Gardening and Outside Mainten- ance	75.00	60.00	78.00	40.00		240.00	
Cleaning of Common Parts	160.00	372.00	780.00	974.00	858.00	858.00	1,000.00
Electricity Common Parts	372.82	554.85	290.12	359.16	259.19	543.07	500.00
Fire Safety	156.00	228.00	885.60	78.00	361.20	570.00	300.00
General Reserve Contribu- tion	-	550.00	550.00	775.00	775.00	1,000.00	1,000.00
Insurance	1,767.94	1,791.90	1,636.01	1,728.24	1,795.65	1,900.98	1,950.00
Management Fee	1,920.00	2,100.00	2,400.00	2,640.00	2,724.00	2,760.00	3,000.00
Professional Fee						1,237.50	
Repairs & Mainten- ance	444.00	878.39	431.00	294.34	3,067.72	3,189.00	1,500.00
Window Cleaning					90.00		100.00
Insurance Claim R&M	250.00						
Total	5,325.76	6,715.14	7,230.46	7,068.19	10,109.82	12,477.22	9,530.00
Payment due 10%	532.57	671.52	723.04	706.81	1,010.98	1,247.72	953.00
Reconciliation with Running Account							
Reserve	53.43						

Ground Rent	160.00	160.00	160.00	160.00			
Admin Fee Reminders	108.00	64.00	168.00	240.00			
Interest				293.16			
Admin Fee Mortgage			72.00				
B/f 2013	24.51						
Total Due	878.51	895.52	1,123.04	1,399.97			
Less Paid		-210.00	-800	-300.00			
Due for year		691.04	323.04	1,099.97			
Cumulative		1,564.03	1,887.07	2,987.04			
Estimate overcharge				116.19			
Charge Admitted				3,103.23			

22. The Tribunal found from a letter dated 31st July 2017 at page 474 of the Bundle that the Respondent had already admitted £3,103.23 including Administration Charges of £576. Pursuant to section 27A (4)(a) of the Landlord and Tenant Act 1985 the Tribunal is not able to make a determination in respect of a matter which has been agreed or admitted by the Tenant. The Tribunal is therefore only able to make a determination in respect of the service charge and administration charge after 31st July 2017.

Respondent's Defence

23. The Respondent provided a written statement of case and photographs in support of his case.
24. The Respondent said that he was willing to pay a fair and reasonable amount of the Service Charge but in return he expected the Applicant's Managing Agent to carry out the required works covered by the Service Contract. The Respondent provided a spread sheet which set out the amounts that he was generally prepared to pay. The Tribunal explained that it made a determination as to the reasonableness of the costs incurred and the standard of the work based on the evidence adduced. The Respondent needed to identify a specific head or item of expenditure which he considered to be unreasonable and to illustrate why it was unreasonable and what he considered to be reasonable by evidence such as photographs, which he had provided, and alternative quotations.
25. He said he had not paid the Service Charge because the Services as set out in Schedule 1 on page 22 of the Lease had not been complied with by the Landlord.
26. He said that he was willing to pay for certain aspects of the Services and a contribution to others, although with reluctance. on page 222.
27. He said that his case was that:

- the Applicant had failed to carry out repairs and maintenance;
- those that had been carried out were not to a reasonable standard or the work was not carried out at all;

As a result, the Building is shabby, unclean and in some aspects, dangerous.

28. The Respondent provided the following documents in support of his case:
- A spread sheet showing the monthly and annual Service Charge against which he had stated what he considered fair, together with his reasons;
 - A Schedule summarising what he is willing to pay;
 - A Schedule of expenditure submitted by the Applicant's Managing Agent for 2019 against the items of which he had indicated those he considered unreasonable or unexplained;
 - A List of concerns and comments about the poor management;
 - Photographs divided as follows:
 - Decorating
 - Roof
 - Key Safe
 - Gardening
 - Cleaning
 - Gutters
 - Fire Safety
 - Electrical
29. The Respondent said that he accepted the costs incurred in relation to the Heads of:
 Audit and Accounting,
 Insurance,
 Building Sinking/Reserve Fund,
 Bank Interest
 Are reasonable and admit they are payable. (To be confirmed).
30. The Heads of Expenditure the Respondent put in issue are as follows:
 Cleaning of Common Areas
 Repairs and Maintenance
 Gardening and Outside maintenance
 Electrical
 Fire Safety
31. The Heads of Expenditure in issue were addressed as follows:

Cleaning in Internal Common Areas

32. The Respondent said that there should be a Cleaning Schedule on display showing exactly when any Cleaning was carried out. A schedule was only provided in October 2020. (Photograph provided) Before that time there is no record of the cleaning having been carried out and if so, it was only done occasionally and to an unreasonable standard. A photograph of a cobweb was provided which it was said had been there for some time. It was said that the stairwell carpets are seldom vacuumed or cleaned properly but there was some slight improvement in late 2020.

