FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AZ/LSC/2021/0065**
HMCTS code	**:**	**V: VIDEO**
Property	**:**	**Flat G, 149-151 Kirkdale, Sydenham, London SE26 4QJ**
Applicant	**:**	**Ms G Y Li**
Representative	**:**	**In Person**
Respondent	**:**	**Mr M Kiledejo**
Representative	**:**	**In Person**
Type of Application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	**:**	**Tribunal Judge Prof R Percival** **Mr R Waterhouse MA LLM FRICS**
Date and venue of Hearing	**:**	**17 September 2021** **Remote**
Date of Decision	**:**	**20 September 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing [on the papers] which has been [consented to/not objected to] by the parties. The form of remote hearing was [insert the code and description, e.g. P:PAPERREMOTE, V: SKYPEREMOTE or A:BTMMCOURT]. A face-to-face hearing was not held because [insert e.g. it was not practicable and no-one requested the same, or it was not practicable and all issues could be determined in a remote hearing/on paper]. The documents that I was referred to are in a bundle of [x] pages, the contents of which I have noted. The order made is described at the end of these reasons. [The parties said this about the process: add as applicable].

The application

1. The Applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the service charge years 2019/20 and 2020/21.

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

The property

3. The property is a one bedroom flat in a small purpose built block of flats. The building contains two retail units and seven flats.

4. The Respondent was responsible for the initial development of the building. He owned the freehold, and the leasehold interest in three of the flats, which he lets on short term tenancies. The other four flats are subject to long leases.

The lease

5. The lease was granted in 2002, for a term of 125 years.

6. By clause 5(4) the lessee covenants to pay the interim charge and the service charge provided for in the fifth schedule. The service charge percentage is 12.8 (particulars paragraph 9).

7. The lessor's covenant in clause 6(5) are to "maintain and keep in good and substantial repair and condition" the structure, common parts, boundaries and any other undemised part of the building (clause 6(5)(a)); to, every fifth year, paint and decorate both the exterior and interior communal areas (clause 6(5)(b), and to keep the common parts

clean and lighted (clause 6(5)(c). The lessor may employ maintenance staff, (clause 6(5)(e)); managing agents and various other professionals. (clause 6(5)(f). There is also an obligation to maintain "a rented electric porter system" for the main entrance (clause 6(5)(j)). There is provision for a reserve fund (clause 6(5)(l). The insurance covenant is at clause 6(5)(m).

8. The fifth schedule makes detailed provision for the service charge. Interim charges are payable twice a year in advance on the basis of estimates, and there is a reconciliation process by which overpayment is credited to the lessee's account and underpayment is subject to a further demand. A certificate is required, setting out basic accounts.

The issues and the hearing

9. Both parties appeared in person.

10. At the start of the hearing the parties identified the relevant issues for determination as:

    (i) Issues in relation to the consultation requirements in section 20 of the 1985 Act and the service charge relating to the painting of the communal hall/stairway (2019/20);

    (ii) The reasonableness of the service charge relating to repair of the electric gate (2019/20);

    (iii) The reasonableness of the service charge relating to repairs to the storage unit (2019/20);

    (iv) The reasonableness of the service charge relating to cleaning (both years); and

    (v) The reasonableness of the service charge relating to administration (both years).

11. The Applicant had initially also contested the service charge relating to the repair of the communal door lock, but withdrew the issue, given that the Respondent had, shortly before the hearing, produced the relevant invoice.

Painting of the communal hall/stairway

12. The service charge particularised a charge of £2,200 (ie £314.29 for each flat) for the painting of the hall/stairway. This involved painting the walls and ceilings of the hall and stairs, and the spindles and banisters.

13. The Applicant contested the reasonableness of the charge, and drew our attention to the fact that no consultation process under section 20 of the 1985 Act had been undertaken. The Respondent frankly admitted that he was unaware of his obligations under section 20.

14. We therefore explained to the parties the effect of *Daejan Investments Ltd v Benson and others* [2013] UKSC 14; [2013] 1 WLR 854. As a result, the Respondent applied for retrospective dispensation from the requirements of section 20 under section 20ZA.

15. The Applicant had obtained two alternative quotations. One was based on a personal inspection, the other on a video shot by the Applicant of the relevant area. One estimate was for £1,345 and the other £1,000. She agreed that both estimates were based on the relevant tradespeople viewing the hall/stairway after they had been painted.

16. The Respondent explained that he had retained a building company who had been recommended to him to undertake refurbishment of one of the flats of which he owned the leasehold interest. He then asked them to undertake the redecoration of the hall/stairway. There was no written specification, and nor did he have an invoice. The work involved a significant amount of making good, of the sort generally necessary before painting can be undertaken.

17. We were able to see photographs of the hall/stairway after the work had been completed.

18. It falls to the Tribunal to consider the issue in the context of the Respondent's section 20ZA application, in the terms set down in *Deajan*. We consider that the fact that the Applicant had obtained, after the event, two quotations demonstrates potential prejudice. Had a proper section 20 process been undertaken she could, and we believe would, have sought and obtained alternative quotations, which could have been put to the Respondent. Had the quotations been significantly lower than that provided by the company that did, in fact, undertake the work, we consider that there is a reasonable likelihood that the Respondent would have accepted the lower quotation.

