



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

Case Reference	:	LON/00AC/LSC/2013/0844 (A) LON/00AC/LSC/2013/0585 (B)
Property	:	Flat 37 Granville Point Flat 47 Granville Point Flat 9 Harpenmead Point Flat 23 Harpenmead Point Flat 57 Harpenmead Point Granville Road London NW2 2LL
Applicant	:	Barnet Homes
Representative	:	Mr Holbrook of Counsel instructed by Judge and Priestly Solicitors
Respondent	:	Ms C Edozie (1) Ms Valencia (2) Ms Abu (3) Ms Odiase (4)
Representative	:	Ms C Edozie
Type of Application	:	For the determination of the reasonableness of and the liability to pay a service charge
Tribunal Members	:	Dr Helen Carr Mr Chris Gowman Mr John Francis
Date and venue of Hearing	:	14th May 2014 continuing on 15th and 16th May 2014 10 Alfred Place, London WC1E 7LR
Date of Decision	:	5th June 2014

DECISION

Decisions of the tribunal

- (1) The tribunal makes the determinations as set out under the various headings in this Decision.
- (2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.
- (3) Since the tribunal has no jurisdiction over county court costs and fees, nor over the issue of the sheds, this matter should now be referred back to the Barnet County Court.

The application

1. The Applicant (who was the Respondent in application B) seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount of service charges payable by the Respondents in respect of service charges demanded in 2012 in connection with major works.
2. Proceedings against Respondent 1 were originally issued by the Applicant in the Northampton County Court under claim no. 3YK72487. The claim was transferred to the Barnet County Court and then in turn transferred to this tribunal, by order of District Judge Marin on 3rd December 2013.
3. Respondent (1) together with the other three Respondents issued an application – application B – in connection with the major works charges.
4. At a case management conference on 4th February 2014 the Tribunal directed that the applications be joined.
5. Subsequent to the case management conference the Tribunal received two further applications. The first application was made by the Applicant on 11th April 2014. It is for dispensation from the consultation requirements under s.20ZA of the Landlord and Tenant Act 1985. The second application dated 14th April 2014 is from the Respondents which is for the striking out of the Applicant’s application for service charges.
6. The Tribunal considered these applications on 15th April 2014 and issued further directions to enable the applications to be determined at the hearing of the substantive applications. In particular the directions ordered the parties to respond to the applications, and for the Respondents to provide evidence of any prejudice that has been suffered as a result of any failure by the Applicant to comply fully with the statutory consultation scheme.

7. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

8. The Applicant was represented by Mr Jon Holbrook of Counsel at the hearing. Also in attendance on behalf of the Applicant were David Hann Head of Operations, Jacky Nelson, Housing Manager both employed with Barnet Homes, and Mr Barry Greenstreet a surveyor with Pellings at the time of the contract for the major works when Pellings were employed by Barnet. The Respondents were represented by Ms Edioze. Ms Odiase attended throughout the hearing and Ms Abu attended on May 15th and 16th 2014.

The background

9. The properties which are the subject of these applications are identical two bedroom flats located in three tower blocks, Templewood Point, Harpenmead Point and Granville Point. The tower blocks were built in the early 1960s and suffered from the sort of problems frequently associated with concrete tower blocks, ie poorly insulated, with cracked and spalling concrete, Crittal windows and balcony doors and were generally in need of refurbishment.
10. The particular circumstances of these applications concerns the funding of the refurbishment of the tower blocks which took place in 2012. Barnet council obtained grant funding of £7,013,000 from the London Development Agency. At the time of the grant application the expectation was that the costs of the works were £14,000,000. The grant was to cover environmental works, in particular cladding of the tower blocks, replacement of the Crittal windows and doors, and landscaping around the estate.
11. Neither party requested an inspection and the tribunal did not consider that one was necessary.
12. The Respondents hold long leases of the flats which require the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.
13. The leases are in identical format and specific provisions will be referred to below, where appropriate.
14. The table below paragraph 17 sets out details of the ownership of the flats and the demands.

