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PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BA/LSC/2022/0064**
Property	**:**	**98 Hartfield Road Wimbledon London SW19 3TF**

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Applicants	**:**	**Andrew McDougall & Halin Jankowski (Flat A)** **Barry Laker & Ciara Laker (Flat B)** **Li Lin (Flat D)** **Nicolas Cole (Flats C & D)** **Megan Skinner (Flat F The Lodge)**
Representative	**:**	**Magan Skinner (in person)**
Respondent	**:**	**Abbeytown Limited**
Representative	**:**	**Jonathan Upton Councel**
Type of Application	**:**	**The determination of the reasonableness of and the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal Members	**:**	**Mr D Jagger MRICS** **Mr S Wheeler xxxx**
Date and venue of Hearing	**:**	**6th September 2022** **At 10 Alfred Place London WC1E 7LR**
Date of Decision	**:**	**13th September 2022**

Description of hearing

This has been a face-to-face hearing. The documents that I was referred to, are in a bundle of 313 pages, the contents of which we have been carefully noted. In addition we received (see below) an unpaginated set of documents on behalf of the Respondent.

Application and Background

1. This is an application dated 4th January 2022 made by the Applicants under section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") for a determination of their liability to pay and/or the reasonableness of service charges claimed by the Respondents for the years 2016, 2019, 2020, 2021 and 2022. The questions the Tribunal are asked to deal with are set out in the 'Schedule of Disputed Service Charges' for each of the years in question. The applicant is seeking to recover a sum of £42,541.92 for all the years in accordance with the application.

2. On the 8th April 2022 Judge Aileen Hamilton-Farey issued directions for this case and set this down for an oral hearing. An amended set of directions were subsequently issued by on the 8th July which extended the timescales for the various submissions and made some variations. On the 9th August 2022 a further variation was made to the directions by Judge Helen Bowers. Following correspondence between the parties regarding allegation and cross allegation, Judge Tagliavini set out an amended and final timetable for this hearing on the 10th Auguat 2022. Finally, on the 25th August 2022 Judge N Carr reviewed the email from Freemans Solicitors on behalf of the Respondents, seeking a further extension of the directions. In Judge Carr's view '*The application as made is, for those reasons, entirely unsatisfactory and refused as it would not be just and proportionate to grant the extension requested and relist the hearing date'*

3. Within the bundle before us we had witness statements of case from Applicants. A copy of the lease, the service charge demands and accounts. The Tribunals earlier decision in connection with dispensation with consultation dated 15th November 2019 dealt with under case reference LON/00BA/LDC/2019/0169.

4. For reasons best known to the themselves the managing agents declined to engage with this process and the bundle contained the applicants evidence only. On the 5th September 2022 the Tribunal received an email from Mr Russel Henry of Freemans Solicitors with three attachments which included accounts for each year in question, various invoices, copies of insurance documents and three cases.

5 So the first question the Tribunal had to consider following the Appl cants objection, was should these documents be allowed as evidence. The Tribunal decided that on balance the documents are not controversial and in fact are helpful to both parties. Moreover, the Tribunal is of the

opinion there would be no prejudice to the Applicant.This will be referred to as the “red bundle” and comprises 118 pages.

6. The subject property is 98 Hartfield Road Wimbledon London SW19 3TF (“the property”) and is a four storey building which was constructed around 1860.It was originally a single dwelling house, but has subsequently been converted in the 1970s into six flats.

7. The Applicants are the present leasehold owner of flat. F which is held under a long lease with the freeholder being Abbeytown and managing agents Martyn Gerrard.

8 It is evident to the Tribunal there has been a long history of dispute between the parties regarding dilapidation to the fabric of the building, damp issues and allegations which resulted in previous action in the County Court and this Tribunal.

9 An inspection did not take place and nor was it requested. The Applicant had helpfully provided a document headed “Disputed Service Charges S/C Year Ended” which were broken down into a number of headings and we propose to deal with each of those separately making a finding on each matter as we proceed

Decision of the Tribunal

10 . The Tribunal makes the determinations as set out under the various headings in this decision.

11 The Tribunal is satisfied that it is just and equitable to make an Order under Section 20C of the Landlord and Tenant Act 1985 in the Applicants favour preventing the Respondent from recovering the costs of these proceedings through the service charge.

