



In *Sara & Hossein Asset Holdings Ltd v Blacks Outdoor Retail Ltd* [2020] EWCA 1521, by paragraph 3 of Schedule 6 to the lease, “in the absence of manifest or mathematical error or fraud [the landlord’s service charge] certificate shall be conclusive”.

The Court of Appeal held that, by virtue of that paragraph, Blacks was precluded from defending to a claim to unpaid service charges on the grounds that some works were unnecessary, contractually irrecoverable and that the costs had increased due to historic neglect. David Richards LJ, giving the lead judgment, observed that a tenant “would be well advised to consider very carefully before agreeing a lease in these terms, particularly where the amount of the service charge is not capped by the terms of the lease...”

Although it is often said (including by me) that residential service charge law needs reform, as a tenant of a commercial unit, Blacks must gaze wistfully at sections 18 to 30 of the Landlord and Tenant Act 1985. Section 27A(6) of the Act renders void an agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) 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 to the First-tier Tribunal (Property Chamber).

Had the dispute fallen within the jurisdiction of the tribunal, I suspect that there would have been good grounds for arguing that paragraph 3 was just such an agreement.

