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**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **LON/00BB/LSC/2013/0326**

Property : **308, 404 & 608 Latitude Court,
Albert Basin Way, London E16 2QP**

Applicant : **Mr Pravin Singh (1) & Ms Andrea
Schuete (2)**

Representative : **In person**

Respondent : **Gallions Approach Management
Limited**

Representative : **James Sandham (Counsel)**

Type of Application : **For the determination of the
reasonableness of and the liability
to pay a service charge**

Tribunal Members : **Mr J P Donegan (Tribunal Judge)
Mr K M Cartwright (Professional
Member)
Mr N Miller (Lay Member)**

**Date and venue of
Hearing** : **09 October 2013
10 Alfred Place, London WC1E 7LR**

Date of Determination : **21 November 2013**

DECISION

Decisions of the Tribunal

- (1) The tribunal determines that the Applicants are liable to pay the following service charges to the Respondents:

Service charge year ended 30 April 2010

Employment costs	£28,155
Security costs	£21,198
Landscape maintenance	£900
Cleaning	£1,528
General repairs and maintenance	£5,665
Lift maintenance	£4,298
Accountancy fee	£2,790

Service charge year ended 30 April 2011

Employment costs	£28,202
Security costs	£19,122
Cleaning, gardening and window cleaning	£3,216
General repairs and maintenance	£4,954
Lift maintenance	£4,770

- (2) The Applicants agreed all other items of service charge expenditure claimed in the 2009/10 and 2010/11 accounts.
- (3) The tribunal refuses the application for an order under section 20c of the Landlord and Tenant Act 1985.
- (4) The tribunal refuses the application for a refund of tribunal fees paid by the Applicants.

The application

1. The Applicants seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to whether certain service charges are payable for the years 2009/10 and 2010/11.
2. The Applicants also seek an order under section 20c of the 1985 Act and an order for a refund of tribunal fees.
3. An oral pre trial review took place on 11 July 2013, when detailed directions were given. Mr Edwards of Counsel appeared at the PTR on behalf of the Respondents. The Applicants did not attend due to work commitments and were not represented.
4. The parties both served statements of case and witness statements. However the Applicants’ statements of case, reply and statement did not specifically identify the items of service charge expenditure that were disputed.
5. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

6. The First Applicant, Mr Pravin Singh, appeared at the hearing and gave evidence and made submissions on behalf the Second Applicant and himself. The Respondent was represented by Mr James Sandham of Counsel and the tribunal also heard evidence from Mr David Hockley, a director of Management Company Services Limited (“MCS”). MCS are the current managing agents of Royal Quay, Gallions Approach, Royal Docks, London E16 (“the Estate”).
7. Prior to the hearing both parties produced bundles of relevant documents for use by the tribunal.

The background

8. The Applicants are the leaseholders of Flats 308, 404 and 608 at Latitude Court, Albert Basin Way, London E16 2QP (“the Flats”). They purchased Flat 404 on 08 December 2009, Flat 608 on 12 March 2010 and Flat 308 on 31 December 2010.
9. The Applicants do not live at the Building. Rather they sublet all three Flats.
10. The Respondent is the management company for the Estate. Latitude Court (“the Building”) forms part of the Estate.

11. The Applicants hold a separate long lease for each of the Flats, which require the Respondent to provide services and the Applicants to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.
12. Neither party requested an inspection of the Flats nor did the tribunal consider that one was necessary, nor would it have been proportionate to the issues in dispute. The tribunal understand that each of the Flats has one bedroom and that the Estate is a mixed use development consisting of 432 units. There are four blocks of Flat on the estate, including the Building.

The lease

13. Copies of the leases for each of the Flats were included in the Respondents' bundle and are in the same form. For the sake of simplicity the tribunal refers to the lease for Flat 308 throughout this decision. This is dated 23 March 2006 and is for a term of 200 years less 5 days from 31 March 2003. The original parties to the Lease were Gallions Approach Limited ("the Owner"), Gallions Approach Management Limited ("the Landlord") and Kamran Khan ("the Tenant").
14. By clause 3.1.2 of the lease the Tenant covenanted "*to pay the Tenant's Proportion to the Landlord or the Owner as additional rent*". The Tenant's Proportion is defined in clause 1 as:

"the fair and proper proportion of the Expenditure (as defined in Schedule 4) as the Landlord may from time to in its reasonable discretion determine to be fair and reasonable in respect of the Premises in all the circumstances save that in the first year of the Term the same shall be an estimate only and the same shall not be required to be certified by an accountant"

15. The Service Charges are also defined in clause 1 and are "*the monies payable by the Tenant for the provision of services in accordance with schedule 4*".
16. The detailed service provisions are to be found in schedule 4 to the lease. Clause 11 of this schedule provides:

"The Landlord will arrange for proper records to be kept in respect of the Expenditure and as soon as convenient after the end of each Account Year will arrange for the preparation and submission to the Tenant of an account showing a summary of the Expenditure for that Account Year together with the Tenant's Proportion and if there is a

dispute the account and the Tenant's Proportion shall be certified by the Surveyor".

