10515

FIRST-TIER TRIBUNAL

PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BE/LSC/2014/0349, and LON00BE/LDC/2014/0129**
Property	:	**77 Dylways, London SE5 8HW**
Applicant	:	**Mr T. Saygin and Mrs S. Saygin (Leaseholders)**
Representative	:	**Mr T. Saygin**
Respondent	:	**London Borough of Southwark (Landlord)**
Representative	:	**Ms E. Bennett; Senior Enforcement Officer, Southwark**
Type of Application	:	**Service Charges – Section 27A and 20C Landlord & Tenant Act 1985; Section 20ZA**
Tribunal Members	:	**Judge Lancelot Robson** **Mrs A. Flynn MA MRICS** **Mr A. Ring**
Date and venue of Hearing	:	**6th November 2014; Inspection 20th November 2104** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**30th December 2014**

DECISION

Decisions Summary

(1) The Tribunal decided that the notice dated 8th August 2013 served pursuant to Section 20 of the Landlord and Tenant Act 1985 (the Act) and challenged by the Applicant was valid, having been served in accordance with the Lease. Case 0349)

(2) All the notices and procedures relating to major works in respect of Warm, Dry and Safe Works carried out in the period 2013 – 2014 have been carried out in accordance with Section 20 of the Act (Case 0349).

(3) The Tribunal decided that the protective application made pursuant to Section 20ZA of the Act by the Respondent (Case 0129) was unnecessary.

(4) The work to be done was necessary, reasonably done, and the estimated amount was reasonable in amount in accordance with Section 27A of the Act (Case 0349).

(5) Following the concession made by the Respondent at the Directions stage, the Tribunal made an order under Section 20C of the Act limiting the costs of the landlord relating to this application and chargeable to the service charge to Nil (Cases 0349 and 0129).

(6) The Tribunal made the other determinations as set out under the various headings in this decision.

The application

1. The Applicants seek a determination as to the reasonableness of estimated service charges payable under Section 27A of the Landlord & Tenant Act 1985 (the Act) pursuant to a lease dated 1st November 1993 (the Lease), relating to a contract for major works commencing in the service charge year commencing on 1st April 2013, and due to be completed in 2015.

2. In a cross-application, LON/00BE/LDC/2014/0129, the Respondent applied on 25th September 2014 under Section 20ZA of the Act for an order to dispense with the consultation requirements of Section 20 of the Act, in respect of Warm, Safe and Dry Works (the major works noted above). In its Directions of 3rd October 2014, the Tribunal directed that the two cases be heard together.

3. Extracts from the relevant legislation are attached as Appendix 1 below.

4. At the case management conference relating to Case 0349 the Respondent confirmed the concessions noted at decision (5) above.

5. Pursuant to the Tribunal's Directions dated 22nd July 2014, the Applicant made written submissions on 29th August, and 7th October 2014, the Respondent made

two written submissions on 25th September 2014. The Applicant made a further submission dated 26th October 2014 outside the Directions process, which the Tribunal treated as a skeleton argument.

6. At the close of the hearing on 6th November 2014, the Tribunal decided, in consultation with the parties, to inspect the property. The inspection took place on the afternoon of 20th November 2014, after which the Tribunal deliberated on its decision.

Inspection

7. The Tribunal inspected the property externally in the company of Mr Saygin and several representatives of the Respondent. It is one of four purpose built units in a detached building. of brick construction under a tiled roof. The freeholder of the building is the Respondent local authority, which is responsible for its repair. On the ground floor are two flats, each with a flat above. All four, we were told, are let on long leases. The subject property, No, 77, is one of the ground floor flats. The leases of the ground floor flats also include the gardens to the front and rear. The rear gardens are accessed via a side pathway. The building showed signs of repair and renewal, including the replacement of a number of hip and ridge tiles, the hip irons, some roof tiles, guttering and soffits, and some bricks in the walls although others had been refaced, rather than replaced. The chimney stacks had also been refaced. Close inspection revealed that some areas of brickwork had also been treated with a waterproof coating. There was also some evidence of external redecoration. There was no sign of moss or lichen on the roof slopes. The Tribunal noted that more recent rear extensions of different sizes with flat roofs had been built onto both properties. The extent of the landlord's repairing obligations relating to these extensions seemed unclear, but no repair work appeared necessary on that part of the property, and none was claimed. Overall, the repair work appeared sound, but presented a rather patchy appearance due to the problems of matching old and new brick and tile colours.

