FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/22UH/LSC/2023/0059**
Property	**:**	**123 Blackthorn Road, Ilford, Essex, IG1 2PZ**
Applicant	**:**	**The Parks (Ilford) Management Company Limited**
Representative	**:**	**Mr Robert Jones, Counsel instructed by Brady Solicitors**
Respondent	**:**	**Ayodele Oluwayemisi Bello**
Representative	**:**	**Ayodele Oluwayemisi Bello**
Type of application	**:**	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	**:**	**Judge Adcock-Jones** **Ms Redmond MRICS**
Venue	**:**	**Via CVP**
Date of hearing	**:**	**20 March 2025**
Date of decision	**:**	**24 March 2025**

DECISION

Decisions of the Tribunal

(1) The Tribunal determines that the sums payable by the Respondent in respect of service charge years 2015 to 2022 inclusive are as set out below.

(2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 ("the 1985 Act") and 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

(3) The Tribunal dismissed the application to make an order under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Tribunal Rules") in respect of reimbursement of the Applicant's Tribunal fees.

The Application

1. The Applicant is the management company for the block within which the premises is situated pursuant to section 27A of the 1985 Act that the service charges are payable in respect of the service charge years from 2015 to 2022.

2. The Respondent sought an order to off-set £699.00 against asserted over paid service charges.

3. The Respondent sought an order to limit the recovery of the Applicant's costs of the proceedings through any service charge and/or administration charges pursuant to section 20C of the Landlord and Tenant Act 1985 ("the 1985 Act") and 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

4. The Applicant sought an order under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Tribunal Rules") in respect of reimbursement of the Applicant's Tribunal fees.

The Hearing

5. A remote hearing was held by CVP video. The Applicant was represented by Mr Robert Jones of Counsel and Ms Beste Dincer, solicitor for Red Rock Estate & Property Management Ltd ("Red Rock") and the Respondent represented herself.

6. The approach taken by the Tribunal was to examine each disputed service charge item in turn with the parties addressing the Tribunal on each item with their clients' position. Witnesses were not formally called,

although all parties helpfully assisted the Tribunal in answering any additional questions or providing further information during the hearing.

7. A member of the public wished to attend to observe proceedings. This observer was not known to the parties and in accordance with Rule 33 of the 2013 Rules which provides that all hearings are to be held in public unless directed otherwise, the observer was permitted access to the hearing and did not take part in the hearing.

The Background

8. On 5 April 2022, the Applicant issued proceedings in the County Court claiming £4,770.46. The particulars of claim indicate this is made up of arrears of £2,901.67 plus interest and contractual costs.

9. The Respondent filed a defence which disputed the full amount claimed and referred to a water charges dispute. The claim was allocated to the small claims track. On 8 November 2023, following a preliminary hearing, the claim was transferred to the Tribunal.

10. On 16 November 2023, the matter was received from the County Court.

11. The Tribunal did not consider that an inspection was necessary, nor would it have been proportionate to the issues in dispute.

12. The Lease requires the landlord to provide services and the tenant to contribute towards their costs by way of service charge. The specific provisions of the lease will be referred to below, where appropriate.

13. Directions were issued by Judge Wayte on 18 September 2024 and further directions in respect of extensions sought were sent to the parties on 04 October 2024 and 01 November 2024.

Procedural Issues

14. The Tribunal found the Scott Schedule included in the bundle to be confusing. It was not clear which figures were disputed and to what these related. The Tribunal wrote to the parties on 19th of March 2025 seeking clarification of the disputed sums per directions 6 and 7 of Judge Wayte's initial directions. However, both parties responded that the existing Scott Schedule effectively complied with the directions.

15. For the avoidance of any doubt, the Tribunal did not consider that there was compliance with those directions in so far as setting out a clear an understandable Scott Schedule of disputed charges. At the start of the hearing, Mr. Jones explained that only two disputed charges were in issue and the remaining 18 rows within the Scott Schedules were not in dispute. It is important that parties understand the need to assist the

Tribunal in succinctly and clearly setting out the disputed figures to preserve Tribunal hearing time for consideration of the same.