33. In 2019 a key was cut for the Cleaners to be placed in a key safe which also was installed (photograph provided) so that they could access the Building. The Respondent said that the charge of £192.00 each for the key and safe was exorbitant.

Repairs and Maintenance

34. The Respondent identified the following items:

Gutter Cleaning

35. In 2019 a charge was made for Gutter Cleaning. A 'gutter hedgehog' has been installed to keep leaves out of the gutter. One of these was hanging down from the gutter (photograph provided). If any maintenance or cleaning had taken place this would have been removed or replaced. It was therefore submitted the gutters had not been cleared.

Passageway to Car Park

36. The panels to the ceiling of the passage are coming away but have not been repaired (photograph provided)

Decorating

37. The internal Common Parts are in a poor state and have not been decorated although this should have been carried out under the Lease every 4 years (photograph provided).

Roof

38. Slates have fallen off the roof but no action has been taken (photograph provided).

Gardening and Outside Maintenance

39. The Respondent said that the outside area is not cleaned and there is rubbish left by workers (photograph provided). He said the windows are dirty (photograph provided).

Electrical Installations in the Common Areas

40. The Respondent said that there are electrical switches in the Common Parts which are unsafe with exposed live conductive metal on one of the light switches (photograph provided).
41. The Respondent said that the lights in the Common Parts have not been tested every 4 years as required by Regulation 514.12.1 of the BS7671 as a Periodic Inspection Label is not displayed on the Consumer Unit (photograph provided).

42. The Respondent said that the lights in the stairwell of the Common Parts have not worked for the past 3 years. There are periods when they do not work at all. Now they are permanently on, which is a waste of electricity.
43. The Respondent said that Emergency Lighting should be tested and a log book kept on site showing the inspection dates, but this is not available.

Fire Safety

44. The Respondent said that electrical cupboards should be kept clear of flammable materials (ARMA Advice on Safety in Flats) however paints as well as other rubbish are stored in the cupboard (photograph provided).
45. The Respondent submitted that the Fire Alarm was not being serviced every six months (the log book showed tests up to 15 and 18 months apart) and the alarm often shows 'Fault mode'. There was also no up to date Fire Risk Assessment.

Applicant's Reply to the Defence

Cleaning in Internal Common Areas

46. The Applicant's Managing Agent stated that prior to 2015 Electric Safe were responsible for cleaning and gardening. In 2015 Care in Herts Ltd was employed. From 2015 there were no complaints and site inspections suggested that the internal common areas were being maintained to a reasonable standard. Early in 2020 when a couple of Tenants came to pay their Service Charges, they raised concerns about the quality of cleaning and the frequency of gardening. The Applicant's Managing Agent said that they terminated the Care in Herts contract and employed Platinum Property Care and as confirmed by the Respondent's Statement of Case, cleaning services appear to have improved.
47. It was said that the level of traffic and usage in the building is high with 8 of the 10 flats sublet, generally subtenants do not care for the building as much as owner occupiers.
48. The Cleaners attend fortnightly. An economical carpet deep clean was carried out recently with a view to avoiding replacing the carpets however permanent staining and short-term high accumulation of dirt has shown it necessary to replace the carpets on a cyclical basis. The Applicant's Managing Agent said that they had tried to strike a balance between the costs of regular cleaning and costs of cyclical replacement. The Applicant's Managing Agents said that they conducted a tendering process and provided an alternative quotation to show that the current cleaners provide a reasonable standard of service at a competitive price. Photographs were provided of the common parts.

Repairs and Maintenance

Key Safe

49. With regard to the installation of the key safe and supplying keys to the key safe the Applicant's Managing Agent said that the sum of £160.00 plus VAT charged included the contractors' travel time, materials and labour. The contractors collected the keys from the Applicant's Managing Agent's office, made copies, returned the keys to the office, supplied the copy keys to the key safe.

