



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

**Case Reference** : CAM/OOMC/LSC/2017/0054

**Property** : 5 Tidmarsh Grange, The Street, Tidmarsh,  
Reading, Berkshire RG8 8FD

**Applicant** : Mr Christopher Thompson

**Representative** : In person accompanied by Miss V Quint

**Respondent** : Tidmarsh Grange Management Company Ltd

**Representative** : Mr G Harvey and Mr A Balchin with Mrs  
Rosalind Neal of Kempton Carr Croft

**Type of Application** : Determination of liability to pay and the  
reasonableness of service charges under  
section 27A of the Landlord and Tenant Act  
1985

**Tribunal Members** : Tribunal Judge Dutton  
Miss S F Redmond BSc Econ MRICS  
Mr A K Kapur

**Date and venue of  
Hearing** : Reading Tribunal Hearing Centre, Friar  
Street, Reading on 14<sup>th</sup> November 2017

**Date of Decision** :

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**DECISION**

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## DECISION

**The Tribunal determines that the proportions of service charges should be 9.0332% for the each of the penthouses and 5.8524% for each of the apartments in respect of Block costs and an equal split between all properties in respect of Estate costs. Lift costs are dealt with separately as shown below. This will apply for the service charge year commencing January 2017 but is not retrospective. These will be the service charge proportions applicable to the blocks and estate going forward.**

### BACKGROUND

1. This was an application made by Mr Christopher Thompson under section 27A of the Landlord and Tenant Act 1985 (the Act). There is no specific challenge to the quantum of any service charges nor their reasonableness nor their payability save insofar as the apportionment of such service charges is challenged.
2. Schedule 4 part ii of Mr Thompson's lease which was within the bundle before us says the following under the heading (Tenants' covenants with the landlord the company and the other tenants who are owners of the leasehold property).

*1.1 To pay to the company the maintenance charge being that proportion percentages or fraction referred to in paragraph 24 of the particulars and definitions of the expenses which the company shall in relation to the estate reasonably and properly incur in each maintenance year in complying with the covenants on its parts contained in part I and part II of schedule 7 hereto (including the provision for future expenditure therein mentioned) the amount of such maintenance charge to be determined the company's managing agent who are accountant acting as an expert not as an arbitrator as soon as conveniently possible after the expiry of each maintenance year and further on the 1<sup>st</sup> January and 1<sup>st</sup> July in each maintenance year or within 21 days of the company requiring payment of same to pay in advance on account of the tenants' liability under this clause the interim maintenance charge the first payment being made on the execution hereof provided that upon the company's managing agents or accountants certificate being given as aforesaid there shall forthwith be paid by the tenant to the company any shortfall between the interim maintenance charge and the maintenance charge so certified and the tenants shall be credited with any excess.*
3. At schedule 6 part I under the heading (Variation of maintenance contribution) we find the following wording.

*If in the reasonable and proper opinion of the surveyor appointed by the company it should at any time become necessary or equitable to vary the maintenance charge (whether as a result of changes relating to the building or a part thereof or the matters specified in schedule 7 relating hereto) the surveyor shall recalculate the proportions as appropriate and equitable in all the circumstances and notify the tenants and owners of the building and accordingly and in such case as from the date of such notification the new proportion notified to the tenants and the owners shall be substituted for that referred to in paragraph 23 of the particulars and definitions of this lease and all references to the proportion appropriate to the demised premises or to the*

*maintenance contribution shall be construed as references to the new proportion or the maintenance contribution based thereon.*