16. The Respondent had indicated within the papers that she was seeking to make a counterclaim of £5000.00 for stress. The Tribunal confirmed during the hearing that it had no jurisdiction to make a determination on such issue and that the Respondent should take independent legal advice.

The Issues

17. At the start of the hearing the Tribunal identified the relevant issues for determination as follows:

- payability of service charges against the backdrop of a water charges dispute as raised by Respondent

- any application by the Respondent if made to limit payment of Tribunal costs as service charges under section 20C of the 1985 Act and/or administration charges under section 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002

- whether order for reimbursement of hearing fees should be made

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

The Lease

19. The Lease is dated 24 March 2005 and entered into between Fairclough Homes Limited v Ayodele Oluwayemisi Bello. The relevant clauses are set out as follows:

- "Maintenance Expenses" means the moneys actually expended or reserved for periodical expenditure by or on behalf of the Management Company or the Lessor at all times during the term in carrying out the obligations specified in the Sixth Schedule

- Part A proportion is 0.4717% for Estate costs and Part B proportion is 1.1146% for block costs. The proportion may be subject to variation from time to time in accordance with the provisions of clause 7.14

- The Sixth Schedule sets out the landlords' obligations in respect of maintenance expenses under part A for Estate Costs, Part B for Block costs and Part C costs applicable to any or all the previous parts of that schedule

- The Seventh schedule sets out the lessee's proportion of maintenance expenses and clause 6.1 provides that such maintenance expenses should be paid in advance on the first day of July in every year for the forthcoming year.

- Clause 6.2 provides that within 21 days after the service by the Management Company on the lessee of a certificate in accordance with paragraph 5 of the Schedule, the Lessee shall pay to the Management Company the balance by which the Lessee's proportion received by the Management Company from the Lessee pursuant to subparagraph 6.1 of the Schedule full short of the Lessee's proportion payable. Any overpayment shall be credited against future payments due from the Lessee to the Management Company.

- The Lessee's covenants are set out to the Eighth Schedule of the Lease

Determination

20. The Tribunal determined that the application was to be considered under section 19 of the 1985 Act.

21. Section 19(1) limits the amount payable for a service charge to the extent that it is "reasonably incurred" and that services or works are "of a reasonable standard".

22. The disputed service charge items are listed in the table below.

Disputed Item	**Value**	**Date on Scott Schedule**
Managing Agent Charges	£240.00	03/03/2022
Op Balance from Previous Agent (Water Charges)	£2,661.67	07/07/2021

23. The Tribunal notes the importance of service charges being paid promptly to ensure the effective management and protection of a building.

Managing Agent Charges

24. The Applicant referred to Clause 4.1 of the Lease regarding the Lessee's covenant to observe and perform the obligations as set out in parts 1 and 2 of the 8th Schedule and thereafter to the 8th Schedule paragraph 8 to keep the Management Company and the Lessor indemnified in respect of charges for other services payable in respect to the demised premises which the Lessor or the Management Company shall from time to time during the term be called upon to pay such sums to be repaid on demand.

25. The management fee of £240.00 was incurred in relation to a letter sent within Red Rock's debt recovery process. Miss Dincer elaborated that the default was recorded when they took over management of the block. She

explained the credit control process insofar as four credit control letters were sent to defaulting leaseholders and that earlier letters costing £90.00 and £150.00 had been credited when a payment plan had been agreed.

26. The payment plan had been agreed on 6 August 2021. The Tribunal queried whether the letter which constituted £240.00 was in the bundle and it was confirmed that it was not. Miss Dincer described the letter as "a simple reminder letter". The purpose of the letter was to prompt payment.

27. The Respondent stated that when Red Rock took over management in July 2021, she sent emails to Red Rock to advise them of the previous dispute that she had raised with Mr Simon Wainwright of JPW, the previous managing agents. The Tribunal noted that previous credit control letters were credited as shown at the statement dated 1 January 2019 to 31 of December 2022.

