FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AW/LSC/20108/0346** **LON/00AW/LSC/2019/0002**
Property	:	**Warwick Mansions, Cromwell Crescent, London. SW5 9QR**
Applicant	:	**Termhouse (Warwick Mansions) Management Ltd.**
Representative	:	**Mr. Jack Dillon of Counsel instructed by SA Law Solicitors**
Respondent	:	**All leaseholders**
Representative	:	**Mr. Oliver Dykes solicitor from DMB Law Solicitors on behalf of** **(1) Mr. and Mrs. Otto Snell** **(2) Mr. Michael O'Connor**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	:	**Tribunal Judge Michael Mullin (Chairman)** **Mrs S Redmond MRICS BSc (Econ)** **Mr M Taylor FRICS**
Venue	:	**10 Alfred Place, London WC1E 7LR on 1st October 2019**
Date of decision	:	**18th October 2019**

DECISION

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Decision of the tribunal

(1) The tribunal determines that the service charges for payment into a reserve fund demanded by the Applicant for the service charge years 2015/16 on 23rd October 2015, 2017/18 on 27th September 2017, and 2018/19 on 28th September 2018 are reasonable and payable by the Respondents in full.

The application

1. The Applicant 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 payments into the reserve fund for the service charge years 2015/16, 2017/18 and 2018/19.

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

The hearing

3. The Applicant was represented by Mr. Dillon at the hearing, Mr. & Mrs. Snell and Mr. O'Conner ('the Participating Respondents') were represented by Mr. Dykes. The balance of the Respondents have played no part in this application.

4. In advance of the hearing Mr. Dykes for the Participating Respondents handed in a skeleton argument putting forward the case for his clients for which the Tribunal was grateful.

5. The Tribunal heard live evidence from Ms Laurel Harbour who is a director of the Applicant company. The Tribunal found Ms Harbour to be a credible and honest witness.

The background

6. The property which is the subject of this application is a Victorian/Edwardian mansion block consisting of 45 purpose-built flats.

7. Neither party requested an inspection and the Tribunal did not consider that one was necessary.

8. The Respondents are the leasehold owners of the various flats. The flats are let under long leases which requires the landlord to provide services and the tenants to contribute towards their costs by way of a variable service charge. The leases are in identical terms and the specific provisions of the leases will be referred to below where appropriate.

9. Under Case Reference 2018/0346 the Applicant management company (made up of leaseholders) made an application to this Tribunal regarding Service Charges for 2018/19, the issue being the reasonableness and payability of payments to the reserve fund. Directions were given on that application.

10. The only leaseholders to respond to the application were the Participating Respondents who then issued applications under section 20C and an application for wasted costs.

11. There then arose a dispute between the parties regarding the clarity of the Applicant's case and this led to adjournments, including an adjournment of the final hearing (which had been set down for 16 January 2019).

12. The Applicant then issued a fresh application under case reference 2019/0002 in respect of the same issues but for the years 2015/2016 and 2017/2018.

13. On 16 January 2019 the Tribunal issued directions, agreed between the parties, in respect of the two applications. The final hearing was fixed for 9 May 2019.

14. There then was an issue between the parties as to whether the Applicant had complied with the directions and whether the applications stood struck out by virtue of the operation of the 16th January 2019 directions. The 9 May hearing was utilised to determine these issues. In a written decision dated 10 May 2019 the Tribunal determined that the applications were not struck out and gave further directions.

15. The final hearing was then listed for the 1st October 2019.

The issues and the Tribunal's Determination

16. 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 relating to payment into the reserve fund for the years 2015/16, 2017/18 and 2018/19.

17. In the Applicant's statement of case the relevant service charges were identified as follows:

    - 2015/2016 Contributions in the total sum of £50,000 were demanded on or around 23 October 2015 and 31 March 2016

    - 2017/2018 Contributions in the total sum of £150,000 were demanded on 27 September 2017 and 14 April 2018 (This includes the sum of £90,154.85 for renovating the electrical systems in Warwick Mansions, which has been determined to be payable by the FTT in Tribunal Application reference 2018/0249).

