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HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTIONS 27A & 20C AND A COUNTER APPLICATION UNDER SECTION 20ZA OF THE LANDLORD AND TENANT ACT 1985

Case Reference:	LON 00AY/LSC/2011/0578
Premises:	Duffell House Loughborough Street London SE11 5PX
Applicant(s):	Leaseholders of Flats 15,19, 22, 27, 32, 34, 38 and 42 Duffell House Loughborough Street London SE11 5PX (see list attached)
Representative:	Mr Nicholas Gillingham Flat 15
Respondent(s):	Lambeth Living Limited on behalf of London Borough of Lambeth
Representative:	Mr Jon Holbrook of counsel
Date of hearing:	8th 9th and 10th February 2012
Appearance for Applicant(s):	Mr Nicholas Gillingham
Appearance for Respondent(s):	Mr Jon Holbrook of counsel instructed by London Borough of Lambeth Legal Department
Leasehold Valuation Tribunal:	Mr P Leighton LL B Hons Mr P Roberts Dip Arch RIBA Mrs L Hart Ba (Hons)
Date of decision:	10th April 2012

Add1	Add2	Postcode	Name	Date (NOI)	Name	Date (LPN)
15	Duffell House	SE11 5PU	Mr J Thakerar & Ms A Chotai	*09-Nov-07*	*Mr N Gillingham, Mrs E Gillingham*	30-May-08
19	Duffell House	SE11 5PX	Mr A Thakerar	09-Nov-07	Mr B Parsons	30-May-08
22	Duffell House	SE11 5PX	Mr J Thakerar & Mrs A Thakerar	09-Nov-07	Mr J Thakerar & Mrs A Thakerar	30-May-08
38	Duffell House	SE11 5PX	Mr J Thakerar & Ms A Thakerar	09-Nov-07	Mr J Thakerar & Ms A Thakerar	30-May-08
42	Duffell House	SE11 5PX	Mr K Robinson	09-Nov-07	Mr K Robinson	30-May-08
27	Duffell House	SE11 5PX	Mr S Muscat	09-Nov-07	Mr S Muscat	30-May-08
32	Duffell House	SE11 5PX	Miss J Nash	09-Nov-07	Miss J Nash	30-May-08
34	Duffell House	SE11 5PX	Mr G Thorpe	09-Nov-07	Mr G Thorpe	30-May-08

Decisions of the Tribunal

The Tribunal determines that the sums demanded by the Respondent in respect of major works and the service charges for the year 2011 are payable by the Applicants.

(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 as the leases make no provision for the recovery of costs out of the service charge account.

The application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicants in respect of the service charge years arising out of the carrying out of major works to the estate.

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

The hearing

3. The six Applicants who appeared were represented at the hearing by Mr N Gillingham a leaseholder of Flat 15 Duffell House and the Respondent was represented by Mr J Holbrook of counsel.

4. In the course of the proceedings the Applicant Mr Gillingham gave evidence and Mr Holbrook called Mr Mark Brown MRICS a surveyor and Mrs Marcia Vernon-Ellington, Team Leader from the Home Ownership Section of Lambeth Living Limited. Mr Holbrook indicated that in the event that the Tribunal found a breach or breaches of the Service Charges (Consultation Requirements) Regulations 2003 (the 2003 regulations) he would apply for dispensation under Section 20ZA of the Act. The Tribunal required the Respondent to issue an application for such which it did on the second day of the proceedings.

The background

5. The properties which are the subject of this application are purpose built flats in an 11 storey block circa 1960 which is part of a large estate owned and administered by the Respondent.

6. Photographs of the building were provided in the hearing bundle. Neither party requested an inspection and the Tribunal did not consider that one was necessary.

7. The Applicants hold long leases of the flats in question which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate. There are two forms of lease applicable to the leases in the block.

The issues

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

(i) The payability and/or reasonableness of service charges for the year relating to major works (project 2237) carried out under the Decent Homes Initiative.

(ii) Whether there had been compliance with the Service Charges (Consultation Requirements) Regulations 2003 ("the 2003 regulations") in respect of the service of the Section 20 notices in respect of Mr Gillingham the lessee of Flat 15.

(iii) Whether the works carried out by the Respondent were governed by Schedule 4 Part 1 or Schedule 4 part 2 of the 2003 regulations.