The issues

15. At the start of the hearing the parties identified the relevant issues for determination as follows:

- (i) The payability and/or reasonableness of service charges for 2012 relating to major works. In particular
 - a. whether the landlord has complied with the consultation requirements under s.20 of the 1985 Act
 - b. Whether the works that are charged under the service charge account are covered by the terms of the lease
 - c. the scope of the grant and its apportionment to the lessees
 - d. whether the costs of the works are reasonable, in particular in relation to the quality of the works
 - e. Historic neglect
 - f. The quality of the works
 - g. The status of the additional charges for electrical rewiring, rerouting pipework and heating installation costs
- (ii) whether an order under section 20C of the 1985 should be made
- (iii) whether an order for reimbursement of application/ hearing fees should be made

16. The tribunal also had to determine the additional issues raised in the applications for dispensation and striking out.

17. Outline of the service charge demands:

Respondent	Property	Total Cost of Works	Reduced demand because of apportionment of grant	Additional demand for individual works in properties
Ms C Edozie	Flat 37 Granville Point	46,484.67	24 067.80	975.90
Ms M Valencia	Flat 47 Granville Point	46,48.67	24,067.80	733.20

Ms C Edozie	Flat 9 Harpenmead Point	43,682.51	24,196.65	£1155.90
Ms Mary Abu	Flat 23 Harpenmead Point	43,682.51	24,196.65	£1207.86
Ms Odiase	Flat 57 Harpenmead Point	43,682.51	24,196.65	N/K

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

The consultation process

19. Ms Edozie argued that she had not received the statutorily required notice of intention in connection with her property at 37 Granville Point. She became aware of the notices via email correspondence with the Applicant's Lease Officer Liz James, dated 15th April 2010, some 8 months after the 30 day period had expired.
20. She suggested that an explanation for this failure was that the Applicant had failed to note her ownership of the flat although it was fully aware of her ownership. This explanation came about because when she was sent the notice by email her surname was incorrect on one of the notices.
21. The Applicant states that notices relating to both her properties were sent to her home address, 26D Sunny Gardens Road Hendon on 11th August 2009. They also point out that she was fully aware of the intended works as she did not dispute receiving notices in connection with 9 Harpenmead Point. They provided evidence that they had done a quick telephone survey of some lessees to ensure that the notices had been received, as they were surprised by the lack of response from lessees. All the lessees they telephoned (this did not include Ms Edozie) confirmed receipt of the notices.
22. The tribunal did have some concerns about the procedure. In particular the tribunal was surprised that the Applicant had followed the consultation procedure for qualifying long term agreements rather than the normal procedure for major works which is set out in Schedule 4 of the regulations. However after long discussions with counsel for the Applicant the tribunal was persuaded that the process followed was appropriate in the particular circumstances of this contract which was for a period of over a year. The tribunal would ask the Applicant to note its concerns about the letters sent to lessees on 28th June 2010. It does not appear to the tribunal that it is consistent with the principles of consultation that notices required

by the schedules are sent on the same day. Moreover it was poor and potentially confusing practice by the Applicant to send notices communicating approximate costs to the lessees when the figures of anticipated costs within those letters are not consistent.

23. The tribunal had another concern about the consultation which it draws to the attention of the Applicant. Whilst the Applicant's decision to include lessees on the procurement panel is to be applauded those lessees were drawn from attendees at a Residents Fun day. The tribunal is concerned that there was insufficient efforts made to notify and inform non resident lessees.
24. The tribunal decided to determine the issue of whether the Applicant had complied with the statutory procedure before hearing evidence in connection with the other outstanding issues.

The tribunal's decision

25. The tribunal determined that the Applicant had complied with the statutory notice procedure.

Reasons for the tribunal's decision

26. The tribunal accepted the evidence of the Applicant that it had sent the notices by post and as a matter of law the Respondent is therefore deemed to have received the notices unless she can produce evidence to the contrary. There was no such evidence and therefore the Applicant complied with the requisite procedures.

Were the works covered by the terms of the lease?

27. The Respondents argued that the majority of the works fell within the landlord's obligations under the lease.
28. The Applicant agreed that the works fell within its obligations but pointed to the clause which entitled it to charge lessees for works. The clause is set out at clause 3 of the lease and provides as follows:

The Lessee Hereby Covenants with the Corporation as follows:-

(ii) to pay without any deduction whatsoever the Corporation's expenses and outgoings as set out in the Third Schedule hereto (hereinafter together called 'the Service Charges') at the times and in manner aforesaid but subject to the terms and provisions set out in the Fourth Schedule hereto.