Gutter Cleaning

50. The invoice dated 18th March 2019 for £340.00 for gutter cleaning was provided together with photographs of the gutter prior to and after cleaning. It was said that it was not known when Mr Townsend took his photographs but it was noted on 23rd February 2021 that the guttering brush had blown down again in a couple of areas and instructions were given to replace it. It was added that it was considered inefficient to replace the gutter brush every time it becomes dislodged as it is replaced when the gutters are routinely cleared. The Applicant's Managing Agent said that if it were not for the visit on 23rd February 2021 the brush would not be replaced because none of the Tenants reported it.

Passageway

51. It was conceded that the under passage has a few loose boards as picked up on the site visit on 23rd February 2021. Some of these areas form part of an insurance claim as the nails and fixings have been weakened by leaks from Flats 4's shower. The works are not considered urgent as the passage ceiling is still secure. The Applicant's Managing Agent said that the Respondent had not been prejudiced as he had not been charged for these works as the cost will be recovered from the insurers.

Roof

52. The roof work identified by the Respondent is very recent and was identified on the site visit on 23rd February 2021. The roofers attended on 25th February 2021 and notified the Applicant's Managing Agent of the defect causing ingress into Flat 8 together with a quotation for repairs. The estimate seemed to be slightly high so the Applicant's Managing Agent sought a second estimate. One of the Tenants has given a quotation for Major Works on 3rd March 2021 and has been instructed.

Decorations

53. The Applicant's Managing Agent said that they were aware that re-decorations were due and a section 20 Stage 1 Notice of Intention to carry out work was served in October 2019. The consultation for observations expired on 13th November 2019 and no observations have been received from any of the Tenants including the Respondent. A letter was sent to all the Tenants

informing them that a draft specification had been received for the intended works and that if a Tenant wished to receive a copy it would be emailed to them on request as the document is 53 pages. A period of two weeks was given for a response prior to the surveyor being instructed to send out the specification to tender. No Tenants responded. The Stage 2 Notice was served on 9th February 2021. It was decided not to progress the matter in 2020 due to the impact of Covid. In addition, the specification has been reduced to internal parts only, the Section 20 Fees have been discounted from 5% plus VAT to 3.5% plus VAT and a payment plan has been put in place to cover the cost of the works over a greater period.

54. A joint email was received from the Tenants dated 3rd March 2021 contesting the cost of the Major Works and stating that they wished to seek alternative quotations notwithstanding no nominations were received after the Stage 1 Notice and that the Section 20 procedure was complete. Nevertheless, the Tenants were asked to provide contact details of preferred contractors within 14 days. One of the Tenants provided a quotation of £19,400.00 which has been agreed in principle subject to confirmation regarding public liability insurance and approval by the surveyor.

Gardening and Outside Maintenance

55. The Applicant's Managing Agent said that gardening services are not undertaken between November to February as there is little growth and the cost incurred would be a waste. It was not clear when the Respondent had taken his photographs. However, the Applicant's Managing Agent provided photographs taken at the site inspection on 23rd February 2021 which showed the condition of the grounds following the winter period which would be dealt with on the gardener's first visit in March.
56. The Applicant's Managing Agent said that window cleaning did not place as there was no provision in the Lease. Tenants were responsible for the maintenance of their own windows.

Electrical Installations in the Common Areas and Fire Safety

57. The Applicant's Managing Agent said that they had responded to the issues raised with regard to electrical and fire safety. The dangerous switch had been picked up on the visit on 23rd February 2021 and repair had already been instructed and completed. It was said that the photographs provided by the Respondent were not up to date as there are no defects shown on the fire alarm display and the emergency lights are tested.
58. The Applicant's Managing Agent said that the items in the communal cupboards are being stored by Tenants and letters have been sent out in the past asking them to remove all items as they pose a fire risk. A new Fire Risk Assessment has been commissioned and the Applicant's Managing Agent said that they would be in touch with the Tenants once the report is received (a copy of the previous 2014 Report was provided). It was added that the independent surveyor had already picked up any health and safety and Fire Risks and included them in the Major Works specification.