(iv) Whether the Respondent had failed to give an adequate reason in the section 20 notice for the necessity for the works.

(v) Whether any of the works in question were works of improvement rather than works of repair.

(vi) Whether the works carried out by the Respondent to the roof and to the windows of the flats were reasonably necessary.

(vii) Whether the costs of the major building works were reasonable.

(viii) Whether the works carried out by the contractors Apollo Group were of a reasonable standard.

(ix) Whether the costs of the work had been increased by virtue of historic neglect of the building by the respondent.

9. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

10. Each Applicant is required to pay the amounts claimed by the Respondent in the service charge demands for the year 2010 – 2011.

The Tribunal's decision

11. The Tribunal determines that the works were governed by the provisions of Schedule 4 part 2 of the regulations and not Schedule 4 Part 1. of the 2003 Regulations

Reasons for the Tribunal's decision

12. The Tribunal was satisfied and it was agreed at the hearing that the works in question were governed by Schedule 4 Part 2 of the regulations as the works were subject to a framework agreement entered into through the London Housing Consortium which was a contracting authority for the purposes of the Public Contracts Regulations 2006. The effect of this application meant that the process was not subject to the requirement of public notice being given in the Official Journal of the European Union and the leaseholders being offered the option of nominating an alternative contractor to carry out the works.

The Tribunal's decision

13. The Tribunal finds that the failure to serve the original Section 20 notice of intention on 9th November 2007 on Mr Gillingham was a breach of the 2003 regulations but that the service of the notice of proposal dated 30th May 2008 was validly served on Mr Gillingham and that there was no breach in respect of this notice.

Reasons for the Tribunal's decision

14. The Respondent admitted that the section 20 notice was not addressed to the First Applicant Mr Gillingham and his wife but to the previous leaseholder of the flat and that he had not received it although it was sent to the correct address 15 Duffell House . The notice was not sent either to the Applicant's home address in South Norwood which he had notified to the Respondent in writing for the purposes of Council tax payments in October 2007. He specified that this was a "billing address" but (did not specify it as an address for the purpose of service of notices.

15. The First Applicant had taken an assignment of the lease of the flat in August 2007 but the service charge section of the council were not aware of this at the time of the service of the original notice although a notice of assignment and cheque had been sent in August 2007.

16. The Tribunal accepted that Mr Gillingham had not received either notice. The first notice had been addressed to the wrong person although sent to the address of the property. It could not therefore in the view of the Tribunal amount to valid service.

17. The second notice however, had been correctly addressed and sent to the Applicants Mr and Mrs Gillingham but they did not receive it. Mrs Vernon-Ellington described the process whereby notices were sent to the names on the Respondent's database, that the notices were placed in envelopes and sent to the post room where they were franked and dispatched for delivery through the post. The Respondent relies upon the provisions of Section 233(5) of the Local Government Act 1972 and contends that the notice was served on the "proper address" for the purpose of establishing service of a statutory notice under that Act and further that it was the last known address and therefore there was a rebuttable presumption that it had been validly served by virtue of Section 7 of the Interpretation Act 1978 The Divisional Court in Rushmoor Borough Council –v- Reynolds 23 HLR 495 (1991) held that if the service complied with Section 233 of the Act it raised an irrebuttable presumption as to receipt and the only rebuttable aspect of Section 7 of the 1978 Act related to the time of receipt and not the fact of receipt. The tribunal is satisfied therefore that the second notice correctly addressed to the Applicant was deemed to have been correctly served at the subject address and was sent in sufficient time.

The Tribunal's decision

18. The Tribunal determines that the Respondent had given an adequate reason for carrying out the works and was not therefore in breach of the Regulations.

Reasons for the Tribunal's decision

19. In the notice of 9th November 2007 the Respondent explained the nature of the works to be carried out which included replacement of windows and doors and repairs to the roof of the block. The reason given for carrying out the works was "We wish to keep and maintain the structure and fabric of the building". The notice also stated that a consultant had visited the site and had produced a report and specification for the "necessary and desirable work". It is regrettable that the notice was not a little more detailed explaining that a large number of the windows were rotted and that it was considered cost effective to replace them all and that there was leaking discovered on the roof. Mr Holbrook conceded that the reasons given were the minimum necessary to secure compliance and the Tribunal agrees with this observation. The tribunal is not prepared to say however that the reason given was not a sufficient compliance as leaseholders were permitted to attend and inspect the relevant documents which would have included Mr Brown's report acting as a consultant.