- <u>2018/2019</u> Contributions in the total sum of £50,000 were demanded on 28 September 2018

18. The Participating Respondents contend, as pleaded across three statements of case, that:

    - The relevant service charges were not contractually payable under the leases because the decision as to the amount of the charges was not taken in accordance with the leases.

    - The charges were, in reality, to fill holes in previous expenditure rather than for future expenditure and are thus not payable under the lease.

    - That to be payable the relevant service charges once collected must be held in a) an interest bearing bank account, and b) in a bank account separate to the annual service charge.

    - The service charges are excessive and are therefore unreasonable in all the circumstances.

19. 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.

<u>Payability</u>

20. The relevant clause in the leases relating to the reserve fund is Clause 4. Clause 4 provides (so far as is relevant) as follows:

    "*The Lessee hereby further covenants with the Managers that he the lessee will in the manner hereinafter provided pay to the Managers [...] such monies as the Managers shall deem appropriate to build up a*

reasonable reserve to meet the maintenance expenditure of subsequent years"

21. It is common ground between the parties that the Applicant is therefore empowered under the lease to establish a reserve fund and to require payments into it by way of a service charge.

22. The Participating Respondents contend that the sums are not contractually payable because they were not 'deemed appropriate' by the Applicant.

23. The Tribunal is satisfied on the balance of probabilities that the sums demanded by the Applicant were properly deemed appropriate. The Tribunal considers that the demands, which were issued at the behest of the Applicant, are themselves evidence of the Applicant's having deemed the charges appropriate. To suggest otherwise begs the unanswered question of why demands would have been issued for those sums if they had not been deemed appropriate.

24. In addition, the 27th September 2017 demand was accompanied by a newsletter (page 136 of the bundle) which explained in detail the basis upon which the sums were being sought for payment into the reserve fund and stated that "*The Board has therefore decided that it would be commercially prudent to build a new reserve fund of £150,000*".

25. Similarly, the 28th September 2018 demand was accompanied by a letter (p594 of the bundle) which stated that the service charge budget for that year, which included the contribution to the reserve fund, had "be*en approved by the directors of the company*".

26. Further, at paragraphs 16-20 of her witness statement Ms Harbour sets out the decision making and rationale of the Applicant in relation to the sums demanded for payment to the reserve fund.

27. The Participating respondents submitted that the absence in evidence of the minutes of the Applicant's board meetings was something which pointed to the appropriate decision-making process not having taken place. However, the Tribunal notes that those minutes were not the subject of a disclosure application and that in cross examination Ms Harbour explained that the minutes of the board meetings were kept confidential as a matter of course.

28. Whether or not the sums were deemed appropriate is a matter of fact for the Tribunal to determine and taking into account all of the evidence before it. The Tribunal is satisfied that it is more likely than not that the service charges demanded in relation to reserve fund were properly deemed appropriate by the Applicant company in accordance with the provisions of the leases and the company's procedure.

29. The Tribunal is also satisfied that the service charges demanded in relation to reserve fund were demanded for use in subsequent years rather than, as the Participating Respondents allege, to fill holes in existing expenditure. There is simply no evidence to base that assertion on. Ms Harbour was cross-examined on this point and was clear that all reserve fund service charges were for future rather than existing expenditure.

30. The Tribunal finds that whether the service charges are paid into an interest-bearing bank account, or a bank account separate to the annual service charge, is irrelevant to their contractual payability under the leases. The leases do not contain any such requirement and there is no rule of law that would imply such a requirement into the lease. If we are wrong about this, the Tribunal was in any event satisfied, having heard Ms Harbour cross-examined on this point, that the reserve fund was in fact kept in a separate, interest-bearing bank account. The Tribunal also notes that in correspondence the Applicant's solicitors provided Mr. Dykes with the relevant bank account numbers for the Islington branch of RBS (page 633 of the bundle).

31. The Tribunal therefore finds that the service charges as defined at paragraph 17 of this decision are contractually payable by the Respondents under their leases.

