FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AG/LSC/2019/0132** **LON/00AG/LSC/2019/0238**
Property	**:**	**Flats 26 and 28 St Stephens Close, Avenue Road, London NW8 6DB**
Applicant	**:**	**St Stephens Close (Residents Association) Limited**
Representative	**:**	**Ms Iris Ferber (Counsel)** **Brethertons LLP (Solicitors)**
Respondent	**:**	**Faulkner Investments Limited (1)** **Little Rock Property Incorporated (2)**
Representative	**:**	**Mr Adel Nassif (Director of both respondents)**
Type of Application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	**:**	**Mr J P Donegan (Tribunal Judge)** **Mr J F Barlow FRICS (Valuer Member)** **Mrs J A Hawkins (Lay Member)**
Date and venue of Hearing	**:**	**09 October 2019** **10 Alfred Place, London WC1E 7LR**
Date of Reviewed and Amended Decision	**:**	**14 January 2020**

REVIEWED AND AMENDED DECISION

The Tribunal has reviewed its decision dated 22 November 2019 ('the Decision') under rule 53 the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and has exercised its powers under rule 50 to correct accidental slips at paragraphs 8, 29, 30 and 82 of the Decision. The Tribunal has also made a consequential amendment to paragraph (3) of the Decision. The corrections and amendment are underlined.

Decisions of the tribunal

(1) The tribunal makes the determinations set out at paragraphs 64, 65, 84, 95, 96, 97 and 105 of this decision.

(2) The respondents' application for an order under section 20C of the Landlord and Tenant Act 1985 ('the 1985 Act') is refused.

(3) The applicant must notify the tribunal whether the claims for ground rent, interest and costs have been agreed, by 31 January 2020. If not, these issues will be listed for hearing before Judge Donegan sitting as a judge of the county court.

The background and procedural history

1. These proceedings concern Flats 26 and 28 St Stephens Close, Avenue Road, London NW8 6DB ('the Flats'), which have been amalgamated to form one unit but which are held on separate leases. The first respondent ('R1') is the leaseholder of Flat 28 and the second respondent ('R2') is the leaseholder of Flat 26. The two respondent companies are linked and Mr Nassif is a director of both.

2. The applicant company is the freeholder of 1-48 St Stephens Close ('the Building'), which is a substantial development of purpose-built flats adjacent to Primrose Hill. The shareholders in the company are the various leaseholders at the Building, including R1 and R2. The Development is managed by Rendall & Rittner Limited ('RRL'), on behalf of the applicant.

3. The proceedings started life in the county court. The applicant issued two claims for unpaid ground rent, administration charges and service charges in October 2018. In the case of Flat 28 ('the First Case') the applicant claimed arrears of £15,490.91 plus interest and costs. A defence was filed by R1, drafted by RIAA Barker Gillette (UK) LLP Solicitors ('RBGL') and the First Case was transferred to the tribunal by an order of District Judge Murch dated 15 March 2019.

4. A separate claim was made for Flat 26 ('the Second Case'), with the applicant seeking arrears of £31,184.22 plus interest and costs. A defence and counterclaim was filed by R2, again drafted by RBGL and the applicant subsequently filed a reply and defence to counterclaim. The Second Case was transferred to the tribunal by District Judge Murch, in an order dated 23 May 2019.

5. In both cases the costs claimed were 'contractual costs', said to be payable under the respective leases. It appears from the county court

documents that RBGL ceased acting for the respondents in or about March 2019.

6. R2's counterclaim arose from water ingress to Flat 26, which is said to be a breach of clause 2 of the fifth schedule to the lease. R2 claimed an estimated sum of £9,500 for anticipated repair costs and reserved the right to amend its counterclaim if the actual costs proved to be higher. In its defence to counterclaim, the applicant put R2 to strict proof of various matters including when the water ingress took place, the cause and effect of the ingress and the cost of carrying out any repairs. It also denied any breach of the lease.

7. The First Case was listed for an oral case management hearing before Judge Carr on 04 June 2019. That hearing was adjourned to enable the applicant to issue further proceedings for post-issue arrears and with a view to consolidating both cases.

8. Directions were issued at a further case management hearing on 09 July 2019. The cases were consolidated by paragraph 4 of those directions and were listed for hearing on 10 October 2019.

9. At paragraph 6 of the directions, Judge Carr identified the following issues for determination:

- *In relation to claim (1) the reasonableness and payability of service charges, administration charges and ground rent totalling £15,490.91 demanded from 1st January 2016 to date;*

- *In relation to claim (2) the reasonableness and payability of service charges, administration charges and ground rent totalling £31,184.22 demanded for service charge years 1st January 2016 to date;*

- *In particular the respondent challenges the reasonableness and payability of administration charges relating to legal fees;*

- *In addition the respondent claims that service charges should be reduced because of damage to the property in 2015 resulting from a failure to repair the exterior of the structure properly. The respondent estimates that that the cost of repair (including the costs of repointing) total £33,000.*

- *whether an order under section 20 of the 1985 Act should be made*

- *whether an order for reimbursement of application/hearing fees should be made*

10. The directions made no mention of any further proceedings involving the parties and the tribunal assumes these have not being issued or are being pursued separately.

11. Both cases include some claims that fall outside the tribunal's jurisdiction; being ground rent, interest and costs. However, judges of the First-tier Tribunal are now also judges of the county court by virtue of section 5(2)(t) and (u) of the County Court Act 1984 (as amended). Paragraphs 8 and 9 of the directions explained that the judge would decide all issues, including those outside the tribunal's jurisdiction.

12. Direction 1 required the respondents to serve their case by 09 August 2019, to include a statement setting out its "*argument in full*", the relevant service charge provisions in the lease and any legal submissions.

