In the FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Tribunal Case Reference	**:**	**LON/00BE/LSC/2022/0384**
Property	**:**	**Kaleidoscope Apartments, 265 Lordship Lane, London SE22 8JG**
Applicants	**:**	**Elizabeth Davis (Apartment 1)** **Leonard & Annwen Rigby (2)** **Wai Leong Chak & Yu Lun Cheng (3)** **Vishal Mukesh Kumar Parekh (4)** **Mark Gareth Evans & Katie Elizabeth Weavers (5)** **Christopher George Chapman & Jennifer Clare Chapman (6)** **Cynthia Maryline Rousselot (7)** **James Anthony Mount Garrett Hamerton (8)** **Therese Bernadette Davis & Louise Margaret Ashley (9)**
Representatives	**:**	**Mark Gareth Evans** **Vishal Mukesh Kumar Parekh**
Respondent	**:**	**Assethold Ltd**
Representative	**:**	**Eagerstates Ltd**
Type of Application	**:**	**Payability of service charges**
Tribunal	**:**	**Judge Nicol** **Mrs F Macleod MCIEH**
Date and venue of Hearing	**:**	**19th February 2024** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**20th February 2024**

DECISION

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(1) The service charges challenged in this matter are not reasonable and payable by the Applicants to the Respondent, save as follows:

(a)The total management fee for 2022 is limited to £900; and

(b) The total fee for cleaning for 2022 is limited to £1,000.

(2) The Respondent shall reimburse the Applicants their Tribunal fees totalling £300.

(3) Further, the Tribunal grants orders under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 prohibiting the Respondent from seeking to recover any of their costs of these proceedings through the service charge or by charge to any individual Applicants.

Relevant legal provisions are set out in the Appendix to this decision.

Reasons

1. The Applicants are the lessees of the 9 flats at the subject property, which they have been managing since April 2022 through a right to manage company. The Respondent is the freeholder and their agents, who managed the property until the right to manage took effect, are Eagerstates Ltd.

2. Mr Mark Evans applied on 5th December 2022 for a determination under section 27A of the Landlord and Tenant Act 1985 ("the Act") as to the reasonableness and payability of certain service and administration charges. By later emails, the other Applicants confirmed their wish to be parties to the proceedings and for Mr Evans and Mr Vishal Parekh to represent them.

3. Judge Latham issued directions on 28th June 2023, in which he defined the issues:

- 2020 Administration charges:
  - £150 for paying by instalments
  - £120 x 2 for notice of proceedings
- 2021 Service charges:
  - £6,240 for two inspections of building façade cladding;
  - £3,600 for fire engineering consultancy;
  - £245 for repairs to a leak above a boiler flue;
  - £6,138 for emergency works to a temporary front door;
  - £540 for deep cleaning due to a fire; and
  - £438 for investigating and repairing a leak.

- 2022 Service charges:
    - £2,200 management fee;
    - £2,329 common cleaning;
    - £3,404.92 repair fund.
- 2023 Administration charge of £300 for collecting the ground rent.

4. The Tribunal heard the case on 19th February 2024. The attendees were Mr Mark Evans and Mr Vishal Parekh, representing the Applicants. No-one attended for the Respondent.

5. The documents before the Tribunal consisted of a bundle of 100 pages compiled by the Applicants.

Procedural Issues

6. The directions required the Respondent to produce their case and the documents in support by 2nd August 2023. To date, they have yet to do so. Neither have they sought more time, either from the Applicants or the Tribunal, nor sought to explain their default. Mr Ronni Gurvits of Eagerstates, as is common practice when the Respondent is a party before this Tribunal, appears to have run the litigation on the Respondent's behalf. Although he is not a lawyer, he has substantial experience of Tribunal proceedings. He both knows what procedure to use and that he ought to use it. The fact that he has failed to do so is significant.