Reasonableness

32. It is common ground that the Applicant commissioned Earl Kendrick, a reputable firm of surveyors, to draft a Planned Maintenance Plan (PMP) which sets out the projected maintenance costs of the block over a ten-year period. The PMP was drafted on 13th June 2018, but was only disclosed to the Participating Respondents in the course of these applications.

33. As stated above, these applications concern the reasonableness of service charges relating to payment into the reserve fund for the years 2015/16, 2017/18 and 2018/19. The Tribunal notes that the 2017/18 demand included £90,154.85 for renovating the electrical systems in Warwick Mansions, which has been determined to be payable by the Tribunal in Tribunal Application 2018/0249. This Tribunal therefore can only consider the balance of the payments into the reserve fund for that year: £59,845.15. It is also important to note that the renovations to the electrical systems were outside the scope of PMP.

34. The PMP projects the ten-year maintenance expenditure for the block to be £1,173,406.55.

35. The Parties have both filed expert evidence as set out in Part D of the bundle.

36. In his report dated 3rd July 2019, Mr. Watson (expert for the Participating Respondents) goes through the PMP on an item by item basis and where appropriate makes suggested amendments to the costs of the individual items on the plan or otherwise comments on their appropriateness. Mr. Watson does not reject the premise of the PMP or

its methodology, but criticises some of the individual items, for example in terms of their projected costs being too high.

37. The Applicants rely on the evidence of Mr Mathew Missenden as set out in his report dated 6th August 2019.

38. The Parties had initially proposed to cross examine one another's experts, but at the Tribunal's suggestion that the experts met with each other over the lunch break and discussed their respective findings and reported back to the Tribunal as to the difference between their headline figures for what they considered to be a reasonable gross spend over a ten year PMP.

39. The experts reported back that the difference between them was less than £200,000 and that both of their headline figures were in excess of £1,000,000 over a ten-year period. On this basis the Parties agreed that they no-longer wished to cross-examine one another's experts.

40. At the Hearing Mr. Dillon sought to rely on the case of *Hyde Housing Association Ltd v Lane & Others* [2009] UKUT 180 (LC). He submitted that the Tribunal was to consider reasonableness of the relevant charges with the benefit of any evidence in justifying produced after the relevant demand. He submitted, it would have been open to the Applicant's to pluck a figure out of thin air and issue a service charge demand and if, by chance, the figure was in fact objectively reasonable with reference to more recent evidence, that was sufficient for the charges to be found to be reasonable.

41. Mr. Dykes was not familiar with this authority and was not aware in advance of the hearing it would be relied on. In those circumstances the Tribunal gave him permission to file and serve written submissions on that authority within seven days. Mr Dykes filed further submission on 8th October 2019 which the Tribunal has considered before making its decision. In those submissions he conceded that the Tribunal is entitled

to take into account 'hindsight evidence' when assessing the reasonableness of service charges.

42. At paragraph 15 of the judgement in *Hyde* the Upper Tribunal stated as follows:

> *"In arriving at this view I consider the LVT was wrong to state in paragraph 13.d of its decision that reasonableness can only be considered as at the date of the demand and not with the benefit of hindsight. Where one is dealing with estimates of future expenditure evidence may subsequently emerge which sheds light on whether a figure is a reasonable one. The tribunal is not required to shut its eyes to the evidence and assess the sum for 'miscellaneous' items as nil on the grounds that at the time of demand there was insufficient evidence to support the reasonableness of the figure demanded when the Appellant has subsequently obtained an expert's report which identifies what a reasonable sum would be."*

43. The Tribunal therefore considers that the PMP can be relied on by the Applicant to justify the reasonableness of the relevant service charges.

44. It is common ground between the parties that the ten year maintenance costs of the block are likely to be in excess of £1,000,000 (or £100,000 per year) without any provision for emergencies, it is therefore difficult to see how it can be said that the sums demanded are anything other than reasonable.

45. The PMP, and cyclical maintenance plans generally, are an example of good property management practice. They allow managers to budget for works and to spread the cost over the course of the plan therefore avoid the need for large one-off demands in years where expensive works are required.

