1064

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

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| **Case Reference** | : | **LON/00AG/LSC/2014/0420** |
| **Property** | : | **61 O'Donnell Court ,The Brunswick Centre London WC1N 1AQ "the property")** |
| **Applicants** | : | **Mr Gerard McLean**<br>**In Person** |
| **Represented by** | : | **Mr J Upton of counsel** |
| **Also in attendance Respondent** | :<br>: | **London Borough of Camden**<br>**Ms R Patel- Court Officer**<br>**Ms A Shortall-Collections Manager**<br>**Mr S Harding-Final Accounts Principal Officer**<br>**Mr S Burr- Senior Leasehold Officer** |
| **Type of Application** | : | **Application for a determination under Section 27A of the Landlord and Tenant Act 1985** |
| **Tribunal Members** | | **Ms M W Daley LLB (Hons)**<br>**Mr Peter Roberts DipArch RIBA** |
| **Date of Hearing and determination and venue** | : | **17th November 2014 and 11 December 2014 10 Alfred Place, London WC1E 7LR** |
| **Date of Decision** | : | **27 February 2015** |

**DECISION**

## Decisions of the Tribunal

(1) The Tribunal makes the various determinations set out in the decision below.

(2) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

## The application

(1) The Applicant seeks a determination under section 27A of the Landlord and Tenant Act 1985 as to the legal basis for recovery of estimated service charges payable for the service years 2013- 2014 and 2014-2015.

(2) A case management conference was held on 4 September 2014 where Directions were given by the Tribunal.

### The matter in issue

(3) At the Directions hearing on 4 September 2014 the Tribunal identified the following issues-:

a. *"(1) Certain items in the estimated service charges for the years 2013/14 and 2014/2015 being the manner of the calculation of the " specified proportion" as defined in the lease, landlord charges, insurance and management charges. The applicant will specify the actual amounts in his statement of case.*

(4) *Whether the landlord has complied with the consultation requirements under section 20 of the 1985 Act in respect of an invoice dated 1 April 2014 in the sum of £668.76 for major works*

a. *(3) whether the works are within the landlord's obligation under the lease/ whether the cost of works are payable by the leaseholder under the lease*

b. *(4)whether the costs are payable by reason of section 20B of the 1985 Act*

c. *(5) Whether the costs of the works are reasonable in particular in relation to the nature of the works, the contract price and the supervision and management fee*

(5) *whether an order under section 20 C of the 1985 Act should be made*

a. *(7) whether an order for reimbursement of application/hearing fees should be made.* The relevant legal provisions are set out in the Appendix to this determination.

**The background**

b. The property which is the subject of this application is a two bedroom flat in a large mixed use building including shops, restaurants, commercial units comprising in total approximately 400 units. The premises are situated in The Brunswick Centre which is described as "a large mixed use building in central London". The freeholder of the centre is a pension fund. Under a lease dated 26 February 1982 the Head Lease. The London Borough of Camden holds an interest in the centre for a period of 99 years from 5 December 1973.

c. The Applicant holds a long lease of the flat "the Lease", which requires the landlord to provide services and the Applicant leaseholder, to contribute towards the cost of the services by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

d. The Tribunal inspected the premises on 11 December 2014. The property consists of 2 stepped residential blocks of 7 stories over a ground floor central plaza bordered by retail outlets; there are terraces over the retail units with 14 commercially let business units. Car parking areas are at lower and upper basement levels; that at lower basement with spaces let on licences to the residential units. The property, which also includes a cinema and restaurants, was built in the early 1970's and is listed Grade ll. There are approximately 90 of the flats that have been sold on long leases, the remainder are retained by the L B Camden.

## The Hearing

(6) At the hearing the Applicant represented himself. The Respondent was represented by Mr Upton Counsel, also in attendance were the parties listed above. At the hearing the following additional documents were provided-:

a. A copy of the final account

b. Counsel for the Respondent's skeleton argument

(7) The Tribunal decided for the purpose of this determination to adopt the issues as set out in the Applicant's statement of case.