12. The Tribunal orders the Respondent to reimburse the Applicant with the application fee of £200 .

2016 Surplus

13. The first item we were asked to consider was the surplus in the 2016 accounts in the sum of £1,412.83. This sum was not disputed by Mr Upton. However, he did make comment that this Tribunal does not have jurisdiction to order payment of the said sum.This suggestion was supported by the case handed to the Tribunal: Knapper v Francis (Upper Tribunal)

Tribunals Decision

14 The Tribunal determines that a proportion of the surplus is payable to the applicant, although no order can be made this effect. The lease is silent in respect of the form of payment which can either be made as a

credit on the service charge account or a refund. It appears to the Tribunal that this surplus shown in the Service Charge Account has been ignored by the managing agents over a period of some 5 years and could certainly be reflective of the communication between the parties.

Insurance years 2019, 2021

15. In the schedule the Applicant claims they have not received insurance documentation for each of these years following a number of requests to the managing agents. Mr Upton took us to the Red bundle of documents and at pages 27-32 and 79-80 the documents confirmed the Building Insurance information with Certificate of Insurance. This was agreed with the Applicant and and there is no dispute under this heading now that the documentation has been provided

Repairs and Maintenance 2019

15. The Applicants dispute the cost of Repairs and Maintenance for the sum of £2760.80 for the year 2019. The Applicants states that despite repeated requests and reminders no documentation or invoices were received for the managing agents to back this figure. Further, it is stated that none of the lessees saw any maintenance works undertaken during this period. Although the Tribunal is aware only one of the leaseholders reside at the property. Mr Upton took us to page 3 of the Red bundle (2019 Service Charge Account prepared by Hall & Co Accountancy Ltd.) In the expenditure column it shows that £2,760.80 is entered in the Accounts for Repairs and Maintenance and a total figure of £16,640.03 is certified by the Accountant as total service charge expenditure.

Tribunals Decision

16 The Tribunal determines that the Repairs and Maintenance charge for 2019 is £2760.80. The certified accounts prepared by the Chartered Accountants enter this figure and it can only be assumed the sum of £2760.80 was sufficiently supported by accounts, receipts, invoices and other documents which have been produced to them

Management Fees 2019, 2020, 2021

17 The Applicants statement of case suggests there has been a failure by the managing agents to provide adequate management services to the building. The management fee is £1890 which equates to £315 per unit. When asked by the Tribunal what figure does the Applicant consider appropriate, a figure of 50% was suggested as reasonable given the failure to provide basic management. Mr Upton confirmed that under Section 19 the management costs are reasonable for the services provided. The management fees are at the lower end of the range for such services and there is no evidence of inadequate services. In fact, the managing agents have been proactive in undertaking major works to a building that requires ongoing maintenance and repair to the fabric. Mr Upton confirmed that if the Tribunal were to consider a reduction it should be no more than 10%

Tribunals Decision

18 The Tribunal determines that the management charges for each of the years in question are unreasonable.It is the Tribunals opinion there has been a sustained period of a complete lack of communication with the leaseholders. Consistent requests have been made by the Applicants for information concerning all elements of the day to day management of the building a lack of a future maintenance programme. There has been a lack of transparency on behalf of the managing agents and indeed the fact that they were not prepared to engage in this process runs the risk of an adverse inference being drawn by their non compliance. For these reasons the Tribunal considers a reduction in the fee of 25% is appropriate for each of the years. (£1417.50)

Major works 2019 (The boundary wall)

19. The Applicants case is that the managing agents failed to correctly manage these major works from the outset to final completion.It is asserted the managing agents did not undertake reasonable due diligence in understanding the true works required which could have led to unnecessary abortive costs to the leaseholders. In essence, this matter was in connection with the proposed demolition and rebuilding of a dilapidated and leaning brick boundary wall which formed the responsibility of the subject property. Following the inspection by contractors it was established this wall was dangerous and required rebuilding. The managing agents entered correspondence with London Borough of Merton.Following lengthy emails between the two parties, the local authority held the strong belief the wall was of considerable age and was in a Conservation area. Accordingly it had to be rebuilt using an expensive stock brick and a lime based mortar. Based on this conclusion, the managing agents obtained various quotations following the Consultation process which resulted in a figure in the region of £36,000.Following this process a leaseholder took it upon himself to instruct a Structural Engineer to prepare a report to establish the quality and age of the wall. This report confirmed the wall to be of reasonably modern construction which resulted in the local authority backing down and resulted in a final figure of £7,500. A significant differential on the initial figure. The Applicants are disputing the managing agents commission of £900 which resulted in a final figure of £8,400. The Applicants state that the quality of the works was poor due to a lack of supervision. The Applicants however were unable to produce any photographic evidence or a surveyors report as evidence in this matter. The only evidence provided were 2 emails from a contractor (pages 178 and 201) disputing the quality of the replacement brickwork.