Management Fees

59. In written representations the Applicant's Managing Agent replied in some detail about its role as Managing Agent. The duties identified included (in summary):
- Maintaining records,
 - Arranging reports, surveys and risk assessments in accordance with statutory requirements,
 - Preparation of accounts,
 - Arranging and Monitoring general repairs to the common parts,
 - Receiving and paying invoices,
 - Liaising with contractors, tradesmen etc.,
 - Preparing and serving service charge and ground rent invoices in accordance with statutory requirements,
 - Collecting service charges and ground rent and enforcing payment,
 - Setting budgets
 - Sending out Insurance demands
 - Administering Insurance claims
 - Convening and attending meetings
 - Attending to correspondence and communicating with Tenants.

The Hearing

60. The hearing was attended by Mr Arjun Nath, Property Manager, Mr Nasir Adnan and Mr Ashraf Sardar of Urbanpoint, Managing Agent, for the Applicant and Mr Jay Townsend, the Respondent, supported by Mr Kevin Brookes.
61. At the hearing the Tribunal referred to the letter dated 31st July 2017 at page 474 of the Bundle in which the Respondent admitted the Service Charge of £3,103.23 including Administration Charges of £576. Therefore, pursuant to section 27A (4)(a) of the Landlord and Tenant Act 1985 the Tribunal stated that as it was not able to make a determination in respect of a matter which had been agreed or admitted by the Tenant it was only able to make a determination in respect of the Service Charges and Administration Charges incurred for the year ending 31st December 2018 and 2019 and to be incurred for the year 31st December 2020.
62. At the hearing the Tribunal firstly heard the Respondent's Defence to the Claim in respect of the reasonableness and payability of the Service Charge. Secondly it heard the Applicant's Reply to the Respondent's Case.

Respondent's Submissions

63. The Respondent's objections as to cost can be summarised as follows:
- Cleaning for 2018 and 2019 was not of a reasonable standard;
 - Outside Gardening and Maintenance for 2018 and 2019 also was not of a reasonable standard

- Repair and Maintenance in that the costs of installation of the key safe at £192.00 and the cutting of the key also at £192.00 incurred in 2019 were unreasonable.
 - The standard and hence the cost of Management was not reasonable for the following reasons:
 1. Cleaning and gardening and outside maintenance have not been overseen;
 2. The gutter hedgehog was not identified as being displaced and so was not replaced after cleaning;
 3. The panels of the passage way to the car park were not repaired;
 4. The internal Common Parts have not been decorated;
 5. Slipped slates have not been replaced on the roof;
 6. Log books have not been kept of electrical maintenance as noted in the Respondent's written statement under Fire Safety Risk Assessment;
 7. Repairs have not been identified due to a failure of the Managing Agent to inspect.
64. With regard to Cleaning the Respondent confirmed the points made in the written statement adding that since Platinum had taken over the cleaning was much better. He said that if the standard of cleaning had been better in the past then there would not have been a need to renew the carpets and the decoration would have been in a better condition.
65. With regard to the Gardening and Maintenance the Respondent confirmed the points made in his written statement. He referred the Tribunal to the photographs he had taken on pages 120 to 124 of the Bundle, saying that his complaint did not relate to just one year but at least since 2019. He said that the standard had been poor for the last two years. The car park had been in the condition as shown in the Agent's photographs, on page 378 following of the Bundle, since October, not just since the beginning of the year. The size of the weeds showed that they have been growing for more than one year. The gardeners never cleared away the debris after cutting back the shrubs.
66. With regard to the key safe and key cutting, he said that the key safe was a relatively cheap item (photographs on page 112 of the Bundle) and the keys could be cut for a fraction of the cost charged. There was no attempt to engage more competitive contractors to carry out work.
67. With regard to the Management Fees the Respondent confirmed the points made in the written statement adding that the Managing Agents should not rely upon the Tenants or contractors to inform them of works that need to be carried out.
68. The Respondent said that there was a general lack of communication. The Tenants did not know when the Managing Agent would inspect. There was no evidence of Management, it was just left to contractors to carry out work that they identified as being needed. The gutter hedgehog had been displaced and hanging down since 2019 (Photographs on pages 129 and 130 of the Bundle). The passageway panels had been hanging off since 2019 when the Respondent said he had taken the photographs on page 114. The decoration was overdue as

shown on the photographs on pages 115 and 116 of the Bundle. He said he was concerned about the roof repairs because tiles were slipping and falling to the ground as shown in the photographs on pages 117, 118 and 119 of the Bundle.