(8) At the hearing Mr McLean by way of introduction set out that the estate had two blocks of flats which comprise around 400 flats. O'Donnell Court comprised a ground floor plus seven floors. The head lease defined 'the Building' as-: " all the buildings and structures ", the estate was defined in more detail in the Applicants lease as-: *The property in respect of which the Landlord is or was the registered proprietor under the Title Number(s) set out above and the Managed Buildings thereon and there over and including the Common Parts.*

(9) The development as well as comprising commercial buildings and shops, also contained two car parks, one on the upper basement level, an NPC car park, this which was not part of the Respondent's lease. On the lower level there was a car park which was included in the Respondent's head lease and was let on licence by the Respondent separately to the residential leases. This car park was described by the Applicant as "*inaccessible to residents of the flats, unless they also happen to be car park licensees.* The car park was available to rent for £2.75 per week. Pedestrian access to the car park was via the lifts by using a key fob system.

(10) The Applicant in his Statement of Case, set out that his dispute centred on two service charge years 2013-14 and 2014-15.

(11) Mr Mclean's first issue was the manner in which the service charges were calculated and the Specified Proportion, and whether the sum contributed/received on account of the non- residential premises was reasonable.

(12) In his statement of case Mr Mclean stated as follows-:"*The Fourth Schedule to the Lease originally allowed the Respondent to calculate the Specified Proportion by one of three alternative methods, or by a combination of those methods. The first method was, for general expenditure, by:*

a. *".... dividing the aggregate of the expenses and outgoings incurred in respect of the Items of Expenditure by the Landlord in the Specified Annual Period to which the certificate relates by the aggregate of the rateable values (in force at the end of such period) of all the premises within the Managed Buildings and then multiplying the resultant amount by the rateable value (in force at the 31st March 1989) of the Premises PROVIDED ALWAYS that in the event of the abolition or disuse of the rateable value system for properties the references to rateable values herein shall be substituted by a reference to the floor areas of all the premises in the Building or on the Estate (where applicable) and apportioned accordingly" [capitalisation present in original] (Clause 4.1).*
b. *The second method was:*
c. *".... in the case of those items for which the Landlord's expenses extend to the Estate or other Estates then a fair and reasonable*

*proportion of the costs thereof attributable to the Premises such proportion to be determined by the Landlord's Finance Officer whose decision shall be final and binding" (Clause 4.2).*

d. *The third method was:*
e. *".... such other method as the Landlord shall specify acting fairly and reasonably in the circumstances and from time to time and at any time (including but without prejudice to the generality thereof and any combination of methods)" (Clause 4.3).*
f. *As the rateable value system has indeed fallen into "disuse" for residential properties (notwithstanding the Respondent's circular argument that this is not the case as it uses obsolete, or in some cases invented, rateable values for calculating the Specified Proportion), the use of rateable values is excluded from the methods that might be used, and the first option becomes:*
g. *".... dividing the aggregate of the expenses and outgoings incurred in respect of the Items of Expenditure by the Landlord in the Specified Annual Period to which the certificate relates by the aggregate of the floor areas of all the premises within the Managed Buildings and then multiplying the resultant amount by the floor area of the Premises".*

(13) The Applicant submitted that all of the residential premises within the managed buildings had rateable values. If realistic rateable values are included for the commercial units and the car park it may be possible to make an acceptable apportionment.

(14) Mr McLean noted that the Respondent's had not given a rateable value to the car park and that he had been informed by the Respondent that the car park did not have a rateable value. However he had obtained information from the valuation office that the rateable value was £153,500. Mr McLean noted that there was also storage area at the premises which were used which did not have a rateable value. However Mr McLean was concerned that the landlord had excluded both of these parts of the premises from their calculation and had attached an artificially low rateable value to the commercial units, the result was unfair and unreasonable.

(15) He submitted that the landlord had not carried out the calculation of the Applicant's share of the service charges in accordance with the first method of apportionment provided for under the fourth schedule of the lease. Mr McLean submitted that the second method of apportionment provided that the borough wide service charge cost would be divided and apportioned based on the notional rateable values, - the *Second method does not relate to Rateable values. However* in Mr McLean's submission, this method could only be used if the service charges were apportioned across the estate. Where the Respondent was seeking to apportion cost solely across the blocks, rather than the whole of the estate this method was, he submitted not permissible.

(16) Mr McLean stated that it was not reasonable to exclude the car park and the storage sheds from the calculation. He stated that the actual method used by the Respondent was to use rateable values, however although rateable values were used these were only accurate insofar as the residential properties were concerned.