4. We return then to look at the definitions section of the lease and in particular paragraphs 23 and 24. At paragraph 23 under the heading 'Maintenance interim charge' it says as follows *"The sum of three thousand and six hundred pounds £3,600 per annum for service charges and four hundred pounds £400 pa for insurance contributions each year payable monthly in advance or such other sum as in the management company its managing agents or accountants shall from time to time and at any time specify (at their reasonable discretion) to be a fair and reasonable sum to be paid on account of the maintenance charge in respect of each maintenance year."*
5. Under section 24 the heading 'Tenants contributions of the total maintenance charge' we find the following wording *"A fair and reasonable proportion of the total maintenance charge provided always at such proportion shall be subject to the terms of part I of schedule 6."*
6. Prior to the hearing, we were provided with a substantial bundle of documents which included the application and the parties' statements of case, correspondence and directions and a copy of the sales particulars for 5 Tidmarsh Grange. We also had a copy of the lease to the subject property, floor plans for the three blocks which make up the estate, some documents issued by the Leasehold Advisory Service and AGM minutes. In addition to the above, there were other documents relating to previous legal advice, the managing agent's service charge budgets and proposals, the Applicant and Respondent proposals, the survey report from Kempton Carr Croft (KCC) with associated email correspondence. We also had copies of section 21 of the Landlord and Tenant Act 1985 and two case reports which we will refer to as necessary. The RICS code of measuring practice was included as was correspondence with the leaseholders and witness statements. We had the chance to read these documents before the hearing.

## **INSPECTION**

7. Prior to the hearing, we had the opportunity of inspecting the development. This was in the presence of Mr Harvey, Mr Balchin, Mr Thompson and Mr Buckley from the managing agents. Our inspection revealed three blocks of flats, two of which appeared to be identical, in very pleasant grounds with secured car parking. Renshaw and Osborne blocks are three storeys and both have lifts. The penthouse, which is the subject of this application in the Osborne block runs the complete length of the Property. The third block is Knebworth House, of two storeys with no lift. We were able to inspect the subject property at 5 Tidmarsh Grange and with the kind assistance of both Mr Balchin at No 2 Osborne House and Miss Wyn's at 12 Knebworth House we were able to make an internal inspection of their apartments. We are grateful to both for affording us this opportunity.
8. In the grounds, there are extensive grassed areas with trees and shrubs. There is a tennis court, although perhaps in need of some work, a dried pond and we believe the River Pangborn running close by. There is also, in a separate block, a

heated indoor swimming pool with sauna, hot tub and changing accommodation. There is extensive car parking and we noted that those for the penthouse apartments appear to have covered parking and two spaces allocated, unlike the other properties which had only one. Outside the gated area there is visitors parking. The development presents well and appears to be well cared for.

## HEARING

9. Before the hearing, Mr Thompson had submitted what was perhaps euphemistically referred to as a skeleton argument but which ran for many pages and appeared to, in effect, be another statement of case. The Respondents objected to this and Mr Thompson indicated that he was not overly concerned whether it was admitted or not.
10. Mr Thompson opened the case by confirming that he was a chartered builder and the director of a substantial company dealing it would seem with retirement accommodation. His application was, he said, to fix the proportions of his obligations but not, as was suggested he said in the Respondent's statement of case, seeking to vary the lease. He told us that the present managing agents Chaney's Chartered Surveyors and Property Managers had put forward certain proposals and these were set out behind tabs 10 and 11 in the bundle.
11. He criticised the report of KCC and relied on the Upper Tribunal authorities of Windermere Marina Village Limited v Wild and Barton [2014]UKUK 0163 (LC) and Gater and others v Wellington Real Estate and LCP Commercial [2014]UKUT 056 (LC)<sup>1</sup>. It is appropriate to note that these decisions were approved by the Court of Appeal in the case of Sheffield City Council v Oliver reference [2017]EWCA Civ 225. In dismissing the appeal in that case Briggs LJ held at paragraph 54 of the decision that the findings in the Windermere and Gater case were rightly decided.
12. It is the provision of section 27A(6) which applies to this case. This says "*Any agreement by the tenant of a dwelling (other than a post dispute arbitration agreement) is void insofar as it purports to provide for a determination (a) in a particular manner or (b) on particular evidence of any question which may be the subject of an application under sub-section (1) or (3)*". As was said by Martin Roger QC Deputy President of the Upper Tribunal at paragraph 40 of Windermere "*The prohibition of section 27A(4) on reopening matters which have been agreed must, however, be considered in the light of section 27A(6). This renders void any agreement by the tenant insofar as it "purports" to provide for the determination of any questions which could be the subject of an application under sub-section (1) or (3) in "a particular manner" or "on particular evidence. The purpose of this provision is clearly to avoid agreements excluding the jurisdiction of the First Tier Tribunal on questions which could otherwise be referred to it for determination.*"
13. Mr Rogers went on at paragraph 44 to say as follows "*It follows that I accept the submission of Miss D'Arcy on the first issue and find the LVT entitled to consider what was the fair proportion of the expenses payable by the Respondents because the contractual mechanism of identifying that fair proportion was rendered void by section 27A(6) of the 1985 Act.*" At paragraph 45 he indicated some procedural steps that would need to be undertaken, in particular notice of

proceedings being given to any third party who may wish to make representations. That has happened in this case and the lessees of the development have without little demur accepted the advocacy and the stance taken by the directors of the Respondent Company and sit behind them in their representations to this Tribunal.

