FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AH/LSC/2019/0468**
HMCTS code (paper, video, audio)	:	**V: CVPREMOTE**
Property	:	**Flats 1 & 3, 76 Portland Rd, London SE25**
Applicants	:	**Chevia Antony Allen (1)** **Property Network (KA SPV) Ltd**
Representative	:	**Ms D Doliveux of Counsel**
Respondents	:	**South London Ground Rents Ltd**
Representative	:	**Mr J Hamerton-Stove of Counsel**
Type of application	:	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	:	**Mr Charles Norman FRICS Valuer Chairman** **Mr Mark Taylor MRICS Valuer Chairman, sitting as a Valuer Member**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of Hearing	:	**13 July 2021**
Date of decision	:	**19 September 2021**

DECISION

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Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been not objected to by the parties. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. The documents that the Tribunal was referred to are in bundles of 346, 156 and 9 pages, the contents of which the Tribunal noted.

Decisions of the tribunal

(1) The Tribunal makes the determinations as set out under the various headings in this Decision and in the accompanying Scott Schedule.

(2) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 as it finds that such costs are irrecoverable under the lease.

(3) The Tribunal makes an order under Sch. 11 Para 5 of the Commonhold and Leasehold Reform Act 2002 that not more than two-thirds of the landlords' legal costs may be recovered as an administration charge under the leases.

The application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges payable by the Applicants in respect of the service charge years 2014, 2015, 2016, 2017, 2018 and 2019.

2. It emerged during the hearing that the lessee of flat 1 has been the subject of other prior proceedings in the County Court. Only a solicitors' note of the judgment was provided. The court found that the on-account sums for the s.20 works, and the sinking fund were reasonable. There was Judgment for the landlord in the sum of £4,556.47 including interest. The defendant was ordered to pay costs summarily assessed in the sum of £9,247. Sums were to be paid by 26 November 2018. There is reference in the bundle to a Tomlin Order, but this was not available.

3. By virtue of section 27A(4)(c) of the Act, the Tribunal has no jurisdiction where a matter has been determined by a court. However, that claim was concerned with on account demands whereas the current application is for final sums. Therefore, the Tribunal finds that it does have jurisdiction in relation to flat 1.

The hearing

4. The Applicants were represented at the hearing by Ms D Doliveux, and the Respondent by Mr J Hamerton-Stove, both of counsel.

5. Shortly after commencement of the hearing, it became apparent that the applicants' bundle had been superseded by a larger bundle of 346 pages and that the Respondents were relying on a supplemental bundle of 157 pages. In addition, the applicants relied on a short supplemental bundle of 9 pages. Although the hearing had commenced without all these bundles being accessible to all parties and the Tribunal, the Tribunal did not consider that any party suffered prejudice, as Mr Hamerton-Stove was still opening his case.

The background

6. The subject property is a three storey pre-first world war house converted into three flats. This is apparent from Google Streetview, as photographs were not provided by the parties.

7. Neither party requested an inspection, and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute. Furthermore, the Tribunal was not carrying out inspections at the date of the hearing, owing to the Coronavirus pandemic.

8. The Applicants each hold a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease which are common to both applicants, will be referred to below, where appropriate. The first applicant holds the lease of the second floor flat known as flat three with such ownership commencing on 8 July 2004. The second applicant holds a long lease of the ground floor flat known as flat one, with such ownership commencing on 15 August 2016.

9. On account demands in relation to Flat 1 had been subject to prior judgment by the county court (see above).

10. The service charge year runs from 1 April to 31 March each year.

The issues

11. From the directions the Tribunal identified the following matters as requiring determination:

(i) The reasonableness and payability of disputed services charges as set out on the Scott Schedule and in respect of the service charge years 2014/15, 2015/16, 2016/17 2017/18 and 2018/19.

(ii) A section 20C application

(iii) A Sch. 11 Para 11 application.

12. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

The Law

13. Relevant extracts of statutes are set out in the Appendix of Relevant Legislation, below.

The tribunal's decision in relation to the Scott Schedule Items

14. The Tribunal makes the determinations set out on the attached Scott Schedule.

Reasons for the tribunal's decision

The Applicants' Case

15. Ms Doliveux in her skeleton argument stated that the applicants will accept that demands were made where the respondent has evidenced the demands. The applicants' position was that the sums demanded were less than the sums allegedly incurred and only the sums actually demanded are recoverable. A spreadsheet analysis was provided. Further, counsel submitted that individual items demanded were unreasonable and in particular, an annual management fee, as no management of the building was carried out.