(17) In his statement of case the Applicant stated-: *"Some of the rateable values in the schedule appear to have been invented by the Respondent. For example, the following fourteen non-residential premises have been included in the calculation: 10, 47, 52, 105, 110, 167 and 172 Foundling Court; and 11, 32, 33, 80, 85, 142 and 147 O'Donnell Court.*

(18) *According to the Valuation Office Agency (schedule at APPENDIX 7), the current combined rateable value of these fourteen properties is £117,800.*

(19) *The combined rateable value in the Respondent's schedule is £4,992; I have seen no evidence that this was ever the combined rateable value of these commercial premises.*

(20) *This unfair and unreasonable method of calculation adopted by the Respondent greatly reduces the contribution to the maintenance and management costs made by these fourteen non-residential occupants and thus increases the contribution demanded of me."*

(21) The Tribunal asked the Applicant to clarify what in his submission, ought to be the correct method used by the Respondent, to calculate the applicant's share of the serve charge.

(22) Mr Mclean stated that whilst he did not advocate the use of rateable values, in his opinion if they were used, they should include all of the premises on the estate which had a rateable value, and should use the last known rateable value.

(23) Mr Mclean stated that the issue was whether all the users/occupiers of the building, that is the commercial and residential paid a fair contribution towards the service charges.

(24) Mr Mclean stated that there was car park access via the lift by using a fob key, the refuse area was also in the car park and cleaning was undertaken by the respondent's cleaning staff, all of these services were paid for by the service charge account.

(25) In reply counsel for the Respondent, Mr Upton referred the Tribunal to the definitions set out in the lease : the 'Specified Proportion' was calculated in accordance with the fourth schedule. Counsel noted that the 'Service Charge' is *defined in Clause 1.1 as:*

(26) *"All those costs and expenses incurred or to be incurred by [R] in connection with the management and maintenance of the Estate and the carrying out of [R's] obligations and duties and providing all such services*

*as are required to be provided by [R] under the terms of the Lease including where relevant the following:*

*i. Category A Services*
*ii. Category B Repairs*
*iii. Category C Improvements*

(27) *and without prejudice to the generality thereof all such matters set out in the Fifth Schedule".* Counsel noted that these charges were wide and fell to be calculated by reference to clauses 4.1 4.2 or 4.3 of the Fourth Schedule. In accordance with the provision of the lease.

(28) Counsel in his submission considered, that it was perfectly proper for the Respondent to "pick and mix" the formula for the charges in this way.

(29) In his submission clause 4.3 was sufficiently wide to allow the landlord to use any combination of these methods, as in accordance with the construction of the lease, the Respondent was given a wide discretion concerning the calculation of the service charges.

(30) Counsel submitted that in accordance with section 19 of the Landlord and Tenant Act 1985 the requirement was what was fair and reasonable there were a number of methods that could be used to calculate service charges, and that the service charge claimed was recoverable in accordance with the lease.

(31) The question for the Tribunal, he submitted, was whether the method used by London Borough of Camden was reasonable within the meaning of the Act.

(32) In the Respondent's statement of case at paragraph 24 The Respondent states -: "*24. The Respondent calculates the service charge by a combination of methods as provided by clause 4.3 and contends that such method or methods are fair and reasonable. On a proper construction of the Sub-Lease, the Respondent will contend that no one method is given supremacy over the others. The Respondent is entitled to calculate the specified proportion by any one of the methods set out in paragraph 4. 24.1 Save for heating charges and insurance, all other day to day services are apportioned by unit apportionment according to the number of units in the block and estate. There are 192 units in O'Donnell Court and the Applicant therefore contributes 1/192th of the block costs. There are 408 units on the Estate and the Applicant therefore contributes 1/408th towards the estate costs. 24.2 The cost of insurance as set out in the estimated service charge demand are apportioned to the lessees by reference to rateable values of the flat in question in proportion to the total values in relation to the units in the block for the block costs or for the total rateable values of the Estate (Foundling and O'Donnell Court) for the estate costs. The Applicant's flat has a unit rateable value of 426 and the total block rateable value is 71,676 and therefore the Respondent (sic) pays 0.59% of block costs. The total estate rateable value is 151,779 and therefore the Applicant pays 0.28% of the estate costs.*"

(33) In answer to a question concerning whether numbers of bed spaces was used as a charge, Mr Upton stated that there was a limited extent to which it was used however the studios and maisonette paid the same service charges for certain items of expenditure.

