



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

**Case Reference** : **LON/00AH/LSC/2021/0073**

**HMCTS code  
(paper, video,  
audio)** : **V: VIDEO**

**Property** : **20 and 20a Hawthorn Avenue,  
Thornton Heath, London CR7 8BU**

**Applicants** : **(1) Ms K Smart (flat 20)  
(2) Mr J Kobiah (flat 20a)**

**Representative** : **Ms Smart, representing herself and  
Mr Kobiah**

**Respondent** : **Assethold Limited**

**Representative** : **Mr R Gurvits of Eagerstates  
Limited / Mr Granby of counsel**

**Type of Application** : **For the determination of the  
reasonableness of and the liability  
to pay a service charge**

**Tribunal Members** : **Tribunal Judge Prof R Percival  
Mrs A Flynn MA, MRICS**

**Date and venue of  
Hearing** : **8 December 2021, 26 January 2022  
and 8 March 2022  
Remote**

**Date of Decision** : **8 July 2022**

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**DECISION**

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## **Covid-19 pandemic: description of hearing**

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was VHS. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

## **The application**

1. The Applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount of service charges payable by the Applicant in respect of the service charge years 2014 to 2022.
2. The application was dated 2 March 2021. Related proceedings were commenced in the County Court by the Respondent against the Applicants (on 25 February 2021 against Mr Kobiah, claim number 196MC943, and on 2 March 2021 against Ms Smart, claim number 200MC140). On 4 August 2021, those proceedings, insofar as they related to service charges, were transferred by a County Court judge to the Tribunal.
3. The relevant legal provisions are set out in the Appendix to this decision.

## **The property**

4. Number 20, Hawthorn Avenue is a mid-terrace house. Flat number 20 is the ground floor flat, and 20a that on the first floor. Both are two bedroomed flats.

## **The leases**

5. The leases are for a term of 125 years from 2003. Mr Kobiah has held the lease since grant, Ms Smart since August 2018. Mr Kobiah is the leaseholder of 20a, the first floor flat, Ms Smart that on the ground floor, referred to as number 20. The leases are in the same terms. The Respondent has held the freehold since 2012.
6. The lessee covenants in clause 3(5) to pay the whole of costs incurred by the landlord on the repair and maintenance of the common parts. The common parts are defined as the entrance porch, the hall inside the building and the driveway (particulars, (1)(f)).

7. Clause 3(16) requires the lessee to pay costs and expenses, including legal costs, “incurred by the landlord in or in contemplation of any proceedings under section 146 of the Law of Property Act 1925 ... notwithstanding forfeiture is avoided ...”
8. The “annual maintenance cost” is defined in clause 4(1)(b) as “the total of all sums actually spent by the landlord in any Year [defined as calendar year – clause 4(1)(a)] in connection with the management and maintenance of the Building”. There is then a long list of matters included (without prejudice to the generality of the principal statement). The lessee’s share is half, and the lessee covenants to pay the share in clause 4(3).
9. One of the listed matters, in Clause 4(1)(v), is to pay “all fees charges and expenses payable to any Solicitor Accountant Surveyor or Architect or other profession or competent adviser or agent whom the Landlord may from time to time reasonably employ in connection with the management and/or maintenance of the Property ...”.
10. Provision is made for advance payments (clause 4(1)(c) and 4(4)). The advance payment is due on such dates as the landlord specifies, and is “such reasonable sum as the Landlord or his Managing Agents shall consider appropriate on account of his contribution to the Annual Maintenance Cost.” There is provision for reconciliation when actual costs are available (clause 4(5)(a) and (c)).
11. By clause 4(7), “the Landlord will keep an account of all expenditure to be included in the Annual Maintenance Cost and ensure that the Statement for every year is prepared by an Accountant to whom all necessary accounts and vouchers will be produced.”
12. If payments are not made within 28 days, the payments carry interest at four percent above Lloyds Bank base rate (clause 4(6)).
13. The tenant is entitled, within 21 days of receiving the Statement, to give 14 days’ notice to “inspect vouchers and receipts” for items in the statement.
14. The landlord’s repairing covenant is in clause 5. The operative terms are “maintain repair cleanse repaint redecorate and renew”. They apply to the main structure, drains, rainwater goods, and gas, electricity and water pipes etc.
15. The obligation to insure the building is in clause 5(4). The sub-clause sets out details of the insurance required.
16. The extent of the demise is set out in the first schedule. The demise includes “the windows of the Premises including their internal and

external frames and the glass but excluding the paintwork and decoration of the external surfaces of such windows and window frames.”