16. The applicants acquired the right to manage on 1 November 2019. Prior to this the respondent engaged Inspired Property Management Ltd, as managing agent. The leases are in identical form in relation to service charges.

17. Ms Doliveux helpfully set out the service charge provisions in the leases. These are set out at clauses 4.4, 6.2 6.4 6.5 and 6.6. These clauses are not in dispute save in respect of the recovery of lessors' legal costs via the service charge, which is addressed below. This point was not specifically canvassed by either party at the hearing but is implicit from the applicant's rejection of "professional fees" in the Scott schedule which are in fact legal costs.

18. The salient points of the service charge mechanism are (i) on account payments are permitted on 1 October and April of each year, and (ii) clause 6.6 authorises a sinking fund. The mechanism is set out in the fifth schedule. This requires certification by the respondent's agents and where appropriate its accountants, of service charges during an accounting period.

19. Ms Doliveux also relied on section 20B which prevents recovery of costs incurred more than 18 months before demands are made unless prior notification is sent. Her submission continued:

> "20. A's have required R to prove that service charge demands were served. The demands available in each accounting year are the starting point of what was payable to R. As submit that the total figure of the invoices and/or accounts will then 'override' this if lower before being then subject to a reasonableness assessment.
>
> 21.The aggregate figures provided by R for (respectively) the various demands, accounts and invoices available in each accounting year are all mismatched.
>
> 22. In particular, in several years the sums demanded have been much higher than the actual spend on maintenance as evidenced by invoices or by the certified accounts. For example, in the year ending March 2019, £13,538.08 was demanded from Flats 1 and 2, but the certified accounts show only £2,560.00 was spent, of which only £1,265.84 is accounted for by invoices **[B7]**.
>
> 23. A submits that only the sums actually demanded from As were payable, and that this was subject to R providing proof that items of expense were:
>
> a. Recoverable under the Lease;
> b. Actually incurred; and
> c. Demanded within 18 mths of being incurred."

Ms Doliveux also took issue with the reasonableness of costs.

The Respondents' Case

20. From the Respondents' supplemental statement of case, the Respondent appointed Inspired Property Services Limited ("Inspired") as their agent, for the maintenance and management of the Building, which included the provision of servicing and the demanding and collection of service charges.

21. Inspired were appointed to deal with the maintenance and management of the Building from September 2014 until 1 November 2019 when management was handed over to '76 Portland Road RTM Company

Limited' pursuant to a claim made under the Commonhold and Leasehold Reform Act 2002. The Respondents' supplemental statement of case stated:

> "During its tenure as managing agents, Inspired sent out written demands by first class post to the First Applicant in respect of Flat 3 for the periods ending 2014 up until 7 February 2019, which was in fact a year-end adjustment by way of a surplus for the year-ending 31 March 2018 and to the Second Applicant in respect of Flat 1 for the periods ending 2016 up until 7 February 2019.
>
> From 8 February 2019 to the handover of management, demands for the service charges were sent to each of the Applicants by email to the email addresses provided by the Applicants up to and including the last demand served prior to the handover of management. Demands were served by email for this period in an attempt to migrate to a more digital form of communications with the leaseholders and to reduce postage overheads. Each of the demands served by email were sent (in the same form and with the same content as if they were sent by hard copy) as a 'PDF' attached to an email, along with a 'PDF' of a service charge statement detailing either the anticipated expenditure budgeted for the accounting period ahead, or of the actual service charge expenditure incurred for the last completed accounting period (and the proportion paid by the Applicants)
>
> In order to ensure that demands for payment had been received, Inspired re-served all demands sent by email by first class post on the First and Second Applicants under cover of letters dated 13 October 2020.
>
> The Applicants were also served a copy of their year-end tenant certificates for the service charge accounting years. The First Applicant was served with a copy of their year-end tenant certificates for the service charge accounting years ending 2015, 2016, 2017 and 2018 and the Second Applicant for the service charge accounting years ending 2016, 2017 and 2018. A copy of the certificates are annexed hereto and marked "F".

