



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

Case reference : **CAM/33UC/LSC/2022/0057 and 58**

Property : **20, 46 and 48 Mill Lane, Aylsham,
Norfolk NR11 6WA, and
16 Donthorn Court, Aylsham,
Norfolk NR11 6YF**

Applicants : **1. Mr Jonathan Dempsey
2. Ms Karen Wraighte
3. Mr Paul Fletcher
4. Ms Catherine Watson**

Representative : **Mr Jonathan Dempsey**

Respondent : **Donthorn Mill Property Limited**

Representatives : **Mr Robert Haughton
Mr Ken Lennox**

Type of application : **For the determination of the
reasonableness of and the liability
to pay service charges**

Tribunal members : **Judge K. Saward
Mr G. F. Smith MRICS FAAV**

Venue : **Dunston Hall, Main Road, Norwich,
Norfolk NR14 8PQ**

Date of hearing : **31 March 2023**

Date of decision : **5 April 2023**

DECISION AND REASONS

DECISIONS OF THE TRIBUNAL

For the reasons that follow:

- (1) The tribunal determines that the sum of £1,847.84 is reasonable and payable by each Applicant in respect of the estimated service charge for the year 2022.
- (2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.
- (3) The tribunal makes an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 to extinguish the tenant's liability to pay an administration charge in respect of litigation costs incurred in these proceedings.
- (4) The tribunal determines that the Respondent shall pay to the Applicants £400 in total within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicants.

REASONS

The application

1. The application was brought under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") for a determination as to whether services charges are payable. The application was brought by Mr Dempsey on behalf of all four Applicants. Two case reference numbers were allocated by the tribunal because there are separate postcodes for Donthorn Court and Mill Lane, albeit part of the same development.
2. It was confirmed at the hearing that the application concerns estimated service charges for major project works yet to be undertaken. Therefore, the application concerns the liability of the Applicants for the charges under the lease and the reasonableness of such charges.
3. The application form identifies the total sum in dispute as £7,358.00. This is the combined figure for all four applicants. When the tribunal queried how this figure had been calculated, it emerged that the actual amount disputed is £7,391.36, representing £1,847.84 charged to each Applicant for major project works in 2022. The Respondent's representatives confirmed those figures are correct.
4. The Applicants also applied for Orders under section 20C of the 1985 Act and under paragraph 5A of schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") to prevent the

Respondent from recovering the costs of these proceedings from the Applicants either through the service charge or against individual leaseholders directly.

5. The relevant legal provisions are appended to this decision.

The background

6. The premises form part of a development known as 'Bure Place' which comprises 21 freehold homes and 17 leasehold apartments contained within two separate buildings. The central building at Donthorn Court is an imposing Grade II listed former hospital. The conversion of the site into residential accommodation took place in or around 2012/13. The Respondent company acquired the freehold interest in 2020.
7. A visual survey of Bure Place was commissioned on behalf of the lessor which was undertaken by a Chartered Surveyor in September 2021. The survey utilised a drone to obtain high level photographs of external elements. A copy of the report is supplied. It provides a 10-year maintenance plan and recommends a major works project be budgeted for in 2022 'to address a number of the major works of replacement and repair/redecoration required.'
8. The tribunal inspected the property immediately before the hearing in the presence of Mr Dempsey for the Applicants and Mr Haughton and Mr Lennox for the Respondent company. Various photographs of the building taken during the survey are also within the hearing bundle.
9. Each Applicant holds a long lease of their property which requires the lessor to provide services and the lessee to contribute towards their costs by way of a variable service charge. Additional provision is made for an estimated service charge. The specific provisions of the lease and will be referred to below, where appropriate.
10. A sample lease (for 15 Donthorn Court) is provided. The parties confirmed that the other leases are in materially identical terms.

The hearing

11. The first Applicant, Mr Dempsey, appeared in person. He confirmed that he was authorised to speak on behalf of all the Applicants. The fourth Applicant, Ms Watson also attended and read out a prepared statement.
12. The second Applicant, Ms Wraighte, was not present due to personal circumstances which were explained to the tribunal. Given those circumstances, the tribunal agreed to a prepared statement from

Ms Wraighte being read out notwithstanding that all witness statements were required to be submitted in advance. No objection was raised by the Respondents to this approach.

13. The Respondent company was represented by Mr Haughton and Mr Lennox who are both directors. They are also leaseholders.
14. The Applicants compiled a bundle of some 216 pages. Two further documents were added prior to the hearing, one being a letter dated 13 December 2022 from Mr Dempsey making payment under protest of £1,820.50 for service charges. The other additional document contains notes on section 20 of the 1985 Act. No dispute is raised over the inclusion of these documents. However, the Respondent does not agree the 'calendar' of events from 2012-2023 inserted by the Applicants at the rear of the bundle. The tribunal has disregarded the calendar noting that the sequence has not been agreed.
15. The bundle contains information from both sides which is not relevant to the application and the points arising thereunder. Time was therefore spent at the hearing clarifying the points of dispute on which evidence was to be heard.

