FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BK/LSC/2018/0265**
Property	**:**	**Flats 2 and 3, 2 Gilbert Street, London W1K 5HA**
Applicants	**:**	**Gilbert Reversions Limited (1)** **Conegate Limited (2)**
Representative	**:**	**Mr Tom Morris of Counsel instructed by Penningtons Manches Cooper LLP represented the First Applicant**
Respondents	**:**	**Watch Guru Limited (1)** **Demos Demosthenous (2)**
Representative	**:**	**Mr William Sclater of Taylor Fordyce Solicitors**
Type of application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	**:**	**Judge N Hawkes** **Mr P Casey MRICS** **Mr O Miller BSc**
Venue	**:**	**10 Alfred Place, London WC1E 7LR from 10 September 2019 to 13 September 2019**
Date of decision	**:**	**4 October 2019**

DECISION

Decisions of the Tribunal

(1) The Tribunal makes the determinations as set out under the various headings in this Decision.

(2) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

The application

1. The Second Applicant is the head lessee of the building known 2 Gilbert Street, London W1K 5HA ("the property"). The First Applicant holds an intermediate lease of four flats and some common parts of the property.

2. The First Applicant is the immediate landlord of the First and Second Respondents, who are the tenants of Flat 3 and Flat 2 respectively at the property. The First Applicant is entitled to pass on to the Respondents any costs incurred by the Second Applicant which are payable by the First Applicant.

3. The First Applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether certain service charges are payable by the Respondents.

4. During the course of the hearing, the application insofar as it concerned the Second Applicant was withdrawn with the consent of the Tribunal and the Tribunal approved a consent order by which some of the issues between the First Applicant and the Respondents were settled. Separate decisions have been issued concerning these two matters.

5. The issues which remain in dispute between the First Applicant and the Respondents are set out below. The relevant legal provisions are set out in the Appendix to this decision.

The hearing and inspection

6. The First Applicant was represented by Mr Morris of Counsel at the hearing and the Respondents were represented by Mr Sclater, Solicitor. The application having been withdrawn insofar as it concerned the Second Applicant, the Second Applicant played no part in the hearing.

7. At the commencement of the hearing, the Tribunal allowed the parties some time in which to conclude the negotiations which resulted in the consent order which is referred to at paragraph 2 above.

8. When the hearing resumed, both parties sought permission to file and serve additional evidence in relation to the remaining issues. The parties accepted

that it was unsatisfactory that further evidence was required and, without seeking to justify the situation, they explained that the primary focus had been on concluding other aspects of the litigation.

9. The Tribunal determined, on balance, to exercise its discretion to grant the parties permission to file and serve additional evidence pursuant to rule 6(3)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules").

10. All parties were in the same position, no adjournment of the final hearing or additional hearing time would be required, and the proposed additional evidence would enable the Tribunal to fairly and justly determine the remaining issues. In reaching this decision, the Tribunal had regard to the overriding objective at rule 3 of the 2013 Rules.

11. The Tribunal granted both the First Applicant and the Respondents permission to file and serve witness evidence concerning the remaining issues by 10 am on 11 September 2019 and permission to file and serve witness evidence in reply by 2 pm on 11 September 2019.

12. Unfortunately, the Respondents did not serve their signed witness statements in reply until 6.30 pm on 11 September 2019 and they therefore applied to the Tribunal for a further extension of time.

13. Mr Sclater explained that the Respondents' witness statements had been served late because new information had unexpectedly been obtained for the first time on 11 September 2019 from the Respondents' former solicitors. He stated that he had had to incorporate this new information into the witness statements at a time when he had temporarily been without a secretary and without an assistant.

14. Mr Morris opposed the Respondents' application for an extension of time. Alternatively, he submitted that the Respondents' statements in reply sought to introduce new matters and that they should only be admitted to the extent that they truly responded to the First Applicant's witness evidence.

15. The Tribunal determined pursuant to rules 6(3)(a) and 18(6)(b) of the 2013 Rules that it would admit the Respondents' statements in reply only insofar as they truly responded to the First Applicant's witness evidence. Insofar as the statements in reply were a true response to the First Applicant's case, the evidence contained within the witness statements was likely to come before the Tribunal in response to cross-examination in any event.

16. The Tribunal heard oral evidence from:

    (i) Mr Wayne Rodrigues of Residential Facilities Management Limited (the First Applicant's managing agents);

(ii) Mr Tom Bolt, a Director of the First Respondent; and

(iii) Mr Vas Hava, the Second Respondent's agent.