(34) In answer to the issue concerning whether the commercial premises paid a fair contribution to the service charges, counsel referred to the witness statement of Antonia Shortall paragraph 10, which dealt with the car park charges. Ms Shortall confirmed that the charges for the car park were not passed on to the Applicant. She stated that in relation to the charges for electricity the Respondent estimated the charges for the car park useage and removed the charge before apportioning the electricity to the leaseholders.

(35) The Tribunal queried how the estimate was arrived at, Ms Shortall informed the Tribunal that a technical assessment had been carried out by an electrician and a surveyor and that this was considered to be a preferable method which was more cost effective than installing a separate check meter. The assessment was used to establish the percentage of cost which was attributable to the car park.

(36) In relation to the other charges which were not apportioned as above-: Ms Shorthall in her witness statement set out the manner in which the charges for heating and hot water were apportioned. The heating and hot water charge was calculated by using the total cost incurred and then applying a weighting system according to the number of bedrooms and type of supply to individual properties. The weighting formula used was based on the number of bedrooms plus industry standard heat loss calculations.

(37) In the Respondent's statement of case at paragraph 26 the Respondent stated-: *The Applicant correctly identifies that some of the units within Foundling Court and O'Donnell Court are not let as residential units. There are 14 commercial units on the Estate and 7 in O'Donnell Court. In the unit apportionment.... the commercial units are treated as a single unit in the same way as individual flats.*

(38) The Respondent asserted that although the premises were let as offices they were of equivalent size, given this the Respondent allocated a rateable value of 370 to each of the 14 units and this was the basis upon which they contributed to the service charges.

(39) In relation to the car park, Mr Upton submitted on the Respondent's behalf that the Applicant was not charged for any of the expenses associated with the Camden operated car park as all of the charges associated with the car park were excluded from the service charges.

(40) In reply, Mr McLean referred the Tribunal to the following heads of charges which he stated benefited the car park, they were the fire/ protection/ ventilation, there was also the matter of the lift and the access doors, the caretaking cost and also the cost of the CCTV camera.

(41) Mr McLean also referred to the repairs carried out by the Respondent for 2013 documented in their R*epairs Schedule of Jobs*. Job No 1522593/1. This repair was for two cold taps that were located in the bin room next to the car park. Mr McLean asked why this had been charged to the leaseholder's service charge account. Mr Mclean also asked about the cost of the door entry controls that served the car park and the cost of estate electricity. Ms Shortall stated that lighting was provided for the exit and entrance of the car park, and that this car park lighting was the only external lighting that was provided, as the lighting for the estate was provided by the shopping centre, for which the leaseholders contributed separately.

(42) In answer to these issues, Ms Shortall on behalf of the Respondent, stated that the fire protection, lighting and ventilation charges benefited the residential premises as well as the car park, (the actual charge to the Applicant was approximately £3.30 per year) Ms Shortall informed the Tribunal that the lighting and ventilation maintenance charges were provided as part of a borough wide contract. In respect of the CCTV, there was also a benefit of additional security for all the residents.

(43) The Respondent's position was that the cost of calculating the different heads of the lift costs, and then apportioning them, to the car park, would outweigh the benefit, and would accordingly be disproportionate. This was also the case with the installation of an additional check meter.

(44) Ms Shortall stated that she did not know whether the caretaking of the car park was charged to the service charge account and did not believe that caretaking was provided to the car park. In respect of the cold water supplies within the bin area, although this was located near the car park, it was for the benefit of the estate.

(45) Ms Shortall stated that in respect of the pedestrian doors and the roller shutters for the car park there was only one contract for the doors to the estate, and each leaseholder was allocated 3 fobs per unit, if a leaseholder/ licensee required any more than this then there was an extra charge of £10.00 per fob. In respect of the lighting, the cost of this was derived from a lighting maintenance contract, the contract cost was a borough wide cost which was divided by the number of properties and then apportioned to each unit.

(46) Regarding the technical assessment, Ms Shortall stated that approximately 2 years ago, the Respondent had noted that the estate contained numerous switch rooms and that there was no *"... logical or linear system, the technical assessment had involved tracing each of the wires to the area that they served, and provided a ...snap shot at a given moment in time"* This had been used for apportionment of the charges ever since. An extra meter could be provided but that would entail an extensive rewire at considerable cost.

