10040

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AH/LSC/2013/0841**
Property	:	**Flat 24, Lyndhurst Prior, 297A Whitehorse Lane, London, SE25 6UQ**
Applicant	:	**WF(Trustees) Ltd & David Glass**
Respondents	:	**Mr M, Mrs G and Ms S Ballard**
Type of Application	:	**Section 27A Landlord and Tenant Act 1985 (the 1985 Act). Determination of the reasonableness and payability of service charges.**
Tribunal Members	:	**Mrs HC Bowers BSc (Econ) MSc MRICS** **Mrs L West MBA**
Date and venue of Hearing	:	**20th March 2014** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**30th April 2014**

DECISION

For the following reasons the Tribunal finds that:

- **The total service charge of £3,228.67 for the service charge years in question is determined to be reasonable and payable.**
- **The administration charge and the legal costs would be more appropriately considered in the county court.**

REASONS

Introduction:

1.) The Applicant seeks and the Tribunal is required to make a determination following a transfer from Croydon County Court under section 27A of the Landlord and Tenant Act 1985 (the 1985 Act) regarding the reasonableness and payability of service charges in respect of Flat 24, Lyndhurst Prior, 297A Whitehorse Lane, London, SE25 6UQ (the subject property). The case was considered at a case management conference (CMC) on 16th January 2014 and Directions were issued on 17th January 2014.

The Law:

2.) A summary of the relevant legal provisions is set out in Appendix 2 to this decision.

The Hearing:

3.) A hearing was held on 20th March 2014 at Alfred Place, London. The Applicant was represented by Mr C Green, solicitor and also in attendance was Ms A Griffiths, Property Manager employed by Trust Property Management the managing agent for the development. The Respondents, Mr M Ballard, Mrs G Ballard and Ms S Ballard all attended the hearing and represented themselves. At the start of the hearing the Chairman explained that she also sat on the Southern Region of the First-tier Tribunal (Property Chamber). Mr Benjamin Mire, who had provided some professional advice in this case and is involved with the managing agent, Trust Property Management, had historically sat on the Southern Region, but was no longer a member of the First-tier Tribunal (Property Chamber). Both parties indicated that they had no issues with the case continuing under the composition of the current Tribunal.

Background:

4.) At the start of the hearing the parties identified what items remained in dispute. It was confirmed that the service charge years in question were from 2008/9 to 2011/12. During the hearing the Respondents indicated certain items that were now agreed and these items are recorded in the decision. There had been a successful RTM claim and the management of the development had changed to the RTM Company with effect from 25th February 2012. In addition to the service charge items a sum of £1,364.00 was identified as legal expenses that the Applicant currently claims from the Respondents. Mr Green stated that it was his preference that the legal costs should be returned to the County Court for their consideration. No issue was taken regarding the summary of rights and obligations included with the invoices sent to the Respondents.

The Lease:

5.) A copy of the lease for the subject property was provided in the trial bundle. The lease is dated 3rd November 1986 and is for a term of 150 years from 25th March 1970. The lease provides that the lessee is to contribute 1/6th of the service charge. The first schedule to the lease describes the property, but it was accepted that the wording is unclear as to the extent of the common parts and parts that are demised to the various leaseholders in the development. The second schedule sets out the items to be included in the service charge and the mechanism as to how the service charges are to be calculated and recovered. Under clause 2(8) the lessee is responsible for the costs and charges incurred by the landlord for the preparation and service of a notice under section 146 of the Law of Property Act 1925.

Inspection:

6.) Given the nature of the issues in dispute, the Tribunal did not carry out an inspection of the subject development. However, the Tribunal had a brief description of the development from the parties.

7.) The development is described as a purpose built block of flats on three floors, with two flats per floor, giving a total of six flats in the development. There is one entrance door at the front of the block and a door to the rear of the block. The ground floor entrance hall is an area of approximately 2m x 14 m and the first and second floor landings are each approximately 2m x 7m. There is oak panelling to the ground floor entrance area. There are two windows to the rear elevations. The property is described as having a mansard roof with a gutter running at the bottom of the mansard. The building is set back from the public highway with paving stones to the front entrance. There are two concrete areas; one providing parking for the subject development and one area providing parking to another block. There is a large garden to the rear of the block.