### **The proceedings in the Tribunal**

17. The Applicants were both represented by Ms Smart. On 8 December 2021, Mr Gurvits of Eagerstates, the managing agents, represented the Respondent.
18. The case was listed with a time estimate of a day on 8 December 2021. Immediately before and during the morning of 8 December 2021, there was considerable confusion in relation to the reception by the Tribunal of the papers. We had a bundle from the Applicants of 386 pages, but nothing from the Respondent was contained in that bundle. It transpired that Mr Gurvits had sent a bundle of 220 pages to the Tribunal, but it had been accidentally misdirected, and so only came available to us after proceedings had started.
19. In the event, we heard and determined two preliminary issues. At that point, it became clear that there was no realistic possibility of us concluding the evidence and submissions on that day, and that if we were to attempt to do so, we would be disadvantaged by the state of the papers. Accordingly, we accepted Mr Gurvits’ application that we adjourn and reconvene on another day, on the basis that it was clear that we would have to reconvene in any event, and if we had the correct papers available, proceedings would be both more easily conducted and fairer.
20. Unfortunately, on the date set to reconvene (26 January 2022), Mr Gurvits was taken ill and had not been able to arrange alternative representation at short notice. We accordingly arranged a further date to reconvene, 8 March 2022. At this point we had a single bundle of 598 pages as a result of Mr Gurvits amalgamating his bundle with the Applicants’, but some material had apparently been lost in the process, in particular from the Scott schedule, which was also in a problematic form, and Mr Gurvits undertook to produce a separate, full Scott schedule for the reconvened hearing. He did not do so in the event.
21. At the reconvened hearing on 8 March, the Respondent was represented by Mr Granby of counsel. Proceedings were marred by problems with the VHS platform, and we lost over two hours of the afternoon to malfunctions. We sat late to make up time. We repeat our apologies to the parties, on behalf of HMCTS.

## **The preliminary issues on 8 December 2021**

22. In respect of both preliminary issues on 8 December 2021, we orally explained our decisions to the parties. These are our full statement of reasons.
23. First, Mr Gurvits submitted that a form signed by Mr Kobiah amounted to an agreement or admission as to the payability and reasonableness of the service charges referenced in the form.
24. The form was addressed to the Respondent, and related to the lease. Thereafter, it read as follows:

### “Statement of Admission

I, John Kwaku Kobiah, am the owner of the Leasehold interest of the Premises. I hereby submit this statement as confirmation that I do not dispute my liability to pay the sums demanded upon the enclosed account for ground rent, service charges and administration charges totalling £8,253.28. I agree and admit that the sums on the statement are payable by me to the Landlord under the terms of the lease.”

25. The form was signed and dated 27 June 2018. Under the signature and date, section 27A of the 1985 Act was set out.
26. Speaking for Mr Kobiah, Ms Smart said that Mr Kobiah had not been legally represented at the relevant time and that his expectation was that, once he had signed the form, there would be a sorting out of what was and what was not owed with the Respondent. Mr Kobiah made it clear that he felt compelled to sign the form, as a pre-condition to his mortgagee paying the sum specified, but that he had not realised it would mean he could not contest the service charges. He made some suggestion that the form was not wholly genuine, but we are not clear that this was his settled position in relation to it. He had been served a section 1
27. Mr Gurvits argued that the form was a clear admission on its face, and he suggested that Mr Kobiah was in fact legally represented at about that time. He objected to any accusation of forgery.
28. We concluded that the form did constitute an agreement or admission, and that as a result we had no jurisdiction to consider the service charge payments covered by it as a result of section 27A(4)(a). There was a dispute as to whether Mr Kobiah was legally represented, but the question did not affect our decision. We have no doubt that Mr Kobiah did indeed sign the admission in order to secure the payment of the sum by the mortgagee. But that that was his motive does not, in our view, mean that the form does not amount to his agreement. The form

is very clear, and only very exceptional circumstances could persuade us that a form in such terms did not amount to express agreement.

29. Subsequently (at the hearing of 8 March 2022), the parties agreed that the admission covered service charges up to and including the estimated charge for 2018, but did not include actual charges for 2018, which were still subject to challenge.
30. Secondly (on 8 December 2021), Mr Gurvits argued that Ms Smart could not contest any service charges which were covered by an admission of liability, and denial of any disputes, made by a Ms Boriosi, Ms Smarts predecessor in title. It is not necessary to rehearse the terms of the admission.
31. Mr Gurvits said his submission had three limbs. First, the payability of the service charges had thereby been admitted by the previous leaseholder. Secondly, it was not just and equitable that we should allow challenges arising from charges earlier than the change of ownership of the leasehold interest. Thirdly – a submission related to how the Applicant put the relevant challenge – that matters of mere accountancy proprietary were not for us, as opposed to issues of payability and reasonableness.
32. Ms Smart noted some indeterminacy in the wording of the admission by Ms Boriosi, and took us to some of the substantive points she wished to make about that year's service charges.
33. We concluded that Ms Boriosi's admission provided no jurisdictional bar to Ms Smart making the substantive arguments she wished to pursue, provided that they related to service charge demands made on Ms Smart herself. While Mr Gurvits was right that making findings of accounting impropriety per se was not one of the objects of our jurisdiction, nonetheless, there were circumstances where accounting matters may be relevant to payability or reasonableness, or other decisions falling to us.
34. As a result of these decisions, the service charges which fell to be considered substantively were those from 2018 to 2021. As it turned out, the effective disputes were confined to 2018 to 2020.

