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HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS UNDER SECTIONS 27A AND 20ZA THE LANDLORD AND TENANT ACT 1985

Case Reference:	LON/00AW/LSC/2012/0758
Premises:	Daska House, 234 Kings Road, Chelsea, London SW3 5AU
Applicant(s):	Christopher Moran Holdings Ltd.
Representative:	RLS Law LLP
Respondent(s):	Leaseholders of Daska House, as set out on the attached Schedule
Representative:	
Date of hearing:	18 December 2012
Appearance for Applicant(s):	Mr O Radley-Gardner, Counsel
Appearance for Respondent(s):	Mr R Harrap, Counsel
Also in attendance:	Ms C Bingham, Flats 4 and 19 Mr K O'Reilly, Flat 16 Mrs L Philpott, Representing Flat 15 Ms L Carrara-Cagni, Flats 8 and 12 Mr K Rutter, Flat 7 Mr O Ibru, Flat 5 Mr S Reilly, Flat 3 Mr Z Mazri, Flat 2 Mr C Pauncefort, Representing Flat 1
Leasehold Valuation Tribunal:	Ms F Dickie, Chairman Mrs S Redmond, MRICS, BSc(Econ) Mr P Clabburn
Date of decision:	12 February 2013

Decisions of the Tribunal

(1) The Tribunal determines that the sum of £146,565 is payable by the Respondents in respect of the major works that are the subject of the First s.27A Application. The tribunal grants an order dispensing with statutory consultation in respect of this work.

(2) The Tribunal determines that the sum of £6,321.60 is payable by the Respondents in respect of the major works that are the subject of the Second s.27A Application. The tribunal grants an order dispensing with statutory consultation in respect of this work.

(3) The Tribunal will issue a separate decision on matters relating to costs.

The Background

1) The premises that are the subject of these applications are the top nine floors of a freehold block let under a Head Lease to the Applicant. The whole freehold building comprises 11 storeys in total, the bottom two storeys being offices and retail space and not demised within the Head Lease. The premises comprise 25 residential flats, including a penthouse flat (flat 25). The tribunal was provided with various photographs of the building and the exterior and interior of the penthouse flat. The Tribunal did not consider an inspection was necessary.

2) The Applicant had put in place major works to repair the exterior of the premises. According to the Applicant, once commenced, the presence of asbestos was discovered in areas of the penthouse flat, which the landlord considered required removal. Christopher Moran Holdings Ltd seeks:

   a) A determination as to service charges payable by the Respondents in the service charge year 2012-13 in respect of asbestos removal works in the sum of £146,565 ("The First s.27A Application")

   b) A determination as to service charges payable by the Respondents in the service charge year 2012-13 in respect of the removal of further asbestos discovered in November 2012 after the First Application had been made ("The Second Application").

   c) An order under s.20ZA of the Act dispensing with statutory consultation in respect of the works that are the subject of the First Application.

   d) An order under s.20ZA of the Act dispensing with statutory consultation in respect of the works that are the subject of the Second Application.

   e) The tribunal also has jurisdiction to order the reimbursement of fees.

3) The Respondents sought:

   a) a determination from the tribunal under s.20C of the Act that the landlord's costs in these proceedings should not be recoverable from them as a service charge.

   b) One of the Respondents, Ms Carrara-Cagni, asked the tribunal in her statement of case to make a determination under s.27A of the Act in respect of some of the major works affecting the penthouse flat (other than the asbestos works), but as no such application had been made to the tribunal it has no jurisdiction to consider the matter.

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

The Leases

5) The Applicant is the holder of the Head Lease of Daska House. The demised premises in the Head Lease are defined in the First Schedule as being the block containing 25 flats situated on the third to ninth floors and includes (so far as is relevant to these applications) the foundations, the main walls, structure and roof of the block. The relevant repairing obligations contained in the Head Lease require the Applicants to keep the demised premises at all times 'repaired and maintained in good and substantial condition'. The Applicant also owns the Underlease of four flats in the building, including the penthouse (flat 25).