Representations:

8.) During the hearing a number of issues were raised to explain the background to the development; the service charge history and the current situation of both the Applicant and the Respondents. Whilst the Tribunal noted this information, it is not replicated in these reasons. The Tribunal had full consideration to both the written submissions and evidence included in the trial bundle, together with the oral evidence and submissions made at the hearing. A summary of each party's case is provided below. Reference is made to the page number in the bundle.

2008/9

Cleaning - £17.63.

9. The Respondents indicated that this sum was acceptable.

Insurance - £809.99

10. Mr Green explained on behalf of the Applicant that the insurance policy arose from a group policy and was portable. He highlighted the insurance provisions in the lease and stated that any alternative quotation would have to be on a "like for like" basis. It was suggested that the insurance information provided by the Respondents did not provide the full cover as required by the lease. In considering an alternative quotation from Discount Insurance (P205), the premium from May 2013 to May 2014 was £1,472.45. Mr Green stated that there were differences on the level of cover and in particular the lack of public liability, employer liability cover, contents cover, terrorism cover and home assistance cover and no rent cover. He criticised the AA graph reproduced on page 204 of the bundle and stated that this was a general view of the residential insurance market and did not take account of the specifics of this type of development and the nature of the group policy. Ms Griffiths explained that the freeholder instructed an insurance broker (Lorica) and that the group policy was offered in the market place for a competitive tender. Ms Griffiths was unable to assist the Tribunal as to whether the landlord received commission on the insurance policy, but stated that the brokers managed any claims that arose on the policy. There is no report from Lorica demonstrating the market testing of the policy. It was confirmed that there is no claims history in respect of this development.

Mr Ballard sought to produce some late documentation in respect of the insurance issue. Mr Green objected on the basis that it was prejudicial to the Applicant as the information had not previously been disclosed. However, after considering the points made by both sides, the Tribunal allowed Mr Ballard to produce these documents. However, in dealing with any potential prejudice to the Applicant, the Tribunal allowed the Applicant the opportunity to consider these documents and to respond more fully to the document over the lunch break.

Mr Ballard produced documentation from Discount Insurance to support the alternative quotation in the bundle (P205). This indicated that there was public liability cover of £5 million, but stated that there was no employer's liability cover. It was also acknowledged that the alternative quote did not provide cover for lettings to students and DSS tenants. Mr Ballard's additional papers suggested that cover for DSS/student tenants would increase the level of premium by about £700 per annum.

Mr Ballard explained that he had taken the level of cover for 2013/14 from the Discount Insurance alternative quote and then applied the AA indices to calculate the anticipated premiums for the earlier years. In Mr Ballard's opinion the development did not require any employer's liability or terrorism cover, but in any event the terrorism cover would be approximately £300 per annum. Mr

Ballard referred to the policy terms and conditions to suggest that loss of rent was covered in the policy (P231).

In response Mr Green stated that if the premium of £700 for DSS/student cover and £300 for terrorism cover were added to the quoted premium of £1,377.31, the premium would be £2,377.31 without the benefit of employer's liability cover and loss of rent cover. As there would be contractors such as cleaners and gardeners employed on the site, then it was reasonable to have employer's liability and terrorism cover was at the discretion of the landlord. In respect of the loss of rent, although it may be described in the policy document, it is the summary of cover that would detail what aspects were insured.

Tribunal's Decision – £541.67

11. The Tribunal sees some merits in the alternative quotation provided by Mr Ballard. The alternative quotation does make the overall premium for this first year of nearly £4,860 appear excessive. However, we accept the criticisms made by Mr Green that the alternative policy does not replicate the same cover as the Applicant's policy. However, some of the omissions were dealt with by the further confirmation in respect of the public liability cover and the additional premium for the DSS/tenant cover of £700 per annum and £300 for terrorism cover. If these additional sums were added to the core premium of £1,472.45, this would be £2,472.45 for the year without employer's liability or loss of rent cover. Although no specific evidence was produced to reflect the level of premium for these two additional aspects, it is the opinion of the Tribunal in its expert capacity that such an additional premium would not exceed a further £700. To give some benefit of the doubt to the Applicant, we consider that a realistic and reasonable premium for the full cover could have been obtained in the market place at a figure of £3,250.00 for the 2013/4 period. We are aware that this is just an estimate of the figure as to what would be reasonable and as such we make no attempt to scale this back for the relevant years, again giving some benefit of the doubt to the Applicant.