8. At the hearing the Applicants disputed the extent of the work actually carried out, suggesting that the quantities of bricks, tiles and coatings, and the extent of works charged for by the Respondent were exaggerated. The Tribunal considered from its inspection that the Respondent did not appear to be claiming for more work than had been undertaken, although this would become clearer when the final account became available.

Hearing

9. At the start of the hearing, the Tribunal found the documents bundles were difficult to use and needed some explanation, as they were not well divided or indexed. This was largely cured by a short adjournment for the parties to locate the key documents, and by the Respondent providing several additional documents during the course of the hearing.

10. The Tribunal then identified, in consultation with the parties, the following items of dispute;

(i) Validity of service of Section 20 Notice
(ii) Dispensation application
(iii)Necessity for the work

(iv)Quality of the work
(v) Cost of the work
(vi)A payments scheme offered to residents not offered to non-residents
(vii)Some specified work had not been done, but no credit would be given until 2016 when the final account was completed
(viii)The work had exacerbated a dispute with one of the neighbours, resulting in an opportunity to buy the freehold being lost.

(i) Section 20 Notice

11. The Applicants submitted that they had not received the Notice of Intention dated 9th August 2013. They had only become aware of the works from the owner of No. 79 in January 2014. The Applicants had sent an email dated 25th July 2013 confirming that they were subletting the property and giving a new correspondence address. In fact they had left the property on 23rd July 2013. A copy of the Section 20 notice had been sent to the Applicants at their new address only after a request from them dated 28th March 2014. Also they queried whether another Section 20 notice should have been served on them in accordance with the statutory procedure. The Respondent was serving such notices regularly, some were relevant to the property and some were not. The notice should have been served by recorded delivery, which the Applicants considered to be the proper way.

12. The Respondent submitted that the work was being done pursuant to a Qualifying Long Term Agreement, which had been consulted upon in 2008. The Notice of Intention for the Agreement had been served on 17th November 2008. Notice of Proposal relating to that Agreement had been served on 22nd January 2010. The Respondent had obtained a dispensation under Section 20ZA from the LVT relating to that notice. The Applicants had not complained that they had not received these earlier notices. The Home Ownership Department had never received the Applicants' notice of change of address dated 25th July 2013, it had been sent to another department, and apparently had not been passed on. Ms Dawn for the Respondent outlined the procedure for serving Section 20 notices. In this case the notice had to be served on 234 properties by hand. It took a full day to do so. The addresses for the notices were checked at quite an early stage in the process, probably 1 – 2 weeks before the date of service. Rechecking the addresses was deemed ineffective, as the correspondence addresses could change at any time, even during the day of service. The notices had all been served by hand at the property addresses on 8th August 2013. If the Respondent was aware of correspondence addresses, notices would also be served by post at those addresses. The Respondent had not had problems with this procedure previously, and they understood that at least two other London boroughs used the same procedure.

13. The Tribunal considered the evidence and submissions. It was unimpressed by the Respondent's contention that the Applicants should have been aware of the possibility of these works as a consequence of the consultation carried out in 2008 and 2010 concerning the intention to enter into a Long Term Qualifying Agreement. The Tribunal studied the notices issued at that time. They relate to the Respondent's arrangements for entering into partnering agreements with