### **The hearing on 8 March 2022 and the issues**

35. Ms Smart again represented the Applicants. Mr Granby of counsel represented the Respondent.
36. At the start of the hearing the parties identified the relevant issues for determination as follows:

- (i) The relationship between Eagerstates, the managing agent and Assethold Ltd, the freeholder, as a general issue;
- (ii) An issue depending on section 21A of the 1985 Act;
- (iii) The service charges in relation to insurance;
- (iv) Electrical work in 2018;
- (v) External decoration;
- (vi) Accounts fees;
- (vii) Summaries of tenants rights and obligations;
- (viii) Management fees;
- (ix) Window cleaning costs;
- (x) Electrical fault finding and repair;
- (xi) Drain cleaning;
- (xii) Surveyor's fees;
- (xiii) Other matters;
- (xiv) Applications under section 20C of the 1985 Act and schedule 11, paragraph 5A, Commonhold and Leasehold Reform Act 2002.

Items (ii) to (xii) were set out individually in the Scott schedule for each relevant year under consideration, but are more conveniently dealt with category by category.

*The relationship between Eagerstates and Assethold Ltd*

- 37. Ms Smart submitted that Eagerstates and Assethold were closely related, in that they shared a correspondence address and some of their officers were the same, or members of the same family. As a result, she said, this resulted in a conflict of interest, and meant that the Applicants were not fairly treated by the managing agents. There was no evidence of a written agreement between Eagerstates and Assethold.
- 38. Mr Granby argued that the fact that the two companies were related was not in principle objectionable. He cited *County Trade Ltd v Noakes* [2011] UKUT 407 (LC) for the statement that the Upper Tribunal had

deprecated the casting of aspersions on the basis on commonality of ownership etc between a managing agent and freeholder.

39. The case law supports the proposition that it is only where a managing agent is a sham or artifice of the freeholder that the existence of a relationship of ownership or similar between the two is objectionable. For the general proposition that, absent sham or artifice, a tribunal should not seek to go behind the corporate structures, the Upper Tribunal in *County Trade* cited *Skilleter v Charles* [1991] 24 HLR 421.
40. In *County Trade* itself, the Upper Tribunal, by way of obiter observations, was castigating the First-tier Tribunal's decision as "redolent with contentious language casting implied aspersions on the probity of the management arrangements". Those paragraphs were not critical of the arguments put by the tenants in that case.
41. For our own part, we consider that the effect, if any, of a sham arrangement would depend on whether there was some provision in the lease that would be affected by such a sham, such as a provision that management fees could be paid to a managing agent, but not by the freeholder themselves.
42. Nonetheless, we agree with the (again, obiter) observations made by the Upper Tribunal in *County Trade* that "such an arrangement may well justify a rigorous scrutiny of the fees charged and the services provided" by such an agent, as long as we keep well in mind that the question for us is whether the costs concerned were reasonably incurred.
43. In respect of the allegation that the proximity of ownership and/or operation between Eagerstates and Assethold resulted in a conflict of interest, we observe that the submission misunderstands the proper relationship between agent and principle. The former is supposed to have no interests other than those of the latter. A conflict of interests between agent and principal would occur when their interests do not coincide, not when they do.
44. *Decision*: That there is proximity between Eagerstates and Assethold is not objectionable, but justifies rigorous scrutiny of fees charged and services provided by Eagerstates.

*Section 21A, Landlord and Tenant Act 1085*

45. The Applicants sought to make a point which relied on section 21A. Mr Granby, relying on a passage in Tanfield Chambers, *Service Charges and Management* (4th edition, 2018), submitted that the section was not in force (the text, at paragraph 29-07, states that not only are the provisions not in force, but that it is unlikely that they ever will be). Having considered other resources after the hearing, we are satisfied that the section is not in force. We also note that the new edition of the



Tanfield Chambers book, published in March 2022, includes the same text.

46. As Mr Grandy observed, the Applicants could not be blamed for thinking the it was in force, as it appears in the statute as published by legislation.gov.uk, which gives no indication as to the status of provisions.

*Insurance*

47. The service charges referable to insurance in each of 2018 to 2020 were £1,007.50; £1,036.22 and £1085.53.
48. The Applicants submitted that the charges were excessive. The broad submission was that for a number of years before Assethold took the freehold in 2012 the charge was in the region of £420 to £550. Thereafter, the costs had increased, from £797.43 in 2015 to the contested figures.
49. The Applicants supplied a number of what were said to be alternative quotations, from both websites and via a broker (the broker, Ms Smart said, who had secured the insurance before 2012). These ranged from £286 to £559.
50. Mr Granby argued that the quotations did not include any but the most basic details of the cover provided, and appeared to be home insurance rather than landlord's insurance policies. Ms Smart said that this was not the case.
51. In the absence of details of the policies, we do not think we can consider these quotations to be like-for-like that obtained by the Respondent. We note Ms Smart's assertion, but the Tribunal does not consider that these quotations, above all those at the bottom end, are at all credible as landlord's building insurance policies.
52. Assethold has a block policy covering all of its portfolio. The premiums for each property are calculated separately, taking into account the specific circumstances of that property. There was some argument as to whether the policy the certificate of which was provided by the Respondent even existed (Ms Smart suggesting that the insurance company had said they had no record of it to her), but, while we have no doubt at all that Ms Smart was truthfully reporting her conversations with whoever she contacted, we do not consider it credible that Assethold does not have insurance cover in place for its portfolio.
53. It is common for companies with portfolios of freeholds to negotiate block policies through brokers with insurers. Assethold do so, and in the recent past has changed the insurer with which they deal following

market testing. It is not inherently unreasonable for freehold companies to do so. Any danger that leaseholders in low risk properties end up effectively subsidising leaseholders in higher risk properties is avoided by the use of the mechanism for setting property-specific premiums.