Management Fee - £253.99

12. The Applicant explained that the management fee was based on a price per unit plus VAT. This ranged from £200 - £250 per unit plus VAT. Ms Griffiths explained the duties undertaken by the managing agent, such as processing information from the insurance brokers and arranging repairs/maintenance and services such as lighting and gardening and the accounting and service charge process. Ms Griffiths had tried to deal with issues within the property and had carried out regular inspections. It was stated that the development had been difficult to management as since 2008 some of the leaseholders had been withholding their service charge contributions. The landlord had not been willing to prior fund the service charges. It was stated that the dangerous carpets

were removed in 2009. It was submitted that the Applicant was entitled to a management fee and if not then any reduction in the fee should be small.

Mr Ballard stated that there had been a history of management problems at the development. He acknowledged that when Ms Griffiths had taken over the management some of the issues were resolved. There had been a cleaner for the first three months of the years in question. But the carpets had been shredded and the cleaning had subsequently been undertaken by the leaseholders. The carpets were stated as being a hazard in the health and safety survey in August 2010 and it was only in 2014 that the carpets had been replaced. In the Respondents' opinion there was inadequate management, there was no response to the issues raised in the health and safety report and the main management function had been to commission the reports and surveys. If the quality of the management service had been satisfactory, then the Respondents would have been content with the level of fees proposed. Photographs were provided of the internal parts that showed amongst other matters the carpets to be in a poor state of repair. The photographs were undated, but Mr Ballard said the photographs dated from 2009.

Tribunal's Decision – £180.00

13. It is clear that there was some management activity at the development during the years in question. It is also acknowledged that the managing agent was stymied by the lack of funds from the leaseholders. However, it also appears that a full management function was not being undertaken. It is noted that the managing agents had no role in managing insurance claims and that a number of the issues raised in the various reports were not being attended to. It is noted that there was some involvement by Ms Griffiths but the bundle provided examples of delayed correspondence and a lack of proactive management required for a property with these issues. The Tribunal determines that the appropriate management fee for the work undertaken for all the years in question would be £150 per unit plus VAT. This equates to £180 per unit.

2009/10

Insurance - £789.21

14. As noted above.

Tribunal's Decision – £541.67

15. As noted above.

Repairs and Maintenance - £280.24

16. The total repairs and maintenance for the development for this year amounted to £1,681.45. Of this amount Mr Ballard stated that an invoice of £250 from S & P Builders (P38) dated 27th July 2009 was disputed as although £40 related to communal areas, a sum of £210 reflected work that was done to

the internal service of flat 26. In addition bills from Able Maintenance Services Ltd dated 21st November 2009 (P39) for £212.75 and All London Roofing, dated 2nd February 2010 for £180 (P41) were a duplication of work and it was suggested a sum of £100 should be deducted to reflect that duplication. In respect of an invoice from CAN Drainage & Plumbing dated 4th February 2010 for £180 (P43), it was stated that the majority of the work related to water tanks for two flats and the work should not be included on the service charge account, only a sum of £40 related to drainage that was within the communal areas.

17. In response Mr Green explained that there were some internal works that would benefit the whole development. The gutters may require cleaning out on several occasions and there was a distinction between works to the gutters and works to the hoppers.