contractors in respect of all major works to the entirety of its housing stock over a substantial period of time. There is no way any leaseholder could ascertain from the notices what works were proposed for their property, when, or indeed if, they would be undertaken, or their likely cost. The first time the Applicants might reasonable have been expected to be aware of the works to their property was when the Notice of Intention was issued in August 2013. It is all the more unfortunate therefore that they apparently did not see that notice until March 2014. At the hearing the Tribunal directed the parties' attention to Section 196(3) of the Law of Property Act 1925, which was applied by Clause 5(6) of the Lease to the service of notices. Briefly, service by hand at the property was deemed sufficient. The Tribunal indicated its preliminary view to the parties at the hearing, which neither party disputed, and considered the matter fully later in its deliberations. It was unfortunate that the Applicants had moved and given notice of change of address so shortly before the Notice of Intention had been served, and it was common ground that the notice had been served after receipt of the change of address by another department of the Respondent. This had been one of the reasons for the application for Dispensation under Section 20ZA. However, the Tribunal decided that the terms of the Lease were clear, and they were paramount. Whether or not the Applicants actually received the notice, they were deemed to have received it on 8th August 2013. Nevertheless, the Tribunal also considered the Dispensation Application (Case 0192), for completeness.

(ii) Dispensation application

14. The Applicants submitted that if they had had the opportunity to make observations they could have highlighted the unnecessary nature of the works. Also if the Applicants had been made aware of the works in August 2013, they would have made a collective enfranchisement application. Since then a boundary dispute had arisen with the leaseholder at No. 79 and the Applicants were now unable to make such application. The dispute had been exacerbated by the contractors who had lost a key to the side gate, resulting in Mr Saygin having to force the lock, resulting in a confrontation with the neighbours. The Applicants submitted that delivering notices by hand was unacceptable in this day and age. The notices should have been served by Recorded Delivery or email.

15. The Respondent submitted that service by Recorded Delivery to the property would not have resulted in the Applicants receiving the notices. Also many leaseholders did not have email. The Applicant's case on this point showed no relevant prejudice.

16. The Tribunal considered the evidence and submissions. The work was being done under a Qualifying Long Term Agreement which necessitated public notice, i.e. advertising within the European Union. The relevant requirements for notices to tenants were contained in Schedules 2 and 3 of the Service Charges (Consultation etc) (England) Regulations 2003. Once a Qualifying Long Term Agreement has been properly entered, only a single notice of intention is required. The works were being done in accordance with measured costs. Further, the documents showed that the Respondent had commissioned a survey prior to the works, and was acting upon the advice given by its professional advisers. In such a situation it was difficult to see what observations the Applicants could have made pursuant to the notice dated 8th August 2013 which would have resulted in reducing or

extinguishing the scope of the works. The assertions of loss of a chance to enfranchise, and the neighbour dispute, were not supported by evidence, and in any event these matters seemed to have no relevance to the consultation requirements of Section 20. The Applicants' point on the mode of service ignored Section 196 of the Law of Property Act 1925, and the practical reality of serving notices on leaseholders who might dispute that service had occurred. The Tribunal decided that in the light of its decision relating to the Section 20 notice. There was no necessity to make an order for dispensation under Section 20ZA of the Act. However if such an order had proved necessary, the Tribunal would have granted the Respondent's application.

(iii)Necessity for the work

17. The Applicants submitted that they had noticed no problems with the property except some spalling brickwork. The removal of lichen was also unnecessary for this property. Photographs taken prior to the works in the bundle showed, in the Applicants' view, that such work was unnecessary. On the roof only one tile had been defective. The brickwork was generally in good order. By contrast the photographs showed a build up of white stains on the flank wall, which had not been removed by the works. Many bricks did not need the refacing which was done. Replacement of some gutters and fascias had been done in 2006. There was no need to replace them again in 2013.

18. The Respondent's Mr Phillips, the contract designer, submitted that the work had been recommended by Blakeney Leigh, their retained surveyors. In the bundle was a feasibility study, and a justification for the works. Mr Phillips himself had then inspected the roof from the scaffolding and confirmed that the work needed to be done. He considered that the existing brickwork soaked up water and needed refacing, or replacement where a significant depth of the facing had spalled.

19. The Tribunal considered the evidence and submissions. From the evidence, which tended to be confirmed by its own inspection, the Tribunal decided that the works were necessary. It also noted that while, e.g. some of the guttering previously replaced might have been in good condition, total replacement was not unreasonable, particularly in the context of ongoing legal liability of the contractors for defective work.