Tribunals Decision

20 The Tribunal determines that the sum of £8,400 is payable for major works in the year 2019. (£7,500 plus £900) Although we have not had sight of

the Managing Agents agreement with the freeholder, it is usual practise for the managing agent to charge 10% for setting up the three stage consultation process, dealing with contractor tenders and negotiating with third parties (the local authority in this case) Supervision of the project is a separate matter, and it would only be normal practise to instruct a building surveyor to provide project management for larger building works. The Applicants have not provided sufficient evidence to persuade the Tribunal the works were of a poor quality. Otherwise, it is agreed between the parties that the figure payable is £8,400 and not a figure of £8,900 as set out in the 2020 accounts. This evidently a typing error.

Repairs and Maintenance 2020

21. The next item we were asked to consider is repairs and maintenance for the year 2020 in the sum of £4036. It is stated by the Applicants that despite repeated requests no documentation or invoices were provided for the sum claimed in this year. The disputed items are as follows: (1) An invoice for the sum of £360 submitted by the managing agents for " Administration Fee" (£300 plus VAT) The Applicants are unsure of the reason for this cost and why it has been submitted (2) An invoice in the sum of £840 for a roof survey. The Applicant has not had sight of the such survey and once again is not convinced such a survey if it exists should need to be carried out. (3) An invoice for emergency works to fit a paddock to the meter cupboard doors.The invoice is for the sum of £474. The Applicant states there is no high power electrical equipment located in this cupboard, there has never been a padlock fixed to this cupboard and the charge beggars belief. (4) On page 251 there is an invoice for electrical works in the sum of £474 for emergency electrical works from OCD Facilities Management Ltd.

Tribunals Decision

22 Taking each of these items individually the Tribunal determines (1) The monies are not payable. The Respondents have not provided any evidence or reasoning for an Administration Charge over and above the agreed management fees. (2) The monies are not payable. Once again, there is no evidence provided why such a roof survey needed to be carried out, and there is no such survey within the bundle of documents. On page 241 there is an invoice for a roof survey from OCD Facilities Management Ltd but no other evidence. The Tribunal noted that future major works undertook emergency works to the roof. Surely if a roof survey was previously commissioned there would be a schedule of works for the roof and not 'emergency works' For these reasons the Tribunal disallows payment of this item. (3) The monies are not payable. Fitting a paddock in the sum of £474 is not considered necessary whatsoever and the Tribunal are somewhat taken back at the invoice amount. (4) The monies are payable. The invoice confirms these were emergency works and therefore payable.

Major works 2020

23 It is asserted by the Applicants that following consultation, the managing agents provided the leases with the best quote for major works being £22,122. At the end of the project this figure had "ballooned" to £30,882 being an increase of some £8,880. These additional works were undertaken by the original contractor without any due process.and it is unclear why the original schedule of works identify these additional works. It is claimed the work was of a poor quality and each of these items clearly illustrated a poor standard of management and lack of site supervision for which the managing agents charged £1,975 plus VAT. Finally, the Applicants state the figure invoiced to the leaseholders was £30,882 but the figure shown in the Service Charge Account is £32, 053.44. For the Respondent Mr Upton raised the reason for the increase in costs were latent defects. In this case the major works concerned damp treatment to the main walls which involved removal of render and once removed the true condition of the brickwork was established. It would have therefore been unreasonable to engage a new contractor in the middle of the building contract. He also said that during the consolation period there had been no objections to the scope of the works at the time.