28. Whilst the Tribunal accepts that ordinarily such a fee would be payable under the terms of the Lease, the Tribunal was concerned by the level of fee levied for what was described as a "simple" letter to prompt payment. In the absence of the actual letter being before the Tribunal for further consideration as to reasonableness, the Tribunal cannot make that determination.

29. Accordingly, the Tribunal determines that the sum of £240.00 in respect of the management fee is not reasonable and therefore not payable by the Respondent.

Op Balance from Previous Agent (Water Charges Dispute)

30. The Applicant reiterated there had been a change in management of the block and such matters went back quite a long time. There was no dispute between the parties as to whether the water charges were payable under the Lease.

31. Mr. Jones noted that strictly the provision of water was not included within the Lease. The Tribunal is satisfied that the Lease makes provision for water charges to be recovered as a service charge.

32. The Tribunal notes paragraph 2 of the 8th Schedule to the Lease which provides for the lessee to pay to the management company or his authorised agent his proportion at the times in the manner provided, such proportions are set out within the Lease and also referred to above.

33. Maintenance expenses are set out above and further detailed within the 6th Schedule of the Lease. Paragraph 6 of the 7th Schedule sets out the manner in which the Respondent was under obligation to pay the service charges and Paragraph 8 of the 8th Schedule provides that the lessee was

to indemnify the management company in respect of charges for other services payable in respect to the demised premises.

34. There are further provisions relating to relevant installations at Clause 1 of the Lease, Paragraph 1.5 of the 2nd Schedule of the Lease, Paragraph 1 of the 4th Schedule which, the Tribunal notes refers to the right of the running of water to the demised premises through and from the service installations forming part of the estate.

35. Further under Part C of the 6th schedule, the Tribunal notes paragraph 3 in respect of the obligation to pay all rates taxes duties charges assessments and outgoings, paragraph 7 relating to managing and administering the maintained property and protecting the amenities.

36. Paragraph 11 to the 6th Schedule relates to the inspecting maintaining repairing reinstating renewing any other service or facility in connection with the maintained property and paragraph 14 which includes renewing any lighting water and power supply apparatus from time to time in connection with the maintained property and providing such additional lighting water or power supply apparatus as the management company may reasonably think fit.

37. The Tribunal regarded the letter of Simon Wainwright FRICS Managing Director of JPW which provided by way of background that there had previously been a single water meter serving the flats at Block G.

38. Historically the flats had private sub meters but legal responsibility for paying the bill was with the management company and they were treated separately to the rest of the service charge. This was unique to Block G; however, the water sub meters stopped working and could no longer be relied upon.

39. The leaseholders thereafter unanimously agreed to install new water meters for each flat. During the period where unanimous agreement had not been obtained, JPW could not use existing sub meters as a method of apportionment as this was not accurate and therefore they apportioned the water bills equally between all of the flats in Block G.

40. Water bills within the Applicant's possession and control were provided at pages 213 to 224 of the Bundle. Mr. Jones confirmed that the calculations for which the Respondent had been charged matched the proportion to be paid by her under the Lease.

41. The Applicant was therefore entitled to be indemnified for these sums. It was the Applicant's decision to decide how to apportion the charges and it had done so equally between the leaseholders. This was a reasonable approach and within their discretion to take this approach.

42. The first water bill available with from the 5 July 2017 to the 10 January 2018 and the previous water bills had not been made available in the transfer to Red Rock as the new managing agent.

43. The Respondent explained that she had sent 49 letters setting out her position regarding the disputed water charges. She agreed that she had received 7 invoices for water charges as recorded on the statement of JPW dated 21 June 2021. She had almost resolved the issue with JPW when they were replaced with Red Rock.

44. She had agreed with JPW to pay a small amount effectively a gesture of good faith to show her intention to settle however, as shown by her correspondence including within the Bundle she had thought the apportionment was unfair given that she owned a one bedroom flat and would not use the same amount of water as those flats within the Block that consisted of two or three bedrooms.

45. The Respondent had not ringfenced the money, but payment of the sum determined would not be an issue for her and she had paid £375.45. The Applicant had stopped using actual readings. When questioned as to what manner she would suggest the apportionment should have been carried out, she confirmed that to divide equally between the leaseholders was not fair because of the difference in properties.