17. The Tribunal found all three witness to be credible and considers that they each did their best to assist the Tribunal.

18. The property which is the subject of this application is a purpose-built block bounded by Oxford Street, Gilbert Street and Binney Street in London W1. The Tribunal inspected the property at 10 am on 10 September 2019, in the presence of representatives of both the First Applicant and the Respondents.

The issues

19. By Directions dated 7 August 2018, a Procedural Judge identified that the application currently before the Tribunal concerns the service charge years 2013-2018.

20. The Tribunal found that it had no jurisdiction to hear a dispute between the parties concerning whether or not a contractual agreement was reached following 2014 Tribunal proceedings (reference LON/00BK/LSC/2013/0636) concerning earlier service charge years.

21. The relevant service charge years are not before this Tribunal, there has already been a Tribunal determination concerning those service charge years, and the Tribunal has no jurisdiction to determine contractual disputes.

22. The First Applicant contended that legal fees incurred in or about 2018 the sum of £12,135 are payable by way of a service charge and that the Tribunal should determine that these fees are both reasonable and payable. The Respondents had not sought to challenge the reasonableness or payability of these legal fees in their Statement of Case.

23. Mr Sclater explained that the Respondents had not sought to challenge the legal fees because the Respondents were not aware that these fees were being claimed as a service charge. He referred the Tribunal to a demand dated 1 June 2018 in which the legal fees were not claimed as a service charge but rather they were claimed pursuant to clause 2.5 of the lease. He also referred the Tribunal to the fact that the First Applicant's statement of account which includes the legal fees also includes non-service charge items such as ground rent.

24. The Tribunal accepts that it was insufficiently clear that the First Applicant was seeking to recover the legal fees as a service charge in these proceedings and the Tribunal therefore makes no finding in respect of the reasonableness or payability of these legal fees.

25. During the course of the hearing, Mr Sclater confirmed that the maintenance costs of the entry phone system and the costs of the provision of post boxes are not in dispute. However, he stated that the evidence concerning the manner in which the issue of door security has been managed would be relied upon by the Respondents as part of their challenge to the managing agents' fees.

26. The service charges relating to lift maintenance costs, the cleaning of the internal common parts, external window cleanings costs in the years 2017 and 2018, and the managing agents' fees remain in dispute and are issues which fall to be determined by this Tribunal.

27. The Respondents challenge is to the standard of the work which has been undertaken and, in the case of the external window cleaning, the Respondents assert that the work has not been carried out at all. The Respondents have not provided any alternative quotations and they do not contend that the costs were unreasonably incurred or that, if the work were carried out to a reasonable standard, the costs would be outside a reasonable range.

28. Having heard evidence and submissions from the parties and having considered all of the documents to which it was referred during the course of the hearing, the Tribunal has made the following determinations.

The lift maintenance costs

29. The Tribunal was referred to an expert report dated 7 July 2019 which was prepared for both the First Applicants and the Respondents by Mr Robert Chippett and Mr Gareth Lomax of Ardent Lift Consultancy, Lift Consulting Engineers.

30. Mr Chippett has over 40 years' experience in the lift engineering industry and it is stated at paragraph 1 of the report that Mr Lomax, the Principal of Ardent Lift Consultancy, has carried out a "peer review".

31. The Tribunal has considered this report in its entirety and notes that, in respect of the general lift maintenance contract, the authors of the report conclude:

"The maintenance contract in place appears to be the basic 'oil and grease' type, with additional items beyond basic maintenance being chargeable. However, the level of housekeeping on site would intimate these basic levels are not being fully met by the existing regime."

32. Mr Sclater submitted that there should be a reduction in the charges for lift maintenance of up to 50% in reliance upon this report. Mr Morris's primary submission was that the experts did not take issue with the operation of the lift, that various criticisms concern the area demised to Second Applicant, that the maintenance contract was basic, and that in all the circumstances there should be no reduction in the lift maintenance costs. Alternatively, he submitted that any reduction should be not more than 10%.

33. The Tribunal accepts that the maintenance contract was basic, that the experts' criticisms do not appear to relate to the operation of the lift and that some of the experts' criticisms concern matters which are outside the First Applicant's demise. However, the Tribunal also notes that the experts are of the view that even the standards of a basic maintenance contract have not been met.