54. On the evidence before us, both the method used by the Respondent to secure its insurance cover and the outcome, in terms of the premium sought to be charged to the leaseholders, are reasonable, and accordingly the costs were reasonably incurred. We note the increase in the premiums over time that Ms Smart set out, but that does not appear to the Tribunal to be out of step with the general level of inflation in the insurance market over that period, which, it is well known, has been higher than general inflation.
55. One, relatively small, element in the increases can be attributed to a revaluation of the reinstatement costs effective from 2020. The final sum identified by the Respondent's surveyors (JMC Chartered Surveyors) was £444,597. Ms Smart objected that the figures provided by the Applicant's surveyor were inflated, and based upon inaccurate measurements. She produced a report generated by a rebuild calculator provided on a website developed under the auspices of the Association of British Insurers. That gave rebuilding costs of £123,000.
56. We reject the criticisms of the JMC report. The methodology of the report is extensively set out, and we are not prepared, without clear evidence, to conclude that a report counter-signed by a RICS member surveyor, is seriously methodologically flawed. The only specific issue that Ms Smart referred to was that the report erroneously identified the flats as having one bedroom, when in fact both have two bedrooms. However, since the rebuilding calculation did not depend on the number of rooms, but rather internal (or assumed internal) measurements, this was not an error that had an effect on the outcome.
57. The JMC report identified as a base figure for rebuilding £156,984. At the hearing, we had assumed that this was the figure in the JMC report that was comparable to Ms Smart's website figure. The final JMC figure was arrived at by adding the cost of external rebuilding, a location multiplier and professional fees.
58. On this basis alone, we were prepared to accept the JMC figure as a reasonable one for the Respondent to accept as the appropriate figure to pass on to its insurer.
59. However, on further inspection of Ms Smart's website figure, it now appears to us that that figure was based on a rebuilding cost for one flat, not for the building as a whole. The basis of the estimate is given as "Flat in a converted 2 storey Terraced house ...", and the size given, on a gross internal floor area basis is 51m<sup>2</sup>. In the JMC report, the figures for

each flat (on the basis of IPM 2 measurements) are 47.5m<sup>2</sup> and 45.5m<sup>2</sup>. While we do not seek to assess the reasons for the precise differences in measurements, these figures further suggest that the website figure is based on a single flat.

60. *Decision:* The costs in relation to the insurance premium were reasonably incurred and are payable.

*Electric works (light)*

61. A charge of £276.73 was made in 2018 for electrical work in the communal hall.
62. The work, the Applicants said, had the effect of wiring the electrical supply for the common parts to Ms Smart's supply, with the result that electricity consumed for the benefit of the common parts was paid by Ms Smart. The Respondent's case was that the work was required as a result of a health and safety fire safety assessment. Ms Smart argued that that assessment only required a change to the light shade in the common area, not the system as a whole.
63. Mr Granby relied on an extract from a health and safety fire risk report, and the corresponding invoice, both provided in the bundle by the Respondent.
64. The invoice is for the installation of a smoke detector, removal of light switches and light and the replacement of the light with a motion sensor light. The invoice states: "Fed both light and smoke from ground floor flat as instructed by Danny". The extract from the report, first, notes that there is no warning and detection system installed, and goes on, under "action required", to say that there was no need for further action provided that the conversion of the property was carried out to Building Regulations standards. Secondly, the lack of a diffuser on the existing pendant light is noted, and the action required is the fitting of a diffuser.
65. It seems clear, then, that, the work actually done was not required by the report, insofar as that is evidenced by the extract provided (at least, in the absence of evidence that the conversion had not been Building Regulations complaint). And, further, that, as Ms Smart said, the installations were attached to Ms Smart's power supply.
66. *Decision:* The costs were not reasonably incurred. Insofar as the electrical supply was taken from Ms Smart's flat, the installation is also outwith the lease, which makes provision for the charging of the cost of communal area lighting to the service charge, not by one tenant.