17. The Expenditure is defined at clause 10 of schedule 4 as:

"all costs, expenses and outgoings whatsoever incurred by the Landlord in providing or procuring the provision of all or any of the Services in respect of the Common Parts, the Building or the Estate (as appropriate) together with all costs expenses and outgoings whatsoever incurred by the Landlord or the Owner pursuant to the terms of the Headlease".

18. Schedule 4 contains an extensive list of the Services to be provided by the Landlord, which are broken down into four categories: Part B (Building Costs), Part C (Estate Costs), Part D (Car Parking Costs) and Part E (General Costs).

The issues

19. The original application identified that the service charges being disputed covered the period 08 December 2009 to 30 April 2011. The Applicants purchased their first flat at the Building (Flat 308) on 08 December 2009.
20. The service charge accounts are drawn up to 30 April in each year. It follows that service charges to be determined by the tribunal are those for the years ended 30 April 2010 and 30 April 2011. The Applicants have paid the service charges in question.
21. In their undated statement of case, the Applicants stated that they *"..are claiming a full refund of service charges for the period 3131 (sic) April 2013 (Provisional arrears!). Applicants have not ruled out county court claim against Gallions Approach Management Ltd. If the matter remains unresolved and proceeds to HMCTS applicants will also be claiming for expenses and loss of rent"*. This appears to be a reference to the service charges for the year ended 30 April 2013. The tribunal has no jurisdiction to determine these charges, as they did not form part of the original application. It follows that Applicants can pursue a separate application to determine the 2013 service charges (and the 2012 charges), should they chose to do so.
22. Following a brief adjournment during the morning of the hearing, Mr Sandham informed the tribunal that the Respondent intended to make certain concessions in relation to the service charges demanded for the period 01 May 2011 onwards. He advised that MCS will write to the Applicants with details of the concessions. Hopefully the parties will then be able to agree the 2012 and 2013 service charges.

Evidence and submissions

23. The Applicants rely upon a letter from the previous managing agents, Trinity, dated 27 May 2010. That letter states that Trinity “...took the decision to suspend certain services as there were insufficient funds in the estates dedicated bank account...”. It goes onto say:

“..the following services remain on hold –

- *Grounds maintenance*
- *Internal Cleaning*
- *Window Cleaning*
- *General Repairs*

As previously advised we will continue to insure the building, maintain the fire equipment and any asset on site and carry out work when health and safety is at risk”.

24. The Applicants’ starting point was that they should not have to pay any service charges during the period that services were suspended at the Estate. The tribunal pointed out to Mr Singh that not all of the services had been suspended and asked him to identify the specific items of expenditure that were being disputed and the reasons why. He dealt with this in his oral evidence and submissions, which are summarised at paragraph 26.
25. Mr Hopley was only able to give direct evidence regarding the period from March 2011, being the date that MCS took over management of the Building and the Estate. Nearly all of the disputed service charge expenditure predates his involvement. This meant that his evidence was somewhat limited although he had been able to refer to the management papers received from Trinity. Mr Sandham addressed the points raised by Mr Singh in his closing submissions. Mr Hockley’s evidence and Mr Sandham’s submissions, on the disputed service charges, are also summarised at paragraph 26.
26. The evidence and submissions on the disputed service charges are summarised below:

26.1 Employment Costs - £28,155 (2009/10) and £28,202 (2010/11)

Mr Singh is unhappy with the service provided by the concierge at the Building. There is only one concierge and Mr Singh described him as a “one man army”, who was overloaded with work. Mr Singh explained

that he has problems getting hold of the concierge whenever he visits the Building, which is approximately twice per month. He is also unhappy that the concierge is unwilling to hold spare keys for the Flats. Mr Singh proposed a reduction in the employment costs of 60% on the basis that the service provided was inadequate. He acknowledged that he had not seen a list of duties that were to be undertaken by the concierge.

In his statement, Mr Hockley advised Trinity and MCS use the job title of Building Manager rather than concierge. The Building Managers at the Estate have not held keys for residents during his period of management.

Mr Sandham pointed out that the concierge service was not suspended following Trinity letter of 27 May 2010. The description of the concierge as a “*one man army*”, suggest that too little was being spent on this service rather than too much. Mr Sandham referred to the Applicants’ failure to produce any evidence to demonstrate that the employment costs were unreasonable, such as like for like quotes. He also pointed out that the Applicants did not know what was in the concierge’s job description and referred the tribunal to clause 6.8 of schedule 4 to the lease. This entitles the Respondent to provide “*...any services, equipment and staff that are at any time deemed desirable by the Landlord for the efficient care, security of the Common Parts and the Estate and/or the provision of the services contained in this Schedule...*”.