34. Taking all of these matters into account, the Tribunal find that the lift maintenance work was not carried out to a reasonable standard and that the lift maintenance costs (that is the costs of the annual maintenance contract rather than the costs of additional call out/repair works) should be reduced by 15% in order to reflect this.

35. This is a straightforward calculation but if there is any dispute concerning the calculation of the final figures resulting from the Tribunal's determination, an application may be made to the Tribunal within 28 days of the date of this decision setting out the nature of any such dispute.

The internal cleaning costs

36. On inspecting the property, the Tribunal noted that the internal common parts are in very poor decorative condition and that the carpet is worn, stained and requires replacement. The stains are clearly too deep to be removed by general cleaning and hoovering.

37. Mr Rodriguez informed the Tribunal that the lift requires a new gear box and/or other items which will have to be manoeuvred through the common parts, potentially causing decorative damage. Accordingly, redecoration has been scheduled to take place after the repairs to the lift have been completed.

38. All parties agreed that redecoration of the common parts of the property is required. However, the issue of redecoration is separate from the issue of cleaning and no charges were demanded in respect of redecoration in the service charge years which fall to be considered by this Tribunal.

39. In the 2014 Tribunal decision, the cleaning costs which formed the subject matter of the application which was then before the Tribunal were reduced by 25%. Mr Rodriguez gave evidence that, since previous Tribunal proceedings, he has asked the cleaners to send him before and after photographs of the areas which have been cleaned on a weekly basis.

40. Mr Rodriguez also gave evidence that he personally inspects the property once a month, sometimes before and sometimes after the cleaning has been undertaken. Mr Rodriguez is satisfied on the basis of the evidence provided by the cleaners together with his own observations on personally inspecting the property that the weekly cleaning is carried out to a reasonable standard.

41. It is common ground that, at times, vagrants have entered the building; that there have been parties within the flats at which anti-social behaviour, including

illegal drug taking, has occurred; and that there have been complaints that flats within the building have been used for prostitution.

42. It is also common ground that these activities have resulted in rubbish, drug paraphernalia and vomit being deposited in the common parts. Mr Rodriguez stated that, when necessary, he arranges for rubbish etc. to be removed between the weekly cleaners' visits.

43. Mr Hava accepted that some complaints concerning anti-social behaviour have been made in respect of occupants of flat 2, whilst stressing that complaints have also been made concerning the occupants of other flats. He stated that if the building were in better condition, the Second Respondent would be in a position to seek to let flat 2 to a family or on a long-term basis to a professional. Mr Hava accepted in cross-examination that there has been a limited improvement in the standard of the cleaning since the 2014 Tribunal decision.

44. Mr Bolt was extremely dissatisfied with the condition of the common parts but his primary concern was the need for redecoration. He gave evidence, which the Tribunal accepts, that he has been greatly inconvenienced by the anti-social behaviour within the building.

45. The Tribunal accepts Mr Bolt and Mr Hava's evidence, which accords with the Tribunal's own observations on inspecting the property, that the common parts of the building are in a very poor decorative condition. The Tribunal also notes that, on inspecting the common parts, there was no build-up of dust, rubbish or dirt of the type which would be removed by general cleaning.

46. The cleaning costs vary but they are approximately £60 per week to include the cleaning of the stairs, hallway, corridors and lift. The Tribunal accepts Mr Rodriguez's evidence that he monitors the cleaning and that the cleaning is carried out to a reasonable standard so as to justify cleaning costs in the region of £15 per flat per week for cleaning a block which is, at times, in poor condition following instances of anti-social behaviour.

47. Accordingly, the Tribunal is satisfied that the costs of cleaning the internal common parts are reasonable and finds that no deduction falls to be made under this heading.

The external window cleaning costs

48. External window cleaning costs were incurred in 2017 and 2018. The Respondents' case is that no external window cleaning is in fact carried out.

49. Mr Rodrigues gave evidence that the external window cleaning is carried out four times a year. At the time of the Tribunal's inspection, the windows had last been cleaned in July and they were due to be cleaned in October.

50. Mr Rodrigues stated that he has not personally seen the external windows in the process of being cleaned but that, on the basis of his monthly inspections of the property, he is satisfied that the window cleaning has taken place. He produced invoices from an independent contractor for carrying out this work. The Tribunal notes that Mr Rodrigues indicated that he intends to obtain more detailed evidence concerning the external window cleaning in the future.