The Tribunal's decision

20. The Tribunal has decided to dispense with the breach relating to the non service of the original notice on Mr and Mrs Gillingham under the provisions of Section 20ZA of the 1985 Act.

Reasons for the Tribunal's decision

21. The Tribunal has to consider whether it would be reasonable in all the circumstances to grant dispensation. In essence the Tribunal has to consider whether there has been any prejudice to the leaseholder by virtue of the non service of the notice.

22. It is clear that none of the Applicants who received notices responded. The Respondent produced a list of those who objected. Flat 32 was a resident leaseholder. Flat 34 purchased for his daughter and the remaining five applicants were investors. The Applicant was an investor who purchased the property at auction. Although he said that he might have responded to the original notice it is in the view of the tribunal unlikely in that he did not respond to subsequent information or attempt to contact the Council until very much later in the process. Mr Gillingham did not make arrangements for post to be forwarded to him. He went to the flat occasionally and admits seeing a newsletter setting out the works but agrees that he did nothing about it. The Council held a number of non statutory consultation meetings in 2008 to which the Applicant could have attended.

23. The Respondent appears to have adopted good practice and no other leaseholder has complained. The Section 20 procedure is designed to encourage good practice not to act as an obstacle course to trip up landlords. The Tribunal accepts that the original notice was received at the subject address but was addressed to the previous leaseholders. This resulted from the fact that the database had not been updated at the time when the statutory notices had been prepared. Mrs Vernon-Ellington admitted that the authority had learned lessons from the exercise and had taken steps to improve its procedures. The Tribunal does not consider that Mr Gillingham has been prejudiced and this is a proper case for dispensation in respect of the first notice.

The Tribunal's decision

24. The Tribunal determines that the replacement of the windows on the estate was a repair and not an improvement so that it was permitted under the terms of all the leases

Reasons for the Tribunal's decision

25. All leases in the Fourth Schedule place a repairing (including a renewal and replacement) obligation on the landlord but only the leases of Flats 32 and 34 which are more recent in date incorporate the right to improve. Therefore 6 of the Applicants contend that the respondent is not entitled to replace the windows and charge them for those works under the terms of their leases.

26. This issue has been canvassed on many occasions before the tribunal and the courts. In most cases it has been held that replacement of existing windows

with newer windows constitutes a repair even if there is an element of betterment since the landlord is only putting back something which was there before but to a better standard rather than putting in a new feature which was not previously present (such as an entry phone system).

27. In the present case the tribunal is satisfied that the replacement of the defective windows was undoubtedly a repair and that the replacement of the other windows was covered by the terms of the leases and was not an improvement.

The Tribunal's decision

28. The Tribunal determines that the major works were necessary to be performed, that the roof had failed and was in need of replacement and many of the windows were rotted and others in a poor state of repair. The doors were replaced at no cost to the leaseholders.

Reasons for the Tribunal's decision

29. Mr Mark Brown a chartered surveyor of Pellings LLP gave evidence as to the condition of the block and produced the report which he had prepared in June 2007. This was based on his inspection of the windows and roof in May 2007 and the inspection by his colleague Mark Kilby of the roof in April 2007 . All the 15 blocks in the estate were inspected and most but not all (13 out of 15) were replaced. Some were repaired Mr Brown gave evidence that the roof at Duffell House was the worst of all the roofs inspected. The tribunal rejected the suggestion that the roof work was done simply to spend money from the Decent Homes Programme.

30. A number of photographs had been taken both by Mr Osborne-Smith, one of the lessees, and Mr Kilby and a representative of Eshas who were roofing specialists. These showed further deterioration from the date of the original inspection and based on the report received from their experts, the Respondent decided to replace the roof.

31. Based on the authorities it is clearly established that where a party has an obligation under a covenant to repair and there is more than one method available the covenantor is entitled to choose the method which is most appropriate provided the decision is not exercised "unreasonably" in the sense that no reasonable landlord would choose that method of repair if he were paying for it himself. The Tribunal is satisfied on the evidence that the decision to replace the roof was not merely one which the landlord was entitled to take but was the correct decision on the available evidence.