(47) Mr Upton submitted on the Respondent's behalf that the landlord was entitled to apportion the cost by using different methods. It was fair and reasonable for the landlord to say that the service benefited the car park and

shed in a very limited way and that accordingly the cost of trying to work out the correct apportionment was "disproportionate to the actual cost recoverable to each unit. Mr Upon stated that the charges being considered by the Tribunal were estimates, and that his overarching submission was that the estimated cost were reasonable. He submitted that all that was required was for the landlord to use a reasonable estimate of the charges, and that any over or under estimate would be reflected in the balancing charges, which could be challenged if they were unreasonable.

(48) He stated by way of example that if the cost of the care taking service was £16.05, and then after the actual cost was calculated the cost was reduced to £14.60 this did not mean that the original estimate of £16.05 was not reasonable. In his skeleton argument he submitted that-:

(49) *"The question is whether the decision is a reasonable one in all the circumstances, even if other reasonable decisions could also be taken..."*

(50) Mr McLean did not accept this, he stated in reply that many of the cost were calculated on a unit basis and given this to exclude the car park and the commercial units from the calculation was simply unfair, it could not be stated that the service charge costs were reasonable.

(51) In his statement of case Mr McLean stated at para 46 -*"The Respondent might have developed a method of calculation of the Specified Proportion that was original and which met the criteria of fairness and reasonableness; instead, it has chosen to use a method adapted (unfairly and unreasonably) from the one method expressly excluded by the Lease, inventing rateable values for some of the commercial areas, while simply excluding others from the calculation. para 47. The Respondent's method of calculation of the Specified Proportion is unfair and unreasonable"*

**The Decision of the Tribunal**

(52) The Tribunal in reaching its determination finds that the landlord by virtue of clause 4.1 to 4.3 of the fourth schedule of the lease; has a very wide discretion on the method to be used in apportioning the service charge cost.

(53) It was submitted by Counsel for the Respondent that the Respondent could use the method set out in 4.1 or 4.3, or indeed a combination of both methods.

(54) There is implicit in the clauses an obligation on the part of the landlord to "act fairly and reasonably in the circumstances."

(55) The Tribunal also noted that it was for the Applicant to prove his assertions that is that "the Respondent was not calculating the charges in accordance with any of the acceptable methods set out in the lease." Given this there was no burden on the Respondent to discharge, however, implicit in the wording of section 19, is the fact that the Tribunal must establish that the cost are reasonably incurred. Whilst this relates to the actual costs, it is clear that the test also relates to the burden of the charges, so that were the

burden falls disproportionately on a party this may give rise to a finding that the service charge is not reasonable or payable.

(56) The Tribunal notes the method of calculation used by the Respondent and the rationale provided by Antonia Shortall in her witness statement at paragraphs 8 to 17. Ms Shortall in her witness statement refers to apportionment of the charges for the block by treating the residential premises and the commercial units as single units and dividing the service charges for the block into unit costs, and that the approach in relation to insurance, was to use rateable values. The Tribunal consider that given the wide discretion in the lease, that there is nothing to prevent them "picking and mixing" in this way.

(57) However although the Tribunal accepts that there is this discretion, neither method is used to establish the proportion of the cost which should be fairly attributed to the car park.

(58) The Tribunal were informed that some of the costs were attributed based on a technical assessment. However it was unclear that this adequately dealt with all of the heads of cost to which the car park might reasonably be expected to share at the block.

(59) The Tribunal consider that for a cost to be fair it must be capable of calculation or demonstration by use of some mathematical formula, the Tribunal did not see that the current method of apportionment, which relied only on the technical assessment met this test of fairness.

(60) The Tribunal considers that the Respondent is correct, in that it is not bound to exclusively use one of the methods referred to in the lease, in preference to another. However the Tribunal finds that the Respondent has failed to recognise that the current apportionment did not fairly reflect the benefit to the car park of the services provided, and as such there was no adequate apportionment in relation to the car park.

(61) The Tribunal notes from the evidence given by Mr McLean, that the rateable value of the car park can be established as Mr McLean was able to get this information from the Valuation office. The Tribunal considers that whilst this is one method which may be used, should the Respondent wish to use it, they should calculate the cost attributable to the car park, in relation to the actual rateable value.