6) The demised premises in the Underlease of flat 25 include (insofar as is relevant to these applications) 'all that flat number 25... situate on the ninth floor together also with the joists and beams on which the floors are laid but not the joists and beams to which the ceilings are attached'.

7) The relevant obligations on the part of the Applicant as head leaseholder contained in the Seventh Schedule of the underlease are to keep the "Reserved Property" in good and tenantable state of repair decoration and condition.... and to provide the services set out in the Ninth Schedule. The reserved property is defined as being the property not included with the flats and comprising all the premises demised by the Head Lease.

8) The Ninth Schedule of each of the Underleases sets out the services the Applicant is to provide, the costs of which he is then entitled to recover under the service charge. The leaseholder of each flat (except the penthouse) is to pay 1/26 of the landlord's costs of "maintaining repairing redecorating and renewing the main structure and in particular the roof walls stanchions gutters and rainwater pipes" at Daska House. The lessee of the penthouse covenants to pay 2/26 of those costs.

The Hearing

9) The parties present, and their representatives at the hearing, are listed in the heading of this decision. On behalf of the Applicant, the tribunal heard evidence from Mr Michael Cutting, General Manager of the Applicant company. The Respondents called no witnesses of fact and neither party relied on expert evidence.

The First s.27A Application

10) After a first stage consultation in 2009, and the preparation of a specification of works and a tendering process, the second stage consultation took place on 21 October 2011. The Applicant's managing agent is Cluttons, who appointed CLC Group as contractors in early 2012 in respect of the major works. The contract sum of £896,683 plus VAT included a contingency of £40,000. The completion date in the contract was 4 January 2013.

11) Prior to commencement of the major works an asbestos inspection of external areas had been commissioned by the Applicant. The asbestos found on that inspection was detailed for removal within the tender specification. Amongst other items of work the roof lights and windows to the penthouse flat were to be replaced. However it was the landlord's case that on commencing this work in July 2012, following removal of the fascia panelling and roof lights to the penthouse flat, asbestos was found in early September in the internal roof void, sprayed onto the roof supports and steel supports between the penthouse windows to the West elevation, and as debris and dust within the floor void. A report was then obtained by ARG, the recommended contractors in the original specification of works for the treatment of asbestos found on external inspection. This report is dated 12 September 2012 and confirms the presence of Amosite sprayed asbestos in the ceiling void and steel beams, with asbestos dust laying on top of the suspended ceilings, and to the steel columns behind the timbers. In the roof lights, Amosite and Chrysotile is identified in the linings. The presence

of asbestos in the sink pad and underside of the worktop was found. Chrysotile and Amosite dust are recorded as present in the floor void.

12) There was insufficient money within the contingency to carry out appropriate works. ARG reported that the asbestos was friable and accordingly dangerous. The ceiling floor voids had become heavily contaminated with fibres which would be released when the window and roof lights are replaced. It was therefore considered necessary to remove the kitchen fittings so that the ceiling and floor-boarding could be removed and all contaminated areas decontaminated.

13) No advice was given to the leaseholders at this stage. Representatives of the Applicant and Cluttons discussed the matter at a meeting with ARG and CLC group on 15 October. A note of that meeting was produced to the tribunal. A decision was taken that the asbestos be removed. Cluttons obtained estimates for this work, for making good the finishes and extra scaffolding and contractor time. The new completion date for the work was 8 March 2013.

14) ARG was chosen to carry out this additional asbestos removal work, having lowered its initial quote to £49,332.00 plus VAT to meet that of the other contractor who provided a quotation (Allan Dyson Asbestos Services Limited). Neither contractor is related to the Applicant. CLC included a charge for their profit, 10% of the cost of the asbestos removal for management thereon, additional scaffolding costs, and an additional £26,950 for reinstating the ceilings, walls and floors, and applying new fire proofing to the steelwork currently encased in asbestos. This reinstatement was said to be required as a result of the landlord carrying out its repairing obligations under the lease, the Applicant considered it to be the landlord's cost under the principle in McGreal v Wake (CA (Civ Div) 1984 13 HLR, 107). This would leave the penthouse as an empty shell which would then be fitted out by the Applicant at its own expense.