7. The Respondent was clearly aware of the directions because Mr Gurvits sought in September 2023 to adjourn the hearing date, then listed for 13th October 2023. On 4th October 2023, the Tribunal notified the parties of the new hearing date of 19th February 2024.

8. On 20th December 2023 Mr Gurvits again sought an adjournment, this time on the basis that the hearing fell within school holidays. Judge Jack refused that application on 2nd February 2024.

9. In the meantime, the Applicants had not yet served their bundle because they had been waiting for the Respondent to serve theirs first, as required by the directions. They had notified the Tribunal of the Respondent's default and were waiting on both the Respondent and the Tribunal. In the event, on Thursday 15th February 2024 the case officer asked them to submit their bundle anyway and they did so. The Statement of Case included in the bundle made no submissions beyond what had already been said in the original application from which Judge Latham had derived the list of issues in paragraph 2 above.

10. At 9am on the morning of the hearing, Mr Gurvits emailed the case officer and Mr Evans stating,

Further to the late submission of this bundle, containing documents that we have never seen before, we are not sure how any hearing can proceed.

In any event, we have since located a copy of an ongoing claim in the county court that predates the Application. In fact, from the attached defence it appears that this application to the Tribunal was only made after the claim had been issued. As such there is no jurisdiction for the Tribunal to hear any claim. I can confirm that this matter is currently ongoing at the county court with a hearing scheduled for May 2024. A copy of the notice of trial is attached. The claim was initially issued in November 2022, with the defence being filed on the 17th December 2022, incidentally one day after the property was sold!

As such, and together with our previous applications on this matter, there is simply no way for the Tribunal to deal with this matter at present.

11. Mr Gurvits's email attached two documents, a Defence in county court form N9B from Mr Evans dated 17th December 2022 and a Notice of Hearing dated 17th October 2023 for a hearing to take place on 28th May 2024. They show the Respondent as the Claimant in an action against Mr Evans and Ms Weavers (claim number J9LM8N7W). Because Mr Gurvits did not include the claim itself, the Tribunal had to glean what it could from the Defence as to what the claim was about. According to the Defence the claim was for a sum of £6,284.42 but had no breakdown as to what that sum consisted of. The fact is that, from the documents provided by Mr Gurvits, the Tribunal had no means of working out what connection, if any, the issues in the county court claim have to do with the issues in front of the Tribunal.

12. According to Mr Evans and Mr Parekh, the court is aware of the Tribunal proceedings. The county court claim was due for hearing last year but was adjourned on Mr Gurvits's request at the same time as the Tribunal hearing. The county court then deliberately listed the court claim for a date after the Tribunal's, presumably to see the Tribunal's decision before making its own deliberations.

13. In any event, the court proceedings have clearly been going on for over a year. Mr Gurvits has a close relationship with the Respondent, demonstrated over the numerous cases in which he has represented the Respondent at the Tribunal, so it is inconceivable that he was unaware of them. Further, Mr Evans's evidence to the Tribunal is that it was Mr Gurvits himself who obtained an adjournment of the previous court hearing. This means that, if the court proceedings were any kind of obstacle to the Tribunal proceedings, he could and should have raised it much earlier. He is wrong to think that the earlier issue of the county court claim somehow precludes the Tribunal from determining the application made to it, even if the issues do overlap. When there are such parallel proceedings, both the court and the Tribunal would be concerned not to tread on each other's toes but this has already been

avoided by the sequential listing of the respective hearings. If and when the county court considers the claim, this Tribunal decision can be taken into account.

14. Further, while Mr Evans and Ms Weavers are parties to the county court case, the other Applicants are not. Mr Gurvits has given no reason as to why the other Applicants should wait until the county court claim is determined despite the fact that it has nothing to do with them.

15. As for Mr Gurvits's objection to the Applicants' documents, this is entirely irrelevant to the Respondent's defaults. According to the Tribunal's directions, the Applicants' documents were always supposed to come after the Respondent's. The late provision of the Applicants' documents has nothing to do with, and cannot possibly have caused, the Respondent to have failed to produce their own or to make timely and properly supported procedural applications.