14. It does not seem to us necessary to go into any great detail as to the circumstances leading up to this application. Our task, agreed by both sides, is to determine what we consider to be a fair and reasonable proportion of the total maintenance charge which should be paid by Mr Thompson and how that will impact on the other residents and what their fair and reasonable proportion should then be.
15. In the course of the hearing, we heard from Mrs Neal from KCC who struck us as a fair and pragmatic witness. Her report, which was not put to us as an independent experts report, was to be found behind tab 13 of the bundle and was made following an inspection in June of this year. The report indicated that she had measured a representative sample of apartments to assess the fairness of the current apportionment. Her conclusion was that a fair and reasonable solution to the dispute was to
  - 1). offer to adjust the service charge percentages paid on a net internal area basis with the penthouse adopting a rate of 9.0332%,
  - 2). offer to average out the rest of the apportioned service charge expenditure between the other apartments at a rate of 5.8524% and
  - 3). split all expenditure on this basis to reflect how the maintenance charge was originally set up in the lease and has been charged over ten years.She did go on to say that she would recommend attempting to resolve the matter through mediation. Annexed to her report she had set out spreadsheets showing the current service charge apportionments which show the penthouse is at 10.3093% and the other apartments at 5.6701%. This resulted in the last year requiring service charge contributions by the penthouses of £8,806.41 and by the other apartments of £4,843.51.
16. Mrs Neal then went on to provide spreadsheets using the measurements of the penthouses and apartments either on a net internal assessment (NIA) or gross internal assessment (GIA). On the NIA basis at page 185 of the bundle, her preferred basis, this somewhat surprisingly appeared to give different measurements for the apartments in Renshaw House to those in Osborne although we were under the impression that they were in fact identical. However, this had been levelled out by the proposed service charge figures which reduced the service charge contribution for the penthouses to £7,716.34 from £8,806 and increased the contributions from the other apartments to £4,999.24 from £4,844.
17. We should also record Mrs Neal's answer to a question posed by the Tribunal. She said that if she were dealing with this development today, as a new estate, she would undertake a block/estate assessment which she considered would be fair and reasonable.
18. Mr Thompson for his part thought that the net sales area method should be followed, which is, as we understand it, used in the valuation of marketing of

residential dwellings, particularly in new developments. Mrs Neal had undertaken an exercise using the net sales area (NSA) and as she had done with the other measurements she firstly created percentages applicable to the penthouse of 8.8564 and a standard percentage applicable to the other apartments of 5.8777. She also undertook apportionments specific to the measurements of the properties which resulted in differing percentages which were set out at page 200 of the bundle.