15) Cluttons proposed to add a 10% contract administration fee in respect of the additional work, but not the reinstatement works. £16,000 remaining from the contingency fund could be allocated for the asbestos removal works. Accordingly a sum of approximately £5000 was required to be collected from each flat, (and a contribution of approximately £10,000 in respect of the penthouse).

16) Ms Carrara-Cagni made a statement of case on behalf of the Daska House Leaseholder Association (DHLA), in which she argued that:

a) The additional asbestos works were not the leaseholders' liability under their lease terms, and the costs could not be recovered from them as a service charge. DHLA disputed that the penthouse roof lights and windows were part of the reserved property, which excluded, by virtue of the second schedule, 'the glass of the windows'. They argued that the affected areas of the floor void were part of the Reserved Property in the penthouse lease, which is defined as 'all that flat number 25... situated on the ninth floor together also with the joists and beams on which the floors are laid'.

b) The landlord had or could have known about the additional asbestos when tendering for the major works, and was disingenuous in suggesting there was urgency. The presence of asbestos in the penthouse had been known of as long ago as July 2011, and was mentioned in the specification of works. Ms Carrara-Cagni argued that suitable contingency planning should have been undertaken in the circumstances.

c) The asbestos could have been sealed as an appropriate and more economical solution. The landlord's decision not to take this option was in its own self interest.

d) The leaseholders also argued that the consequential works in removing the kitchen fittings and sanitary ware in the penthouse flat were not their liability under the leases since these items were within the demise of the penthouse flat.

e) It was unreasonable for CLC and Cluttons to charge management charges in the circumstances, in particular since the works had been badly managed and not consulted upon.

f) Had the works being contemplated before July 2011, as the leaseholders argued they could and should have been, there would not have been a need to negotiate extra charges for the scaffolding and thus they said these charges were unreasonably incurred.

17) Partway through the hearing Mr Charles Pauncefort attended to make representations on behalf of the leaseholders of flat 1. The day before the hearing he had sent by e-mail to the tribunal a statement of case on their behalf and a bundle of evidence, but this had not been copied to the landlord. Owing to his late arrival after Mr Cutting had given his evidence, Mr Pauncefort had lost the opportunity to put his case to the landlord in cross examination. In the circumstances, the tribunal was unable to have particular regard to his submissions, but did allow him some time to put his main objections to the application, which included a challenge to the quality of the evidence provided by the applicant as to the existence of asbestos. He considered that the landlord should have produced its expert witness for cross examination. He also cast doubt upon the bona fides of the asbestos contractor ARG Europe Limited since their accreditation, VAT details and landline telephone number could not be seen on the copy of their correspondence within the bundle. However, the tribunal was able to read this information clearly on the better copy of these documents what lay on its own case file. Mr Pauncefort also observed that the company directorship of a Mr Douglas Olive had been terminated in November 2010 but he continued to represent the company on its website. However, the tribunal saw nothing irregular in a former director acting as an employee or agent for a company.

18) Mr Pauncefort sought an adjournment so he could produce more evidence in support of his suspicions about the companies involved. However, given his very late submissions, late arrival and the serious prejudice which would have been caused to all others who had complied with directions and attended the hearing, the tribunal found it would not be reasonable to adjourn.