16. As mentioned above, the Applicants' Statement of Case contains nothing the Respondent wasn't already on notice of. The rest of the Applicants' bundle consists almost entirely of documents generated by Eagerstates or sent to the Respondent by the Tribunal. There is nothing in the bundle that could possibly have caused the Respondent to alter its approach to the Tribunal proceedings. In other words, if the existing material available to the Respondent did not persuade them to engage with the proceedings or to attend the hearing, then there is nothing in the bundle which could change their mind.

17. Under rules 8(2)(e) and 9(3) and (7) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal has the power to bar the Respondent from participation in the proceedings for its failure to comply with the Tribunal's directions. The directions themselves warned of this although Mr Gurvits is already fully aware of these powers from other cases where directions made the same provision while he has both submitted and defended applications in relation to these powers. However, the real problem is that the Respondent is not participating in any meaningful sense. The more significant question concerns the existing hearing. Mr Evans and Mr Parekh attended fully prepared to proceed. The question for the Tribunal is whether to proceed in the absence of the Respondent or anyone acting on their behalf.

18. Rule 34 of the above-mentioned Procedure Rules,

> If a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal—
>
> (a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and
> (b) considers that it is in the interests of justice to proceed with the hearing.

19. The Respondent has clearly been notified of the hearing because Mr Gurvits asked for it to be adjourned. He was informed 17 days before the

hearing that his request for adjournment had been refused. It is worth noting that Mr Gurvits would already have known that a mere assertion, 2 months after listing, that a hearing fell within school holidays would not have been regarded by the Tribunal as a sufficient reason to adjourn. He has had a number of other requests for adjournment in other cases rejected because he didn't provide details of why the holiday in question was a problem and why an alternative representative could not attend in his stead. In the circumstances, it is difficult to believe that Mr Gurvits genuinely thought that his application stood any remote prospect of success. Mr Evans and Mr Parekh alleged that this was just one part of a deliberate effort to delay a definitive resolution of the Applicants' dispute with the Respondent and the Tribunal can understand why they believe that.

20. It is now close to two years since the Applicants, through their company, took on management of their building from the Respondent. The Applicants notified the Respondent of their intention to exercise their right to manage around 10 months prior to that. In all that time, despite a number of requests and, later, the Tribunal's directions, the Respondent has failed to provide information on the basis of which the Applicants could determine what sums they needed to pay to close their accounts with the Respondent. Instead, Eagerstates threatened the Applicants with legal proceedings and additional charges, as a result of which all the Applicants but for Mr Evans and Ms Weavers have actually paid the sums demanded. This case has been dragging on for far too long and, based on their failure to engage properly with these proceedings, it is clear that the blame lies entirely with the Respondent.

21. Mr Gurvits obtained one adjournment. He has then provided supposed reasons for putting off the hearing which bear no close examination. He has chosen not to attend the hearing, to explain his absence or to send someone (a colleague, a solicitor or a barrister) in his stead. Such behaviour brings both the perpetrator and the justice system into disrepute. It is clearly not in the interests of justice to permit this matter to drag on further in these circumstances. Therefore, the Tribunal decided to proceed with the hearing in the Respondent's absence. Each of the charges challenged is considered in turn below.

Administration charge for paying by instalments and for late payment

22. In 2019 Mr Evans paid his service charges by four quarterly instalments. Mr Gurvits phoned him to ask why. Mr Evans explained his position. Mr Gurvits didn't object or ask him to change his practice, nor did he suggest then or any later communication that such a practice would incur a charge. Mr Evans unsurprisingly concluded that he could continue this method of payment.

23. However, when Mr Evans sought to pay his 2020 charges by the same method, the Respondent demanded a charge of £150 to allow payment by instalment and two charges of £120 for correspondence relating to "late" payment.