Tribunals Decision

24. The Tribunal determines the sum of £30,882 is payable. This is the amount that was invoiced. It is evident that the consultation process had been undertaken in a satisfactory manner following Dispensation with consultation granted on the 19th November 2019 (LON/00BA/LDC/2019/0169. During that hearing Judge Latham asked Mr Mc Dougall (Flat A) *whether he had any criticism of the Schedule of Works prepared by Mr Byers. He had none.* The Tribunal agrees with Mr Upton.insofar that it is often the case that once on site hidden defects are discovered unknown to the contractor and this will involve a revised schedule of works and of course additional costings. Turning to the managing agents fees in the matter, once again it has been shown the managing agents set up the three stage consolation and there was no significant criticism at the time and the fee claimed is reasonable and justified. As above, supervision of the project is a separate matter, and it would appear a building surveyor did not provide project management for the building works. The Applicants have not provided sufficient evidence to persuade the Tribunal the works were of a poor quality.

Postage and Bank Charges

25. The Tribunal will look at each of these small items together which are contested by the Applicant.

Tribunals Decision

25 We are satisfied that Bank Charges in the sum of £30 are payable. They should not be absorbed in the agreed management charges, this is a separate figure and is usually shown as such in a typical managing agents contract. Turning to the postage, we are of the opinion this does fall within

the agents charges for day to day management of the building. It can be assumed the majority of the exchange of correspondence is done by email but there is obviously some postage involved. The sum of £10 postage is no payable.

2021 Surplus

26. The next item item we were asked to consider was the surplus in the 2021 accounts in the sum of £3,775.02. This is the same as the first matter the Tribunal was asked to consider. Once again, this sum was not disputed by Mr Upton. However, he did make it clear that this Tribunal does not have jurisdiction to order payment of the said sum.This suggestion was supported by the case handed to the Tribunal: Knapper v Francis (Upper Tribunal)

Tribunals Decision

27 The Tribunal determines in accordance with item one, that a proportion of the surplus is payable to the applicant, although no order can be made this effect. The lease is silent in respect of the form of payment which can either be made as a credit on the service charge account or a refund.

The Repairs and Maintenance Budget for 2022

28. The Applicant states the leaseholders have not been presented with a management plan for 2022 or any indication what is and what is not included in this budget figure.

Tribunals Decision

29 The Tribunal determines that a budget of £3000 for the forthcoming year is reasonable and justified, being in accordance with section 19(2) LTA 1985.Although a maintenance schedule has not been prepared it is obvious the managing agents have based this budget figure on previous years accounts and average costings. The Tribunal considers that although a maintenance schedule would be helpful for forthcoming years, it is certainly not unusual for a managing agent to base future costing on previous known figures providing no major works are planned.

Section 20 C

30 The Tribunal is satisfied that it is just and equitable to make an Order under Section 20C of the Landlord and Tenant Act 1985 in the Applicants favour preventing the Respondent from recovering the costs of these proceedings through the service charge. The Tribunal has found in the Applicant's favour in respect of a number of items and the Tribunal was uncomfortable with the fact that the managing agents failed to engage whatsoever with this hearing. The Tribunal considered that the managing agents

were unresponsive and did not co-operate with the Applicant. Her only recourse was to make an application to the Tribunal get matters resolved and obtain some kind of response. However as we have seen the managing agents did not apply their mind to the issues identified by the Applicant and did not comply will the Directions.

31. Given the above considerations the Tribunal is also minded to order the Respondent to reimburse the Applicant with the application fee of £200 .. This order would take effect within 14 days from the date of this decision unless the Respondents makes representations to the contrary which the Tribunal will consider before making a final determination.

Tribunal Judge D Jagger
13th September 2022

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

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 a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
  (a) the person by whom it is payable,
  (b) the person to whom it is payable,
  (c) the amount which is payable,
  (d) the date at or by which it is payable, and

(e) the manner in which it is payable.

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

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

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

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

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) a leasehold valuation 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 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.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

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 a leasehold valuation tribunal for a determination whether an administration charge is payable and, if it is, as to—
 (a) the person by whom it is payable,
 (b) the person to whom it is payable,
 (c) the amount which is payable,
 (d) the date at or by which it is payable, and
 (e) the manner in which it is payable.

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

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

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

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

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
 (a) in a particular manner, or
 (b) on particular evidence,
of any question which may be the subject matter of an application under sub-paragraph (1).

Schedule 11, paragraph 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) …