*External decoration and management fee*

67. The Applicants challenge a charge of £2,336.40 in 2018 for external decoration. This was made up of an invoice from the decorator for £1,980 and £356.40 for section 20 administration costs from the Respondent (both figures including VAT).
68. Ms Smart relied on the both the quality of the work done, and on what she said was the Respondent's failure to properly undertake the consultation process required by section 20 of the 1985 Act, and the regulations made thereunder. Ms Smart provided an alternative quotation, for £1,200.
69. As to the quality of the work undertaken, we were taken to photographs of the work provided by both parties. Those produced by Ms Smart clearly showed significant areas of paintwork showing poor to very poor preparation before the paint was applied. These included areas where there had simply not been sufficient making good before the paint was applied, and other areas where cracks or other defects had been made good, but not sanded down (or not adequately sanded).
70. The Respondent's photographs consisted of some clearly during the decorating, showing that there had been some making good (but not sanding back, at least when the photographs were taken), and some "after" photographs taken from some distance.
71. We are quite clear that the quality of work is visibly sub-standard.
72. In respect of the section 20 consultation, Mr Granby took us to a notice of intention to carry out works dated 2 January 2018 and a statement of estimates at 29 March 2018, with two estimates, one higher than that accepted.
73. Ms Smart objected that the higher estimate was expressed as relating to a quite different address, in the body of the estimate. The heading included the right address against a heading "location of work".
74. Further, Ms Smart, who completed on her purchase on 8 August 2018, said she was not informed of the work.
75. We reject the challenge to the section 20 consultation. The error in respect of the higher estimate is odd (as is the fact that the correct address against the heading "location of work" is in a different type face to that of the rest of the letter), but we do not think that that is sufficient to invalidate the process. Ms Smart did not identify the basis upon which it could be said to do so. Given the presence of the correct address as well, we do not think it is sufficient to raise the conclusion that the contractor made a mistake and quoted for the wrong property. Nor do we think we can go so far as to conclude that the estimate was

altered – presumably, by the Respondent – to include the subject address. While the different typeface is odd, even suspicious, we do not think it is sufficient for us to come to such a conclusion.

76. As to Mr Smart’s objections in respect of her knowledge of the works, that is a matter that is or should have been dealt with during the conveyancing process. It is a matter between Ms Smart and her predecessor in title, not something that could invalidate the consultation process before she acquired her title.
77. The charge for administration of the section 20 consultation was not contested.
78. *Decision:* The section 20 consultation process was properly carried out. The work was not carried out to a reasonable standard. A reasonable cost for work of this quality would be no more than £,1000 excluding VAT. The total charge for the work and the administration fee should be £1,556.40 including VAT.

#### *Accounts fee*

79. The Applicants challenged accountancy fees of £180 for 2018 and 2019, and £210 for 2020.
80. The thrust of the challenge was that the accountants were not truly independent of the Assethold and Eagerstates. All three operated from the same address. The Applicants further argued it appeared that a company called Martin and Heller had been dissolved in 2014, providing Companies House details.
81. As we understood it, the Respondent’s case was that the registered offices of Assethold and Eagerstates, amongst those of many other companies, was the office of Martin, Heller, who acted as accountants for both of those companies.
82. We accept the Respondent’s argument. There is nothing to suggest any inappropriate proximity between Assethold, Eagerstates and Martin, Heller other than the coincidence of address, in respect of which the Applicants are unable to gainsay the Respondent’s explanation. The explanation itself is not implausible.
83. As the dissolution of the company, the name of the company is not the same as the name of the concern issuing the invoices, although the primary names are the same, and in particular headed paper of the concern issuing the invoices does not indicate that it is a limited company. We do not know whether the people involved in the current concern are the same as those involved in the company, but that is not relevant.

84. There was no challenge before us to the reasonableness of the amount of the fees claimed.
85. *Decision*: the fees claimed for audit fees are reasonable in amount and payable.

*Summary of rights and obligations*

86. The Applicants argued that none of the service charge demands from 2018 to 2020 were accompanied by a valid summary of rights and obligations, as required by section 21B of the 1985 Act, and the Service Charges (Summary of Rights and Obligations, and Transitional Provision)(England) Regulations 2007.
87. In each case, there was a document headed “Service Charges – Summary of Tenants Rights and Obligations”, but Ms Smart submitted that they were in a smaller font than 10 (the minimum specified by the regulations) and that paragraphs 4, 6, 7, 8, 9 and 10 were illegible.
88. Mr Granby referred us to *Roberts v Countryside Residential (South West) Ltd* [2017] UKUT 0386 (LC). The passage from [42] to [50] deals with a similar issue in respect to the Welsh version of the 2007 Regulations, albeit on the basis of a more extremely expressed submission than that made by Ms Smart. In that case, HHJ Robinson considered recent Court of Appeal authority in relation to the validity of notices in a landlord and tenant regulatory context (*Elim Court RTM Company Ltd v Avon Freeholds Ltd* [2017] EWCA Civ 89 | [2018] Q.B. 571). She concluded that the smaller-than-10 font size and the omission of a paragraph number and consequent renumbering of the other paragraphs (plus the inversion of the order of the Welsh and English text) was not sufficient to invalidate the summaries of rights and obligations. In the judge’s view, “the key requirement is that the statement is legible” ([49]).
89. Our task in relation to these statements is different, and harder. In each case, the statement has been provided on a single page, which, no doubt, requires a font size below 10 (and we did not understand Mr Granby to deny that). On the basis of *Roberts v Countryside Residential*, that alone cannot render the summaries invalid. But the principal issue in our case is that the statements are difficult to read in the versions supplied to us digitally in the bundles. The problem is not necessarily the size of the letters per se, but that they are also indistinct. It is just possible to make out the words, or most of them, but with sufficient difficulty that, as presented, they are at best on the borders of illegibility, if not actually the wrong side of that border.
90. Mr Granby submitted, however, that we should not be satisfied that the statements, as received, were indeed in the form in which they were presented to us. He asked us to look at the copy of the Tribunal’s

directions reproduced in the bundle, as a demonstration that presentation in the bundle was poorer than that in an original document. He is right that the directions document is harder to read than the original, a word document in font 11. It was, however, perfectly legible.