19. Mr Thompson's view was that the NSA differed little from the GIA figures that Mrs Neal had measured. The GIA for his property was 1,930 square feet and the NSA figure 1,925. Mr Thompson told us he would agree the block percentage splits as set out at page 199 in the bundle which is the 5.8777% for the apartments and 8.8564% for the penthouses.
20. We asked the parties over the luncheon adjournment whether there was the possibility of reaching some form of agreement on matters. We are pleased to say that there had been some headway. We were told that it was agreed there should be estate and block charges with a separate charge for the lift. It was agreed that the estate charges would be split equally and that the block's charges would be split on size but no agreement could be reached as to which method of measurement should be utilised. It was also submitted that insofar as the lift was concerned, the ground floor occupants of Osborne and Renshaw House would not contribute towards the lift and instead that would be paid for by the first floor and the penthouses. It should be pointed out that the penthouse lift deliveries a passenger directly into the flat and is governed by a code which means that those persons lower down in the building are unable to access the lift to the top floor. The Knebworth block has no lift and it was, therefore, suggested that the lift costs should be split between four apartments and two penthouses on the estate.
21. Before we make our findings in connection the various apportionments, we would like to thank the parties for endeavouring to reach agreement on a number of matters. It did, however, leave issues open as to the following estate costs:-
  - On *management*, it was suggested that there were some estate costs and some block costs and there would need to be an apportionment.
  - On *electricity*, it appeared to be agreed that there was a three way split between the blocks but that the cost of electricity to those blocks that had a lift would need to reflect that additional usage.
  - It was suggested that in respect of *gate maintenance* there was a suggestion that the penthouse should pay some extra sum because that property had the benefit of two car parking spaces.
  - Insofar as *fire safety*, it was agreed that this could be dealt with on a block basis. The more so as Mr Copley from the managing agents Chaney's told us that the fire safety was dealt with by an external consultant it seems on an annual basis and then monthly tests were undertaken by the managing agents at each block.
  - In respect of *repairs and maintenance* and a new heading which appeared to be *estate costs*, we were told by Mr Copley that it would be possible to allocate these between block and estate costs and the same with any estate repairs.

- As to the *insurance*, it appeared there had been agreement that the estate element should be 15% of the premium and 85% attributable to the blocks. Mr Copley told us that this could be split down between estate and blocks with the assistance of the insurance brokers and that that was something that could be undertaken depending upon our decision.
- On the *reserve fund*, there was discussions concerning this. It seemed to be suggested that this could be split on an estate basis, a block basis and also in respect of the lifts. Apparently, there is little money standing to the credit of the reserve fund at the moment and there is no planned maintenance programme in place.
- We briefly heard from Mr Bowen of Flat 4 in Osborne House who thought that the square footage approach was appropriate but all should contribute to the estate charges. He said that it had been a peaceful environment and he hoped that it would continue to be such.

### **POST HEARING CORRESPONDENCE**

23. We did not invite the parties to submit further papers to us after the hearing had finished, However by a letter dated 21st November 2017 running to some 10 pages including appendices the Respondent, through Mr Balchin, sought to address certain matters, some of which we had thought were agreed. This letter had been sent to Mr Thompson who responded on 26th November 2017. The matter did not rest there for Mr Balchin considered it was necessary to reply to Mr Thompson's letter, which he did on 27th November.

### **THE LAW**

22. The law applicable to this matter is set out below.

### **FINDINGS**

23. We thought it had been agreed between the parties that the present arrangements are unsatisfactory and need to be reviewed, although Mr Harvey was concerned that the residents of the apartments would be upset by any decision we made which changed the status quo. The late submissions appears to seek to resile from this position in some regards. So far as we are concerned the parties have agreed that there should be a split in relation to estate and block charges and for the first time have agreed that the estate should be dealt with on an equal basis. If we may say so, we find this eminently sensible. It seems to us it matters little what the size of the apartment may be. There is on this estate, no evidence of any correlation between the size of the apartments and the use of the common parts and services. All apartments we were told comprise three bedrooms and two bathrooms. Accordingly, it is not going to be a situation where there are vast numbers of occupiers of any particular apartment who make use of the estate facilities more than any other.
24. It is quite clear from the authorities put to us that such clauses as are found in this lease and as set out above are not appropriate and are void. It is for this Tribunal to fix the proportions which will apply now and going forward. We are not obliged to accept the evidence of any expert.