13. Direction 4 provided "*If any party wishes to rely on expert evidence, they must apply to the tribunal for permission to do so*". No such application was made.

14. The relevant legal provisions are set out in the appendix to this decision.

The leases

15. The original lease of Flat 26 was granted by Hipparchus Limited ("the Lessor") to Samuel Judah Birn and Doris Birn ("the Lessee") on 29 September 1970, for a term of 99 years from 25 March 1970. A supplemental lease was granted by the applicant to R2 on 17 September 1996. This was granted on identical terms to the original, save as expressly varied. One of the express variations was a new term of 999 years from March 1996.

16. The original lease of Flat 28 was granted by Hipparchus Limited ("the Lessor") to Sir Andrew McFadyean and Lady Dorothea Emily McFadyean ("the Lessee") on 30 April 1971, for a term of 99 years from 25 March 1970. A supplemental lease was granted by the applicant to R1 on 10 July 1996. Again this was granted on identical terms to the original lease, save as expressly varied and one of the variations was new term of 999 years from March 1996.

17. The relevant provisions are all in the original leases, which are in similar terms. The Lessee's covenants are at clause 3 and include obligations:

> *"(5) To keep clean open and repaired and maintained all such pipes wires cables and sewers and ducts (except central heating) solely used to provide services to the demised premises and in particular but*

without prejudice to the generality of the foregoing as to as prevent damage by escape of water

…

(9) To pay all costs charges and expenses incurred by the Lessors in the preparation and service of any notice under Section 146 and 147 of the Law of Property Act 1925 notwithstanding that forfeiture is avoided otherwise than by relief granted by the Court

…

(15) To pay without deduction to the Lessor in every year the proportion specified in Part 1 of the First Schedule hereto of the total sum expended by the Lessor in fulfilling its obligations in respect of the matters referred to in the Fifth Schedule hereto such sums to be paid in the following manner

> *(a) To pay to the Lessor on account on each quarter day in every year one quarter of the Lessees proportion for the preceding year (the first year to be estimated by the Managing Agents)*
>
> *(b) At the expiration of each calendar year to pay to the Lessor on demand the amount by which the Lessees proportion for that year exceeds the total of the instalments paid on account*
>
> *(c) If the instalments paid on account in any one year shall exceed the amount actually payable then such excess shall be credited towards the Lessees obligations for the succeeding year"*

18. The service charge proportion for each of the Flats, as specified in the first schedule, is 2.2%.

19. By clause 4 of the lease, the Lessor covenanted to perform the obligations in the fifth schedule. These obligations include:

"2. To repair maintain and renew all such parts of the building as are not repairable or maintainable by the Lessees of any flat including in particular but without prejudice to the generality of the foregoing the main structure roof the lifts the external gardens and grounds and to re-decorate the exterior when in the opinion of the Lessor this is required

3. To insure and keep insured the building against Public and Third Party liability loss or damage by fire explosion storm lightning

tempest earthquake aircraft in peace time and things dropped therefrom the risk of explosion and damage in connection with the boilers and heating apparatus and all plants associated therewith riots civil commotions malicious damage bursting and overflowing of water tanks pipes and apparatus three years loss of rent and such other risk as the Lessor may think fit in such Insurance Office of repute in the full value thereof including an amount to cover professional fees and other incidentals in connection with the reinstatement of any insured damage and the insurance of all fixtures and fittings plant and machinery maintainable by the Lessor against such risk as are usually covered by a Comprehensive policy but subject to all normal and usual exclusions

...

15. To do all other such acts and things as the Lessor shall consider necessary for the management and care of the building and the comfort safety and convenience of all the occupiers thereof"

The hearing

20. The full hearing of both cases took place on 10 October 2019. Ms Ferber appeared for the applicant and was accompanied by Mr Richard Daver, who is the managing director of RRL and a Fellow of the Royal Institution of Chartered Surveyors. Mr Nassif appeared on behalf of both respondents. Mr Daver and Mr Nassif both gave oral evidence with the former speaking to a witness statement dated 22 August 2019 and the latter speaking to an undated statement. Their evidence was thoroughly tested, both in cross-examination and questioning from the tribunal.

21. The applicant produced a hearing bundle (two volumes), which included copies of the claim forms, statements of case and orders from the county court proceedings together with the directions, statements of case and witness statements from the tribunal proceedings.

22. At the start of the hearing, the judge explained that the tribunal members would collectively hear the issues within its jurisdiction. He would then hear the remaining issues on his own, sitting in his capacity as a county court judge. Ms Ferber identified the tribunal issues as the payability of the administration and service charges. She accepted that R2's counterclaim also fell within the tribunal's jurisdiction, if it was limited to a set-off against the administration and service charges claimed for Flat 26. The claims for ground rent, interest and costs are issues for the county court.

23. The Judge also clarified the issues to be determined by the tribunal. Mr Nassif explained that some of the administration and service charges

were disputed on the basis they are not contractually recoverable under the leases. In relation to Flat 26, R2 also seeks to set-off its counterclaim against the recoverable charges.

24. There was then some discussion regarding the quantification of the counterclaim. R2 had claimed an estimated sum of £9,500 in the counterclaim filed with the county court. This figure had increased to £33,000 by the time of the case management hearing in July 2019. However, there was no explanation of how either figure had been calculated and Mr Nassif's statement did not address quantum or identify any specific losses suffered by R2.