91. Two further considerations convince us that the versions we have before us are harder to read than the originals would have been; or, at any rate, we cannot be satisfied on the balance of probabilities that they are not harder to read. The first is that, necessarily, the reproduction on the page is smaller than the A4 sized original, to accommodate other material at the head and foot of the page. That albeit moderate reduction in size would have had some negative impact on legibility.
92. Secondly, there are two versions of one of the summaries, that for 2018, at different pages in the bundle. One is significantly harder to read than the other (and certainly crosses the boundary into illegibility). This demonstrates that the clarity of the text must be at least in part an artifact of the reproduction, as both of these bundle versions must be assumed to have been a reproduction of the same original.
93. Had we been hearing the case face to face, and had Ms Smart had an original version as received by the Applicants to hand, she could have shown that physical article to both us and Mr Granby, and we would have been in a better position to have made a judgement. As it is, we can only go on the material that we have available, and on that basis, and with some reluctance, we have come to the conclusion that we cannot be satisfied that the Applicants have discharged their burden to satisfy us that the originals were, indeed, illegible.
94. *Decision:* We are not satisfied that the legibility of the original summaries of rights of obligations was such as to render them invalid.

#### *Management fees*

95. Eagerstates charged management fees of £564 in 2018 and £568.80 in 2019 and 2020.
96. At our invitation, Mr Granby argued that management fees were justified by Clause 4(1)(v) (see paragraph [9] above). While there was no specific reference to a managing agent in this sub-clause, that a “competent adviser or agent” must include a managing agent was evident from the fact that in a number of other places in the lease, there is a reference to “the Landlord or the managing agent” doing something (eg clause 4(4) and (5), clause 5(4)(3)(twice), paragraph 7 of the fourth schedule).

97. Ms Smart submitted that the previous freeholder had been responsible for drawing up the leases, and he had never employed a managing agent.
98. We accept Mr Smart's submission as to the interpretation of the lease. Objectively, the wording of the lease envisages a managing agent being a possibility, which in turn assists us in interpreting the wording of clause (1)(v) to read "competent ... agent" as including the costs of a managing agent. The practice of a previous freeholder is not relevant.
99. Ms Smart's second submission is that even if the lease allows the payment of a managing agent, the performance of Eagerstates is such that their fees should be reduced. In making this argument, Ms Smart pointed out that Eagerstates charges task-specific fees as well as the annual sum.
100. We agree with this submission. Although, as Mr Granby argued, an additional fee for arranging a section 20 consultation is common place (and anticipated in the RICS guidance), we consider that Eagerstates' performance of its basic functions is compromised. As we note above, judging poor accountancy practice is not the function of the Tribunal, but when the way in which service charge demands (and, where they exist, accounts) makes it difficult for a tenant to determine what they are paying for, that is relevant to the reasonableness of a management fee. Similarly, Ms Smart was able to point to occasions when reasonable requests for information or to inspect documents had been ignored or refused. Apart from its inherent undesirability, a lack of transparency also makes conflict and litigation more likely.
101. Mr Granby suggested that the fees here – £282 and £284 per unit – were towards the lower end of the market range in Greater London for properties of this type, and we agree. However, we consider that the matters we refer to above are such as to render these fees unreasonable. We substitute a sum we consider to be at the bottom of the market range of what would be reasonable.
102. *Decision:* the fees for the managing agent are not reasonably incurred. A fee of £250 per unit would be reasonable.

*Fees for fire health and safety service and fire health and safety reports*

103. There was some initial lack of clarity as to what was covered by this heading. Our understand is that it refers, first, to charges made in 2019 (£114) and 2020 (£246), for what was described as a fire health and safety service. That in 2019 related to an invoice for the annual testing of the fire alarm system, and in 2020 to an invoice for checking the fire alarm, the emergency lights and undescribed other lights. Secondly, we were concerned with charges made in 2019 (£240) and 2020 (£252) for fire health and safety assessments.