Tribunal's Decision – £263.57

18. It would appear the lease for this development is far from clear; there are no clear definitions in respect of the areas demised to the tenants and to the areas that form the common parts. In respect of the roof tanks we consider that, whilst they serve individual flats, they appear to be incorporated into the common parts. As such we determine that the costs in relation to the water tanks are a service charge item. We noted Mr Ballard's comments about the duplication of the works relating to the gutters. However, we do think it is plausible that there could be a number of call outs during a winter period in respect of cleansing and work to gutters and as such we determine that all the costs are rechargeable to the service charges. In respect of the S & P Builders invoice there seems some work that would be attributable to the service charge account. However there is specific mention in the invoice to work to the sink and washing machine of flat 26. In the opinion of the Tribunal, this is not a service charge item. As the invoice is not itemised it is difficult to determine how much is attributable to the internal works. However we consider that a sum of £100 should reflect the work done for the benefit of flat 26 and should be re-charged directly. Accordingly, this will reduce the service charge contribution for the Respondents for this item by £16.67.

Management Fee - £286.63

19. As noted above.

Tribunal Findings - £180.00

20. As noted above.

Asbestos Survey - £76.48

21. The invoice for this item of work is for a total sum of £458.85 and is from 4Site and is dated 20th April 2009 (P49). Ms Griffiths explained that Mowlems had carried out an initial survey in 2004 and that the report had made a number

of assumptions as some areas had not been accessed. As it had been anticipated that major work was going to be carried out to the development, it appeared to be good practice to carry out a new report. The report was issued on 16th April 2009 and recommended a re-inspection in March 2010 (P131). Mr Ballard indicated that if asbestos had previously been identified in the soffit area then a separate survey was needed only for that area and not a full survey. In respect of the report only one area of asbestos had been identified in respect of a cement flue and cowl on the roof, no sample had been taken and it was reported as being low priority. Re-inspections should only be carried out every 3-4 years. If the sum for this survey was accepted, then the sum of £22.52 in 2011 (P53) would be disputed on the basis that there had been a survey in the earlier year.

Tribunal's Decision - £76.48

22. There are now very strict rules regarding health and safety issues in respect of works to such buildings as the development under consideration. Overall the Tribunal considers that it is good practice to have a thorough understanding of potential issues in such a development. We accept Ms Griffiths' comments that a previous survey in 2004 was not thorough and having a detailed survey prior to the commencement of major works was good practice. The survey now stands as a reliable record of the asbestos issues at the development and is a useful survey to be relied upon in the future. As such the Tribunal determine that the survey costs are payable within the service charge regime.

Surveyor's Fee - £48.96

23. The Respondents indicated that this sum was acceptable.

2010/11

Insurance - £812.00

24. As noted above.

Tribunal's Decision – £541.67

25. As noted above.

Management - £305.63

26. As noted above.

Tribunal's Decision - £180.00

27. As noted above.

Asbestos Survey - £22.52

28. This item related to a re-inspection in respect of the asbestos survey. While initially agreed, Mr Ballard suggested that if the full asbestos survey cost was accepted for 2009/10, then this sum would be disputed as it would be

unnecessary to carry out annual surveys. Mr Green stated that the initial report had recommended an annual re-inspection.

Tribunal's Decision - £22.52

29. As mentioned above the health and safety issues surrounding a building are important considerations in respect of a well-managed building. As such it is reasonable that an asbestos survey is reconsidered on a regular basis. We note that only one occurrence of asbestos is noted and identified with low priority, as such we would normally expect only a very brief survey/update is required. Whilst we consider that the sum charged for the re-survey is at the high end of the range that we would normally expect, it is still reasonable that the work is undertaken and accept that in this instance the sum is recoverable by the service charge.

2011/12

Health and Safety Works - £134.50

30. The total amount attributable for health and safety works was £807.00 and the Respondents' contribution equated to £134.50. The £807.00 is made up from three invoices – Harriott Property Maintenance with an invoice dated 14th April 2011 for the sum of £345.00 and the work is described as supplying and installing three smoke alarms; health and safety signage applied to the communal areas and removal of rubbish from an electric cupboard; an invoice dated 2nd September 2011 from 4Site for £300.00 for a water hygiene risk assessment and an invoice from 4Site dated 1st September 2011 for a sum of £162.00 for a water hygiene log book and schematic. It was explained that these works were carried out as a consequence of recommendations from a Health, Safety and Fire Risk Assessment report from 4Site dated 24th August 2010 (P209, 212 and 213). The measures taken reflected that they were temporary works due to the anticipated major works.