25. On questioning from the tribunal, Mr Nassif stated that £33,000 represented the estimated cost of making good the damage to Flat 26 and that he had various documents to support this figure. However, these were not referred, or appended, to his statement and were not included in the hearing bundle. Mr Nassif also stated that the figure of £9,500 had been suggested by R2's former solicitor, with a view to limiting the court fee on filing the counterclaim. The Judge queried if Mr Nassif wished to make an application to rely on the further documents. Unsurprisingly; Ms Ferber stated that any such application would be opposed. After some deliberation, Mr Nassif stated that R2 would limit the counterclaim to the original £9,500 figure and would not seek to adduce the further documents. Given this figure is substantially less than the administration and service charges claimed for Flat 26 (£31,184.22) the tribunal was able to determine the counterclaim as a potential set-off.

26. The hearing was listed for one day but this proved insufficient. The tribunal issues took up the full day, concluding at 4.20pm. The tribunal reconvened on 08 November 2019, in the absence of the parties, to decide these issues. A further hearing will be required to determine the county court issues, if not agreed.

27. During the course of the hearing, the tribunal was referred to ground rent and service charge statements appended to the county court particulars of claim. These revealed that £455 had been charged to each Flat in November 2014, seemingly for court fees paid by the applicant's former solicitors (Guillaumes LLP).

28. Following the hearing, the tribunal wrote to the applicant's solicitors asking for clarification and copies of the statements of case and orders from any previous court proceedings. These documents were produced on 07 November 2019 and were of considerable assistance. They revealed that two sets of proceedings had been issued in the County Court Money Claims Centre ('the 2014/15 Proceedings') and default judgments had been entered on 10 January 2015. In the case of Flat 26, the amount of the judgment was £5,669.32. The amount of the judgment for Flat 28 was £7,336.74. In both cases, the applicant

claimed ground rent, administration and service charges covering the period 24 June to 30 October 2014 plus interest and contractual costs.

29. The ground rent and service charge statements included credits of £5,246.03 (Flat 26) and £6,875.03 (Flat 28), which appear to be partial payment of the judgments.

30. The judgments are significant in that the ground rent, administration and service charges for the period 24 June to 30 October 2014 have already been determined in the county court, as have the court fees on issuing those proceedings. It follows that the tribunal has no jurisdiction to determine the administration and service charges for this period, or the court fees, by virtue of section 27A(4)(c) of the 1985 Act. The judgments are also significant, as they reveal that that the 2014/15 Proceedings were not contested by the respondents. This is considered further at paragraphs 76, 86 and 98, below.

The issues

31. In their defences, the respondents disputed their liability to pay specific administration and service charges. It follows that the tribunal must determine the payability of these specific charges. In the case of Flat 26, it must also determine R2's counterclaim.

32. Two concessions were made during the course of the hearing. Firstly, Ms Ferber accepted that a sum of £5,000, charged to Flat 26, was not payable as a service charge. This item represents the excess payable on a buildings insurance claim for water damage to Flat 25. This was said to have been caused by a burst pipe in Flat 26. The excess was charged solely to Flat 26; rather than the Building as a whole. The tribunal queried the basis for the charge and whether there was provision for this in the lease. Following a short adjournment, Ms Ferber advised that this item was withdrawn as a service charge but may be resurrected as a claim for breach of the covenant at clause 3(5) of the lease.

33. The second concession was made by Mr Nassif and relates to an end of year service charge deficit of £578.73 for 2007, charged to Flat 26 on 28 July 2008. R2 had disputed this item and requested further information in its defence. During cross-examination Mr Nassif stated that it was no longer challenged.

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

The counterclaim set-off for Flat 26

35. The counterclaim arises from water ingress in the sitting room in Flat 26. R2 claims that the ingress was caused by the applicant's failure to maintain and repair an external wall in breach of clause 3(5) of the lease. It also claims that the ingress damaged the internal walls and an area of parquet flooring.

36. By way of background, the exterior of the Building was redecorated in 2013/14. The contract administrator for this work was Cardoe Martin Limited, which later changed its name to Cardoe Martin Burr Limited ('CMBL'). In late 2014 R2 reported water damage to the sitting room to RRL. CMBL was instructed to investigate and inspected on 06 February 2015. It produced a report dated 03 March 2015, which included the following findings:

"*2.1* *Water Penetration Below the Sash Window to the Left Hand Side of the Living Room*

At the time of the inspection, there was evidence of damp penetration below the window sill on the left hand side of the balcony doors, high readings were taken with a damp meter and paintwork was peeling off the wal.

Damp staining was also present on one same wall.

Access could be arranged via the balcony to inspect the external brickwork where it was found the mortar between the brickwork and external window sill was defective and cracking was noted.

This is the most likely cause of water ingress in this location.

2.2 *Water Penetration to the Right Hand Side Sash Window from the Balcony Door*

Two hairline cracks could be seen below the internal window sill, the one nearest the window was approximately 200mm in length running vertically down towards the floor. The second crack was between the boxing of the radiator and the wall below the window sill, this crack was approximately 400mm in length. Both of these cracks had slight discolouration, possibly attributed to water ingress from the external wall.

External wall there was cracking to the mortar fillet below the external window will. This is most likely the cause of water ingress into the property in this location.

2.3 *Wooden Floor Staining opposite Left Hand Side Sash Window*

The discolouration to the wooden flooring leads from the radiator to approximately 800mm in to the room and is apparent leading right up to the balcony doors. It then leads from the balcony approximately 1m away from the balcony doors. Although discoloured, the worst affected area was below the plant pot which had to be moved to carry out the inspection, this plant pot could also be attributing to the staining as well as warping the floor slightly.

The warped wooden flooring leads away from the radiator covering below the left hand side sash window and covers an area of approximately 2.5 sq.m. At the time of the inspection, the protimeter recorded low readings when testing the wooden flooring indicating that it is currently dry."

37. CMBL recommended raking out the defective mortar between the brickwork and external window sills and repointing. It also recommended an inspection of the parquet flooring by a specialist flooring contractor to ascertain whether it could be refurbished.