Tribunal's Determination on the First s.27A Application

19) Having considered the evidence carefully, and the submissions of the parties, the tribunal determines that all costs of removal of the asbestos in the sum of £146,565 are recoverable under the lease terms from the lessees as a service charge for the following reasons:

a) The tribunal rejects the tenants' contention that the affected areas are within the demise of the penthouse flat. The roof is specifically referred to in paragraph 4 of the first schedule in the underlease and is within the Reserved Property, as are the steel beams supporting it, by virtue of paragraph 12 of the First Schedule which includes within it "the structural and all exterior walls and floor slabs or beams and staunchions..." and only the internal faces of the walls are demised. The roof lights and windows are part of the reserved property in any event, since only the glass of the windows is demised.

b) The premises demised in the Second Schedule are expressly excluded from the Reserved Property, and these include "the ceilings and floors of the said flat and the joists and beams to which the floors are laid but not the joists or beams to which the ceilings are attached" as well as "the interior faces only of such walls as bound the said flat". There is plainly no argument that the ceiling beams affected are within the Reserved Property.

c) Regarding works in respect of the asbestos within the floor void, the tribunal rejects the argument that the Respondents have no liability to contribute to this cost. Only asbestos dust and debris is described as present in this area – not sprayed asbestos on any

beams. It would be wrong to look at the question of liability by solely considering where the asbestos currently lies (though it is in fact largely resting on the upper surface of the ceiling of the flat below). The dust and debris has originated from asbestos present within the fabric of the building. A plan of the layout of the penthouse flat within the ALG report indicated that the asbestos dust and debris in the floor void (items BS07, 08 and 09) was to the western side of the flat in close proximity to the asbestos on the steel beams supporting the roof, though it was spread over a large area of up to 60m2. Mr Cutting in his second witness statement said that the loose asbestos fibres in the floor void were the result of overspill from the original spray application to the ceiling beams, though it is clear from the photographs that asbestos debris will have been released from the beams owing to obvious deterioration. There is no evidence of sprayed asbestos on the floor beams themselves, or that this dust and debris originated from any other part of the demise of the penthouse flat. The tribunal is satisfied that it has been shed or dispersed from asbestos within the structure of the building and within the landlord's demise, and that it is the landlord's responsibility to make it safe, and the residential lessees' liability to contribute to the cost through the service charge.

d) The tribunal is satisfied that the removal of the sink and worktop are accordingly the landlord's liability also, being necessary to access the floor void, and in any event that these costs are minimal. The Applicant has correctly identified the landlord's duty in law to reinstate the flat after the necessary works have been carried out.

20) The tribunal is furthermore satisfied that the cost of the works is reasonable for the following reasons:

a) The tribunal does not agree with the tenants' interpretation of the ARG report that encapsulation was a possibility. The tenants have produced no expert comment of their own upon those findings. As recorded in the note of the meeting on 15 October 2012, Douglas Olive of ARG confirmed that it would not be practicable or safe to seal the existing asbestos in-site, and so to complete CLC's works on site, removal of asbestos was ALG's recommended option. In an email dated 7 September 2012 Douglas Olive had advised CLC that "it will be impossible to remove the AIB roof-light linings safely until the sprayed asbestos to the steelwork is removed".

b) Photographs of each area of asbestos are present in the ALG report. The recommended action recorded for each is removal under fully controlled conditions except in respect of the linings to roof-lights, in which encapsulation and monitoring for deterioration are provided as an alternative to removal under fully controlled conditions. It would therefore have been unreasonable of the landlord to do anything but remove the asbestos according to the recommendations of ARG – the Applicant had no option. In the context of a programme of removal of asbestos required to several areas, it was not unreasonable of the landlord to opt for removal of the linings to the roof-lights also, and this is likely to represent a relatively small proportion of the overall cost (though the tribunal notes that neither of the quotations for asbestos removal specifically mention this work).

c) It is reasonable that this asbestos was not identified at an earlier stage, and that the landlord did not conduct a more invasive investigation before preparing the initial specification. The landlord engaged a specialist to advise. The new asbestos discovered in September was in different locations to that known about when preparing the specification, and there is nothing in the evidence before the tribunal to suggest that the existence of one could have been deduced from the existence of the other.

d) Notwithstanding that consultation with the tenants did not take place, the works were not mismanaged. Taking into account the service provided, the management charges are reasonable in the circumstances, as are contract administration charges.