69. The Respondent said he was an electrical contractor and therefore was knowledgeable about the electrical regulations. He said that the consumer box had no labelling indicating when the installation was last tested. The trunking to hold the wire in the meter cupboard was defective, there were items stored or deposited in the cupboard which were a fire hazard. These were all items that should have been picked up on an inspection. There was a broken electric switch which was live to the touch. The Respondent referred to photograph on page 136 of the Bundle showing meter being held to it indicating it was live. When informed the Managing Agent told one of the Tenants to carry out the work instead of employing a contractor and the attempted repair was not done correctly and the corrective repairs were only done recently.
70. The Respondent said that the last Health and Safety and Fire Risk Assessment was not carried out at reasonable intervals, the last Assessment being in 2014.

Applicant's Submissions

71. The Managing Agent replied to the issues raised by the Respondent at the hearing re-iterating the points stated in its written Statement of Case.
72. With regard to the cleaning, it was said that this took place fortnightly. It was said that they tried to strike a balance between a sufficient frequency to achieve a reasonable standard of cleanliness and cost. They tried to choose local companies. The service provided by Platinum was said to be competitive and the Tribunal's attention was drawn to the alternative quotation in the Bundle.
73. They had responded to the complaints made by Tenants with regard to the cleaning and gardening by undertaking a tendering exercise for the work having dismissed the previous contractor. The Leaseholder, including the Respondent had agreed there was an improvement in the standard of cleaning and gardening since the new contractor had been engaged. With regard to the standard of cleaning the Managing Agents referred the Tribunal to the photographs they had provided on pages 147 to 199 of the Bundle which showed 'before and after' cleaning on a fortnightly visit. They submitted that taking into account the high level of traffic the standard of cleaning was good.
74. The Managing Agents said that gardening did not take place during the winter months as there was little growth and this would be a waste of money. They agreed that at the end of the winter before the first visit by the gardeners there was weed growth coming through and debris and referred the Tribunal to the photographs on pages 378 to 383 which had been taken at a site visits on 23rd February 2021. However, the state of the borders and car park at that visit was commensurate with work having been carried out the previous year and only what might be expected before the first visit for the current year.

75. With regard to providing and affixing the key safe the Managing Agent agreed that there was a basic charge that On Call made for work of that kind but overall, they considered it competitive. The cost of employing a contractor is bound to be more than the cost to private home owners carrying out the work themselves. With regard to the key cutting, the Managing Agent said that the cost included the travelling between the office to collect the original keys, the key cutting venue, the returning of the original keys to the office, the Building to deposit the keys in the key safe. They said that On Call was very reliable and trustworthy and that they considered this a reasonable charge taking into account the security needed for the keys. With regard to the gutter hedgehog the Managing Agent said that it would not be cost effective to replace it every time it came out when it is checked in the course of regular cyclical cleaning. Similarly, the decoration is carried out on a cyclical basis.
76. With regard to the Management Fees the Applicant's Managing Agent confirmed the points made in the written statement. It added that on its site visit on 23rd February 2021 the electric cupboard was cleared of any items that would be a fire hazard. They said there was an ongoing problem with Tenants or more particularly the subtenants of Tenants using the cupboard for storage. They referred to the photograph on page 385 which showed a bicycle being kept in the cupboard. They said that the Tenants must take some of the responsibility for the inappropriate use of the cupboard by themselves or their subtenants. The Applicant's Managing Agent added that the wire referred to by the Respondent was now within the trunking.
77. It was said that on the visit the fire alarm was not showing any warning signs. In answer to the Tribunal's questions the Managing Agents said that the emergency lighting was checked by the cleaners on each visit and that the three-hour test was carried out each year. The Fire alarm is maintained and invoices of Black & White Fire and Security were provided for Inspections carried out on the fire alarm in 2014, 2015, 2016, 2017 2018 and 2019.
78. They said that the Health and Safety and Fire Risk Assessment was carried out every four years or so and that it was due this year 2020/2021. Inspections are carried out regularly and a copy of an On Call Invoice was provided at page 434.
79. In response to the Tribunal's questions the Managing Agents said that they carry out an inspection twice a year. It was conceded that they rely on Tenants and contractors to inform them of any matters between visits that require action. On Call were said to be particularly reliable in this regard. When they visited to carry out one set of works, they would inform the Managing Agent what other works might be required.