38. On 25 September 2015, Juan Zuleta (a property manager for RRL) sent an email to Mr Nassif, which included the following:

"*Further to Cardoe Martins report in reference to the damaged to your flooring, one of our contractors has been to site and quoted for the necessary repairs. I understand from Cardoe Martin Burr that you are looking to replace the flooring, as a result, you rather (sic) have a contribution towards the replacement cost.*

In order to get matters finalised, can you please let me know what sort of contribution you are looking for?"

39. Mr Nassif responded on 29 September 2015, in the following terms:

"*It is about time to hear from you regarding the damage. Before we discuss any contribution I would like to see the report, the estimate and recommendation from Cardoe Martins and the quote from your contractor regarding the damage to the parquet flooring and the special paint to the walls.*"

40. A different property manager, Archi Minhas responded on 09 October 2015, saying:

"*Please note that I have now taken over the management of St Stephens Close.*

I will speak with CMB regarding the documentation you require and revert back to you."

41. The hearing bundle did not include any follow up correspondence from Mr Minhas or anyone else at RRL. Rather; the next documented development was a claim on the buildings insurance policy made in October 2016. This was investigated by loss adjusters, Cunningham Lindsey ('CL'), who wrote to the applicant on 15 December 2016, repudiating liability. They contended that the water damage was not caused by an insured peril and was due to a number of factors, including "*natural weathering and the foreseeable repetitive discharge of water from a pot plant.*" Their letter also stated they had "*found no evidence of ingress of water from your balcony. The areas examined, including the damaged parquetry floor, were devoid of any moisture.*"

42. CL also produced a synopsis, the main body of which is set out below:

"The date of loss is given as 3rd July 2016.

During our interview with the Claimant he stated he had the same problem previously, but did not state how long ago or when. He stated that he previously had the wooden floor blocks sanded and resealed. He also stated the floor blocks cannot be sanded again because of the nails holding them in place. Later during the interview, we asked the Claimant how long he had been suffering with the problem in its current status; he responded by stating 'three years'/

Using a moisture meter, we checked the apparently affect area of moisture levels. There was no reading whatsoever. Therefore, there is no moisture in the floor or the internal walls.

A physical examination to the walls revealed no damage that is consistent with water, long term or recent. The physical damage present on both the inside walls and the external areas of the doors and windows is consistent with 'sun damage' – weathering.

The damage to the floor parquetry is certainly not of a recent nature. It is also evident that that the internal window sill and skirting had been repainted during the part two to three years, light paint splatter being visible on the surface of the parquetry. This in itself strongly indicates the problem is not of a recent nature.

We then noticed a pot plant which was consistently hampering our examination. On the floor adjacent to the pot plant is a mark consistent with continual water seepage from the pot plant. The pot does not have a tray. The floor slopes away from the pot plant towards the most visible 'damage'.

We subsequently telephoned the managing agent to advise of our findings. We were informed that they had appointed a surveyor prior to our involvement, who had also stated that the area was dry and the most probably cause was the pot plant."

43. CL also relied on a photograph, which shows an area of circular damage to the parquet floor by the left hand window and the direction of the floor slope. It also shows other areas of staining to the floor.

44. Mr Nassif was dissatisfied with CL's decision and took the matter up with RRL. Various emails were exchanged and RRL staff explained they were not responsible for the decision and suggested he take the matter up with CL direct. Copies of the emails were exhibited to Mr Daver's statement. It is unclear whether Mr Nassif followed this suggestion but there has been no reversal of the decision and no payment from the insurers.

45. Copies of various emails were exhibited to Mr Daver's statement, including one from Mr Ben Jarvis of RRL to Mr Nassif dated 28 June 2017. This relayed the following pertinent comments from a Mr Craig White of CMBL:

"*As requested I have provided you with an email response following our joint inspection on Thursday 8th June.*

During the assessment the wall area behind the radiator was assessed where it was found that the area had previously been affected by water ingress from the external side of the wall. The wall was tested using a protimeter where the wall was found to be dry and there was no live water ingress at the time of the survey. It was noted during the inspection that there was a small hole in the surface of the wall behind the radiator and the historic staining was covering this area. However, there was no hole present on the external side and all pointing and brickwork in the area appeared to be in satisfactory condition. The previous works done to the balcony also appeared to be in satisfactory condition.

The resident has a long standing issue with water damage to the parquet flooring which is facing the area of defective wall behind the radiator. I have checked historic reports and the there are no photos of the wall behind the radiator where based on the photos I have seen, although the boxing around the radiator was opened up, the radiator was not removed so the area behind was not assessed to confirm as to whether this was an issue

As all sources of potential water ingress (i.e defective mortar to brickwork and underneath window, defect to balcony surface, issue with leaking plant) are rectified, it is difficult to ascertain beyond

reasonable doubt as to which item was the cause of the damage at this late stage and as the issues of the plant and the balcony have already been rectified it cannot be tested to confirm."

46. It is unclear when the repairs were undertaken. The synopsis from CL suggests that external and internal repairs had been completed by the time of their inspection (in late 2016). In his oral evidence, Mr Daver referred to external repairs in 2015 but this date was disputed by Mr Nassif. The tribunal was not referred to any invoice or quotation for 2015 repairs. Rather, it was only referred to invoices from 2016 and 2017.

47. Exhibited to Mr Nassif's statement was an email from Mr Derek Strand of RRL, dated 30 November 2016, stating that contractors had been instructed "*to undertake the works to the windows either side of your French doors in 26 and under the sill of the French doors themselves*." Also exhibited to the statement was an invoice from the contractors, Cite Construction ('Cite'), dated 20 January 2017 and numbered STSTEP01. This was addressed to Flat 26 but gave no name. The amount was £3,790 plus VAT and the narrative simply reads "*Invoice for works to balcony as per quotation*". The quotation was not exhibited.