32. The inspection of the windows revealed that 12% of them were rotten and a further 32%* were in need of repair. Mr Brown gained access to a number of flats but not all of them and based his conclusions on external inspections of

Reasons for the Tribunal's decision

21. The Tribunal has to consider whether it would be reasonable in all the circumstances to grant dispensation. In essence the Tribunal has to consider whether there has been any prejudice to the leaseholder by virtue of the non service of the notice.

22. It is clear that none of the Applicants who received notices responded. The Respondent produced a list of those who objected. Flat 32 was a resident leaseholder. Flat 34 purchased for his daughter and the remaining five applicants were investors. The Applicant was an investor who purchased the property at auction. Although he said that he might have responded to the original notice it is in the view of the tribunal unlikely in that he did not respond to subsequent information or attempt to contact the Council until very much later in the process. Mr Gillingham did not make arrangements for post to be forwarded to him. He went to the flat occasionally and admits seeing a newsletter setting out the works but agrees that he did nothing about it. The Council held a number of non statutory consultation meetings in 2008 to which the Applicant could have attended.

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The Tribunal's decision

24. The Tribunal determines that the replacement of the windows on the estate was a repair and not an improvement so that it was permitted under the terms of all the leases

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with newer windows constitutes a repair even if there is an element of betterment since the landlord is only putting back something which was there before but to a better standard rather than putting in a new feature which was not previously present (such as an entry phone system).

27. In the present case the tribunal is satisfied that the replacement of the defective windows was undoubtedly a repair and that the replacement of the other windows was covered by the terms of the leases and was not an improvement.

The Tribunal's decision

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30. A number of photographs had been taken both by Mr Osborne-Smith, one of the lessees, and Mr Kilby and a representative of Eshas who were roofing specialists. These showed further deterioration from the date of the original inspection and based on the report received from their experts, the Respondent decided to replace the roof.

31. Based on the authorities it is clearly established that where a party has an obligation under a covenant to repair and there is more than one method available the covenantor is entitled to choose the method which is most appropriate provided the decision is not exercised "unreasonably" in the sense that no reasonable landlord would choose that method of repair if he were paying for it himself. The Tribunal is satisfied on the evidence that the decision to replace the roof was not merely one which the landlord was entitled to take but was the correct decision on the available evidence.

32. The inspection of the windows revealed that 12% of them were rotten and a further 32%* were in need of repair. Mr Brown gained access to a number of flats but not all of them and based his conclusions on external inspections of

the window frames and also a knife or key test on the frames to test whether there was evidence of decay in the wood.

33. The Applicants instructed a Mr Crompton a surveyor of Design Group to inspect the windows. He carried out a purely external visual inspection and concluded that 12% of the frames were rotten. He did not carry out a knife test which was carried out by Mr Brown .It was not disputed, however, that a further 32% of the windows were in need of repair. Therefore 44% of the windows were in need of immediate attention.

34. Mr Brown carried out a cost benefit analysis shown as appendix MB6 to his report in which he compared the various costs of total replacement against routine maintenance and replacement over a 30 year period. Many of the windows only had a realistic life expectancy of 5 years but could be extended to 20 years if regular maintenance was carried out. He concluded that replacement of all the windows immediately would cost £338,954 whereas if they were replaced over a 30 year period at 5 yearly intervals as replacement became necessary and with appropriate maintenance the cost would rise to £708,114. One of the main elements of cost would be the necessity to erect scaffolding at the block which would add considerably to the expense each time repairs or replacement was carried out.

35. A further complication would be that if only 12% of the windows were replaced now it would be unlikely that planning permission would be given to use upvc material and it would have been necessary to replace with matching timber frames. This would also add considerably to the cost.

36. Once again the landlord having the obligation under the covenant had the right to decide on the appropriate method to be adopted. The Tribunal has concluded on the basis of the evidence of Mr Brown that not only was the landlord entitled to choose total replacement but that was in fact the best and most cost effective decision. Fensa certificates were issued for the replacement windows.

The Tribunal's decision

37. The Tribunal determines that the costs of the works were reasonable.

Reasons for the Tribunal's decision

38. The works were put out to tender in February 2008 to be returned by 8th March 2008 to three contractors who were covered by the London Housing Consortium Framework Agreement. Although leaseholders were given the opportunity under the section 20 notice to nominate an alternative contractor, none were nominated, though this may not be surprising having regard to the size and scope of the contract.