31. Mr Ballard stated that there had been one "fire" sign on the back door but there were no signs on the electrical intake cupboard. There were no fire exit signs and the work did not respond to the health and safety report as the back door was not a fire door. It is accepted that three alarms had been installed, but the signage provided was very poor quality that would have not cost much money. In his opinion a reasonable cost for the fire alarm/signage work would be in the region of £120.00. In respect of the water tanks Mr Ballard initially suggested that this was work that should not be within the service charge regime as the work benefitted individual flats. He subsequently accepted that the works were to the tanks in the roof space that served all the flats. He expressed concerns that the management company had maintained or had intended to maintain the water hygiene log.

32. In response Mr Green said that the log had been obtained in 2011 and at that time there had been the RTM application which competed in February 2012, so the managing agent had had no opportunity to put the log book into operation.

Tribunal's Decision – £134.50

33. The work covered by this head of expenditure is work that would be expected as part of the good management of a development and was a response to recommendations in the health and safety report. Failure to carry out that work would have been a point of potential criticism. The leaseholders have benefitted from the works undertaken and no doubt copies of these documents and surveys would have been transferred at the commencement of the RTM's involvement in the development. There is no specific evidence before us to show that the level of costs are unreasonable and as such the Tribunal determine that the costs are recoverable as part of the service charges.

Management - £390.00

34. As noted above.

Tribunal's Decision – £180.00

35. As noted above.

Surveyor - £672.18

36. It appears that the total sum being sought under this heading is £4,033.08. A 1/6th contribution equates to £672.18, the sum being sought from the Respondents. The figure of £4,033.08 is taken from three invoices from Benjamin Mire Chartered Surveyors. The first invoice is numbered 42656 and is for £1,350 and is dated 20th June 2011 and describes the work as *"To taking your further instructions in respect of the above property to prepare a specification and schedule of works and forwarding copies of the same to your managing agents. To our fee in this matter based on anticipated lowest tender figure of £15,000. Fee Due 15% of £15,000 = £2,250 plus VAT Stage 1 Fee Now Due 50% being £1,125 plus VAT"* (P80). The second invoice is also dated 20th June 2011 (number 42660C) and is for £1350. The description of the works is *"To taking your further instructions in respect of the above property to prepare a specification and schedule of works and forwarding copies of the same to your managing agents. To our fee in this matter based on anticipated lowest tender figure of £30,000. Fee Due 15% of £30,000 = £4,500 plus VAT. Stage 1 Fee Now Due 50% being £2,259 plus VAT. Less £1,125 invoiced 20/6/2011 No 42656"* (P80a). The third invoice is dated 20th June 2011 (42660D) and is for £1,333.08 and describes the work as *"To taking your further instructions to obtain tenders based on the specification and schedule of works previously provided to you and forwarding a tender analysis report to you for your due consideration. Our fee in this matter based on anticipated lowest tender figure of £44,812. Fee Due 12.5% being £5,601.50. Stage 2 Fee Now Due 60% being £3,360.90. Less Stage 1 Fee as per invoices nos. 42656 and 42660C being £2,250 plus VAT"* (P81).

37. Mr Green submitted that the work involved several site inspections; an initial report (that was not available); a further specification (that was not available); liaising with contractors in respect of the tender process; liaising with the freeholder and chasing tenders from nominated contractors and dealing with observations. It was confirmed that Trust Property Management dealt with the section 20 processes. In respect of the proposed works, there are obligations under the lease that require the landlord to carry out works to the property and the actions taken in the preparation of the major works were in contemplation of those lease obligations. A section 20 notice had been sent out to the leaseholders on 3rd February 2010 to advise of the proposed works. There had been no observations or subsequent correspondence from the leaseholders that the work was not needed. The surveying work occurred in May 2011.

38. Mr Ballard explained that it had been unrealistic for this work to be progressed. There had been historic problems at the property. Essential works had not been undertaken, whilst minor works that did not benefit the development had been progressed. There had not been any prudent management of the development and leaseholders would not have contributed to major works, so preparing a specification and undertaking a tender analysis was not reasonable in the circumstances.