25. Nonetheless we would prefer to reach a decision that is acceptable to the majority of the residents, whilst recognising the claim made by Mr Thompson. In that regard we have noted what has been said in the latter from the Respondent dated 21st November and the response dated 26th November by Mr Thompson. We do not consider that the further letter from the Respondent dated 27th November should be admitted. As we indicated above we did not request this additional paperwork and it is as a matter of courtesy that we will consider what has been said in the two letters and a wish to try and reach a workable and largely acceptable compromise. We will not accept any further submissions. If any party is unhappy with our findings their route is one of an appeal, after seeking permission of course.
26. Having considered all the submissions that have been made, the evidence that we received from Mrs Neal and Mr Copley, the papers before us and the authorities, we find as follows. In respect of the estate charges, those should be split on an equal basis. We set out below those charges that we consider form part of the estate costs. They are as follows:-
- Management, we can see no reason why this cannot continue to be dealt with on a unit basis. It should, therefore, appear as part of the estate costs with each lessee paying an equal share towards the management charges. We do not consider that there is likely to be any particular additional management requirements for a penthouse as against an apartment and in those circumstances, see no reason to further muddy the waters by making any differing proportions for this charge.
  - There seems no logic to seeking to make any changes to the distribution of the gate costs which should be on an equal split basis. The fact that the Applicant may have two parking spaces is in our mind irrelevant. It would be impossible to police this and therefore we find that the gate maintenance costs should be dealt with on an equal basis.
  - Fire safety, again we conclude this should be on an estate basis. We were told that there is an annual review of all blocks as well as monthly checking. The residents, therefore, appear to get the same service and if there are any repairs relating to fire issues, then of course those can be allocated on a block basis as necessary.
  - Insurance, we were told this could be dealt with on a 15% split to the estate and 85% for each block, dealt with under the block percentage basis. Mr Copley told us that they would be able to get the broker's assistance to deal with that and we, therefore, are quite comfortable having the insurance split on a basis of 15% for the estate and 85% for the three blocks to be apportioned on between the apartments/penthouses in any particular block on a square footage basis.
  - For the record, we should also note that the costs of the following- company secretary honorarium; annual returns; accountancy fees; bank charges; fuel oil; water and sewerage charges; waste management; gardening; effluent licence; foul pump maintenance; pool and spar maintenance; tennis court maintenance; and directors and officers' insurance should all form part of the estate costs.
  - In respect of the Electricity, we find that this needs to be dealt with on a block and estate basis. We were told that the main electricity meter is in the



swimming pool and that each block has its own electrical meter for the block use. The simple way forward, we find, is to calculate what each block has used in electricity and the balance will be an estate charge payable by everybody. The electricity used in each block will be dealt with under the block provisions, which we will come onto.

- We find that internal cleaning, window cleaning and lift matters need to be dealt with on a block basis. We will deal with the percentages applicable below.
27. We must then turn as to how the block charges are to be apportioned.
  28. We heard all that was said by Mr Thompson in respect of the NSA percentages and have reviewed the appropriateness of those against the GIA or NIA percentage. We take into account Mrs Neal's view that an NIA percentage is the appropriate way. She was the only surveyor that we heard from in these proceedings, although we accept that she is not independent but acted as expert for the Respondent. Mr Thompson's evidence, whilst we do not seek to belittle it, is based on his experience as a chartered builder and his proposed method appears to be more appropriate to sales of new properties. We, therefore, prefer the evidence of Mrs Neal and adopt the NIA approach to the assessment of the block charges. Mrs Neal's preferred division was at page 185 where, for reasons that were not wholly clear to us or we think to her, the internal measurements of the flats in Osborne House and Renshaw House appeared to differ. However, and for the sake of ease of understanding in respect of this matter going forward, we propose to adopt the service charge figures suggested by Mrs Neal at page 189 of her bundle. This is based on her report adjusting the service charge percentages on a net internal basis giving the percentages of 9.0332 for the penthouses and 5.8524 for the apartments. This has the benefit of being consistent with the previous arrangements whereby the penthouses had separate percentage contributions but the remainder of the apartments had the same. This should, therefore, cause as little disruption to the parties as possible.
  29. We should just comment that mention was made of the benefit to Mr Thompson of the roof space above his property. We inspected that. We think that it really is of little benefit other than a storage. There is only one hatch space and to utilise the far end, away from the hatch, would seem to us to be unrealistic. In addition the loft spaces above Knebworth seem to us to have no relevance insofar as assessing the square footage and thus the contributions towards the service charges.
  30. The next matter that we need to address is the question of the lift. It is in our finding unusual for the ground floor properties in a block not to make a contribution towards the lift. However, it appears that the Respondents, acting for the other lessees had indicated that they would seek an apportionment of the lift costs as two thirds to the Applicant and one sixth to those lessees on the first floor. They have however resiled from this and now suggest a split of 21.70% for the penthouses and the remaining costs to be left to the Respondent to resolve at some stage in the future. We are not prepared to leave the lift matter in such a state of flux.