39. The works commenced on 8th June 2009 with anticipated completion date of November 2009 but were completed in July 2010. The snagging period ended in July 2011.

40. Tenders were received from Apollo Property Services Group, Connaught (who have subsequently gone out of business) and Breyer Group plc. The tender from Apollo was well below that of the other two contractors being in the sum of £7,475,213.74 whereas the other two were in excess of £9 million. The estimated budget for the work was near £9 million so the lowest tenderer was asked to check their tender, it stood by its price and this represented best value compared with the others.

41. The original estimated cost for leaseholders was £20,808.31.although the final demands were reduced to an average figure of £16,337.79. Whilst the Tribunal accepts that this is a very high sum for a leaseholder to find it cannot be said to be excessive in the light of the estimated budgeted costs and the low sum tendered for the works; the Tribunal has no evidence from which it can infer that this work could have been carried out more cheaply.

42. This was part of a major initiative involving 15 buildings and the Respondent endeavoured to obtain economies of scale by having the works undertaken under one contract. The leaseholders have not been charged for the replacement of the doors.

The Tribunal's decision

43. The Tribunal considers that the works have been performed to a reasonable standard.

Reasons for the Tribunal's decision

44. Whilst there have been a number of complaints made by the Applicants in these proceedings about the quality of works, it is to be noted that this was a large contract and the snagging period has just expired. The contractor has already dealt with some of the complaints raised and is coming on to the site to attend to the others at no cost to leaseholders. The contractors have also agreed to extend the snagging period.

45. Within the snagging period leaseholders were asked to indicate their complaints in writing and the Respondent states that only 5 were received in response to the request sent out by the Respondent inviting any complaints at the end of the defects period.

46. Although Mr Gillingham spoke of some ill fitting panels and having to move a radiator due to some fixings being missing the Tribunal has concluded that in the context of the contract as a whole the complaints are of a minor type; the contractor has indicated a willingness to attend to defects and it would be

wrong in the view of the Tribunal to state that the works had not been performed to a reasonable standard, which means reasonable in the context of the contract and not perfect.

The Tribunal's decision

47. The Tribunal does not consider that the costs of the works has been increased significantly or at all by virtue of historic neglect of the building.

Reasons for the Tribunal's decision

48. The Tribunal accepts that like many blocks of flats in the London area particularly those owned by local authorities the standard of maintenance has often been left for many years through shortage of funds. To some extent the Decent Homes initiative was intended to address this question although it was primarily designed to ensure that decent kitchens and bathrooms were installed in many of the building.

49. It is possible to show in certain cases that if a repair was carried out at an early stage this might result in a considerable cost saving at a later stage. This can be reflected in an equitable set off to a claim for service charges but is extremely difficult to establish particularly without some expert evidence to show that leaseholders who had not paid the service charges for many years would have saved money if they had contributed to repairs at an earlier stage. In the case of roofs and windows which have reached the end of their natural lives it is difficult to establish that they would have lasted very much longer if they had been regularly repaired and that the leaseholders would have made savings as a result.

50. In the present case no evidence has been called on this question and the Tribunal is unable to find that any additional cost has been incurred as a result of historic neglect by the Respondent.

51. Application under s.20C and refund of fees

52. At the end of the hearing, the Respondent made it clear that no claim would be made in respect of costs in these proceedings to be added to the service charge as they did not appear to be recoverable under the terms of the lease. It was not necessary therefore for the Tribunal to consider the position under Section 20C of the Act.

53. Further the Tribunal did not consider it appropriate to require the Respondent to reimburse the applicants in respect of the fees incurred on the application and for the hearing as the respondents have been substantially successful in resisting the application.

Conclusion

54. The Tribunal determines that the amounts demanded by the Respondent from each of the Applicants are payable in full.

Chairman: Peter Leighton

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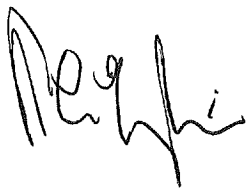

Date: 17th April 2012

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 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 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 a Leasehold valuation 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 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 tribunal or leasehold valuation 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 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;

(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.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).