Tribunal's Decision – £320

39. There is no doubt that the landlord was obliged to carry out repair works to the property. Even if there has been a historic neglect of a building, once a landlord appreciates his obligations and commences the work, then as a general principle any costs that could be claimed via the service charge mechanism could be so collected. This is of course subject to the provisions of the lease and the requirements of statute. In this case it is noted that the administration part of the section 20 process was being conducted by Trust Property Management. The fee being claimed by Benjamin Mire Chartered Surveyors seems to vary from 12.5% to 15% of the estimated cost of the work. This level of fee is at the high end of the range and it would normally be anticipated that such level of fees would include more involvement in the administration process and in overseeing the major works. In this case the work that was undertaken was a preparation of the specification and analysis of the tenders that were received. The Tribunal were not provided with any of the supporting documentation to indicate the level of work that was undertaken. It was noted (P128) that in May 2011 correspondence from Trust Property Management indicated that there were delays in preparing the specification due to access problems to the internal areas. However, it is appreciated that some work must have been carried out. In the opinion of the Tribunal, given the abortive nature of the work undertaken, it would be more appropriate if this work was costed on the basis of the reasonable amount of time that should have been spent on the associated activities. The Tribunal determine that given the nature of the building, it would have been reasonable for a surveyor to spend no more than 8 hours in undertaking the work that has been suggested. An appropriate hourly rate for a chartered surveyor would be in the region of £200. Accordingly, the Tribunal determine that a sum of

£1,600 plus VAT at 20% would be a reasonable sum for the work that appears to have been undertaken. This equates to a sum of £320 as the contribution due from the Respondents.

Administration Fees - £110.00

40. No invoice was provided or this item. It was explained that the sum related to instructions to Bradys for the issue of a letter before action and for drafting out the particulars of claim. Mr Green suggested that this item should be considered by the county court as part of their jurisdiction on the costs of this case. Mr Ballard explained that they had tried to resolve issues via mediation, but the Applicant had not responded. The Respondents had tried to send a cheque but that had been refused.

Tribunal's Decision

41. The Tribunal accepts the position taken by Mr Green on this point and consider that it would be more appropriate for the county court to consider this item in addition to the other legal costs that the Applicant is seeking. Accordingly, this element should be removed from the service charges being claimed and considered with the other legal costs.

Legal Fees - £1,364.00

42. Mr Green mentioned at the start of the hearing that the legal costs that are being sought should remain the jurisdiction of the county court.

Tribunal's Decision

43. The Tribunal accepts the comments made by Mr Green that the legal costs need to be seen in the context of the whole process both in front of the Tribunal and the county court. As such the Tribunal respectfully suggests that the county court is the most appropriate place for consideration of those legal costs.

44. A summary of the Tribunal's decision in respect of the service charges are detailed in the table in Appendix 1. It should be emphasised that these figures do not include the legal costs and administration fee, in respect of the pre-action steps taken by the Applicant.

The next steps

45. This matter should now be returned to the Croydon County Court.

Chairman: Helen C Bowers **Date: 30th April 2014**

Appendix 1

Item	Claimed	Agreed/FTT Decision
2008/9		
Cleaning	£17.63	£17.63
Insurance	£809.99	£541.67
Management	£253.99	£180.00
2009/10		
Insurance	£789.21	£541.67
Repairs & Maintenance	£280.24	£263.57
Management	£286.63	£180.00
Asbestos Survey	£76.48	£76.48
Surveyor's Fee	£48.96	£48.96
2010/11		
Insurance	£812.00	£541.67
Management	£305.63	£180.00
Asbestos Survey	£22.52	£22.52
2011/12		
Health and Safety	£134.50	£134.50
Management	£390.00	£180.00
Surveyor	£672.18	£320.00
TOTAL	**£4,899.96**	**£3,228.67**

Appendix 2

LANDLORD AND TENANT ACT 1985

Section 19 Limitation of service charges: reasonableness

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

Section 27A Liability to pay service charges: jurisdiction

(1) An application may be made to a leasehold valuation 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 it which it is payable.....
(2) Subsection (1) applies whether or not any payment has been made.
(3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred fro 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 it 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 subject of determination by a court, or
(d) has been 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.