Administration Charges

80. Administration Charges cannot be levied unless there is a provision in the Lease which authorises them. The Tribunal found that Clause 3.24 and 3.24.2 did allow these charges to be made as variable administration charge. The Tribunal identified the charges set out in the table below. It noted that the Respondent had admitted all the charges 1-9 in the Table in the letter of 31st

July 2017 therefore the Tribunal had no jurisdiction to determine their reasonableness by reason of paragraph 5(4)(a) Schedule 11 Commonhold and Leasehold Reform Act 2002.

	Date	Description	Amount £
1	18/02/2014	Admin Fee - 1 st Reminder	24.00
2	17/03/2014	Admin Fee – 2 nd Reminder	60.00
3	14/11/2014	Admin Fee - 1st Reminder	24.00
4	29/05/2015	Admin Fee – 2nd Reminder	60.00
5	25/02/2016	Admin Fee - 1 st Reminder	24.00
6	06/05/2016	Admin Fee – 2 nd Reminder	60.00
7	02/09/2016	Admin Fee - 1 st Reminder	24.00
8	19/09/2016	Admin Fee – 2 nd Reminder	60.00
9	05/06/2017	Admin Fee – Non payment	240.00
Total Admitted	31/07/2017		576
10	06/08/2020	Admin Fee – Non payment	600.00

81. In response to the Tribunal’s questions the Managing Agent said that the charge of £600.00 was a general fee for the inconvenience caused by the Respondent in not paying the Service Charge on time or more recently at all. An agreement had been reached in July 2017 by which the Respondent was to pay off the arrears accrued by regular instalments however this had not happened. A specific record had not been kept of the time spent and letters and emails sent on the matter. The figure was just a broad estimate.
82. The Tribunal explained to the Respondent that there was no right to withhold a Service Charge. If, as a Tenant, he considered a Service Charge to be unreasonable, then he should apply to the Tribunal for a determination as stated in the Summary of Rights and Obligations that was sent with every Service Charge Demand. He should not just refuse to pay and wait for the Landlord to take action for non-payment against him as this is only likely to incur additional costs which he is likely to have to pay.

Decision

Service Charge

83. The Tribunal considered all the evidence that had been adduced by the parties including their respective Written Statements of Case together with supporting documents and photographs, and their oral submissions at the hearing. The Tribunal looked at each of the heads of expenditure and items that the Respondent raised by way of challenge to the reasonableness of the Service Charge. The onus is on the Respondent in this instance to show that the costs have not been reasonably incurred or are not reasonable in amount or that the work has not been carried out to a reasonable standard.

Cleaning in Internal Common Areas

84. The Tribunal considered the costs incurred for the years ending 31st December 2018 and 2019 and the costs to be incurred for the year ending 31st December 2020.
85. The Tribunal noted the frequency of the clean and the area to be cleaned from the description of the Building and the photographs. The charge for 2018 and 2019 was £858.00 per annum which was £33.00 per visit to vacuum the carpets and clean the surfaces with some spot cleaning to the walls. The Tribunal estimated that this would take about one and a half hours at a rate of £22.00 per hour. The Tribunal considered this to be a fairly basic but adequate service. The alternative quotation provided by the Applicant's Managing Agent was a much more thorough cleaning service but equally well was significantly higher in price at £89.00 per visit, (the equivalent of two persons for two hours per visit). No alternative quotations were provided by the Respondent. In the absence of evidence to the contrary and in the knowledge and experience of the Tribunal the cost was determined to be reasonable.
86. The Respondent accepted that the standard had improved and the photographs provided by the Applicant showed the current standard to be reasonable. In addition, the Tribunal found that the allowance of £1,000 for cleaning in the Estimated Service Charge for 2020 was reasonable.

Gardening and Outside Maintenance

87. The Tribunal found that no charge was made for the year ending 31st December 2018 nor are there any estimated costs for 2020. A charge of £240.00 was made for the year ending 31st December 2019. The Tribunal noted the area to be maintained from the photographs. Much of the ground are given over to the car park with a shrub border. The photographs showed some weed growth and plant debris but not so much as to lead it to consider that no work had been done in 2019 and 2020. The Applicant's Managing Agent's explanation for the weeds and debris being that gardening work was not carried out in the Winter months was reasonable and the condition was such that the area could be put in a reasonable condition in a single visit by a contractor. Therefore, the Tribunal determined that charge of £240.00 per annum for 2019 to be reasonable.