51. Both Mr Bolt and Mr Hava gave evidence that they do not believe that the external window cleaning is carried out at all. Mr Hava informed the Tribunal that he had visited the property four times in six months and had never found the windows to be clean. Mr Bolt was less specific about the amount of time which he has spent at the property and he too has never seen the windows in a clean condition.

52. On inspecting the property, the Tribunal noted that the external windows were extremely dirty. However, on the First Applicant's case, the windows had not been cleaned since July and the property is located in one of the busiest areas of London.

53. Having considered all the evidence, the Tribunal is not satisfied on the balance of probabilities that the independent window cleaning contractor is invoicing quarterly for work which is never undertaken.

54. The Tribunal finds that it is more likely that the windows are cleaned quarterly but that, due to the dirt, dust and traffic pollution of the property's Oxford Street location, the windows become dirty relatively quickly and that the windows have not been observed by Mr Bolt or Mr Hava immediately after cleaning. Accordingly, the Tribunal finds that no deduction falls to be made under this heading.

The managing agents' fees

55. Mr Bolt is, understandably, extremely concerned about an ongoing problem of water penetration into flat 3. He explained that the water penetration has included flooding and is not simply a leak. It is common ground that water penetration into flat 3 has been a problem for many years and Mr Bolt is of the view that the managing agents could have done more to resolve this issue.

56. When it was put to Mr Bolt that the source of the water is either the roof above his flat or the plant room, all of which are within the Second Applicant's demise, Mr Bolt accepted that this is what he has been told but pointed out that the managing agents are his "port of call".

57. Mr Bolt also accepted that a lot of emails have been sent whilst noting that sending emails does not keep him dry. He vividly described to the Tribunal how soulless it is to occupy a flat which is affected by long term water penetration.

58. Mr Hava accepted that there has been some improvement in management of the block since the 2014 Tribunal proceedings. He was dissatisfied with many matters relating to the property but he agreed in cross-examination that it is not within the power of the managing agents to resolve them. He accepted that the managing agents "have been chasing" the Second Applicant and he also agreed that the agents can do no more than write and telephone. He gave evidence that the managing agents have removed rubbish from the common parts whenever it has been reported.

59. Mr Rodrigues gave evidence that the managing agents have sent over 7,000 emails concerning issues raised by the Respondents during the relevant period, in particular, concerning the issue of water penetration into flat 3.

60. Mr Rodrigues said that the managing agents passed on requests for invoices to the First Applicants before the First Applicants instructed solicitors to deal with such requests in October or November 2017. He also stated that they have carried out monthly inspections, monitored the cleaners, arranged for additional ad hoc cleaning/rubbish removal, and have carried out general management functions.

61. Some examples of the extensive email correspondence were provided and Mr Rodrigues gave evidence that telephone calls have also been made. Service charge information was sent out late as a result of the date on which it was received from the Second Applicant.

62. Mr Rodrigues stated that, when complaints are received concerning the condition of the common parts after parties, he takes action to deal with them. He accepted that vagrants have in the past gained access to the block by putting their hand through the letterbox but explained that, in response, a plate has been installed over the letter box which prevents this.

63. Mr Rodrigues stated that the ongoing security issues and anti-social behaviour is not the result of people who have been provided with the door entry code later returning to the property. On his evidence, the source of the problem is a series of new nuisance subtenants (many of whom let the flats via Airbnb) who are provided with the door entry code by lessees. Accordingly, if the code were changed or a fob system introduced before the issue of unauthorised short terms lets has been resolved, the problem would remain.

64. For the reasons set out above, the Second Applicant has played no part in these proceedings. On the basis of the information which was presented to the Tribunal, the Tribunal accepts that Mr Bolt has experienced water penetration into flat 3 over many years. However, the First Respondent's remedy in respect of the water penetration does not lie against the managing agents because it is not within the power of the managing agents to resolve the issue and the Tribunal accepts that they took reasonable steps to pass on Mr Bolt's complaints.

65. The Tribunal accepts Mr Rodriguez' evidence and is satisfied that the managing agents carried out a considerable amount of activity for their management fee of less than £500 per flat per annum. The Tribunal notes that a standard of perfection is not required and accepts that many of the matters complained of are outside the managing agents' control. This is a difficult block to manage with a complicated lease structure, frequent complaints of water penetration which appears to emanate from areas within the head lessee's demise, and problems of anti-social behaviour.

66. The Tribunal finds that the service provided by the managing agents was of a reasonable standard. Accordingly, no deduction falls to be made under this heading.