26.2 Security Costs - £22,196 (2009/10) and £19,122 (2010/11)

Mr Singh alleged that the security guards at the Estate were constantly sleeping or using their telephones. He referred to the guards’ failure to police parking and suggested a reduction in their charges of 90%, upon the basis that they only did 10% of their jobs.

Mr Sandham again referred to the Applicants’ failure to produce any evidence to demonstrate that these costs were unreasonable. The sums being claimed were Estate wide charges and are modest.

26.3 Landscape Maintenance - £900 (2009/10)

Mr Singh contended that there should not have been any landscape maintenance charge in 2009/10, as this was one of the services that was said to be suspended in the Trinity letter of 27 May 2010. He asked the tribunal to disallow these charges in full.

Mr Sandham pointed out that the landscape maintenance charges would not have stopped straightaway, following the letter of 27 May 2010, as there were bound to be invoices that were paid after this date.

Further the Respondent still had to pay for the service provided in May 2010. There was no landscape maintenance charge in 2010/11, which reflects the suspension of the service. The sum claimed in 2009/10 was modest. Mr Sandham also pointed out that the corresponding charges in 2008/09 were much higher (£9,915). The substantial reduction in the charge in 2009/10 and the absence of any change in 2010/11 is attributable to the suspension of this service.

26.4 Cleaning - £1,528 (2009/10) and £3,216 (2010/11)

Again, Mr Singh argued that there should not be any cleaning charges as this was one of the services that was suspended. He asked the tribunal to disallow these charges in full.

Mr Sandham relied on the same arguments as those advanced for the landscape maintenance charges. He referred the tribunal to the equivalent charge in 2008/09 (£11,880). The sum claimed in the 2010/11 accounts covered not just cleaning but also gardening and window cleaning.

26.5 General Repairs and Maintenance - £5,665 (2009/10) and £4,954 (2010/11)

Mr Singh sought a reduction in these charges of 80% upon the basis that general repairs were one of the services suspended. He accepted that there would still be some costs for essential maintenance but pointed out that when he visits the Building there are often problems with the door entry system and the lifts.

Again Mr Sandham relied upon the same arguments as those advanced for landscape maintenance charges. He referred the tribunal to the equivalent charge in 2008/09 (£14,681). The reduction in these charges reflects the suspension of general repairs.

26.6 Lift Maintenance - £4,298 (2009/10) and £4,770 (2010/11)

The maintenance of the lifts was not one of the services suspended by Trinity. Mr Singh seeks a reduction in these charges of 20% upon the basis that the lift has broken down frequently. On being questioned by the tribunal, he accepted that the lift is generally in service.

Mr Sandham pointed out that the lift maintenance charges were fairly static. The charge in 2008/09 was £5,872. The maintenance of the lift is essential work and was not suspended. Mr Singh only visits the Building twice per month, so has limited first hand knowledge of any problems with the lift.

26.7 Accountancy Fee - £3,300 (2010/11)

Mr Singh did not dispute the accountancy fee in 2009/10 of £600. Rather he only disputed the 2010/11 charge of £3,300. He pointed out that this was more than five times higher than the charge in the previous year. Mr Singh contended that the 2010/11 charge should be capped at £600.

Mr Hopley dealt with these charges, which relate to the preparation of the 2009/10 service charge accounts. He instructed new accountants in or about May 2011, shortly after MCSS took over the management of the Estate. However there was a substantial delay in producing the accounts, as additional information was required from Trinity. They were very slow at producing this information, which generated additional work for the accountants. The 2009/10 accounts were finally produced in June 2012. Mr Hopley considers that the accountancy fee is reasonable, given the size of the Estate and the work involved in preparing the accounts. He accepted that some additional work had been generated by the change of managing agents and change accountants but pointed out that the charges in 2011/12 were similar (£2,790).

Mr Sandham made the point that the fact that the previous accountants charged a much lower fee does not mean that the 2010/11 charges were unreasonably incurred. Rather the test is whether the charges were reasonable for the work undertaken.

26.8 General

Mr Singh took issue with the late production of the 2009/10 service charge accounts and referred the tribunal to a letter from Trinity, dated 29 October 2010. This indicated that there would be a delay in the production of the 2009/10 accounts and advised that actual service charge expenditure for the year was likely to be less than that estimated in the budget. In fact the accounts revealed an end of year deficit of £42,249, as identified by Mr Sandham.

Mr Singh also claimed that he had experienced difficulties in subletting the Flats due to the suspension of services by Trinity. However he did not seek to quantify any losses that he might have suffered or advance any set off claim.

27. The other items of service charge expenditure in the 2009/10 and 2010/11 accounts were all agreed by Mr Singh, including the management fees.

