

11650



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

Case reference : LON/00AW/LSC/2015/0467 and
LON/00AW/LSC/2015/0479

Property : Flat 9, 54 Hogarth Road, London
SW5 0PX

Applicant : 1. Su Lien Stone
2. Raymond Henry Stone

Representative : Self

Respondent : 54 Hogarth Road London SW5
Management Limited

Representative : Elizabeth England, counsel
instructed by SLC Solicitors,
Shrewsbury

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

Tribunal members : Judge Hargreaves
CP Gowman BSc MCIEH MCMI

**Date and venue of
hearing** : 10 Alfred Place, London WC1E 7LR
16th March 2016

Date of decision : 5th April 2016

DECISION

Decisions of the Tribunal

- (1) Raymond Henry Stone is added as Second Applicant because he is a co-registered proprietor of the long lease and should have been a party to the application in any event.
- (2) The Tribunal determines that the sums required by the Respondent in relation to insurance premiums and the reserve fund for 2014-2015 and 2015-2016 are reasonable and payable, as is the sum levied for major works in 2014, as detailed below.
- (3) The Tribunal makes the determinations as set out under the various headings in this Decision.
- (4) The Tribunal makes no order (for the avoidance of doubt) under section 20C of the Landlord and Tenant Act 1985.

The application

1. The Applicants seek 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 Applicant in respect of the reserve fund for the year 2014-2015 and 2015-2016 and by her second application as to cost of major works in 2014 and the insurance charges for 2014-2015 and 2015-2016. The two applications were consolidated when other case management directions were given on 24th November 2015.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicants represented themselves. As the application was until the hearing presented by Mrs Stone herself, she had the benefit of a Chinese interpreter as requested, though much of the work on the submissions appears to have been made and prepared by Mr Stone, who was promptly and without objection joined as a party at the outset of the hearing, being a co-registered proprietor of the relevant leasehold interest. The Respondent was represented by Elizabeth England who was able to call Mr Cross of TPC Estates Management Limited, the management company employed by the Respondent.
4. The Tribunal was greatly assisted by the Scott Schedule which was substantially completed by the parties (A100), as well as skeleton arguments. References are to the trial bundles, prefaced by A (Applicants) or R (Respondent), depending on which bundle is being used.

5. A week before the hearing SLC wrote to the Tribunal enclosing certain court documents and submitting that the insurance charges for 2014-2015 and the 2014-2015 reserve fund charge had already been dealt with by the county court. The letter did not contain an application to strike out pursuant to Tribunal Rule 9(3)(d) or (e) and the information, referred to now, should plainly have been brought to the attention of the Tribunal when directions were being given, if not shortly after. This raised the vexed question of how the Tribunal should approach the effect of the various county court orders because although conclusive, they were default decisions and therefore there had been no investigation of or findings on the merits. As Ms England submitted, they did not deal with the charges for the reserve fund or insurance for the second year in dispute, 2015-2016, which remained matters for the Tribunal, and she was reluctant to submit that the parties were issue estopped in relation to the subject matter of the county court proceedings, because she preferred to obtain a Tribunal decision after a hearing on the merits. (This pragmatic approach was somewhat at odds with the Respondent's statement of case at R116: see below.) Given that the county court proceedings could have been referred to the Tribunal, the somewhat random approach to the various jurisdictions is an inefficient way to proceed, arguably duplicating costs unnecessarily - though the attractions of obtaining a default judgment in the county court will always be a strong point to consider in the context of making litigation choices. In the event, for the reasons given below, the effect of the county court orders made little difference, except they suggest that the Tribunal has been used at least in part by the Applicants as a means of trying to appeal the county court order and to re-run a 2014 application issued in Mr Stone's name and then withdrawn just before the hearing.
6. To clarify the chronology of the two sets of proceedings, the Respondent issued proceedings (B09YM552) in the county court in Northampton for unpaid service charges in the sum of £6,764.58 (including 2013-2014 arrears plus costs to a total of £7,319.58. On 24th June 2015 the Respondent applied for judgment in default of defence and on 23rd July an order was made in the Respondent's favour for £7,398.23. On 13th September 2015 Mrs Stone applied for an adjournment of the county court proceedings (A93) pending the outcome of Tribunal proceedings, which were not actually issued until 2nd and 9th November 2015. Ryan DJ treated that as an application to set aside the judgment and dismissed it as totally without merit on 18th November 2015, and refused to give permission to appeal.
7. To add to the multiplicity of proceedings, Mr Stone had issued an application in 2014 in LON/00AW/LSC/2014/0430 relating to service charges for the years 2011-2013, the background being set out in a costs decision of Judge Dutton at R136 (23rd April 2015). Mr Stone withdrew at the last minute. He told this Tribunal that he was advised to do so because he did not have the evidence to challenge the reasonableness of the service charges he was challenging, particularly the 2014 major