31. There is no doubt that the Applicant has the benefit of the lift which exclusively serves his floor governed as it is by a code. The absence of an inclusion of contributions from the ground floor properties seems to us to be unusual. It is also suggested that Knebworth residents should contribute, notwithstanding that they have no lift. We noted the proposed reasons for this, which we reject. We find that the most appropriate method of dealing with the lift cost is to place a premium on the penthouses and to divide the remaining costs between the remaining residents of Osbourne and Renshaw. The question is what should these contributions be. It seems to us that the lift costs can be apportioned on a block basis rather than conjoining the two blocks. To reflect the undoubted benefit that the penthouse enjoys we find that it would be reasonable for the penthouse to be responsible for 40% of the lift costs with the remaining four apartments bearing a share at 15% each.
32. In respect of electricity, we think it would be unnecessarily complicated for the costs of the electricity for the lift to be extrapolated from the costs for the block. It would require special rewiring and a separate meter, which we think could be expensive and we would have thought that the costs of the electricity to power the lift would be satisfactorily catered for if it was paid on the same percentages as other block costs, which reflects any extra use by the penthouse.
33. The only other matter we need to address is the reserve fund. We are satisfied that this could be dealt with on the basis that there are reserve funds for the estate, for the blocks and for the lifts. It would be for the managing agents to decide how those are apportioned. Accordingly those who have a lift will have a greater contribution towards the reserve fund and that contribution should be dealt with on the same basis as the lift block contributions, which we have fixed above. We understand there may be a small existing reserve fund which on our findings should be distributed as it would have been prior to our decision but that any new reserve fund monies collected should be apportioned as we have set out above.
34. We accept that there will be some winners and some losers. We conclude, however, that the distribution of estate costs on an equal basis is by far the fairest method of dealing with this. We are happy with the percentages reached by Mrs Neal in her report to deal with the individual block costs and we believe we have apportioned those as necessary in accordance with discussions between the parties and on our inspection. We believe the apportionment of the lift costs reflects the benefit to Mr Thompson and to the other residents of Renshaw and Osbourne.
35. We hope, therefore, that our findings are clear and enable the parties to move forward with what we consider is now a fair and reasonable proportion of service charges to this estate.
36. We note that the Respondent seems to be suggesting that the change should be effective from July 2017. We can see no logic for this. It may be when the budget is issued but the accounting year expires at the end of December. Thereafter there will be a final reckoning utilising actual costs against the budgeted figures and it will be easy enough for the managing agents to send out demands which reflect the changes we have ordered after the final accounts have been prepared. We

confirm therefore that these amendments are to be effective from the year commencing 1<sup>st</sup> January 2017.

37. An application was made by Mr Thompson for an order under section 20C which was objected to by the Respondent. It seems to us that this matter, in the absence of any agreement, which perhaps would have been difficult, was inevitably going to come before the Tribunal. As we have indicated above, there are some winners and some losers. All residents are members of the Respondent Company and accordingly to make any orders under section 20C would seem to us to be inappropriate. Accordingly, we decline to make an order under section 20C. There were no other applications made to us.

*Andrew Dutton*

Judge:

\_\_\_\_\_  
A A Dutton

Date: 1st December 2017

#### **ANNEX – RIGHTS OF APPEAL**

1. 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 at the Regional Office which has been dealing with the case.
2. 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.
3. If the application is not made within the 28-day time limit, such application must include a request to 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.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

#### **The relevant Law**

27A Liability to pay service charges: jurisdiction

(1)An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to—

- (a)the person by whom it is payable,
- (b)the person to whom it is payable,
- (c)the amount which is payable,
- (d)the date at or by which it is payable, and
- (e)the manner in which it is payable.

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

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

- (a) the person by whom it would be payable,
- (b) the person to whom it would be payable,
- (c) the amount which would be payable,
- (d) the date at or by which it would be payable, and
- (e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which—

- (a) has been agreed or admitted by the tenant,
- (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
- (c) has been the subject of determination by a court, or
- (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

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

- (a) in a particular manner, or
- (b) on particular evidence,

of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.