(iv)Quality of the work

20. The Applicants submitted that much of the work was substandard and "frivolous". They made a number of assertions of deliberate overcharging and misfeasance by the Respondent, for which there was no supporting evidence in the bundle. The Tribunal found no substance in those items. More constructively they referred to the following matters;

a) The underside of the canopy above the front door had not been repainted, although the Applicants had painted it themselves 10 years ago.

b) The white stains on the side elevation had not been removed, despite the Respondent's claim that several attempts had been made to clean it. The Respondent should have power cleaned it with a water jet. These stains had been reported to the Respondent some years ago, as it was the result of water dripping from the overflow of the property above.

c) By contrast to the neighbouring block there were no lichens on the roof of this block and no cleaning of the roof had been done, although this item had been charged.
d) The dyeing of the hip ridges was unsightly. They looked better before the work was done.
e) The contract was entitled Safe Dry and Warm, but much of the work was decorative
f) Black paint had been smeared on the white paint on the soffits during redecoration, and was unsightly.
g) PVA solution applied to the spalled bricks, followed by brick dust applied while wet produced a surface which crumbled upon contact and had no longevity.
h) Waterproofing solution should have been applied to the whole of the walls, not just parts
i) The Respondent had not replaced the number of tiles and bricks charged for. The same had occurred with the refacing.
j) The entrance door had not been replaced as specified, although it was not part of the original notice.

21. The Respondent submitted that the works had been specified by Blakeney Leigh, their retained chartered building surveyors pursuant to a report in September 2012. The Report outlined the need to undertake works relating to the entrance doors, roofs, insulation, brick and concrete works, lateral mains replacement and asphalt works on the estate. The Notice of Intention issued on 8th August 2013 gave a general description of the works as above. An estimate of the relevant leaseholder's contribution was issued with each notice together with a specification of the work. The work had reached practical completion on 22nd August 2014, and was subject to a defects period ending on 11th November 2015. On expiry of the defects period a formal invoice or credit note would be issued to leaseholders, depending upon the actual work done to the building concerned.

22. For the purposes of this application, the Respondent had produced a draft final account for this building, which was in the bundle. The front entrance doors had not yet been replaced, but the rest of the work was substantially complete. Some defects noted by the Applicants, e.g. the paint smears, had been dealt with on snagging. Other items complained of were not in the contract but had been done as a matter of goodwill, e.g. the attempts to remove the white stains on the side elevation. The cause of the stains was a defective overflow belonging to the leaseholder upstairs, and this was not a matter for the Respondent to deal with under the Lease, as there was no evidence of dampness or damage to the structure. The matter was one between the leaseholders. Other matters raised by the Applicants were not within the contract specification, e.g. painting the underside of the canopy. The loft insulation was inspected, but no work was done, as such work was a matter for individual leaseholders. Mr Fang, the Respondent's Contracts Manager was called among the witnesses called for the Respondent. He stated that he had inspected the works regularly and was satisfied with the quality of the work done. Mr Begley, the Senior Quantity Surveyor, confirmed that he had also inspected the building during and after the works had been completed and was satisfied that the work had been carried out to a reasonable standard.

23. The Tribunal noted after questioning the Respondent's witnesses that there were already some minor variations in the draft account. In particular it noted that

there had been no power cleaning on the roof, and that charge would be removed. With the benefit of its own inspection, (which could not be a detailed forensic inpection) it decided that the quantities charged for in relation to bricks, tiles and refacing appeared to be consistent with what had been done on site, i.e. it found no significant discrepancies, despite Mr Saygin's suggestions on site that such existed. The Tribunal further noted that the Notice of Intention set out the following general works to be done, which then directed the reader's attention to an estimated schedule of works to the relevant building (which was very similar to the draft final account mentioned above in format). The general works included:

Communal and Front Entrance door works
Roof works including canopy
Loft Insulation
Brick and concrete works
Lateral Mains Replacement
Asphalt to balconies