works. Judge Dutton refused Mr Stone's application for permission to appeal the costs order though the Deputy President granted permission to appeal it in October 2015 (R149), and the result is awaited (the appeal is one of four being heard together just before Easter 2016). On any view the Respondent had prepared a substantial bundle of documents and evidence for the 2014 hearing.

8. There is therefore a somewhat protracted history of litigation between the parties which gives force to Ms England's submission that a decision on the merits is desirable. For a Respondent's resume of the legal proceedings, see A110.

The background

9. The property which is the subject of this application is a third floor flat in a building, photographs of which appear at R89 and A163-177. The Tribunal did not consider that an inspection was necessary, nor would it have been proportionate to the issues in dispute.
10. The Applicant holds a long lease of the property (99 years from 25th March 1978¹) which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. A copy of the lease is at A15, dated 16th July 1979, and it requires the Applicants at clause 1 to pay service charges as follows:- "*SECONDLY during the said term by way of further and additional annual rent **one-sixth** of all such sums as the Lessor shall pay by way of premium for insuring ... the Building AND THIRDLY on demand during the said term by way of further and additional rent the Service Charge and Service Provision specified in clause 5 hereof ...*". Clause 5 (A29) provides for the Applicants to pay a **one-sixth** share of the service charge, which is defined by clause 5(4) to "*.. comprise all expenditure incurred (or anticipated) by the Lessor or its Surveyor in connection with the repair management maintenance and provision of services for the Building..*" including items set out in the next following sub-paragraphs.
11. The "*Service Provision*" is defined by clause 5(3) as comprising (a) the expenditure estimated as likely to be incurred in the relevant account year (ending 29th September) with (b) "*an appropriate amount as a reserve for or towards Matters which are likely to arise either only once during the then unexpired term of this lease or at intervals of more than one year ... including ... such matters as the redecoration of the exterior of the Building and of the Common Parts*".
12. At the top of A103 is an account of the development of the property. By virtue of the fact that the lease of the basement flat and the Applicants' flat have not been amended to take into account the sub-division of

¹ As extended to 999 years on the same terms by a deed of variation, A40

various flats in 1982, the Applicants' liability remains one-sixth; the owner of the basement flat is in a similar situation. The proposal is to make it 15% but that requires a deed of variation and the parties are at stalemate due to a dispute about paying for the costs of the deed, and according to the Respondent, the Applicants' desire to include further changes to the lease. The Tribunal cannot, contrary to Mr Stone's submission, proceed to determine the service charges in this application on any basis other than the contractual basis or direct that the lease be varied. These issues are addressed in Mr Cross's witness statement (see below) at R169. As Ms England said, any such variation would not have retrospective effect in any event.

The issues

13. The Applicants' statement of case is at A81. It is more a list of rhetorical questions as to the reasonableness of the service charge demands overall than a properly formulated statement of case dealing with the subject matter of the two applications, based on Mrs Stone's complaint that the charges are too high for a third floor flat with no lift, no porter and no garden space. She also complains that the rest of the flats are occupied by the assured shorthold tenants of leaseholders who care little for the state of the building and the common parts, the leaseholders merely making money from renting out their properties to a constantly changing population which is heavy on the wear and tear of the common parts.
14. The Respondent's brief statement of case is at R115, and it adds little of substance because it refers to the other proceedings (see above) and suggests that "*the significant overlap ... is an abuse of the process*" but without taking the submission further. Luckily the witness statement of Mr Cross for TPS at R169 addresses the relevant issues, and as for the subject matter of the previous Tribunal application (on which the Respondent relies where relevant), the Respondent's statement of case is at R300, and there is a witness statement at R409, to which reference should be made. R195-497 incorporates the bundle of documents which the Respondent prepared for the 2014 application. Between them the parties have produced most of the relevant documents.
15. There is no dispute that prior to about 2011 Mr Stone undertook responsibility for managing the building. Part of the background to this dispute is caused by his unhappiness at being edged out: the other leaseholders became dissatisfied and arranged the first AGM of the Respondent (in which all leaseholders have a shareholding) in 2011. All major decisions are made at the AGM; the Respondent observes (skeleton argument paragraph 14) that Mr Stone disagrees with most decisions made, is fundamentally opposed to the principle of a reserve fund to which he has never contributed, and has litigated on and off since 2011 when TPS was appointed.