46. The Applicant was asked to confirm the number of properties within the Block which consisted of one-, two- or three-bedroom properties and Miss Dincer initially liaised with a colleague during the hearing to establish this and had been informed that all of the flats within Block G from numbers 109 to 163 consisted of two-bedroom flats.

47. This is clearly inaccurate as the Respondent resides within Block G in a one-bedroom flat and she is aware of friends within the Block who have a 3-bedroom flat. The Tribunal therefore notes with concern that Red Rock does not appear to have suitable knowledge of premises of which it is managing.

48. The Respondent further referred to AGM minutes in which problems with the water were noted, although the Tribunal notes that these minutes did not elaborate this specifically related to water charges, and that she had been complaining about this issue since 2017 as evidenced by correspondence within the bundle. The Tribunal noted her e-mail of the 15 August 2017. She particularly disputed the two initial larger charges but accepted the third charge of £196.75.

49. The water bill produced at page 213 of the bundle was the earliest bill held within the possession and control of the Applicant and that despite requests, the earlier bills had not been forthcoming from the previous managing agent. It was pointed out that the charge of £1255.60 related to a period of three half years periods and the Applicant noted that we were now going back over 8 to 10 years where a different agent had been appointed.

50. The five further bills were invoiced at an apportionment of equally between the 28 flats and the Tribunal was therefore invited on the

balance of probabilities that this set the tone of the earlier bills. The Applicant therefore submitted in those circumstances that they were passing on water charges properly and actually incurred, and the only dispute was how this should be divided and the Applicant had chosen one possible method.

51. The Tribunal concurs with the Applicant that the correspondence from Simon Wainwright did not go as far as suggested by the Respondent that the dispute regarding the water charges would be upheld in her favour.

52. The Tribunal sets out the relevant bills and charges made against the Respondent in the table below:

Water Bill Period	**Charges per Statement dated 21 June 2021**	**Value**
	01/08/2015 – 30/06/2016	£768.95
05/07/2017 - 10/01/2018	01/07/2016 – 10/01/2018	£1,255.60
11/01/2018 - 18/06/2018	10/01/2018 – 18/06/2018	£196.75
19/06/2018 - 20/12/2018	19/06/2018 – 20/12/2018	£247.95
21/12/2018 – 21/06/2019	21/12/2018 – 21/06/2019	£241.42
22/06/2019 - 19/12/2019	22/06/2019 – 19/12/2019	£247.45
20/12/2019 - 26/02/2020	20/12/2019 – 26/02/2020	£78.96

53. The total water charges were therefore £3,037.08 less the sum of £375.45 paid by the Respondent leaving the balance of £2,661.67, the disputed figure.

54. The Tribunal accepts the sums raised as service charges by the Applicant from the 10 January 2018 to the 26 February 2020. These sums are supported by the water bills produced within the Bundle. However, there is no invoice available before the Tribunal in respect of the first period charged for between 1 August 2015 to 30 June 2016. In the absence of corroborative evidence the Tribunal is not satisfied that it can determine this sum to be payable and finds that the sum is not payable.

55. The first invoice supplied refers to the period 5/7/17 to 10/1/18 leaving a period unaccounted for between 1 July 2016 to 5 July 2017. Effectively, this accounts for two half year periods in respect of the charge of £1,255.60, and that in the absence of corroborative evidence, the Tribunal is not satisfied it can determine that the totality of this sum is reasonable. Accordingly, as two half year periods of evidence are missing, the sum sought is reduced by two thirds to £418.53.

56. Accordingly, the Tribunal determines that the sums payable and reasonable by the Respondent are set out in the below table:

Charges per Statement dated 21 June 2021	Determination
01/08/2015 – 30/06/2016	£0.00
01/07/2016 – 10/01/2018	£418.53
10/01/2018 – 18/06/2018	£196.75
19/06/2018 – 20/12/2018	£247.95
21/12/2018 – 21/06/2019	£241.42
22/06/2019 – 19/12/2019	£247.45
20/12/2019 – 26/02/2020	£78.96
TOTAL	£1,431.06 (with credit to be given for payment of £345.45 paid)

Overpayment

57. The Respondent referred to page 239 of the Bundle which was a breakdown of payments received sent to her by Bradys Solicitors. Her position was that she had been charged £7,865.95 but the balancing sum was only £7,166.95 and this had resulted in an overpayment of £699.00 that was now owed to her.