48. A further invoice from Cite was exhibited to Mr Daver's statement. This was addressed to Mr Nassif at Flat 26, dated 22 March 2017 and numbered STSTEP04. The amount of the invoice was £2,895 plus VAT and the narrative refers to removal of existing pointing and re-pointing the affected areas of brickwork, applying a waterproof seal, carting away debris and removing and reinstating furniture. This appears to relate to external and internal repairs.

49. Also exhibited to Mr Daver's statement was a copy letter from Cite to RRL dated 21 August 2019, reading:

"In regards to our email correspondence I can confirm the works associated with our invoice STSTEPH04 were instructed by Mr A Nassif of 26 Stephens Close and that the invoice was sent directly to him for it be forwarded onto yourselves for payment. The invoice still remains unpaid."

50. Mr Daver was cross-examined on the internal repairs. He thought these had also been undertaken in 2015 but this was disputed by Mr Nassif. The CL synopsis suggests that some internal repairs had been undertaken by the time of their inspection in late 2016. Their photograph shows the skirting and wall below the left window in good condition. On questioning from the tribunal, Mr Daver stated that the applicant would make good any outstanding, internal damage to the walls. In his closing submissions, Mr Nassif accepted there had been "*some internal protection to the wall*" in 2017.

51. Various photographs were exhibited to Mr Nassif's statement. These are not dated but appear to have been taken at various times, as they show differing degrees of mould and staining to the parquet flooring. The photograph at page 135H of the bundle shows severe black mould/staining to the floor adjacent to the left hand window and black mould/staining on the skirting, radiator housing and wall. The photograph at 135G shows lesser mould/staining to the floor and the skirting is clean. Those at 135B-D and I show limited staining and the skirting is clean. It appears that the tiles and skirting were cleaned (and possibly the tiles were sanded) after 135G was taken.

52. R2 holds the applicant responsible for the water damage to the internal walls and the parquet flooring. In his statement, Mr Nassif alleged that RRL was responsible for the delay in submitting the insurance claim and blamed this on the high turnover of staff at RRL, resulting in a lack of continuity and follow-up, and incompetence. He suggested that the delay was a major cause in the rejection of the insurance claim. He was also critical of RRL's failure to challenge CL's decision. He believes this this was motivated by a desire to protect CMBL, who had failed to detect the defect in the external pointing when administering the external redecoration works. Mr Nassif also made the point that CMBL was now owned by RRL and was not independent. He disputed CMBL's findings in relation to the floor.

53. Mr Nassif rejected CL's suggestion that the damage to the flooring might be attributable to watering of the plant pot. They inspected two years after the original damage and after the external repairs. There had been no plant pot in the vicinity of the damage, when the damage occurred. Further, Mr Nassif disputed CL's assessment of the floor slope.

54. Mr Nassif relied on a signed a note from Mr Michael Bassett, the House Manager for the Building, dated 17 May 2017. The main section reads:

"*My name is Michael Barrett and I have been employed as the House Manager at St Stephens Close for over 7 years. I am writing this statement to inform you of the following:*

1) *Is that the first time I investigated the flooring by the balcony doors, in the living room of the flat 26, was over 3 years ago.*

2) *Mr Nassif, the owner and I had to move a large sofa to look at the flooring.*

3) *Also, I must inform you, that there was no plant pot in the vicinity of the sofa or near the balcony at that time.*

55. In cross-examination, Mr Nassif accepted that the water penetration through the external walls occurred in late 2014 and early 2015. He also accepted that Mr Barrett's initial investigation of damaged flooring must have been before May 2014, given the terms of paragraph 1 of the note. However, he was adamant that the damage was caused by penetrating damp. There was no other conceivable cause and no plant in the vicinity (at that time).

56. Mr Nassif also alleged double standards and bias on the part of RRL and contrasted this with their approach to the leak into Flat 25. Various sums have been charged to Flat 26, arising from the leak, which R2 disputes. Mr Nassif suggested it was not for RRL or the applicant "*to collect third party claims money*".

57. In its counterclaim, R2 sought the cost of repairs arising from the water ingress, estimated at £9,500. There was no claim for loss of amenity. In his witness statement, Mr Nassif sought various remedies including a finding that the applicant and RRL were "*RESPONSIBLE FOR THE WATER DAMAGE COST*". However, this cost was not quantified and there was documentary evidence of repair costs. In his oral evidence, Mr Nassif stated that the actual costs would be in the region of £31,000-32,000.

58. R2 did not provide any expert evidence to establish the cause of the damage to the parquet flooring. The applicant's solicitors suggested the appointment of a joint expert but then decided it would serve no purpose, given the passage of time. Various repairs had been undertaken and the floor is now dry, meaning it is no longer possible to determine the cause of the damage.

59. The applicant disputed both liability and quantum. As to liability, it relied on the CMBL report and the CL letter, photograph and synopsis. At the time of CMBL's inspection in February 2015 there was dampness in the walls but the floor was dry. This suggests the parquet damage was not caused by the defects in the external mortar. In Mr Daver's opinion, overwatering the plant shown the CL photograph could have caused the damage shown in that photograph. On questioning from the tribunal, he said Mr Zuleta was trying to be helpful when asking what contribution was being sought for the floor repairs (in his email of 25 September 2015).

60. Mr Daver blamed Mr Nassif for the the delay in submitting the insurance claim. In his statement he explained that the first intimation of a claim was an email from Mr Nassif to Mr Strand of RRL dated 26 July 2016, which included an estimate to repair the damage to the floor. This email was not exhibited to his statement.