16. It makes sense to take the disputed items in the order in which they appear on the Scott Schedule.

Major works 2014

17. See R79-99. The leaseholders agreed at the 2012 AGM to redecorate the front of the building in 2013 (R420-421) on the advice of Mr Cross, who is a chartered surveyor (since 1988). S20 notices were served in 2013 and re-served in 2014. TPS instructed Hyams Building Contractors to carry out works in 2014 after accepting its quote (R466) as the cheapest of several exhibited. (See eg a s20 notice at R422, R488.) Mr Stone complained about the quote being insufficiently itemised but it was a quotation prepared against a schedule of works prepared in February 2014 by TPS (see eg R453 for a copy of the schedule of works). Mr Stone's preferred contractor was John Cirmaci Builders Limited (R432) (which had carried out works to the hotel next door and provided the next lowest quote) but Mr Cross said that it was not prepared against the specification of works which he had prepared, and it did not contain a number of items including a contingency fee, the cost of raking out and re-pointing, or breaking out and renewing live render, which justified preferring Hyams. Also, the firm had not responded to his contact. That decision is not open to challenge, and was reasonable.
18. The question of the choice of contractor was discussed in full at the 2014 AGM (A148 for the minutes with the Applicants' handwritten notes): see in particular A151. Notice of the AGM was given by letter dated 14th April 2014: see R439. The Applicants contend that Mr Stone was excluded from the meeting, but that appears to have been because his choice of location was not taken up, or changed at the last minute, resulting in his refusal to attend, rather than being physically barred, which was not alleged. The Tribunal rejects Mr Stone's allegation that Mr Cross inserted the "post meeting note" at A151 on a fallacious basis: we accept it was a genuine addition which reflected the conversation he had with Hyams.
19. The final Hyams invoice is at R84 in the sum of £13,700 including VAT. The TPS fee is invoiced at 5% (A196) which adds a further £822. That 5% management charge is acceptable as well within the industry standard. The works were delayed until 2014 due to collecting funds amongst other factors. Mr Cross was able to justify the increase in the Hyams final figure in oral evidence by referring to the costs of additional works which became necessary when the scaffolding was erected. Without pleading a case as such, as opposed to alleging that the amount charged for the works was an "overcharge", it is hard for the Tribunal to know precisely what the Applicants' case on the cost of the major works is, despite the fact that Mr Stone should have been well aware of the potential consequences of failing to particularise Mrs Stone's case.

20. There is certainly no evidence of poor workmanship or unreasonable cost in the bundle or any documents prepared by the Applicants, though their case is slightly expanded in photographs and their skeleton argument, if a series of questions in rhetorical style can properly be taken into account. Mr Cross was however questioned by Mr Stone on the basis that he had pointed out substantial defects in the workmanship relating to hanging wires/the front door/the railings/the steps (requiring further works as per the Cirmaci quote of October 2015 at A178 on which Mr Stone relied) but the Tribunal, having listened to Mr Cross's response to Mr Stone's questions (which included evidence as to Hyams returning to resolve outstanding issues and on the date and content of the photographs relied upon), is satisfied that the works which he signed off were done to a reasonable standard and that the overall cost of the major works carried out in 2014 was reasonable.
21. Therefore notwithstanding the Applicants' complaints, they were unsubstantiated by any evidence. The Tribunal prefers and accepts the evidence of Mr Cross, who had a paper trail supporting his decisions, and whose oral evidence met the Applicants' complaints, the Tribunal finding him a truthful and credible witness, as well as demonstrating competent management of a block which had arguably been neglected prior to his involvement.
22. For the record, the Tribunal rejects any allegation by Mr Stone that Mr Cross was colluding with Mr Hyams to let the contract to him. Mr Stone was warned about making wholly unfounded claims of fraudulent behaviour against Mr Cross during a hearing, and has since apologised to the Tribunal, which apology is accepted as far as the Tribunal is concerned.