104. Ms Smart suggested that there were in fact monthly fire alarm checks, with appears from the invoices to be inaccurate. She also argued that it would be acceptable for her, or Mr Kobiah, to agree to test the fire alarm, as it was not a technical matter.
105. In respect of annual testing, we consider that it is reasonable for the landlord to engage a contractor to conduct an annual test, and that can include both the alarm and the emergency lighting. We consider these two charges to have been reasonably incurred.
106. As to the reports, Ms Smart argued that an annual report was not necessary. It was accepted, she said, that a house with two flats was a low-risk form of property, and she referred to a report addressed to local authorities that suggested four-yearly reports, not annual ones.
107. On the Scott schedule, the Respondent stated that the reports were “required” by the Fire Safety (Regulatory Reform) Order 2004.
108. Fire health and safety risk assessments should be carried out periodically. What that period should be is to be determined having regard to the nature of the property in question and the level of risk to be expected. It is not necessary for us to determine the relevant period, but it is clear that to procure a new report each year for a low risk property with minimal common areas is excessive and unreasonable.
109. *Decision:* the charges for annual testing of fire alarms and emergency lighting were reasonably incurred. The charge for the first fire health and safety risk assessment was reasonably incurred. The charge for the second fire health and safety assessment was not reasonably incurred, and cannot be recovered.

#### *Window cleaning*

110. From the year ending 2019, the Respondent charged for quarterly window cleaning (£257.40 in 2019 and £257.40 and £300.32 in 2020). Whether window cleaning could come within the Respondent’s maintenance obligations depends upon whether the external surface of the glass in the windows is demised or not. The Respondent’s position was that it was not.
111. It is evident that the demise of “the windows” must mean both surfaces of the glass. The relevant paragraph in the schedule (see paragraph [16] above) starts by describing the windows and frames as demised, but then expressly, and only, excludes the “paintwork and decoration” of the external surfaces. Obviously, there is neither paintwork nor decoration on the external face of the glass of a window.

112. *Decision:* Both surfaces of the windows are demised and accordingly a charge by the Respondent for window cleaning is not payable under the lease.

*Electrical fault finding and repair*

113. In 2019, a charge of £224.40 was made under this description. Ms Smart argued that neither she nor Mr Kobiah had any idea that there was any issue with electrics, or the light (fitted by the same company) in the communal hall was working.
114. The Respondent's case was that work had properly been carried out, as made clear on the invoice. That invoice, dated 31 May 2019, states that the contractor "found light fitting to be non emergency – installed emergency gear tray to change to emergency". The charge was broken down as £91 for labour and £96 for "tray gear emergency".
115. The sum identified for an emergency LED gear tray is in itself reasonable. However, the same company installed the light two years earlier, and no one has suggested any other work was carried out on it between those dates, except for one annual test. We must therefore infer that the wrong gear tray was initially installed, by the same company. The work carried out under this invoice was, therefore, merely the rectification of the company's initial faulty installation. The company should have undertaken rectification without charge, and if they did not, the Respondent should not have paid the invoice.
116. *Decision:* the charge for "electrical fault finding and repair" was not reasonably incurred.

*Drain cleaning*

117. In 2019, £102 was charged for drain cleaning. Ms Smart's evidence was that on the relevant date, a plumber inspected a drain, accompanied by Ms Smart. The plumber confirmed there was no problem with the drain, and asked Ms Smart for some water with which to wash away dead leaves, which she supplied. The plumber had no tools with him and used no tools.
118. The Respondent produced an invoice which stated that the drain had been blocked, that it was cleared with a "specialist plunger" and he used specialist high power water jetting to clear other drains on site. Photographs were attached to the invoice.
119. Ms Smart's evidence was that the drain pictured was not that at the property. Mr Smart produced photographs of the drain at the property, which was evidently not the same as that provided with the invoice (as Mr Granby realistically agreed).

120. The invoice purported to be signed by “Keshia”. Ms Smart insisted that she had not signed this or any other document.
121. We believe Ms Smart. This account is one she effectively gave at the time, or shortly thereafter. The photographic evidence supports her account. We believe her to be an honest and straightforward witness of fact.
122. This does not necessarily imply a finding of dishonesty in respect of Mr Gurvits or another agent of the Respondent. We do not know how the invoice came into existence.
123. In the circumstances, we decline to speculate as to the true value of the limited service described by Ms Smart. It is sufficient that the invoice provided is not one reasonably incurred, as we are satisfied that the work described was not carried out.
124. *Decision:* the charge for drain cleaning in year ending 2019 was not reasonably incurred.

#### *Surveyor’s fees*

125. Two separate items in 2020 charged by reference to invoices from the Respondent’s chartered surveyors were specified in the same line in the Scott schedule – a charge of £834 for the reinstatement costs assessment and of £257.40 for producing a planned maintenance schedule.
126. We have already given our assessment of the Applicants’ criticism of the reinstatement costs report when considering it in the context of the reasonableness of the premium. We do not think that the principal point relating to the misdescription of the flats, would justify any reduction in the fee. For the reasons given there, it was not effective to undermine the accuracy or value of the report.
127. We have no evidence before us as to when the last reinstatement report had been commissioned, and it is necessary for a landlord to conduct them periodically.
128. We have no alternative pricing for the report before us. Applying our general knowledge of the cost of such reports in London, we consider this fee to be within the reasonable range for a property of this size (if, perhaps, towards the top of it).
129. There was no substantive challenge to the fee for the planned maintenance schedule.