61. In cross-examination, Mr Daver acknowledged that CMBL is now a subsidiary of RRL. The purchase took place in April 2015, after CMBL's

inspection and report. CL were appointed by the applicant's insurers and have no business association with RRL.

62. In closing, Ms Ferber stressed that the burden of proving the set-off was on R2. She submitted there was no evidence the applicant was responsible for the damage to the flooring. The CMBL report suggested the opposite, as it identified different moisture levels in the walls and floor and this was reinforced by CL's findings. Ms Ferber invited the tribunal to prefer Mr Daver's evidence on the timing and extent of the repairs, suggesting that Mr Nassif was not a credible witness.

63. As to quantum, Ms Ferber referred to the absence of any valuation. The pleaded figure of £9,500 was artificial, unreliable and "*based on nothing*". In the absence of proper valuation evidence, the set-off must fail.

The tribunal's decision

64. The counterclaim is dismissed.

65. No sum is to be set-off against the administration and service charges payable for Flat 26.

Reasons for the tribunal's decision

66. The defence to counterclaim put R2 to strict proof of various matters, including when the water ingress took place, the cause and effect of the ingress, how the ingress resulted from a breach of the lease and the cost of carrying out any repairs.

67. Based on the CMBL report, the tribunal finds there was water ingress to the internal walls in the sitting room in late 2014 and early 2015 and this was caused by defective mortar below the external sills. This was investigated promptly and the tribunal accepts Mr Daver's evidence that external repairs were undertaken in 2015.

68. The water ingress to the internal walls, on its own, does not amount to a breach of paragraph 2 of the fifth schedule to the lease. Rather; R2 would need to establish a failure to repair, maintain and renew the external walls. There was no evidence of this. In particular, there was no evidence of who was responsible for the defective mortar, how long it had been defective or how and when the damage was reported to RRL.

69. R2 has not proved how the water ingress resulted from a breach of the lease. Further, it has not produced any evidence of loss suffered as a result of the ingress. There was no pleaded claim for loss of amenity

and no evidence of such loss. Rather; R2 only sought the cost of repairs but produced no evidence of these costs.

70. It is unclear when the floor damage occurred. Based on Mr Bassett's note, there was damage to the parquet flooring by May 2014 whereas Mr Nassif's evidence was that the damage occurred in late 2014. The various photographs in the bundle show differing degrees of mould and staining to the floor but they were all undated. Those at pages 135G and H appear to show water ingress spreading from the wall and radiator housing to the floor but the tribunal cannot say when they were taken.

71. The tribunal accepts the contents of the CMBL report, as a contemporaneous record of the extent and cause of the water ingress. In particular it accepts the floor was dry at the time of the February 2015 inspection. The different moisture levels in the floor and walls suggest different causes.

72. CMBL is an RICS regulated practice and there was no expert evidence or other reports to challenge its findings. The fact that CMBL was subsequently acquired by RRL is not enough to discredit the report.

73. The CL letter and synopsis are of little evidential value, as they inspected more than two years after damage to the floor and external and internal repairs had already taken place. Their photograph shows a circular mark on the floor that might be attributable to the plant pot but also shows separate, staining adjacent to the wall. This separate staining might have been caused by water ingress through the wall but this is not enough. R2 has not proved the cause of the floor damage or any breach of the lease.

74. As with the wall damage, there was no evidence of the cost of repairing the floor.

75. The defence to counterclaim required R2 to prove its case. The tribunal directions stated that the respondents' statement should set out its "*arguments in full*". It did neither of these things and the counterclaim fails. For the sake of completeness, had R2 proved a breach of the lease the tribunal would not have awarded any damages on the counterclaim. The tribunal disregarded the pleaded figure of £9,500, as this was an estimated sum and, based on Mr Nassif's evidence, was artificial. Further, there was no evidence of R2's losses that could be used to assess the damages.

Service charges

76. In its county court defence, R1 disputed 8 specific items in the ground rent and service charge statement for Flat 28:

19/09/2011	Recharge Flat 28 leak overflow	£120.00
15/08/2012	Investigate leak F26 & 29	£120.00
12/02/2013	Recharge to Flat 28	£127.20
12/02/2013	Recharge to Flat 28	£624.00
18/07/2014	Leak Flat 28 into Flat 25	£78.00
18/07/2014	Flat 28 No hot water	£84.00
07/08/2014	Water Leak	£1,561.00
04/11/2014	Flat 28	£455.00

The item dated 07 August 2014 was claimed in the 2014/15 Proceedings for Flat 26 and has already been determined. The same is true of the item dated 04 November 2014, which was the court fee on issuing those proceedings. The tribunal has no jurisdiction to determine either of these items, by virtue of section 27A(4)(c) of the 1985 Act.

77. The other 6 items have not been determined. R1 contends they are not contractually recoverable as service charges, under the lease and should be disallowed. They have only been billed to Flat 28 and relate to third party claims for damage to other flats. The applicant asserts that items have been paid and agreed or admitted. The ground rent and service charge statement shows various payments from Mr Nassif including one for £10,939.51 on 18 February 2016. This discharged all arrears to that date and left a nil balance on the account. The 6 items all pre-date 18 February 2016 and have, therefore been paid.

78. Mere payment of the 6 items does not mean they have been agreed or admitted. Section 27A(5) provides that a "*tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment*." Ms Ferber submitted that the frequent payments by Mr Nassif, made without reserving R1's position on liability, amounted to an agreement or admission.