19. We note the proper approach set down in Deajan at paragraph [67]:

> "given that the landlord will have failed to comply with the requirements, the landlord can scarcely complain if the LVT views the tenants' arguments sympathetically, for instance by resolving in their favour any doubts as to whether the works would have cost less … , if the tenants had been given a proper opportunity to make their points."

20. Having said that, we agree with the Respondent that the quotations obtained by the Applicant after the event are unlikely to present a realistic reflection of what would be required before the work had been done. However, resolving doubts in the tenant's favour, we think that the job would take approximately seven or eight person-days, and materials would cost perhaps £200. On that basis, we consider a realistic low quotation would be £1,700. Accordingly, we grant

dispensation on the basis that the cost be so limited. This amounts to the same result as if we had concluded that £1,700 was the reasonable cost for the work.

21. *Decision*: Under section 20ZA of the 1985 Act, we grant the Respondent's application for dispensation from the requirements of section 20 of the same Act, on condition that the cost put through the service charge be limited to £1,700.

Electric gate repairs

22. In the service charge for 2019/20, a charge of £1038.60 appears for repairs to what is described as the electric gate.

23. Access to the flats from the streets requires passage through, first, this gate – a black steel gate secured by a lock accessible via an intercom system – and then a front door.

24. Both parties agreed that the lock to the gate had frequently been broken, apparently by vandalism or by someone seeking to gain access. The Applicant complained that the ease of access as a result made her feel unsafe. There was some evidence in relation to a violent party, the details of which do not need to detain us.

25. The Respondent produced two invoices for the repairs to the gate, which, he said, required specialist attention. One was for £420 and the second for £228. Another repair had been undertaken during the relevant period, he said, but he did not have an invoice for it. Initially, he said it was for about £330, but when we pointed out that that amounted to a total of £978, he said he must have got the figure wrong and it must have been for whatever sum made up that charged.

26. The Respondent had invoices for two repairs. There is no reason why he should not have been able to produce a third. He said that he would have the sum in his bank statement, but he has not produced that as evidence. Where there is a dispute, as there is, between the parties about the extent of (successful) repair of the gate, we are not prepared to take on trust that there is a further invoice, chargeable during the relevant period, in the absence of any evidence of it.

27. *Decision*: The charge of £1038.60 referable to repairs to the electric gate is not reasonable in amount. A charge of £648 should be substituted.

The storage unit

28. Outside the building, but against it, is a small storage unit containing the meters for the house. The door, as is evident from the photograph we were shown, does not close.

29. The Respondent charged £530 for repairs to the unit. The Applicant had understood this to relate only to a repair to the door. At the hearing, the Respondent explained that the sum also included repairs to a small felt roof above the unit, which is not visible on the photographs.

30. The Applicant complained that all that had happened was that the door of the unit had been painted, inappropriately with internal paint that came off on her clothes if she touched it as she passed. In the Applicant's bundle were whatsapp conversations with other leaseholders who endorsed this point.

31. The Respondent confirmed that the decorators who had been engaged for the hall/stairway had also painted the door. He denied that the type of the paint was inappropriate.

32. It is clear from the photograph that the door is a cheap, internal door that should not be put to that use. It is not clear if there had been any repair to the door itself, but if there had it had not been effective. We accept the Respondent's evidence, however, that the roof had been re-felted.

33. Having considered the size of the unit and the likely cost of re-felting, the reasonable charge for this work would be no more than £350.

34. *Decision*: The charge of £530 referable to repairs to the storage unit is not reasonable in amount. A charge of £350 should be substituted.

Cleaning

35. Each flat was charged £180 in 2019/20 and £192.86 in 2020/21 for cleaning of the common parts.

36. The Applicant said that the carpet in the hall/stairwell was only rarely cleaned – she estimated once a month – and then by someone with just a dustpan and brush. She and the other leaseholders and tenants regularly picked up rubbish. She exhibited photographs showing a discarded take away bag and some other detritus on the carpet.

37. After an occasion on which the Respondent visited her (in a way to which she took objection), the cleaner attended more frequently with a vacuum cleaner for a period, but reverted to his previous pattern thereafter.

38. The Respondent said that the cleaner was someone who lived locally and who had undertaken this work for a considerable time. He attended once a week with a vacuum cleaner to clean the carpet in the internal common hall/stairway, and on another day to put the bins out, and

again the next day to put them back. The Applicant did not contest the evidence in relation to the bins.

39. The evidence of the parties is irreconcilable. On balance, we prefer that of the Respondent. We did not explore with the Applicant how she was able to be sure that the cleaner only attended as infrequently as she indicated, but it is intrinsically unlikely that he would do so with a vacuum cleaner on some occasions, but not others.