21) The statutory consultation which took place in respect of the major works project did not contemplate these additional works. The Notice of Intention dated 16 January 2009 summarised the works in the following terms: "carrying out comprehensive repairs to all the external parts of the building together with redecoration of any previously painted surfaces". Dispensation from statutory consultation is therefore required if the landlord is to recover more than £250 from each leaseholder, in respect of which application see below.

The Second s.27A Application

22) As set out in an e-mail from Cluttons dated 23rd of November 2012, the floorboards within the penthouse were removed and asbestos insulation board in a deteriorated condition found around a concrete slab on 22 November. The tribunal understands that the purpose of the concrete slab appears to have been to fireproof the now redundant air conditioning ducts which run beneath the floor. The asbestos removal is being undertaken in two zones because one area of the penthouse is required to contain decontamination units and equipment whilst the other zone is undergoing asbestos removal. This new asbestos appeared to route beneath the second zone where floor boarding had yet to be removed and therefore ARG suggested that there costs of removal are doubled to allow for what will probably be twice the amount of asbestos than is currently known about.

23) The email advised that encapsulation was an option and would cause a single day delay to the programme whereas removal would cause a 4 to 5 day delay which would result in additional scaffolding costs. The additional costs exclusive of VAT were £3025 for encapsulation and £10680 for removal, plus 10% professional fees in either case, though an email of 7 December from ARG increased the cost of removal, as an area 3 times greater than expected had been discovered in zone 2. In a recalculation of costs produced in the hearing bundle, ARG's costs had increased to £5,500 for encapsulation, though it is not clear how this was calculated. The total inclusive figure was now almost £8000 against over £18321.60 for removal. No photographs were produced of the latest discovery of asbestos, and no other documentation apart from emails and the calculations mentioned above. It was submitted for the landlord that its presence under a concrete slab suggested it was not within the demise.

24) Mr Harrap said that management costs should not be awarded where the management of the project was poor, as it had been in this case by virtue of the landlord's failure to invite the tenants to participate or to keep them informed.

Determination on the Second s.27A Application

25) There is some inconsistency in the Underlease as to whether conduits serving only the demised premises are demised or within the reserved property, but ducts used solely for the purposes of the flat are demised. In any event, it is likely that the purpose of the asbestos slab was fire proofing, and the tribunal is satisfied that as such it is within the Retained Property and not demised. The tribunal therefore finds it is recoverable from the lessees.

26) However the tribunal determines that all costs of removal of the asbestos in excess of those required for its encasement were not reasonably incurred. The landlord had produced surprisingly little evidence that it had made a reasonable choice not to encapsulate the asbestos. Though it was submitted that the landlord's option avoided the need for an asbestos register and ongoing monitoring, there was insufficient evidence that an asbestos register would not be required in any event for the building, in light of there being reference to remaining asbestos adhered to steel and bitumen in joints which could not be safely removed and would be encapsulated according to the expert evidence. The additional cost of removal rather than encapsulation was substantial at over £10,000, including the requirement for scaffolding hire that could have been avoided by encapsulation. There is therefore insufficient rationale for the landlord's decision to remove this asbestos and charge more than £10,000 to the lessees. It is clear from the evidence that in respect of this further

asbestos work there was a real choice for the landlord about removal or encasement. There is no suggestion that expert advice preferred one solution over another. Since the tribunal has insufficient information to verify the calculation for the estimated cost of encapsulation, it must make a judgement as to the appropriate figure to disallow, which it finds is £12,000 of the total removal cost.

The First S.20ZA Application

27) Mr Harrap for the leaseholders argued that they had been prejudiced by the failure to consult because the landlord had delayed in notifying them of the additional work, did not invite tenants to the meeting on 15 October 2012, did not notify DHLA in spite of having been informed that it existed, and denied them the opportunity to discuss encapsulation as a cheaper option. Ms Carrara-Cagni had demonstrated that DHLA had its first meeting in January 2012. She said that Cluttons had been informed of its existence in May 2012, and showed that it was registered with the Royal Borough of Kensington and Chelsea on its register of tenants and residents associations in December 2012. By the time the tenants knew about the works they were already underway.