24. If a lease does not permit payment by instalment or if a lessee is paying in a way that other lessees are not, then it is entirely understandable if a landlord or their agent charges for the additional administration involved. However, it is not reasonable to seek to impose charges without notice or explanation. Service and administration charges are unlikely to be reasonable if they are not transparent.

25. Mr Gurvits's behaviour led Mr Evans to think that he could continue to pay by instalments. The Respondent could and should have warned Mr Evans about the charges so that he had the option of paying without incurring such charges. It is not reasonable to have imposed the charges in the particular circumstances and so they are not payable.

Building façade cladding

26. Kaleidoscope Apartments were built by a company called LightBox and construction was completed in 2016. The building is 3 storeys high, two faced with brick and the top storey with tiling with dormer windows. The building would not appear to be one which would give rise to concern about its cladding following the Grenfell disaster and the Building Safety Act. Nevertheless, in 2021 Eagerstates purported to incur £6,240 for two inspections of the cladding.

27. Despite the fact that the cost of these inspections exceeded the statutory limit of £250, no consultation was conducted prior to the expense in accordance with section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003. The Applicants asked Eagerstates for evidence of any tendering process but none was provided. The Respondent has not sought any dispensation from the statutory consultation requirements, let alone provided any explanation for their failure to comply.

28. The Applicants asked Eagerstates to explain the charges but they received no response. They have not seen any resulting report. They asked LightBox who said that, as far as they were aware, the building was compliant with all relevant regulations.

29. Later, on 24th May 2021, an EWS1 certificate was obtained confirming that the fire risk was sufficiently low that no remedial works were required. This satisfied the Applicants' mortgagees so it is difficult to see what value the cladding inspections could provide.

30. On their face, the cladding charges are not reasonably incurred or reasonable in amount. They demand an explanation. The Respondent has had plenty of opportunity, both before and during these proceedings, to provide an explanation. They have not seen fit to do so. The Tribunal has no choice but to decide that the charges are not reasonable and so not payable.

Engineering consultancy

31. Eagerstates also purported to incur £3,600 for engineering consultancy. On the Applicants' request, they provided an invoice but no report or explanation. The Applicants asked Acorn (who were the managing agents prior to the Respondent's purchase of the property) and the RTM company's current agents, Haus, if they could think of any reason for such a report but they could not. There is no lift in the building or any other service which might appear to require an engineering consultant. Again, despite the fact that the cost of the consultancy exceeded the statutory limit of £250, no consultation was conducted.

32. Again, on its face, the consultancy charges are not reasonably incurred or reasonable in amount and they demand an explanation which has not been provided despite ample opportunity. Again, the Tribunal has no choice but to decide that the charges are not reasonable and so not payable.

Repairs to Flat 9

33. There was a fire localised in Flat 9 at a time when the lessees were absent. The Fire Brigade had to break down the door to deal with it. As a result, costs were incurred in emergency works for a temporary front door to the flat (£6,138) and deep cleaning (£540).

34. There were also costs incurred in dealing with leaks in Flat 9 (£245 and £438).

35. Eagerstates put these costs on the service charges. The Applicants queried why they were not charged to Flat 9 alone and/or why the money could not be recovered through insurance. Mr Gurvits told them that, if any money was recovered from the insurers, the lessees would be credited but that has never happened. The Applicants do not even know if there has been an insurance claim – the building insurers refused to speak to them on the basis that the policy was not in their name.

36. It is not uncommon that lessees query a charge that appears to relate to just one flat but the landlord or agent is able to demonstrate that their repairing obligations were engaged so that any resulting expenses may properly be put on the service charge. However, it is not obvious that that is the case here. While it seems entirely reasonable to have incurred a cost in carrying out the works, again an explanation is demanded in the circumstances as to why those costs were put on the service charge and/or not recovered through an insurance claim.