29. Counsel referred the tribunal to clause 6(3)a of the lease which require the Applicant to keep in good and substantial repair and condition (and ... wherever necessary rebuild reinstate renew and replace all worn or damaged parts) and clause 9(5) which entitles the Applicant, in its absolute discretion to 'provide install alter or improve any such system or service or the block or estate or any part thereof for the benefit of the lessee and other occupiers of the Block or other occupier on the Estate.'

The tribunal's decision

30. The tribunal determines that the lease entitles the Applicant to carry out the works to the blocks and to charge the lessees for that work.

Reasons for the tribunal's decision

31. The provisions of the lease clearly cover the circumstances and scope of the works carried out.

The scope of the grant and its apportionment to the lessees

32. The Respondents argued that because the Applicant had obtained a grant from the London Development Agency to carry out the works to the blocks the scope of the works were far more extensive than they otherwise would have been. This added to the costs borne by the lessees. The Respondents referred specifically to the procurement method required, and asked the question whether the landlord would have carried out the full extent of the works if it had to bear the costs itself.
33. The Respondents also disagreed with the way in which the grant was apportioned between the Applicant and the lessees. Their argument was that as in the original bid documents the Applicant had said that £1.88 million would go to the refurbishment of private homes, all of that amount should have been used to offset lessees costs.
34. The Respondents argued that because the Applicant had applied for a grant they were unable to make use of any available grants for environmental refurbishment.
35. The Applicant argues that the apportionment of the grant between the lessees and the Applicant was a matter within its discretion and that it had acted reasonably and indeed generously in not requiring the Respondents to pay towards the cladding of the tower blocks or the additional costs associated with the cladding. Nor did it require the Respondents to pay towards the costs of refurbishing the lifts. The Applicant gave evidence that it had made reductions in the costs which would otherwise, under the terms of the lease, been properly chargeable to the lessees.

The tribunal's decision

36. The tribunal determines that the apportionment of the grant between the Applicant and the lessees is reasonable.

Reasons for the tribunal's decision

37. The tribunal considered the figures provided by the Applicant carefully. It noted that the total costs of the works was £9,465,214 of which £7,013,000 was funded by the grant, and of the remaining amount, £1,403,145 was funded by London Borough of Barnet and £1,049,068 was funded by leaseholders.

38. The tribunal considered that this was a reasonable apportionment of the costs and noted that it was arguable under the terms of the lease that the full costs were chargeable to the lessees.

Historic neglect

39. The Respondents argued that the costs of the works of refurbishment were escalated by the Applicant's failure to maintain the tower blocks.

40. The Applicant refuted the argument.

The tribunal's decision

41. The tribunal determines that there was no sustainable argument in connection with historic neglect.

Reasons for the tribunal's decision

42. The Respondents produced no evidence in support of her argument. The Respondents should note that it is not sufficient to assert historic neglect, any assertions must be supported by clear evidence.

The quality of the works

43. The Respondents raised general concerns about the quality of the refurbishment works carried out by the Applicant. In particular they were concerned that several panels of the cladding had fallen from the tower blocks during high winds.

44. The Applicant said it was unfortunate that panels had dislodged during exceptional weather. It also said that the works were still within the defects liability period and any problems outstanding would be addressed.

The tribunal's decision

45. The tribunal determines that as the Respondents had not paid for the cladding the problems, although concerning, were not relevant to its determination of the reasonableness of costs.

Reasons for the tribunal's decision

46. The Respondents had not paid for the cladding. If there are other problems with the quality of works they should as a matter of urgency report these to the Applicant for remedial works.