24. The Tribunal decided that generally the works had been carried out in accordance with the specification sent to the Applicants with the Notice of Intention. After consideration of the Lease, it accepted the Respondent's submission that the white stains on the side elevation were matters between individual leaseholders, and although the Lease gave power for the Respondent to enforce repairing covenants at the request of a leaseholder, this was not relevant to the contract for work. Nevertheless the Tribunal accepted that Mr Saygin had notified the Respondent of the leak some time ago, and was disappointed to note that the Respondent appeared to have ignored its responsibility to make the leaseholder concerned remedy the defect. However the Tribunal saw no signs of dampness or structural damage to the wall concerned, although it was unsightly. The Tribunal had concerns with the efficacy of the method used to reface bricks, but presumably its effectiveness will become clear after a winter season, after which the work will still be in the defects period. In this connection the Tribunal also noted that the charges made are still based on an estimate. It is open to either party to make a further application to the Tribunal based on the final account, when it is sent at the end of 2015.

25. The Tribunal therefore found generally in favour of the Respondent on the issue of quality.

(v) Cost of the work

26. The applicants challenged the costs of individual items of work in considerable detail, using the costs of a loft extension to their new property some years ago as a comparison. The main thrust of their argument was based on the costs of materials and scaffolding, and also administration and professional fees. On these last two items the Applicants offered no comparable evidence. At the hearing, the Tribunal suggested to the Applicants that the comparison might not be apposite, as the Respondent was a public body which was obliged by law to follow certain tendering procedures, and ensure that all safety and other legal considerations had been taken into account. An individual house owner employing a small building company was not so constrained. The Applicants did not accept this point.

27. The Respondent with the support of its witnesses submitted that the necessary tendering processes had been followed. Those initial processes in the period 2008 to 2010 relating to the Qualifying Long Term Agreement had been approved by the Leasehold Valuation Tribunal. The Agreement allowed the Respondent to sample the market and fix rates for work based on present market conditions, rather than at any date in the past. Materials were also obtained at current market prices. The professional advisers also had to tender for the work they did. The Respondent considered that its administration charges of 10 per cent were reasonable, and these were stated in the Lease at paragraph 7(7) of the third Schedule. The total estimated cost of the works demanded of the Applicants was £8,271.39. Based on present information, a credit of about £350 might be expected in the final account, but this was not certain.

28. The Tribunal considered the evidence and submissions. The Tribunal accepted the Respondent's submission that the comparison of a major works contract with individual elements of a particular loft extension was not helpful, particularly when there was no copy of the loft contract or a detailed specification. There was clearly much disagreement between the parties about the cost of materials and particularly about scaffolding. However the Tribunal considered that the Respondent's views were based on evidence and procedures, while those of the Applicants were largely anecdotal and did not take account of the legal constraints upon the Respondent noted above. The Tribunal also recognises that the Respondent's costs have been reached after a statutory tendering process which was not challenged by the Applicants. The Tribunal had seen that the work had been carried out reasonably competently, if not perfectly, and the charging procedures seemed transparent. The work clearly had some benefit for the Applicants. The professional fees had been tendered, and did not, in the Tribunal's experience appear excessive at 7.28%. The Respondent's own fee of 10% was specified in the Lease and was therefore outside the Tribunal's jurisdiction. Also. it did not seem excessive. The Tribunal decided in all the circumstances that the estimated cost of the work demanded by the Respondent was reasonable, and in accordance with the Lease.

(vi)A payments scheme offered to residents was not offered to non-residents

29. The Applicant submitted that the payment scheme offered to residents should also have been offered to non-resident leaseholders. The Tribunal stated at the start of the hearing that it had no jurisdiction to rule on this issue under Section 27A in the absence of any provision in the Lease. The terms of the Lease required payment of service charges on demand. The Tribunal therefore made no finding.

(vii)Some specified work had not been done, but no credit would be given until 2016 when the final account was completed

30. The Applicant submitted that the estimated charge was excessive as a significant part of the work had subsequently been found unnecessary by the Respondent. It was unfair to allow the Respondent to charge for work which would not ultimately be done. The Respondent made no specific response to this issue.