22. Mr Hamilton-Stove submitted that applying the principle of "he who asserts must prove" the burden of proof lay on the Applicants. He relied on *Enterprise House Developments LLP v Adam* [2020] UKUT 151 (LC) at paragraph 28 to this effect. He submitted that there was no evidence from the Applicants, no witness statements, no comparables and only a statement of case. Accordingly in his submission, the claim must fail.

23. Mr Hamilton-Stove also submitted that the Applicants had not exercised their right to inspect invoices pursuant to section 22 of the Landlord and Tenant Act 1985, notwithstanding that their initial bundles were served on 8 September 2020.

24. Counsel also relied on *Gateway Holdings (NWB) Limited and (1)Mrs Lynda Mckenzie (2) Mr Simon Greenfield* [2018] UKUT 371 (LC) to support his submission that the second applicant could not bring a claim prior to its ownership, which occurred on 15 August 2016.

25. Mr Hamilton-Stove called Mr David Poppleton to give evidence. Mr Poppleton had served a witness statement. He is a director of Inspired Property Management Ltd. In his witness statement he confirmed that the contents in the [supplemental] statement of case dated 3 June 2021 were correct.

26. In examination in chief, Mr Poppleton stated that Inspire was an ARMA regulated business of which he was a director. It had 80 employees. He explained that the sinking fund was not specifically invoiced to the lessees.

27. Mr Poppleton was cross examined at considerable length by Ms Doliveux. Mr Poppleton explained that his company managed 500 buildings. The management fee charged of £185 per unit per annum plus VAT was reasonable, in his opinion. Services provided included budgeting, issuing demands, recovery of service charges, purchase orders, site inspection and dealing with major works. Mr Poppleton explained the basis of the major works and made reference to the cost estimates for the works, being a quotation from Halas & Co, chartered surveyors dated 28 February 2017 for £27,500, excluding VAT. Mr Poppleton explained that this contract did not proceed because of a lack of funds. His firm carried out quarterly inspections. He explained that the dispute with flat one had led to £11,359 of the service charge sinking fund being used. That matter was dealt with by Salter Rex , the previous managing agent. Subsequently this amount was credited back to the service charge fund. Mr Poppleton was also taken through each of the items in dispute for the relevant years.

Findings

28. The Tribunal found Mr Poppleton to be an impressive and reliable witness. It therefore accepts the Respondent's supplemental statement of case. Accordingly, it finds that the applicants were sent on account service charge demands and year end statements. It also notes that chartered accountants' certificates of income and expenditure were produced in respect of each of the years in question. It also finds that such accountants' certificates were sent to the applicants, albeit late. The Tribunal accepts these accountants' certificates as proving actual expenditure, whether or not invoices were provided to the applicants or Tribunal. The Tribunal has then considered the reasonableness and payability of such expenditure.

29. The amounts demanded on account are complicated by the conflation of the dispute with flat one with use of the sinking fund. As stated above,

the Tribunal noted reference in the bundle to a Tomlin Order, but this was not provided.

30. In relation to section 20B, the Tribunal notes, as is invariably the case, that the amounts demanded for the sinking fund will not be the subject of specific invoices. However, the Tribunal finds that the year-end statements of account sent to the applicants, and which include the sinking fund as a cost, operate as a notification under section 20B(2). Therefore, the Tribunal finds that section 20 B is not a bar to recovery of sinking fund costs, where the Tribunal has found that such costs are otherwise reasonable and payable.

31. The Tribunal accepts Mr Hamerton-Stove's submission that the second respondent's rights in this matter did not extend to any period of time prior to its ownership.

32. The specific decisions in relation to each item are set out on the attached Scott Schedule as amplified below.

Recovery of landlord's legal costs through the service charge

33. The Tribunal noted that an invoice of £1,459 in respect of the year ending 2018 and described as "professional fees" relates to legal costs incurred by the landlord in connection with its dispute with flat one. There is also a further invoice headed "professional fees" for £60 in the year ending 2019 accounts.