The issues

16. Directions were issued by the tribunal on 14 November 2022 which identified the issues in dispute from the material available at that time. These were discussed at the start of the hearing.
17. The dispute concerns on-account service charges payable in advance of works being undertaken. As such, the consultation requirements under section 20 of the 1985 Act for qualifying works exceeding a contribution of £250 per leaseholder, did not apply at this stage. The only statutory limit in such a case is the reasonableness requirement imposed by section 19(2). The tribunal identified the main issues as follows:
 - (i) whether the works are within the landlord's obligations under the lease/ whether the cost of the works are payable by the leaseholders under the lease;
 - (ii) whether the amount of the estimated service charge is reasonable;
 - (iii) whether an order under section 20C of the 1985 Act and/or paragraph 5A of Schedule 11 to the 2002 Act should be made;
 - (iv) whether an order for reimbursement of tribunal fees should be made.

The lease

18. The lessee covenants to observe and perform the obligations set out in Parts 1, 2 and 3 of the Schedule 4. The lessor covenants to observe and perform the obligations within Schedule 5.
19. Under paragraph 2 of Part 1 of Schedule 4 the lessee covenants to pay to the lessor the service charge and estimated service charge in the manner provided in Schedule 6 within ten working days of demand. Interest is payable under paragraph 3 on all sums in arrears.
20. Schedule 6 sets out the service charge provisions. The amount of service charge is expressed in paragraph 1 as 6.21% in relation to the block, being the block of flats and curtilage, the access driveway and communal landscaped area, as outlined on the accompanying plan. Paragraph 3 of Schedule 6 makes provision for an 'estimated service charge' (also at 6.21%) for costs and expenses to be incurred during the service charge year in respect of 'building expenses'. Such estimate is to be certified by accountants or managing agents engaged or employed by the lessor and the certificate shall be final and binding. The estimated service charge is payable by the lessee by two equal instalments on 1st January and 1st July in each year.
21. 'Building expenses' are defined as all costs and expenses incurred by the lessor in carrying out its obligations in paragraphs 1 and 2 of Schedule 5 and the costs of certifying and collecting the same.
22. Under Schedule 5, the lessor's responsibilities include the maintenance, repair and renewal of all things enjoyed in common, including the roofs, the main structure and exterior and foundations of the block and other external parts, including window frames. Additionally, the lessor is responsible for carpets in common entrance halls, the painting and decoration of the exterior of the block and all common parts. These responsibilities are made subject to payment of the service charge and estimated service charge.

Other documents

23. The survey concluded that the property generally is in fair condition both internally and externally but works of 'improvement' are required within the term to bring the property back to a suitable condition. Of particular note are sections of damaged/spalled stonework with some poor sections of stone locally contributing to water ingress. Dampness is considered likely to be present requiring investigation by damp specialists. External and internal redecoration is expressed to be required in the short term. Within year 1, works are identified for roof repairs and external masonry and stonework along with internal works.

24. In terms of process, the managing agents engaged by the Respondents at the time, wrote to leaseholders on 31 January 2022 to inform them that a building survey had been undertaken which had highlighted a wide range of work to be planned for over the following 10 years to keep Bure Place in a good state of repair. The letter warned that £34,000 of expenditure would be budgeted for in year 1 which would result in an increase in the service charge due that same month. The letter refers to routine internal and external decorations as well as investigations into wall cracks and damp issues. It does not elaborate further.
25. In response to a letter from Mr Dempsey of 30 March 2022, the managing agents advised on 4 April 2022 that the major works category of the service charge budget was “*likely to include masonry repairs, repointing, localised redecoration and leak investigation on a historic longstanding issued [sic] relating to the roof on block 14-16 Donthorn Court.*” The letter cites the Upper Tribunal decision in *23 Dollis Avenue (1998) v Vejdani* [2016] UKUT 0365 (LC) as authority that there was no need to consult in order to collect sums in excess of £250 for future works where an estimated service charge is demanded in advance.
26. The bundle contains an invoice sent by the Respondent’s managing agents to the first Applicant dated 30 June 2022 for a contribution to major project works of £923.92. This is expressed as 50% of the contribution. The invoice also contains a service charge of £896.58 for the period 1 July 2022 to 31 December 2022 which is not in dispute.