79. Mr Nassif contended that the payments to RRL were made by cheque and were accompanied by copies of the relevant demands. Copies of the cheques and demands were appended to the respondent's reply. In several cases, the demands had been annotated with items crossed through. Payment of these items had been withheld. In one case, the annotation went further. On a demand dated 27 April 2016 (for Flat 26) Mr Nassif had written:

"*I am paying above under reserve because I am waiting for the last 2 years for water damage to the living room to be remedy without any result or intention from your part to take any action.*"

80. Mr Nassif submitted that the annotations demonstrated which items were agreed and which were disputed.

81. Mr Nassif was cross-examined on the payments at some length. Despite being challenged by Ms Ferber, he was adamant that the cheque payments to RRL were accompanied by annotated demands. He had also made payments to the applicant's former solicitors, Guillaumes and the current solicitors, Brethertons LLP. In the case of Flat 26, he had made payments to Brethertons of £25,000 in May 2018 and £3,000 in June 2018. He described these as goodwill payments and accepted they had not been made in full and final settlement.

82. The disputed items for Flat 26 were:

28/07/2008	Y/E 2007 Deficit	£578.73
24/11/2014	Flat 26	£455.00
13/11/2017	Flat 25	£5,000.00

The first item was agreed by Mr Nassif during the hearing. The second item has already been determined, being the court fee the 2014/15 Proceedings for Flat 26. The third item was withdrawn by Ms Ferber (see paragraph 32, above). It follows that the tribunal has no jurisdiction to determine any of these items.

83. In his statement, Mr Nassif asked the tribunal to "*ORDER THE REASSESSMENT OF THE SERVICE CHARGES.*" He also suggested that the service charge apportionments should be *"revisited after the sale of the porter flat"*. During the hearing, he accepted that the service charge proportions were fixed by the leases.

The tribunal's decision

84. The service charges claimed for Flats 26 and 28 are payable in full.

Reasons for the tribunal's decision

85. By the end of the hearing the only 'live' issue was R1's challenge to the 6 items for Flat 28. The tribunal agrees with Ms Ferber that these items have been agreed or admitted.

86. It is unnecessary for the tribunal to decide if the cheque payments were accompanied by annotated demands, as all 6 items pre-date the 2014/15 Proceedings. R1 did not challenge these items within the earlier proceedings or even defend those proceedings. This failure, combined with the payments and the absence of any express reservation, clearly demonstrates that the 6 items were agreed. It follows that the tribunal has no jurisdiction to determine these items and the service charges claimed for Flat 28 are payable in full.

87. Given that the Flat 26 challenges all fell away, it is unnecessary for the tribunal to address the annotation on the demand dated 27 April 2016. In any event, the annotation concerns the counterclaim for that flat, which has already been dismissed. The service charges claimed for Flat 26 are also payable in full.

Administration charges

88. The ground rent and service charge statements also include various legal fees, as well as administration fees levied by RRL. These cover the period to 25 July 2018 (Flat 28) and 11 January 2018 (Flat 26) and arise from non-payment of the service charges. In the county court defences, the respondents sought a determination of these charges pursuant to paragraph 5(1) of schedule 11 to the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act').

89. The disputed legal fees for Flat 28 total £6,995.97 and the disputed administration fees total £1,405.50. The totals for Flat 26 are £3,572.32 (legal) and £1,260.50 (administration). Most of these fees were charged before the 2014/15 Proceedings.

90. In his statement, Mr Nassif asked the tribunal to "*WAIVE AND IN SOME INSTANCES REDUCE ALL THE ADMINISTRATION FEES, THE INTEREST CHARGED AND THE LEGAL FEES*". He also challenged RRL's fees, as they exceeded the rate stipulated in a circulate email to leaseholders dated 13 February 2019 (£15 plus VAT).

91. Mr Nassif submitted that the administration and legal fees had not been reasonably incurred and should be reduced. The respondents had withheld part of the service charges due to the water damage in Flat 26, RRL's failings and the unauthorised charges for third party claims. This was entirely justified and there had been no need to incur the administration and legal fees.

92. Mr Nassif also suggested there had been some duplication of the administration and legal fees, as the demands and reminder letters had been in the same form for both Flats and had all been sent to Flat 26. He did not suggest any alternative figures for these fees.

93. In his statement, Mr Daver explained that RRL had recently introduced a fee of £15 plus VAT for sending a reminder letter. If the letter does not prompt payment then an additional fee is charged for referring the case to lawyers. The additional fee is currently £150 but was previously £96.

94. Mr Daver suggested that the respondents had agreed or admitted most of the administration and legal fees, by making unreserved payments. Further, he had been advised by Brethertons there had no duplication of their work. Copies of the Brethertons' invoices were exhibited to his statement.

The tribunal's decision

95. The legal fees claimed for Flats 26 and 28 are payable in full.

96. The disputed administration fees for Flat 26 are reduced by £36. The balance of £1,224.50 is payable in full.

97. The disputed administration fees for Flat 28 are reduced by £90. The balance of £1,325.50 is payable in full.

Reasons for the tribunal's decision

98. The respondents did not dispute the applicant's contractual ability to recover administration or legal fees under the lease. Most of the disputed fees pre-date the 2014/15 Proceedings and have already been paid. The tribunal finds that all fees to up to the commencement of those proceedings (November 2014) have been agreed, following the reasoning at paragraph 86 above.

99. The tribunal has already dismissed the counterclaim for Flat 26 and found that the service charges for both Flats (excluding the £5,000 concession at paragraph 32) are payable in full. It follows that it was reasonable for RRL to pursue the arrears, send reminder letters and then instruct solicitors. It was also reasonable to charge for this additional work.

100. There was no specific challenge to the amount of the legal fees. The copy invoices from Brethertons match the sums clamed in the statements and the tribunal accepts there was no duplication. It allows the legal fees, post-dating the 2014/15 Proceedings, in full.