130. *Decision:* the chartered surveyor's fees in 2020 were reasonably incurred.

*Other matters*

131. The Applicants had originally sought to challenge elements which at some point were posited as interim payments for 2021, and in respect of which a form of section 20 consultation had been commenced. These were the painting of the communal area, and some works to the meter cupboards for the gas and electricity meters. In respect of both, the Respondent affirmed that it had not carried out the work and did not now intend to do so.
132. The Applicants sought to challenge charges imposed by the Respondent for late payment, and in respect of the fees of debt collection agents.
133. These charges are in the nature of administration charges against each tenant individually, rather than charged through the service charge.
134. We accepted Mr Granby's argument that the Applicants had not made an application under paragraph 5 of schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") to challenge the reasonableness of administration charges; and the transfers from the County Court were limited to matters relating to service charges, not administration charges. As a result, we do not have jurisdiction to consider challenges to these charges.
135. We record our gratitude to both Ms Smart and Mr Granby for their helpful submissions and their conduct of the hearing. Ms Smart, a first-time litigant in person, produced a quite exemplary bundle, and made her submissions courteously and appropriately.

*Issue 5: Application for orders under Section 20C of the 1985 Act/Commonhold and Leasehold Reform Act 2002, schedule 11, paragraph 5A*

136. The Applicant applied for orders under section 20C of the 1985 Act that the costs of these proceedings may not be considered relevant costs for the purposes of determining a service charge; and an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 extinguishing any liability to pay an administration charge in respect of litigation cost in relation to the proceedings.
137. Ms Smart referred us to her written submissions in respect of the applications. In those, she stressed the efforts taken by the Applicants to avoid litigation, and that the unreasonable conduct of the Respondent drove them to make their application.

138. Mr Granby addressed us orally. He accepted that relative success would be an important determinant, and success relative to payment. He urged on us that some level of success for the Applicants should not override the contractual rights of the Respondent (realistically, to administration charges under the section 146 notice clause in the lease, rather than the service charge).
139. We consider these applications on the basis that the leases do provide for such costs to be passed on either in the service charge or as administration charges, without deciding whether that was the case or not. Whether the lease does, in fact, make such provision is, accordingly, an open question should the matter be litigated in the future.
140. An application under section 20C is to be determined on the basis of what is just and equitable in all the circumstances (*Tenants of Langford Court v Doren Ltd* (LRX/37/2000)). The approach must be the same under paragraph 5A, which was enacted to ensure that a parallel jurisdiction existed in relation to administration charges to that conferred by section 20C.
141. Such orders are an interference with the landlord's contractual rights, and must never be made as a matter of course.
142. We should take into account the effect of the order on others affected, including the landlord: *Re SCMLLA (Freehold) Ltd* [2014] UKUT 58 (LC); *Conway v Jam Factory Freehold Ltd* [2013] UKUT 592 (LC); [2014] 1 EGLR 111. In this case, the Respondent is a large commercial freeholder.
143. The success or failure of a party to the proceedings is not determinative. Comparative success is, however, a significant matter in weighing up what is just and equitable in the circumstances.
144. The preponderance of success in respect of issues within our jurisdiction lies with the Applicants, although the single largest issue was decided in favour of the Respondent. Even where we decided for the Respondent, the Applicants' challenges were, for the most part, reasonable ones and we made some decisions quite closely on the burden of proof. We further consider that it is appropriate to give some weight to the deficiencies in the conduct of the Respondent towards the Applicants. Had the managing agents conducted themselves with greater transparency and engaged with the Applicants in a less hostile fashion, we consider that some at least of the issues need not have arisen.

145. *Decision:* We order

(1) under section 20C of the 1985 Act that the costs incurred by the Respondent in proceedings before the Tribunal are not to be taken into account in determining the amount of any service charge payable by the Applicants; and

(2) under Commonhold and Leasehold Reform Act 2002, schedule 11, paragraph 5A that any liability of the Applicants to pay litigation costs as defined in that paragraph be extinguished

### **Rights of appeal**

146. 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 London regional office.

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

148. If the application is not made within the 28 day time limit, the 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 these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

149. The application for permission to appeal must identify the decision of the Tribunal to which it relates, 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.

### **The next steps**

150. This matter should now be returned to the County Court in respect of the transferred claims.

**Name:** Tribunal Judge Professor Richard Percival    **Date:** 8 July 2022

## **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 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.

#### **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.

(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.

## **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 20ZA**

(1) Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

(2) In section 20 and this section—

“qualifying works” means works on a building or any other premises, and

“qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

(a) if it is an agreement of a description prescribed by the regulations, or

(b) in any circumstances so prescribed.

(4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord—

(a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,

(b) to obtain estimates for proposed works or agreements,

(c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,

(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and

(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6) Regulations under section 20 or this section—

(a) may make provision generally or only in relation to specific cases, and

(b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### **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<sup>2</sup> or leasehold valuation tribunal or the First-tier Tribunal<sup>3</sup>, or the Upper Tribunal<sup>4</sup>, 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<sup>4</sup>, 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.

## **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]<sup>1</sup> 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).