34. Clause 6.4 entitled "employment of personnel and managing agents" is as follows:

6.4.1 for the purpose of performing the covenants on the part of the lessor hear in these presents contained at their discretion to employ on such terms and conditions as the less or shall reasonably think fit maintenance staff cleaners or such other parties as the lessor may from time to time reasonably consider necessary and proper

6.4.2 to employ at the lessors discretion a firm of managing agents and chartered accountants to manage the building and discharge all proper fees salaries charges and expenses payable to such parties including the cost of computing and collecting the rents and service charges in respect of the building or any part thereof...

6.4.3 to employ all such surveyors builders architects engineers tradesmen accountants or other professional parties as may be necessary or desirable for the proper maintenance safety and administration of the building"

35. It is trite law that clear wording is required to recover legal costs via the service charge : *Sella House Ltd v Mears* [1989] 1 EGLR 65. Lord Justice Taylor said

> "nowhere is there any specific mention of lawyers, proceedings or legal costs. The scope of [the relevant clause] is concerned with management... In [the relevant clause] it is with maintenance, safety and administration. On the respondent's argument tenant, paying his rent and service charge regularly, would be liable by the service charge to subsidise the landlord's legal costs of pursuing his co-tenants, if they were all defaulters. For my part, I should require to see a clause in clear and unambiguous terms before being persuaded that that result as intended by the parties."

36. That judgment was followed in *St. Mary's Mansions Limited* v *Limegate Investment Co Ltd* [2003] 1EGLR41.

37. The lease clauses concerned with service charges make no reference to the cost of lawyers or recovery of legal costs.

38. As this matter was not directly raised by either party at hearing, the Tribunal circulated its provisional findings to the parties and invited submissions. The landlord cited *Staghold v Takeda* [2005] 3 EGLR 45 as authority for the principle that costs incurred in defending applications brought by a tenant in the Tribunal seeking to challenge the recoverability of service charges can be recovered as part of the service charge. The Tribunal accepts that this is possible but finds that this depends on the specific wording of the lease. It noted that in *Staghold*, employment of legal advisors was referred to in the relevant lease covenant. The Tribunal therefore distinguishes *Staghold* from the leases in the present case.

39. The Tribunal therefore finds that the landlord's legal costs are irrecoverable via the service charge.

Payability

40. Owing to the complications caused by the county court dispute with flat one, the Tribunal is not in a position to make specific payability findings in relation to flat one. The parties are directed to agree the financial consequences as to payability between themselves using best endeavours to do so.

Application under s.20C

41. Having found that legal costs are irrecoverable via the service charge under the leases, it is inappropriate for the Tribunal to make an order under section 20C and for that reason it declines to do so.

Application under schedule 11, paragraph 5A of the 2002 Act

42. The Tribunal notes that the applicants have been partially successful in relation to the disputed items, to approximately 30%. The Tribunal also notes that service charge certificates were sent very late and that this has contributed to the confusion around service charge demands. For these reasons the Tribunal considers that the appropriate order is that not more than two-thirds of the landlords' litigation costs in these present proceedings can be recovered as an administration charge under the leases.

Name: C Norman FRICS **Date:** 19 September 2021

Rights of appeal

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

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

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

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

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

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

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

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

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

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

Section 19

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

    and the amount payable shall be limited accordingly.

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

Section 27A

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

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

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

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

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

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

Section 20

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

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

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

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

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

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

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

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

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property Tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are

not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
- (aa) in the case of proceedings before a residential property Tribunal, to that Tribunal;
- (b) in the case of proceedings before a residential property Tribunal, to the Tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property Tribunal;
- (c) in the case of proceedings before the Upper Tribunal, to the Tribunal;
- (d) in the case of arbitration proceedings, to the arbitral Tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or Tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
- (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
- (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
- (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
   (a) specified in his lease, nor
   (b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

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

Schedule 11, paragraph 5

(1) An application may be made to the appropriate Tribunal for a determination whether an administration charge is payable and, if it is, as to—
   (a) the person by whom it is payable,
   (b) the person to whom it is payable,
   (c) the amount which is payable,
   (d) the date at or by which it is payable, and
   (e) the manner in which it is payable.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate Tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

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

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

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
   (a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).

Schedule 11, paragraph 5A

5A(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—

(a)“litigation costs” means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and

(b)“the relevant court or Tribunal” means the court or Tribunal mentioned in the table in relation to those proceedings.