Summary of the parties’ respective cases

27. One of the main grievances of the Applicants concerns a lack of warning, consultation and information over the estimated charges which has caused them to doubt the necessity for and reasonableness of the charges. It is submitted that there were sufficient reserve funds to be used instead. In addition, the first Applicant suggested that in the current economic climate it would be more logical for works to be undertaken as the need arises rather than taking preventative steps. The tribunal heard how the unforeseen expenses have impacted upon individual leaseholders and how the struggle to pay has caused hardship and strain.
28. The Respondent’s representatives maintain that the charges are in accordance with the lease and reasonable. As leaseholders themselves, they emphasised how they had an interest in keeping the charges to a minimum. The charges had been reduced to make them more affordable. They described it as unfortunate that the managing agents’ letter to leaseholders advising of the increased charges had not been sent earlier. The Respondent’s representatives acknowledged that there had been ineffective communication and expressed their dissatisfaction with the managing agents, who are no longer acting. They also

suggested that the first Applicant had been unreasonably persistent in his demands for information.

29. Given these outstanding proceedings, the Respondent is yet to embark upon the section 20 consultation process as a pre-requisite for commissioning the works.

Findings

30. The first step is to identify whether the sums charged by the Respondent are payable as a matter of contract between the parties by way of an advance service charge. Whilst the Applicants did not take issue on this point, it is fundamental to the tribunal's consideration. Put simply, if there is no provision within the lease for an advance service charge then it is not payable.
31. After prolonged questioning of the Respondent's representatives, the tribunal established that the estimated sum of £34,000 was principally to cover the future costs of (i) damp investigations at the Mill Lane entrance (ii) masonry repairs (iii) redecoration costs (iv) other more minor works. The 10 years maintenance plan compiled by the Surveyor, identifies works to the roofs, external walls and windows, plus internal works. All these works are of a type for which the lessor is responsible under Schedule 5 of the lease and is obliged to maintain, repair and renew. Schedule 6 allows for the costs of such works to be charged on account to the leaseholders at the rate of 6.21% as an estimated charge for costs and expenses to be incurred during the service charge year.
32. Therefore, there is contractual provision for the costs of such works to be charged by way of an advance service charge.
33. The Applicants were mistaken in their belief that there should have been statutory consultation. The section 20 consultation requirements did not apply to the estimated charge. The next question is whether the sums charged exceeded the requirement to be 'no greater than is reasonable', as imposed by section 19(2) of the 1985 Act.
34. Among other authorities, the Applicants cite *Waalder v LB Hounslow* [2017] EWCA Civ 45, which essentially set out a two-stage test. Firstly, whether the landlord's decision-making process was objectively reasonable. Secondly, whether the outcome was a reasonable one or excessive. This is the leading case on section 19(1)(a) whereas this application concerns advance service charges falling within section 19(2). Nevertheless, similar principles apply (*Carey-Morgan v De Walden* [2013] UKUT 134 (LC); [2013]).
35. In *Waalder*, the Court of Appeal acknowledged that there may be an obligation on the Respondent to take into account the leaseholders

finances where the proposed work is an improvement (and a discretionary item of work) rather than a repair. The Court declined to issue future guidance, stating “the open textured nature of a test of reasonableness makes it dangerous even to attempt to be prescriptive. Factual situations are almost infinitely variable, and different considerations will come into play in different circumstances. Parliament has deliberately chosen an open ended and flexible test, and has left all factual determinations to the good sense of the FTT.”

36. *Garside v RFYC Ltd* [2011] UKUT 367 (LC) confirms the test of reasonableness allows the law to respond appropriately to different situations as they arise.
37. The total amount of estimated charges was reduced from £34,000 to £29,750 as the forecast expenditure in 2022. This lower amount was apportioned among the properties resulting in the contribution of £1,847.84 per Applicant. In making this reduction, attempts were made to address affordability.
38. The likelihood is that costs for such works will become due. Instigating the works has stalled pending resolution of this dispute before the tribunal. However, the survey identifies works needed in year 1 and beyond. It was evident from the tribunal’s site visit, that significant investment will be required over future years to preserve and maintain the listed building. It is a substantial structure with obvious signs of deterioration in the exterior brick and stonework, not to mention the exploratory works required to identify and resolve issues of damp as flagged in the experts’ report.
39. A reasonable process must be followed. It was sensible and reasonable for a surveyor’s report to be commissioned utilising a drone to gauge the nature and extent of works potentially required. It is laudable that a 10-year maintenance plan is being put in place. The tribunal considers this prudent for a building of this nature.
40. The freeholder has ongoing maintenance responsibilities under the lease. Allowing the property to deteriorate is not an option. There is a distinction between works that a lessor is obliged to undertake and optional improvements. As noted in the Surveyor’s report: “A number of elements require works of urgent improvement in order to address defects observed in the short term.” It warns that: “If left elements will deteriorate further and in some instances repair will not be possible (and elements will require total replacement)”. Taking a reactive approach waiting until works become essential clearly risks more extensive works at greater cost. The Applicants have not produced any evidence of their own to support the contention that the works are not needed or that they could wait.