Repairs and Maintenance

Key Safe

88. The Tribunal considered the cost of the key safe and key cutting to be expensive. However, it also accepted that it was important that the contractor carrying out such work should be reliable and trustworthy. The charge seemed to be a standard charge made by On Call for work of that kind and other contractors are likely to make a similar charge. Taking in to account the nature of the work and that On Call were well known to the Managing Agent, the cost was determined to be reasonable.

Gutter Cleaning

89. The Tribunal noted that the invoice dated 18th March 2019 for £340.00 for gutter cleaning was provided together with photographs of the gutter prior to and after cleaning. No alternative estimates were provided by the Respondent. The Tribunal was satisfied that the work had been carried out, that the costs had been incurred and, in the knowledge, and experience of the Tribunal members, the charge was determined to be reasonable. The displacement of hedgehogs/gutter brushes does not justify a reduction in the charge although the Managing Agents should consider having clips fitted to the guttering to retain the brushes. The brushes themselves assist in preventing the rainwater goods becoming clogged but do not negate the need for regular cleaning.

Passageway

90. No charge had been made for the affixing of the loose boards in the passageway therefore they cannot be the subject of a determination. Whether or not they should be affixed is a matter to be considered with regard to the Management Fee.

Roof

91. As with the passage panels, the roof work is not an item of expenditure for the years in issue, therefore, it cannot be the subject of a determination in these proceedings. Whether or not the work should have been identified sooner is a matter to be considered with regard to the Management Fee.

Decorations

92. Again, redecoration is not an item of expenditure for the years in issue, therefore it cannot be the subject of a determination in these proceedings. Whether or not the work should have been identified sooner is a matter to be considered with regard to the Management Fee.

Electrical Installations in the Common Areas

93. The charge for testing the electrical installations is included in the head of expenditure for repairs and maintenance. The Respondent's challenge did not appear to be about cost but that no electrical inspection had been carried out. The Tribunal was satisfied that for the years in issue the Inspection Reports provided showed that the work had been carried out.
94. The issue with regard to the timely repair of the dangerous live switch and the maintaining of the electrical cupboard is a matter to be considered with regard to the Management Fee.
95. With regard to the storage of items in the electrical cupboard there was an onus on the Tenants to ensure that if they let their flats their subtenants must comply with the obligations for their own safety and the safety of all persons residing in the Building.

Fire Safety

96. With regard to the Fire Safety the Respondent's challenge did not appear to be about cost but that the installation was not properly maintained and so related to the Management Fee. The Tribunal was satisfied by the Inspection reports from Black and White Fire and Security that the fire alarm installation was maintained.
97. In the opinion of the Tribunal a full Health and Safety and Fire Risk Assessment should be carried out every three to four years. They are not required every year unless there is a change in the Building. The obligations under the relevant legislation can be met between the full reports by the Applicant's Managing Agent as the competent person, through its inspections and site visits under the terms of the Management Agreement. The Assessment in this case is a little overdue but the Managing agent said that arrangements were being made for a full Assessment in 2021.

Management Fees

98. The Tribunal noted the Management Fees for the years in issue were
- £2,724.00 for the year ending 31st December 2018
£227.00 + £45.40 VAT per unit
- £2,760.00 for the year ending 31st December 2019
£230.00 + £46.00 per unit
- £3,000.00 for the year ending 31st December 2020
£250.00 + £50.00 per unit
99. The Tribunal considered that the rate for the years in issue was reasonable provided a reasonable standard of service was provided.
100. The current cleaners appear reliable but the standard had clearly dropped with regard to the previous cleaners. This should have been picked up by the Applicant's Managing Agent before the Tenants complained.
101. The manner in which the garden is maintained appears to be a considered decision. The employment of the gardeners just during the summer months does keep the cost of the work down and since the grounds predominantly comprise a car park a basic regime of cutting back the shrubs, clearing the weeds and removing the debris appears reasonable. However, from the photographs taken at the site visit on 23rd February 2021 there appeared to be debris from the previous year. The Tribunal questioned the level of oversight of the work by the Applicant's Managing Agent.
102. With regard to the repairs and maintenance the Tribunal found that too great a reliance was placed upon Tenants to report that works need to be undertaken or to complain about the standard of work carried out before tasks were actioned.