The Tribunal's decision

28. The Tribunal determines that the following sums are payable respect of the disputed service charges:

Service charge year ended 30 April 2010

Employment costs	£28,155
Security costs	£21,198
Landscape maintenance	£900
Cleaning	£1,528
General repairs and maintenance	£5,665
Lift maintenance	£4,298
Accountancy fee	£2,790

Service charge year ended 30 April 2011

Employment costs	£28,202
Security costs	£19,122
Cleaning, gardening and window cleaning	£3,216
General repairs and maintenance	£4,954
Lift maintenance	£4,770

29. The tribunal has determined that all of the disputed service charges are payable with the exception of the accountancy charges in 2010/11, which have been reduced by £510 (from £3,300 to £2,790).

Reasons for the Tribunal's decision

30. The Applicants' starting point was that they should not have to pay any service charges for 2009/10 and 2010/11, as services had been suspended from late May 2010. However it was not all of the services that had been suspended and those services that were suspended were provided for approximately one month, in May 2010. Furthermore the

accounts show substantial reductions in the expenditure on suspended services. Put simply the leaseholders were only charged for those services that were provided.

31. The directions issued on 20 June 2013 spelt out that the Applicants' statement of case should identify each disputed amount in the accounts and the factual, legal or other basis for their challenge. Unfortunately their statements of case did not provide this level of detail. It appears that the Applicants based their entire case on the suspension of certain services in May 2010, without analysing what impact this had on the service charge expenditure. It was only at the hearing that Mr Singh identified specific items of expenditure that were disputed.
32. The reductions proposed by Mr Singh were arbitrary and were not supported by any independent evidence. Most of the disputed sums were modest, given the size of the Building and the Estate. Furthermore, Mr Singh's knowledge of the services provided is understandably limited. He does not live at the Building and only visits it twice per month. Using their own knowledge and expertise, the tribunal conclude that all of the disputed expenditure was reasonably incurred with the exception of the accountancy charges for 2009/10.
33. In relation to the accountancy charges, the tribunal is of the view that the previous charge of £600 per annum was low and that this figure was not a useful comparable when determining a reasonable charge for 2009/10. The Estate consists of 432 units and the preparation of the accounts is a substantial undertaking. Again, using their own knowledge and expertise, the tribunal considers that a reasonable charge for this particular year would be in the region of £2,000-3,000 plus VAT.
34. The tribunal consider that some of the work involved in preparing the 2009/10 accounts arose from the change of managing agents and accountants. In addition the new accountants were put to additional work due to Trinity's failure to produce documents promptly. It is unreasonable for the leaseholders to bear any additional costs arising from these handover issues. Accordingly the tribunal limited the accountancy charges to the sum claimed in the 2011/12 accounts, namely £2,790 (including any VAT).
35. In conclusion the tribunal rejected all of the arguments advanced by Mr Singh at the hearing, with the exception of the challenge to the 2010/11 accountancy charges. These have been reduced by £510.

Application under s.20C and refund of fees

36. At the end of the hearing, Mr Singh made an application for a refund of the fees that the Applicants had paid in respect of the application and

hearing¹. Having heard the submissions from the parties and taking into account the determinations above, the tribunal does not order the Respondent to refund any fees paid by the Applicant.

37. In the application form and at the hearing, Mr Singh applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that it is not just and equitable to make a section 20C order. The Respondent has been almost completely successful in resisting the application. The only reduction achieved by the Applicants was a very modest sum of £510 for the 2010/11 accountancy charges. Furthermore the tribunal has taken account of the conduct of the parties. The Applicants failed to properly comply with the directions in that their statement of case did not identify the specific items being disputed and the reasons why. It was only at the hearing that Mr Singh applied his mind to these issues. Had a proper statement of case been produced then the Respondent and the tribunal would have known what was disputed and why, prior to the hearing. This would have saved time, both in the preparation of the Respondent's case and in hearing the application.

The Next Steps

38. The tribunal has determined the service charges for 2009/10 and 2010/11 but has not quantified the precise sums due, if any, for each of the Flats. Hopefully the parties can now agree these figures, taking account of the tribunal's determination, the percentage contributions due for each of the Flats and the payments that have been made by the Applicants.
39. For the avoidance of doubt the tribunal has not made any finding as to whether the suspension of certain services during Trinity's period of management amounted to a breach of the leases. Nor has the tribunal determined any claim or right of set off that might arise, if the leases have been breached. This would be a matter for the Applicants to pursue separately, if they chose to do so. They are recommended to seek independent, legal advice on this aspect of the case.

Name: Jeremy Donegan (Tribunal Judge)

Date: 21 November 2013

¹ The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,

- (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 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 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 the Upper Tribunal, or in connection with arbitration proceedings, are

not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.