***The landlord's charges***

(62) In his statement of case the Applicant stated at paragraph 48. "*A proportion of the Respondent's contribution to the freeholder's expenses is included on my annual Service Charge invoices under the heading "Landlord Charges". However, almost none of the costs that make up the Landlord Charges are in fact recoverable under the Lease...*"

(63) Clause 3.29 of the lease required the Applicant to-:*"....bear a reasonable part of the costs incurred by the Landlord in contributing towards the costs incurred by the Superior Landlord (if any) in discharging its obligations under the said Head lease or Superior Lease..."*

(64) These costs were as follows £344109.59 (Applicant's share £843.41) for the year ending 2014 and £355501.28 (Applicant's share £871.33) for the year ending 2015.

(65) The Tribunal were referred to the head lease(tab 6) dated 26 February 1982, the relevant Lessees Covenant was at clause 2 ix (a) which states *"To contribute and pay to the Lessor or at the Lessor or at the discretion of the Lessor to any person incurring the expenditure hereinafter mentioned a Service Charge... equal to Twenty-five per cent(25%) of the total cost of the items of expenditure referred to in the Fourth schedule..."*

(66) The Fourth schedule refers to expenditure in or about the maintenance repair and decoration of any parts of the Building. "Building" was defined at 4 (e) of the head lease as "...The building shall mean all buildings and structures erected on over and under parts of the piece of land bounded by Handel Street Hunter Street Brunswick Square Bernard Street and Marchmont Street in the Borough of Camden..."

(67) This includes the entire Brunswick Centre.

(68) The Applicant submitted that *"almost none of the costs that make up the Landlord Charges were in fact recoverable under the lease".*

(69) In his statement of case, Mr McLean referred to the irrecoverable charges as the cost of the Security (29.6% of the total costs) The cleaning (15.0%), Landscaping/floral (0.5%), Mechanical & electrical services(10.2%), External repairs (18.0%), Health and Safety (0.5%), Electricity(5.5%), Staff costs/Office costs,/Audit fees/Management fees(18.6%0), and insurance (2.1%).

(70) Although the Applicant set out under each of the heads why he considered that these cost were not recoverable, the two principal reasons relied upon by him was that either there was no direct benefit derived from the service by the leaseholders, or alternatively that there was an element of duplication as these services were provided by the Respondent as the leaseholders landlord.

(71) The Applicant submitted that the freeholder has *"no obligation under the head lease"* to provide many of these services.

(72) Mr McLean referred to paragraph 26 of his Statement of Case in which he stated-: *"In the case of Perkins –v- London Borough of Camden (LON/00AG/LIS/2006/0142 the Respondent argued that the range of costs that it could recover from a leaseholder should be extended beyond those expressly set out in the lease. The LVT rejected the Respondent's arguments, by reference to Gilje v Charlegrove Securites Ltd [2002] 1 EGLR 41.* And at

para 28. *" My obligation under Clause 3.2.1 therefore is not to contribute to ALL of the costs that the freeholder chooses to incur, only: 28.1 those that relate to work within the Estate; and 28.2 those costs that the freeholder incurs "in discharging its [the freeholder's] obligations under the said Head lease."*

(73) Mr Steve Burr the senior leasehold officer in reply referred to paragraph 25 of the witness statement of Antonia Shortall which dealt with the freeholders expenditure under five categories which were as follows-1. retail tenants only. 2 marketing. 3. to all tenants. 4 .basement car park 5.residential parts only.

(74) The Respondent stated that of these costs, schedules 3, 4, and 5 (which were the headings for the categories of charges referred to above) costs were attributable as part of the Respondent's 25% of the service charge costs and of these cost, the Respondent specifically chose not to pass on the car park charges in category 4.

(75) It was submitted by Mr Upton that on a proper construction of the leaseholder's lease all of the costs relating to category 3 (schedule 3 costs), were within the scope of the Applicant's lease. Where a charge was classified as schedule 4 costs, (category 4) that is, as costs related to the car park, the Respondent did not pass the cost on to the leaseholders.

(76) Mr Upton specifically rejected the submission made by the Applicant that because the expenditure was a matter of choice for the freeholder this meant that it was not recoverable.