103. In addition, too great a reliance was placed upon contractors identifying what repairs needed to be done and their extent and to ensure that the work was carried out to the requisite standard.
104. The role of the property manager cannot be conducted from the office and the Tribunal found that two visits a year to the Building was inadequate. The need to replace roof tiles, the adequate securing of the gutter brush with clips, the checking of the electric cupboard, the identification of the damaged and dangerous electric switch, as well as the oversight of the cleaning and gardening, required an onsite presence. For the years in issue this was provided to some extent by On Call rather than the property manager.

The Tribunal found in the knowledge and experience of its members that this amounted to a shortfall in the Applicant's Managing Agent's duties and justified a deduction in the fees for the years in issue. Therefore, the Tribunal determines that a reasonable Management Fee is:

£2,220.00 for the year ending 31st December 2018
£185.00 + £37.00 VAT per unit

£2,280.00 for the year ending 31st December 2019
£190.00 + £38.00 per unit

£2,400.00 for the year ending 31st December 2020
£200.00 + £40.00 per unit

Administration Charges

105. The Tribunal expected to see a breakdown of the cost of the work carried out in respect of the Administration Charge in accordance with a protocol. For example, the Leaseholder should receive a reminder letter, followed by a further letter giving a clear statement of the procedure that will be followed should the Leaseholder continue to fail to pay the Service Charge together with an account of the related costs. There was no evidence of any protocol or correspondence stating the procedure or the related costs. Therefore, the Tribunal found that the Administration Charge of £600.00 was not reasonable or payable.

Summary

106. The Respondent has already admitted the sum of £3,103.23 in July 2017 so we can only consider the costs for 2018 onwards.
107. The Tribunal determines the Service Charge costs incurred for the years ending 31st December 2018 and 2019 and the costs to be incurred for the year ending 31st December 2020 as set out in the table below:

Years ending 31 st December	2018 Actual Costs £	2019 Actual Costs £	2020 Estimated Costs £
Audit and Accountancy	180.00	180.00	180.00
Bank Interest	-0.94	-1.33	
Gardening and Outside Maintenance		240.00	
Cleaning of Common Parts	858.00	858.00	1,000.00
Electricity Common Parts	259.19	543.07	500.00
Fire Safety	361.20	570.00	300.00
General Reserve Contribution	775.00	1,000.00	1,000.00
Insurance	1,795.65	1,900.98	1,950.00
Management Fee	2,220.00	2,280.00	2,400.00
Professional Fees		1,237.50	
Repairs & Maintenance	3,067.72	3,189.00	1,500.00
Window Cleaning	90.00		100.00
Total for Building	9,605.82	11,997.22	9,530.00
Less credit from 2017 re Respondent	-116.00		
Payment due 10% re Respondent	844.58	1,199.72	893.00
Cumulative		2,044.30	2,937.30

108. The Tribunal determines the following Service Charge costs to be reasonable and payable by the Respondent to the Applicant for the years ending 31st December:

2018 £844.58
2019 £1,199.72
2020 £893.00.

Judge JR Morris

ANNEX 1 - RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.

ANNEX 2 - THE LAW

Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002

1. Section 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, improvement 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 of which the service charge is payable.
 - (3) for this purpose
 - (a) costs include 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 period

2. Section 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.

3. Section 27A Liability to pay service charges: jurisdiction
 - (1) An application may be made to a leasehold valuation 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 a leasehold valuation 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.

1. 20C Landlord and Tenant Act 1985

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.

2. Schedule 11 Commonhold and Leasehold Reform Act 2002 relating to reasonableness of Administration Charges

1 Meaning of “administration charge”

- (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.

2 Reasonableness of administration charges

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

3

- (1) Any party to a lease of a dwelling may apply to a tribunal for an order varying the lease in such manner as is specified in the application on the grounds that—

- (a) any administration charge specified in the lease is unreasonable, or
 - (b) any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable.
- (2) If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the lease in such manner as is specified in the order.
 - (3) The variation specified in the order may be—
 - (a) the variation specified in the application, or
 - (b) such other variation as the tribunal thinks fit.
 - (4) The tribunal may, instead of making an order varying the lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified.
 - (5) The tribunal may by order direct that a memorandum of any variation of a lease effected by virtue of this paragraph be endorsed on such documents as are specified in the order.
 - (6) Any such variation of a lease shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title), whether or not they were parties to the proceedings in which the order was made.

5 Liability to pay administration charges

- (1) An application may be made to a 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 a leasehold valuation 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).

- 5 A Limitation of administration charges: costs of proceedings
- (1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.
 - (2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.
 - (3) In this paragraph—