58. The Applicant referred to the statement from pages 449 to 454 of the Bundle which set out the total payments made and the Respondent upon being asked to confirm whether there was anything within that statement which had not been credited that she expected to have been credited or was not shown as credited on that statement which was incorrect, and she confirmed that there was not.

59. The Tribunal was therefore satisfied about the accuracy of the statement in terms of its contents and therefore does not determine that there has been any overpayment owed to the Respondent

Application under section 20C and paragraph 5A of Schedule 11 and for refund of fees

60. The Respondent applied for an order under section 20C of the 1985 Act to limit recovery of the Respondent's costs of the proceedings through the service charge and under section 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 through administration charges.

61. The Applicant submitted such fees could be levied by way of service charges and/or administration charges pursuant to paragraph 4 of the 8th Schedule of the Lease. The Applicant further referred the Tribunal to the 6th Schedule Part C Paragraph 8 in respect of enforcing covenants noting that once the matter was returned to the County Court, there was the question of costs sought on a contractual basis. It was just and

equitable in the circumstances to recover those costs as a service/ administration charge. The Applicant further noted that it was a leaseholder owned management company and if such costs were not recoverable, there was a risk of insolvency.

62. The Respondent repeated that she had been raising these issues since 2017 and if they had effectively engaged with her, and not, in her words, intimidated her with threatening correspondence or ignored her communications, she would not have been obliged to send 49 emails pleading with the Applicant look into her case.

63. Whilst the document was not before the Tribunal, the Respondent stated that she had already received a demand from Red Rock purporting to recover the Tribunal fees. The Respondent was asked why she had not referred the matter to the Tribunal herself earlier and the Tribunal was shown correspondence at page 168 of the Bundle where it appeared that there had been a misunderstanding on her part that Tribunal proceedings had already been commenced.

64. The Tribunal was concerned about the level of correspondence sent by the Respondent over many years to the previous agents and others to try and deal with this matter. She had made the Applicant aware of the outstanding issue. Unfortunately, the Applicant had not sufficiently engaged with the Respondent in addressing her concerns electing instead to pursue the matter through the County Court.

65. In such circumstances, the Tribunal considers it just and equitable to make an order pursuant to section 20C of the 1985 act and in respect of section 5A of Schedule 11 of the 2002 Act.

66. The Applicant requested payment of the hearing fee, there being no issue fee as the matter was transferred from the County Court. Mr Jones submitted that this situation could not be avoided, and the Applicant had had to pay the hearing fee and it was necessarily incurred.

67. The Respondent informed the Tribunal that she had been informed by Red Rock that she should not contact them as the matter was in Court and again it would appear that there was not sufficient engagement with the Respondent on the part of the Applicant to try and resolve the issues.

68. The Tribunal further notes that the Applicant has largely been unsuccessful in the determination of the service charges given the amounts determined by the Tribunal and therefore the Tribunal does not determine it to be just and equitable to award the Applicant the hearing fee.

Name:	Judge Adcock-Jones	**Date:**	24 March 2025

Rights of appeal

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

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

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

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

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

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

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -

(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

20 Limitation of service charges: consultation requirements

(1)Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

(a)complied with in relation to the works or agreement, or

(b) except in the case of works to which section 20D applies, dispensed with in relation to the works or agreement by (or on appeal from) **t**he appropriate tribunal.

(2)In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3)This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4)The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
(a)if relevant costs incurred under the agreement exceed an appropriate amount, or
(b)if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
(5)An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a)an amount prescribed by, or determined in accordance with, the regulations, and
(b)an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
(6)Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
(7)Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.
(2) Subsection (1) applies whether or not any payment has been made.
(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.
(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

Section 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.