Application under s.20C of the Landlord and Tenant Act 1985

67. Section 20C of the 1985 Act provides that 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 residential property tribunal 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. This provision provides the Tribunal with a wide discretion to exercise having regard to all the circumstances of the case.

68. As regards the principles to be applied in determining the section 20C application, in *Tenants of Langford Court v Doren Ltd (LRX/37/2000)*, HHJ Rich QC stated at [28] to [31]:

"In my judgement the only principle upon which the discretion should be exercised is to have regard to what is just and equitable in all the circumstances … Where, as in the case of the LVT there is no power to award costs, there is no automatic expectation of an order under s.20C in favour of a successful tenant… Excessive costs unreasonably incurred will not, in any event, be recoverable by reasons of s.19 of the Landlord and Tenant Act 1985."

69. In *Schilling v Canary Riverside Development PTE Limited* LRX/26/2005, at [14] HHJ Rich QC stated, of the outcome of proceedings:

"… in service charge cases, the "outcome" cannot be measured merely by whether the applicant has succeeded in obtaining a reduction. That would be to make an Order "follow the event". Weight should be given rather to the degree of success, that is the proportionality between the complaints and the determination, and to the proportionality of the complaint, that is between any reduction achieved and the total of service charges on the one hand and the costs of the dispute on the other hand"

70. Section 20C is a power to deprive a landlord of a property right. At [13] of *Schilling* it is said that, so far as an unsuccessful tenant is concerned, it requires some unusual circumstance to justify an order under section 20C and, at [22]:

> *"Although the LVT in taking account of the tenants' success in reducing the service charge adds the expectation that the accounts should have been completely correct having regard to the class of the Estate, I do not think that such consideration when one takes into account the very modest adjustments which have been made following my decision on appeal can possibly justify depriving the landlords of their contractual right to charge the costs of these provisions to the service charge."*

71. At paragraphs 45 and 46 of Mr Morris's skeleton argument, it is submitted that, as a matter of construction, paragraph 4.6 of part B to the Third Schedule of the leases *"is more than ample to encompass the First Applicant's legal costs of pursing the Respondents' service charge arears and of this application and determination."*

72. Mr Sclater did not take issue with this assertion and did not address the Tribunal concerning the construction of the lease. However, he submitted that it would be just an equitable to make an order under section 20C of the 1985 Act having regard to the First Applicant's conduct of these proceedings. In particular, he stated that the First Applicant disclosed invoices late, did not instruct a mechanical and electrical expert jointly with the Respondents, and did not seek to join the Second Applicant when the proceedings were issued.

73. Mr Morris stated that the Second Applicant was joined at the first case management hearing, that no request was made to the First Applicant to jointly instruct a mechanical and electrical expert, and he disputes that the First Applicant has breached any legal obligation to disclose invoices.

74. It is the First Applicant's case that there has been a long history of service charge arrears and that from May 2018, when Mr Sclater left his previous firm, until 30 October 2018 when Mr Sclater contacted the First Applicant's solicitors from his new firm, there was no engagement on the part of the Respondents with any aspect of the dispute notwithstanding chasing on the part of the First Applicant's solicitors. By the time Mr Sclater contacted the First Applicant's solicitors on 30 October 2018, these proceedings had already been issued.

75. Further, Mr Morris pointed to the fact that the Respondents never completed the Scott Schedule and he stated that the precise nature of the dispute therefore only became apparent on the eve of the hearing. As stated above, following the commencement of the hearing, the Respondents were late in complying with the directions which were made by this Tribunal.

76. The Tribunal finds that the Respondents have not been successful within the meaning of *Schilling*. The majority of the time available for the hearing was spent in dealing with aspects of the dispute other than the 15% reduction in the

lift maintenance costs and the issue of whether the legal fees of £12,135 fall to be considered as part of this application.

77. The possible procedural failings which are complained of by the Respondents would not (if their case on these issues were made out) render it just and equitable for the Tribunal to make the order sought. Both parties failed to fully prepare for the hearing and the Respondents' failure to complete the Scott Schedule and the late service of the Respondents' witness evidence in reply rendered the Tribunal's preparation particularly difficult. The Respondents do not take issue with the assertion that they failed to engage with the First Applicant's solicitors from May 2018 until October 2018 when Mr Sclater was reinstructed.

78. In all the circumstances, the Tribunal is not satisfied that it is just and equitable to make the order sought.

Name: Judge N Hawkes **Date:** 4 October 2019

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 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.