(77) He stated that the specific purpose of clause 3.29 of the Applicant's lease was to pass on a reasonable part of the freeholder's cost to the leaseholder, he did not content that each of the costs incurred by the landlord, had to be for the specific benefit of the leaseholder. He submitted that it was a question of the construction of the lease whether the cost were reasonable for the purpose of section 19(2) of 1985 Act.

(78) At paragraph 29 of the witness statement of Ms Shortall the estate costs were set out as £357,344.03 this was divided by 408 units in the estate and charged at £875.84 per unit.

(79) The Tribunal asked for details of why these five heads of charge were used. Mr Upton confirmed that this was based on the freeholder's managing agent's method of apportionment.

(80) The Respondent's in their statement of case set out that whilst the schedule 5 costs related *"entirely to the residential element under the terms of the Head lease, the Respondent, and therefore lessees under the Sub-Leases, only contribute 25% towards such cost..."*

(81) Mr Upton submitted in his skeleton argument that -:
*" Clause 3.29 does not provide that the costs incurred by the Superior Landlord must relate to the Flat or the Estate. There is no unfairness in*

*this: A knew or ought to have known that he would be required to pay these costs when he took his lease."*

(82) The Respondent also rejected Mr McLean's submission that the cost set out by Mr McLean in relation to security, cleaning, landscaping, mechanical and electrical services, electricity and health and safety were not recoverable, and cited that they all properly fell within the remit of the schedule 4 costs (basement car park).

(83) It was submitted that the Respondent did not seek to recover the cost of the car park under schedule 4 of the freeholder's charges which related to both the NCP and Camden Car Park. The Respondent had adopted this approach because they considered it to be equitable, however clause 3.29 of the Applicant's lease was wide enough to enable them to recover these costs had they wished to do so.

**The Tribunal's decision**

(84) The Tribunal noted that by reference to clause 3.29 of the lease required the Applicant to-:*"bear a reasonable part of the costs incurred by the Landlord in contributing towards the cost incurred by the Superior Landlord (if any) in discharging its obligations under the said Head lease or Superior Lease..."*

(85) The duties of the Landlord are set out in clause 2 ix (a) of the Head Lease.

(86) The Tribunal noted the explanation given by Ms Shortall in her witness statement of these cost and how there were categories and also her view that in relation to the costs in category 3 and 5 the leaseholder's derived a benefit.

(87) At paragraphs 43-45 of the Respondent's statement of case, the Respondent refers to the direct benefits for the leaseholders derived from; cleaning, security, landscaping and flora provided by the head landlord; the Respondent submitted that these charges were services provided under the terms of the lease.

(88) The Tribunal notes that Counsel for the Respondent goes further, he specifically submitted that the duty to pay the cost does not just arise in circumstances where the Leaseholder derives a direct benefit, and is payable by virtue of the terms of the lease alone.

(89) The Tribunal noted Mr McLean's reference to *Perkins –v- London Borough of Camden (LON/00AG/LIS/2006/0142* which dealt with the landlord's obligation to keep the charges to matters which were within the scope of the lease. The Tribunal having looked at the lease in detail prefers the submissions of Mr Upton on this issue.

(90) The Tribunal considered the actual service charges for the year ending 31 March 2014 payable by the Applicant which were included within the bundle. These charges were in the sum of £875.84. The Tribunal considered

that these charges were high and did not necessarily represent the best bargain; the charges did however represent what the leaseholder (in choosing premises in an estate which was a mixture of residential and commercial properties in central London) had bargained for.

(91) The Tribunal noted that the standard of the cleaning and flora (which was observable at the centre at the time of the inspection) and the additional security was of benefit to the Applicant, and in all the circumstances the Tribunal considers that the Landlord's charges are payable by the Applicant in accordance with the terms of the lease.

**The Insurance**

(92) Mr McLean referred to paragraph 4 of the Fifth Schedule of the lease.