28) It was argued for the leaseholders that they had been prejudiced by virtue of the failure to deal with the asbestos in a timely fashion and to consult them, since they had the opportunity to obtain alternative quotations or nominate a contractor. Though Mr Cutting said the new asbestos was discovered on 13 July 2012 it was not until 15 October that the meeting with the contractors and ALG had taken place, and a further week elapsed before an HSE notification was made.

Determination on the First s.20ZA Application

29) Section 20ZA of the Landlord and Tenant Act 1985 provides.

> (1) Where an application is made to the Leasehold Valuation 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.

30) The Court of Appeal in <u>Daejan Investments Ltd v Benson and Others</u> [2011] EWCA Civ 38 has considered that the following factors to be among those relevant to the Leasehold Valuation Tribunal's exercise of its discretion under s.20ZA(1) to dispense with statutory consultation:

a) all other things being equal, the following situations might commend the grant of dispensation:

i) The need to undertake emergency works;

ii) The availability, realistically, of only a single specialist contractor;

iii) A minor breach of procedure, causing no prejudice to the tenants.

b) The financial effect of the grant or refusal of dispensation is an irrelevant consideration when exercising the discretion.

31) The tribunal is persuaded that the works were of an emergency nature and could not reasonably have been foreseen by the landlord, for the reasons set out in the Applicant's case. A full scale consultation would have been unreasonable in the circumstances, owing

to the additional costs resulting from the delay to the major works. The landlord acted reasonably in obtaining an alternative quotation to the one provided by the subcontractor nominated in the contract, and indeed this had the effect of reducing their price. It is unfortunate that the tenants were not notified earlier of the work, but the tribunal is satisfied that no prejudice occurred as upon identifying the appropriate asbestos work, removal was a requirement but for the option to encapsulate one very limited part of that work (the roof-light linings). The landlord had no alternative.

The Second s.20ZA Application

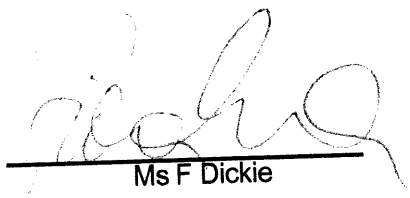
32) On behalf of the Respondents, Mr Harrap consented to the tribunal hearing an amended application for dispensation from the consultation requirements in relation to the works to make safe the asbestos in the concrete casing discovered in November. He argued that it was unreasonable of the landlord to choose the more expensive option in removing the asbestos.

33) It was the Landlord's case that since these additional works could only have been identified once the major works were in progress and the asbestos contaminated floor of the penthouse removed, it is reasonable to dispense with consultation, which could not take place without wholly disproportionate additional costs owing to the substantial delay that would have resulted.

34) Once the asbestos removal was ongoing, the tribunal considers that there was only realistically one specialist contractor who could carry out the work to treat the concrete slab, being ALG as the contractor on site. It is clear from the emails that a decision had to be taken instantly, and the tribunal accepts that this was the case. There was no time even for informal consultation or tendering. Accordingly, the tribunal makes an order granting dispensation, but this does not affect its determination above as to the amount of expenditure reasonably incurred.

Costs

35) The leaseholders disputed that the costs to the landlord of making the present applications were recoverable as a service charge in the lease terms. The tribunal directed parties to provide written representations upon costs issues and upon the leaseholders' application under section 20C of the Act. The tribunal will issue a separate decision on these costs matters.

Chairman: 

Ms F Dickie

Date: 12 February 2013

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 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;

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

(c) 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;

(d) in the case of proceedings before the Upper Tribunal, to the tribunal;

(e) 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).