37. Further, there may be a good excuse arising from the urgency of the situation as to why the Respondent did not consult in relation to the front door works, despite the cost being high enough to engage the statutory requirements, but, again, there is no application for dispensation.

38. Yet again, in the absence of any explanation from the Respondent, despite sufficient opportunity to provide one, the Tribunal has no real choice but to hold that these charges are not reasonable or payable.

Management fee

39. In 2022 Eagerstates were only responsible for managing the property for 4 months out of the 12 prior to the handover to the RTM company. In relation to their management fees, they had estimated that they would incur a charge of £2,700 for the year. Given that it turned out that they managed for only one-third of that year, the Applicants expected that the actual charge would be no more than one-third of the estimate, namely £900. The handover to the RTM company's agents might have been expected to incur additional work save that Eagerstates charged a separate £600 for that and, in any event, have neither been in contact with Haus nor handed over any remaining service charge monies they happen to hold.

40. Neither the Applicants nor the Tribunal can understand why Eagerstates have sought to charge as much as £2,200.20 in management fees for the four months of 2022. Mr Evans said that the Applicants would be willing to pay £900 although there are arguments based on the quality of service as to why it should be lower. In the circumstances, the Tribunal has decided that a reasonable management fee for 2022 would be no higher than £900.

Cleaning

41. The charge in 2022 in relation to cleaning is subject to similar criticism. It was budgeted at £3,000 but the actual charge was £2,329.30 rather than the expected figure of around one-third, namely £1,000. Again, Mr Evans said the Applicants would be willing to pay £1,000 despite evidence from CCTV cameras that the cleaners spent most of their time in their vehicles eating food rather than actually doing any cleaning.

42. Again, in the absence of anything from the Respondent, the Tribunal is satisfied that a reasonable cleaning charge for 2022 would be no more than £1,000.

Repair fund

43. In the 2022 account, Eagerstates charged £3,404.92 for "Repairs & Maintenance". While this is a common charge in service charge accounts generally, the Applicants had not seen it in their accounts before and asked Eagerstates for an explanation, including any relevant invoices. Again, Eagerstates had the opportunity but have provided neither an explanation nor any invoices. The Applicants are not aware of any repairs or maintenance that were carried out to the building.

44. Again, the Tribunal is left with no real choice but to decide that the charges for "Repairs & Maintenance" are not reasonable or payable.

Administration charge for collecting the rent

45. In the most recent financial year, 2023, Eagerstates have purported to levy an administration charge of £66 per flat for collecting the ground

rent. This would seem to the Tribunal to be a liability of the Respondent, the beneficiaries of the collection. The Tribunal knows of no basis on which it would be appropriate to charge the Applicants for whom Eagerstates are not the agents. In the Tribunal's opinion, this administration charge is not reasonable and so not payable.

Costs

46. In their application, the Applicants sought three orders in relation to costs:

(a) The Applicants paid a fee to the Tribunal of £100 for their application and £200 for the hearing. They have been incurred due to the Respondent's failure even to try to justify the service charges they sought to impose. The Tribunal is satisfied that it is appropriate to order the Respondent to reimburse the Applicants the total sum of £300.

(b) The Applicants sought an order under section 20C of the Landlord and Tenant Act 1985 to prohibit the Respondent from seeking to recover any costs incurred in the proceedings through the service charge. It is not clear, given their lack of participation, that the Respondent did incur any costs. In any event, given the Respondent lack of engagement in the proceedings, it would be neither just nor equitable to allow them to recover anything and so the Tribunal makes the order.

(c) Further, the Applicants sought an order under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 prohibiting the Respondent from seeking to recover any costs incurred in these proceedings by direct charge to one or more of the Applicants. For the same reasons as those for the section 20C order, the Tribunal grants the order.

Name: Judge Nicol **Date:** 20th February 2024

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 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.

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.

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).

Schedule 11, paragraph 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.