101. The only disputed administration fees that post-date the 2014/15 Proceedings are:

Flat 26

26/07/2016	£96.00
03/05/2017	£96.00

Flat 28

26/07/2016	£96.00
09/07/2018	£18.00
25/07/2018	£150.00

102. The tribunal accepts there was some duplication in respect of the two referral fees on 26 July 2016. The work involved in referring two cases to solicitors, on the same date and with very similar facts, is not double that for referring one case. The tribunal reduces each of these fees by £36 to £60.

103. The £18 reminder fee for Flat 28 is reasonable and payable. The tribunal was not given any explanation for the increase in the referral fee from £96 (£80 plus VAT) to £150 (£125 plus VAT). This is an increase of 56.25% and, in the absence of any justification, is unreasonable. The tribunal reduces the 25 July 2018 fee by £54 to the old rate of £96.

104. The total reduction for Flat 28 is £90 and the reduction for Flat 26 is £36.

Summary

105. Having regard to the decisions at paragraphs 97 and 98 and the £5,000 concession at paragraph 32, the following sums are payable:

Flat 26	**£26,148.22**
Flat 28	**£15,410.91**

Section 20C

106. At the end of the hearing Mr Nassif applied for an order under section 20C of the 1985 Act, to limit the applicant from charging its costs to the service charge accounts for the Flats. That application was opposed by Ms Ferber. Having regard to the outcome of the case it is not just and

equitable to make a section 20C order. The applicant has succeeded on almost every point. The counterclaim has been dismissed and, save for the £5,000 concession, the service charges have been allowed in full. The respondents have secured some modest reductions in the administration charges but these only total £126. The applicant was entirely justified in pursuing the proceedings and should not be deprived of the opportunity to recover its costs from the service charge accounts for the Flats (if this is permitted by the leases).

107. There were no applications under paragraph 5A of schedule 11 to the 2002 Act or for a refund of any tribunal fees[1].

Next steps

108. This decision deals with all issues within the tribunal's jurisdiction. The remaining issues (ground rent, interest and costs) are matters for the county court and will be determined by Judge Donegan, sitting alone. The parties should endeavour to agree these issues to avoid the costs of a further hearing. If they are unable to reach agreement by 03 January 2020, the case will be listed for a further hearing.

109. The respondents may wish to seek independent legal advice upon this decision and the county court issues.

Name: Tribunal Judge Donegan **Date:** 14 January 2020

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 Tribunal 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 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.

[1] The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

4. 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.

Appendix of relevant legislation

County Courts Act 1984

Section 5 Judges of the county court

(1) A person is a judge of the county court if the person—
(a) is a Circuit judge,
(b) is a district judge (which, by virtue of section 8(1C), here includes a deputy district judge appointed under section 8), or
(c) is within subsection (2),
but see also section 9 of the Senior Courts Act 1981 (certain ex-judges may act as judges of the county court).

(2) A person is within this subsection (and so, by virtue of subsection (1)(c), is a judge of the county court) if the person—
(a) is the Lord Chief Justice,
(b) is the Master of the Rolls,
(c) is the President of the Queen's Bench Division,
(d) is the President of the Family Division,
(e) is the Chancellor of the High Court,
(f) is an ordinary judge of the Court of Appeal (including the vice-president, if any, of either division of that court),
(g) is the Senior President of Tribunals,
(h) is a puisne judge of the High Court,
(i) is a deputy judge of the High Court,
(j) is the Judge Advocate General,
(k) is a Recorder,
(l) is a person who holds an office listed—
(i) in the first column of the table in section 89(3C) of the Senior Courts Act 1981 (senior High Court masters etc), or
(ii) in column 1 of Part 2 of Schedule 2 to that Act (High Court masters etc),
(m) is a deputy district judge appointed under section 102 of that Act,
(n) is a Chamber President, or a Deputy Chamber President, of a chamber of the Upper Tribunal or of a chamber of the First-tier Tribunal,
(o) is a judge of the Upper Tribunal by virtue of appointment under paragraph 1(1) of Schedule 3 to the Tribunals, Courts and Enforcement Act 2007,
(p) is a transferred-in judge of the Upper Tribunal (see section 31(2) of that Act),
(q) is a deputy judge of the Upper Tribunal (whether under paragraph 7 of Schedule 3 to, or section 31(2) of, that Act),
(r) is a District Judge (Magistrates' Courts),
(s) is a person appointed under section 30(1)(a) or (b) of the Courts-Martial (Appeals) Act 1951 (assistants to the Judge Advocate General),

(t) is a judge of the First-tier Tribunal by virtue of appointment under paragraph 1(1) of Schedule 2 to the Tribunals, Courts and Enforcement Act 2007,
(u) is a transferred-in judge of the First-tier Tribunal (see section 31(2) of that Act), or
(v) is a member of a panel of Employment Judges established for England and Wales or for Scotland

Landlord and Tenant Act 1985 (as amended)

Section 18 Meaning of "service charge" and "relevant costs"

(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 Limitation of service charges: reasonableness

(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 20C Limitation of service charges: costs of proceedings

(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.

Section 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.

Commonhold and Leasehold Reform Act 2002

Schedule 11

Part 1

Reasonableness of Administration Charges

Meaning of "administration charges"

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.

Reasonableness of administration charges

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

…

Limitation of administration charges: costs of proceedings

5A

(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

(3) In this paragraph –

(a) "litigation costs means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and

(b) "the relevant court or tribunal" means the court or tribunal mentioned in the table in relation to those proceedings.

Proceedings to which costs relate	***"The relevant court or tribunal"***
Court proceedings	The court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, the county court
First-tier Tribunal proceedings	The First-tier Tribunal
Upper Tribunal proceedings	The Upper Tribunal
Arbitration proceedings	The arbitral tribunal or, if the application is made after the proceedings are concluded, the county court.