41. Moreover, the test is whether the service charge is reasonable and not whether there are other possible ways of charging that might be better or more reasonable.
42. The tribunal sympathises with leaseholders who have found the financial burden of the estimated service charge to be onerous and had not anticipated the likelihood of ongoing charges. We recognise that for some, the financial impact has been severe. That said, there are clearly major works needed for which the lease provides and the Respondent is liable. This is not a case of discretionary works. We must weigh up whether the estimated charges exceed what is reasonable on the evidence. The tribunal cannot be influenced by leaseholders being unaware of the extent of their potential liability under the lease.
43. It will always be a difficult task forecasting likely expenditure prior to invoking the section 20 consultation process. At this stage the sums are estimated only which provides some leeway. It can be a judgement on raising sufficient funds for the works against potentially higher costs of borrowing. The accounts show that the reserve fund was already allocated. There was no general fund available for allocation to the future major works, as the Applicants suggest.
44. The tribunal is critical of the freeholder's failings to communicate with leaseholders effectively over the nature and extent of the works required and costs implications. Even if those failings were attributable to the managing agents, the responsibility lies with the freeholders.
45. When the invoice was issued to leaseholders for a contribution towards major project works, it gave no details of how the sum was calculated or what the money would be used for. This was wholly inadequate. Leaseholders were being required to pay £1,847.84 in 2022 for future major works without any breakdown or meaningful particulars as to the intended nature of the works. As the Respondent's representatives acknowledged during the hearing, a leaseholder simply had no means of knowing what they were being asked to pay for and why.
46. The leaseholders were not provided with a copy of the building survey or a summary of its findings. Whilst not a requirement, divulging the details, or at least the headline terms, may have gone some way to appease the leaseholders that the works were required.
47. Ultimately, the failings on the Respondent's part in how they communicated with leaseholders do not cause the tribunal to conclude that the estimated charge was not payable or excessive. The tribunal considers that the process was rational although poorly communicated. Having regard to the condition of the building, the works required and all the relevant circumstances, the estimated sum is of no greater amount than is reasonable in terms of section 19(2) of the 1985 Act.

There is no contrary evidence before the tribunal to indicate that the estimated charges are too high for the works required.

48. The tribunal is satisfied on the information before it that the £1,847.84 charged to each Applicant for major project works in 2022 was reasonable and payable.
49. When the section 20 consultation process is commenced then there will be opportunity for the leaseholders to engage in the process should they so wish and the lessor will need to have regard to their observations on its proposals. Once the costs have been incurred any necessary adjustment must be made, including any repayment if relevant.
50. There has plainly been a breakdown in the relationship between the freeholder and Applicants which has not helped the situation. The tribunal urges reconciliation and better communication in future.

Applications under section 20C, paragraph 5A and refund of fees

51. In the application form the Applicants applied for an order under section 20C of the 1985 Act so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge. At the same time, an application was made for an order to reduce or extinguish any liability to pay an administration charge in respect of litigation costs (i.e. contractual costs in a lease), under paragraph 5A of the 2002 Act. The Applicants also applied for a refund of the fees paid in respect of the application/hearing¹.
52. Whilst the Respondent was not legally represented at the hearing, the tribunal was informed that legal costs had been incurred which the Respondent would wish to pass on, if successful in these proceedings.
53. The tribunal has found in favour of the Respondent for the estimated charges imposed. However, it is telling that it took extensive questioning by the tribunal of the Respondent's representatives to gain details on how the charges had been calculated and what for. This could not be readily gleaned from the information within the bundle. The current managing agents, who may have been in the best position to offer assistance and explanation, did not attend.
54. When demanding payment, the details given were so scant that leaseholders could not ascertain whether the sums were properly payable under the lease. It is no surprise that leaseholders paid under protest in order to avoid incurring late payment charges and pursued a

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

claim via the tribunal. It is only through this process that clarity has been obtained. With better information and communication from the Respondent at the outset, the application was entirely avoidable.

55. It is for this reason, which amounts to unreasonable conduct, that the tribunal determines that the Applicants should be awarded their costs of the tribunal proceedings notwithstanding that the tribunal has not found in their favour on the substantive issue.
56. Having examined the Lease, the tribunal notes it contains a general indemnity given by the leaseholder at paragraph 8 of Schedule 4 in respect of charges for other services payable in respect of the property. For the avoidance of doubt, and for the reasons above, the tribunal finds it just and equitable that orders be made under section 20C to prevent the recovery of the cost of the proceedings through the service charge and to extinguish any liability to pay an administration charge in respect of litigation costs, under paragraph 5A of the 2002 Act.

Name: Judge K. Seward Date: 5 April 2023

Rights of appeal

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

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

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

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

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

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

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 20

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

- (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 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 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