46. Ms Harbour gave evidence that although much higher amounts could have been reasonably demanded of the Respondents by relying on the figures in the PMP, it was felt that the Applicant should not do so

because of the high level of some service charge demands in recent years. That is why the contributions to the reserve fund for 2018/19 were kept at £50,2000.

47. In his further written submissions, Mr. Dyke submits that the 2017/18 charges should be reduced to nil on the basis that "it would have been *objectively* reasonable for the Directors, in September 2017, to decide upon £ 50,000 (but not more)". We disagree. There is nothing in the facts of this case that imposed such a restriction on the Applicant's discretion to set the level of service charge demands. The question for the Tribunal is whether the sums of £50,000 (for 2015/16), £59,845.15 (for 2017/18) and £50,000 (for 2018/19) are reasonable bearing in mind the conclusions of the PMP, the other evidence in the case and the common ground as to the anticipated level of future necessary expenditure. The Tribunal considers that in light of the evidence, these sums are plainly reasonable given how far below the annual projected cost they are. Indeed, the Tribunal notes that in future year demands will be likely to increase so as to avoid further substantial one-off demands and increased deficit.

48. The Tribunal therefore considers that the relevant service charges which are the subject of these applications are all reasonable and payable.

<u>Further Directions relating to costs</u>

49. There are three live applications relating to costs:

(i) the Respondents' application under r.13 of the FTT Rules 2013 ('**r.13**') and/or s.20C of the LTA 1985 concerning the costs of different proceedings between these same parties that related to demands for contributions towards electrical works under reference 2018/249, substantively determined by decision dated 27 September 2018 for written reasons dated 15 October 2018 (the '**Electrical Works Proceedings Costs**');

(ii) the Respondents' application under r.13 in relation to the costs of the adjourned hearing in these proceedings on 16 January 2019 (the '**Adjourned January Hearing Costs**'); and

(iii) the Applicant's application under r.13 in relation to the costs of the hearing on 9 May 2019 at which the Reserve Fund Applications were not struck out, for written reasons dated 10 May 2019 (the '**May Strike Out Costs**')

50. Both Parties have indicated an intention to consider making an application in relation to the substantive costs of the instant applications (the '**Substantive Proceedings Costs**')

51. The Tribunal makes the following directions for the purpose of determining the above applications. To the extent that these directions conflict with directions given previously in case 2018/249 these directions take precedence and the previous directions are set aside. The Tribunal considers that events have to some degree overtaken the previous directions and that given the number of applications the following directions are proportionate way of determining the various applications and avoiding further delay in accordance with the overriding objective. The Tribunal will list the matter for a contested hearing if the costs applications cannot be determined on the papers.

52. by 5 pm on the day 28 days after the Tribunal delivers its determination and reasons in these applications:

(i) the Applicant shall file a skeleton argument and (if so advised) a witness statement:

(a) setting out the basis for and any submissions in support of its application for the May Strike Out Costs;

(b) making any application it may have in relation to the Substantive Proceedings Costs; and

(c) responding to the Respondents' application in relation to the Electrical Works Proceedings Costs; and

(ii) the Respondents shall file a skeleton argument and (if so advised) a witness statement:

(a) setting out the basis for and any submissions in support of their application for the Adjourned January Hearing Costs; and

(b) making any application they may have in relation to the Substantive Proceedings Costs;

53. by 5 pm on the day 21 days after receipt of documentation in accordance with paragraphs 51(i) or (as applicable) (ii):

(i) the Applicant shall file and serve a skeleton argument and (if so advised) witness statement confined to responding to the issues raised by the Respondent in relation to:

(a) the Adjourned January Hearing Costs; and/or

(b) the Substantive Proceedings Costs; and

(ii) the Respondents shall file and serve a further skeleton argument and (if so advised) witness statement confined to responding to the issues raised by the Applicant in relation to:

(a) the May Strike Out Costs; and/or

(b) the Substantive Proceedings Costs;

54. the Panel will duly convene to consider the questions of costs and will either determine the issue of costs of the papers or, if not satisfied that such a course is appropriate, will give directions for the listing of an oral hearing.

Name: Tribunal Judge Mullin **Date:** 23rd October 2019

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

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

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (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).