40. Further, and more importantly, we have seen a significant number of photographs of the carpet. It is visibly in good condition. We do not think that it would be so, had it been subject to such a minimal cleaning regime over a long period.

41. *Decision*: the charges referable to cleaning in both years are reasonable.

Administration charge

42. The Respondent confirmed that the fee of £250 per flat in both years' service charge for "administration" was for his management of the property.

43. The Respondent had taken over management of the property in April 2019 when the previous manager had died. That person had apparently been the Respondent's partner in the original development of the flats. He now undertook the management task directly.

44. The Applicant had originally simply not understood what this charge, which was, we agree, confusingly labelled, was for. It was only when we discussed the issue with the Respondent that its nature became clear to her.

45. We said to both parties that our understanding of the market for managing agents in London, an understanding based on experience and not specific disclosable evidence, was that the reasonable range of per unit management fees for small blocks was between about £250 and £375. These are figures for professional managers.

46. The Respondent agreed that he was not a professional property manager, and agreed that had he been one he would have been aware of section 20 of the 1985 Act. However, he said that his experience in the construction industry meant that he was capable in respect of aspects of property management.

47. The Applicant said that she now understood the charge, but still contested it on the basis of the quality of management of the block.

48. *Decision*: On balance, we consider that the "administration charge" for management services was reasonable.

49. However, we do urge upon the Respondent that section 20 of the 1985 Act is not the only technical legal matter of which a property manager needs to be aware.

Issue 5: Application for orders under Section 20C of the 1985 Act/Commonhold and Leasehold Reform Act 2002, schedule 11, paragraph 5A

50. The Applicant applied for orders under section 20C of the 1985 Act that the costs of these proceedings may not be considered relevant costs for the purposes of determining a service charge; and an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 extinguishing any liability to pay an administration charge in respect of litigation cost in relation to the proceedings.

51. We consider these applications on the basis that the leases does provide for such costs to be passed on either in the service charge or as administration charges, without deciding whether that is the case or not. Whether the lease does, in fact, make such provision is, accordingly, an open question should the matter be litigated in the future.

52. An application under section 20C is to be determined on the basis of what is just and equitable in all the circumstances (*Tenants of Langford Court v Doren Ltd* (LRX/37/2000). The approach must be the same under paragraph 5A, which was enacted to ensure that a parallel jurisdiction existed in relation to administration charges to that conferred by section 20C.

53. Such orders are an interference with the landlord's contractual rights, and must never be made as a matter of course.

54. We should take into account the effect of the order on others affected, including the landlord: *Re SCMLLA (Freehold) Ltd* [2014] UKUT 58 (LC); *Conway v Jam Factory Freehold Ltd* [2013] UKUT 592 (LC); [2014] 1 EGLR 111.

55. The success or failure of a party to the proceedings is not determinative. Comparative success is, however, a significant matter in weighing up what is just and equitable in the circumstances.

56. While both parties before us have enjoyed some success, the preponderance amongst those contested has been in favour of the Applicant.

57. Further, this is a case where the Applicant can fairly argue that she was forced to make the application in order to secure the most basic information from the Respondent, a point she made before us in her submissions on the applications.

58. There are no evident financial implications for the landlord (or any other party), as there would be, for instance, in the case of a tenant-owned freehold company. The Respondent did not make such an argument before us.

59. The Respondent did argue that he had made efforts to resolve he matter, and said he had incurred legal costs, having consulted a solicitor.

60. We conclude that it would be just and equitable to make the orders.

61. *Decision*: We order (1) under section 20C of the 1985 Act that the costs incurred by the Respondent in proceedings before the Tribunal are not to be taken into account in determining the amount of any service charge payable by the Applicants; and (2) under Commonhold and Leasehold Reform Act 2002, schedule 11, paragraph 5A that any liability of the Applicants to pay litigation costs as defined in that paragraph be extinguished.

Rights of appeal

62. 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 London regional office.

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

64. If the application is not made within the 28 day time limit, the 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 these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

65. The application for permission to appeal must identify the decision of the Tribunal to which it relates, 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.

Name: Tribunal Judge Professor Richard Percival **Date:** 20 September 2021

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 provision 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.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

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 20ZA

(1) Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

(2) In section 20 and this section—

"qualifying works" means works on a building or any other premises, and

"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

(a) if it is an agreement of a description prescribed by the regulations, or

(b) in any circumstances so prescribed.

(4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord—

(a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,

(b) to obtain estimates for proposed works or agreements,

(c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,

(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and

(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6) Regulations under section 20 or this section—

(a) may make provision generally or only in relation to specific cases, and

(b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

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 tribunal2 or leasehold valuation tribunal or the First-tier Tribunal3 , or the Upper Tribunal4 , 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 the county court ;

(aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;

(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

(ba) in the case of proceedings before the First-tier Tribunal, to the tribunal;

(c) in the case of proceedings before the Upper Tribunal4 , 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 the 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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,

(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,

(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—

(a) specified in his lease, nor

(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on [the appropriate tribunal]1 in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—

(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c) has been the subject of determination by a court, or

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

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

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).