The status of the additional charges for electrical rewiring, rerouting pipework and heating installation costs

47. The Respondents objected to additional costs they had been charged individually in relation to works which were consequential upon the major works project.
48. There were four sets of works that had been charged for separately, works relating to the rerouting of pipe works under the balcony door, rewiring works, the removal of pigeon guano and the replacement of boilers.
49. The rerouting of the pipe works was because of the installation of new balcony doors. The Applicant gave evidence that some lessees pipework, and indeed some social tenants pipework, had to be rerouted to fit the new doors. The Applicant agreed that it had not informed the Respondents that this work was to be carried out. To do so would have delayed the works. The Applicant argued it was entitled to reroute the pipes and recharge the lessees concerned because the lessees had an obligation to maintain their pipes and this had not been fulfilled.
50. The Respondents argued that there had been no failure in connection with the maintenance of the pipes. There was no agreement between the Applicant and the Respondents in connection with the costs of rerouting pipe work. The rewiring work was necessitated by the installation of a new ring main. The Applicant could not guarantee that power suppliers would reconnect lessees whose installations did not comply with current regulations. The Applicant informed affected lessees of problems with their wiring, and gave them the opportunity to seek alternative quotes for upgrading wiring. If lessees chose they could have the work carried out by the Applicant. Lessees who chose this option were asked to sign a letter to demonstrate their agreement.
51. Ms Edozie argued that she had fulfilled her responsibilities under the lease to maintain the wiring and she produced certificates to the tribunal to demonstrate that she had indeed done this. Ms Edozie said that she felt that she had signed the agreement under duress. If she had not her

tenants would have been at risk of disconnection. She also gave evidence that she believed that if she had gone to another contractor she would end up in long negotiations with the Applicant as to whether the work that contractor carried out was of an adequate standard.

52. The Applicant argued in connection with the rewiring costs that they fell outside of the jurisdiction of the tribunal as they were costs that had been freely entered into.
53. Some works were carried out to some lessees boilers including Ms Abu one of the Respondents. The work was carried out because the cladding work required a flue extension that was not available for certain boilers. The Applicant offered to replace those lessees boilers for no charge but on a like for like basis. They would also install combination boilers but the additional costs of this were to be borne by lessees.
54. Whilst the evidence given by Ms Abu in connection with the installation of her boiler was not entirely clear, the tribunal understood that the position was that Ms Abu did not agree to the installation of an improved boiler and did not agree, against the advice of the Applicant's contractor, to pay the costs of flushing out her system prior to the installation of the new boiler. When the new boiler was installed on a like for like basis, because it was a more sensitive boiler it could not cope with the accumulated debris.
55. The issue of the pigeon guano was also not very clear to the tribunal. The Applicant said that works to Ms Abu's balcony could not be carried out without prior cleaning of the pigeon guano. This was properly charged to the individual lessee's account.

The tribunal's decision

56. The tribunal determined that the costs of the rerouting of the pipework and the costs of Ms Edozie rewiring should be met by the Applicant and not charged to the service charge account.
57. In connection with the removal of pigeon guano and the installation of the boiler to Ms Abu, the tribunal determines that those costs are properly borne by Ms Abu personally.
58. The tribunal has insufficient information to determine additional costs charged to Ms Valencia and Ms Odiase. It expects that the Respondent will follow the principles underpinning its decisions in connection with the other Applicants.

The reasons for the tribunal decision

59. The tribunal considers that the costs of rerouting the pipework were consequent upon the major works and was not an issue of failure by the leaseholders and should therefore not be charged individually to the lessees.
60. In connection with the costs of rewiring work for Ms Edozie should also not be borne individually. Ms Edozie had taken all reasonable steps to ensure that her installations were up to the requisite regulatory standards. The tribunal also determines that she was given no choice other than to agree to the works.

Application under s.20C and refund of fees

61. At the end of the hearing, the Respondents made an application for a refund of the fees that he had paid in respect of their original application. Having heard the submissions from the parties and taking into account the determinations above, the tribunal does not order the Applicant to refund any fees paid by the Respondents.
62. At the hearing, the Respondents applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines not to make an order.

The next steps

63. The tribunal has no jurisdiction over county court costs or the issue of the sheds. This matter should now be returned to the Barnet County Court.

Name: Helen Carr

Date: 6th June 2014

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

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

- (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

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

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

- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
 - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
 - (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

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

Schedule 11, paragraph 5

- (1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) may be made in respect of a matter which—
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
 - (a) in a particular manner, or

(b) on particular evidence,
of any question which may be the subject matter of an application
under sub-paragraph (1).