31. The Tribunal decided that this matter was governed by the terms of the Lease, which had not been challenged. The estimate appeared to be based on the best information available at the time. Also the Respondent had allowed the costs to be paid in four equal instalments in April 2014, July 2014, October 2014 and January 2015. Any balance was payable in November 2015. This offer was stated in the documentation attached to the formal demand on 30th January 2014. The Respondent was not obliged to offer this facility in the Lease. The Tribunal decided that the Applicants' complaint on this point had no substance.

(viii)The work had exacerbated a dispute with one of the neighbours, resulting in an opportunity to buy the freehold being lost.

32. The applicant submitted that a contractor carrying out work on the side elevation had asked for a key to the gate. The key had not been returned and had been lost by the contractor. Mr Saygin had decided to force the lock, which had led to confrontation with the leaseholder at No.79, thus exacerbating a previous boundary dispute. He had also not been reimbursed for the cost of the lock. Again the Tribunal found no supporting evidence in the bundle and stated at the hearing that this matter was not within its jurisdiction under Section 27A. The Tribunal therefore made no finding.

Costs

Section 20C

33. In their application the Applicants applied for an order that all or any of the costs incurred, or to be incurred, by the Respondent landlord in connection with these 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 Applicants.

34. Following the Respondent's concession on this point at the Case Management Conference on 22nd July 2014, the Tribunal ordered that such costs shall be limited to Nil.

Applications for reimbursement of fees paid to the Tribunal by both parties under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013

35. Each party applied to the Tribunal to exercise its discretion and order the other party to reimburse its fees paid to the Tribunal. The Tribunal noted that in Case 0349 that the Applicants had not succeeded on any significant issue. This was not conclusive, but the Tribunal decided it was proper for the Respondent to defend the application, and it had entirely succeeded. The Tribunal decided in all the circumstances that it would make no order.

36. Relating to Case 0129, the Respondent applied for the Applicants to reimburse its fees paid to the Tribunal. The Tribunal noted that while it would have been minded to make an order under Section 20ZA, it had not been necessary to do so. While the Tribunal understood the Respondent's concerns that the Tribunal might be persuaded to find the Section 20 notice invalid, this was a matter of judgement for the Respondent. Penalising the Applicant for the fees of a

protective cross-application, which was ultimately unnecessary, seemed harsh. The Tribunal decided to make no order.

Other Matter

37. After the hearing, the Applicants wrote to the Tribunal on 13th November 2015 to complain that the evidence of Mr Begley should be disallowed, as his witness statement had not been disclosed until just before the hearing. Mr Saygin submitted that there had been some discussion in the waiting area just before the hearing started as to the date his Response dated 7th October had been sent to the Respondent. Ms Bennett had been unaware that the Response had been sent to a member of the Respondent's staff who had recently left. There had also been some discussion as to the inclusion of Mr Begley's statement. Mr Saygin had required that a formal request for the statement to be included should be made. When the statement had been introduced he had not agreed or disagreed whether it should be included. He suggested that allowing the inclusion of fresh documents and evidence put the Applicants at a disadvantage and was favouritism.

38. The Tribunal considered this complaint but rejected it. The Applicants had made no complaint about the matter during the hearing at all, and Mr Begley's very short statement contained no new evidence. It, and the oral evidence he gave at the hearing, merely served to support other evidence. The Tribunal decided that the Applicants should not have been surprised by its contents, and thus were not disadvantaged by it.

Signed: Lancelot Robson

Dated: 30th December 2014

Appendix

Landlord & 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;
- (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.

The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013

Rules 13(1) - (3)

13.-(1) The Tribunal may make an order in respect of costs only-
- (a) under Section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
- (b) if a person has acted unreasonably in bringing, defending, or conducting proceedings in-
  - (i) an agricultural land and drainage case,
  - (ii) a residential property case, or
  - (iii) a leasehold case; or
- (c) in a land registration case.

(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

(3) The Tribunal may make an order under this rule on application or on its own initiative.

(4) – (9)...