Insurance charges 2014-2015 and 2015-2016

23. It is clear that the Applicants' case is not with the amount of the premium or choice of insurance or the nature of the policy (despite the questions raised in their skeleton argument paragraphs 16-20) but with the fact they pay one-sixth and contend they should only pay a one-eleventh share, there being eleven flats. The Respondent's response is limited to the simple matter of construction of their lease, the relevant clauses of which are set out above.
24. As Ms England states simply in her skeleton argument (as repeated in the Scott Schedule), the Tribunal has no power to vary the terms of the lease and the construction is clear: it is a one-sixth liability. To clarify, the Applicants' flat covers the whole of the third floor, and is one of the largest in the building, like the basement flat (both remaining undivided).
25. For the record, Mr Cross gave evidence that the policy in place is a standard all risks block policy.

26. It follows that the amounts claimed by the Respondent for the contribution to the service charge for the years in question in relation to the insurance premium (£497.59 and £528.12) are recoverable as reasonably incurred and reasonable in amount, there being no evidence to the contrary whatsoever. (For reference see R110-114, R525, R533, R534.)

Reserve fund 2014-2015 and 2015-2016

27. So far as the Applicants contend that they should only be liable for one-eleventh of the charges attributable to the service charge, they are wrong on the construction of the lease for the same reasons given in respect of the insurance policy above.
28. So far as the Applicants have an in-principle objection to a reserve fund liability, their position is misconceived. The Respondent is clearly entitled to set up a reserve fund. It is clear from clause 5(3)(b) of the lease that the sum in the reserve fund must be “*appropriate*”. As Ms England notes, there is no limit on the sum to be held otherwise, and it is not a fixed amount save by reference to the one-sixth share. Reference has already been made to the minutes of the 2012 AGM at R420.
29. So far as the Applicants object to a reserve fund which they contend benefits the leaseholders who sub-let the other flats, on the basis that if they pay a one-sixth share they are subsidising their activities, that is an irrelevant objection.
30. So far as the Applicants contend (as Mr Stone did in submissions) that TPS should obtain estimates for works before setting the reserve fund contribution, the only requirement is that it should be an “*appropriate*” amount.
31. This has to be put in context. The balance sheet for the year ending September 2012 shows that there was no reserve fund but a small surplus (A181, R509). The information for the year ending September 2013 shows a surplus of about £7,500 (A185, R516). The information for the year ending September 2014 (certified in February 2015) includes the expenditure on the external works at £14,522 and a small surplus of £3,010 (A189, R520) and notes a reserve fund of £11,046 (A190-1, R521-2). The year ending 2015 accounts which were signed off in December 2015 are at R119, which shows the reserve fund at about £20,000.
32. There are numerous service charge demands served on the Applicants at R585-606, the most recent of which (and most useful for the purpose of this decision) is the September 2015 demand at R585. Apart from showing refunds of the surplus, it shows a charge for the reserve fund at

£1582.70 for the period September 2014-September 2015 due on 29th September 2014, and the same amount due on 29th September 2015 for the following year. These demands are based on the service charge budget prepared by TPS on 9th September 2015 showing a reserve fund set at £9500 for 2015 and 2016. Mr Stone says that looking at the year end figures for September 2015 (R119), the balance on the reserve exceeds £20,000, and that the fund would keep on increasing unnecessarily.

33. But the facts suggest this is not the case, as the report of the 2013 AGM at A144 and the 2014 AGM report at A148 indicate. Works are required to the internal common parts and the roof. There is an explanation by Mr Cross in the 2014 application witness statement at paragraphs 5-9 and 18-21, which is accepted as reasonable in approach by the Tribunal. The reserve fund is not just building up at the expense of the Applicants as they suggest, but is being properly earmarked as required under the terms of the lease for works which have been approved by most, if not all, the leaseholders. Indeed, it is significant that during the hearing Mr Stone said he would consider a £9000 reserve fund demand to be fair so long as he could pay a one-eleventh share. That neatly demonstrates the fallacy of the Applicants' challenge, as Ms England submitted in closing. It follows that the amounts claimed for the reserve fund are both "*appropriate*" and reasonable.
34. It follows that the Applicants' challenge to the reasonableness of the various demands they have challenge, fails.

Application under s.20C

35. On the basis of the foregoing, it would not be appropriate to make an order under s20C.
36. As to costs, bearing in mind that Mr Stone's appeal against Judge Dutton's order is the subject of a forthcoming Upper Tribunal decision, we extend the time in this application for any application for costs to be made no later than 14 days after any decision is handed down, the parties to notify the Tribunal whether or not an application is to be made by the end of the same time limit.

Judge Hargreaves

CP Gowman BSc MCIEH MCMI

5th April 2016

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).