*By para 4 of the Fifth Schedule, Items of Expenditure include:*
*" The costs of effecting and maintaining insurance pursuant to the provisions of clause 4.5.1 of the Lease including but not limited to the costs of placing insurance cover the administration costs of effecting and maintaining such cover the provision of claim forms and the costs of collecting premiums or monies due from the tenants of the Estate in connection with such cover and the costs of performing such services as the insurer may reasonably require as a condition of the acceptance of risk by that insurer (other than those referred to in clause 3.5 of the Lease).*

(93) The Applicant stated that the Respondent did not meet their obligation to provide insurance under the lease; Mr McLean referred to clause 4.5.1 of the lease. This required the Respondent to *" keep insured for the full reinstatement value thereof the flat and the Landlord's fixtures and fittings therein against loss or damage by fire ...etc."*

(94) The Applicant stated that the cover did not provide for the landlord's fixtures and fittings as required by clause 4.5.1 of the Applicant's lease hence this was a breach of Mr McLean's lease. He asserted that the Respondent claims to arrange cover through the benefit of the freeholders insurance policy, however that cover expressly excludes fixtures and fittings.

(95) The Applicant stated that the 2013-14 insurance was not in joint names as required by Clause 3 (b) of the Head lease. He submitted that this meant that there was a potential breach of covenant in relation to this clause.

(96) Mr McLean also submitted that the policy stated the Nature of Occupation as, Shopping Centre. The Applicant stated that the policy provided for the sum insured related to the Brunswick Centre, and that a disproportionate amount of the cost related to Terrorism Insurance premium( approximately 45%) £44,436.57 of £98,896.70. He also drew attention to the 'sum insured' of £182,796,321 as being unrealistically high.

(97) There was also a separate issue of the cumbersome nature of the Respondent's claim process. The policy stated that claims must be notified in

30 days, whilst the procedure for notifying used by the Respondent and the Freeholder's managing agent provided nine stages. There was also a discretionary element which enabled the landlord and the freeholder to decide whether claims were notified to the insurer. Mr McLean considered that the insurance was not provided in the manner set out in the lease.

(98) The Applicant further submitted that the cost of administration of insurance cover should not be charged separately as a management charge as this was provided for under clause 4 of the fifth Schedule.

(99) At para 34.3 of the Applicant's reply, he stated-: *"Clause 3.2.1 of the Lease requires me... to pay for insurance in accordance with clause 4.5.1 of the Lease. It does not require me to pay for whatever cover the freeholder chooses to provide...to quote Denise Green v 180 Archway Road Management Co Ltd [2012] UKUT 245(LC) at 14 "... the question was not whether insurance had been placed which, on the balance of probabilities would have been sufficient for the appellant if she had made a claim. The question instead is whether the respondent complied with its obligation under clause 4(ii) of the lease... Accordingly in order to be entitled to seek payment from the appellant under her covenant the respondent must show that it has placed insurance in accordance with clause 4(ii)..."*

(100) The Applicant also provided in his statement of case details of the difficulty that the notification of claims procedure had caused, the Applicant's flat was flooded on 17 January 2011. The Applicant stated that he notified the Respondent on the same day requesting an insurance claim form, which he never received, and despite *"...following 148 telephone calls, emails, letters etc...I was first contacted by the insurer's underwriter on 7 July 2011; she advised me that the loss was not covered as the incident had not been notified promptly..."*

(101) He further stated that it was not reasonable for the Respondent to charge management charges in relation to a service that they it neither provides nor manages.

(102) Mr Upton made the following submissions in relation to this issue.

(103) Counsel submitted that on a proper construction of 4.5.1 of the lease the obligation on the Respondent was to procure insurance, it does this through the Head Lease

(104) Counsel submitted in his skeleton argument that-:

(105) *"A's submissions concern whether R has complied with its obligations. This issue may be relevant when challenging the actual service charge but it cannot be relevant to an estimate."* It was submitted that the Tribunal were considering estimates and that the figures of £284.02 and £284.24 are reasonable estimates. In the Skeleton argument Counsel continued at length as follows-:

(106) *In the instant case, the admissible background material includes the terms of the Head Lease. It is absurd to suggest that R cannot satisfy the obligation to insure by contracting with the Superior Landlord that the Superior Landlord will insure. The real intention of the parties was that the full reinstatement value of the Flat, the Landlord's fixtures and fittings and the Managed Buildings be insured against loss and damage by fire and such other risks as [R] deems desirable or expedient. R satisfies that obligation by procuring the insurance pursuant to the terms of the Head Lease.*

*Terrorism insurance*
*46. In Qdime Ltd v Bath Building (Swindon) Management Company Ltd [2014] UKUT 0261 (LC) the Upper Tribunal held that a covenant to keep the building insured against "the usual comprehensive risks" obliged the landlord to insure against terrorism. R is obliged to insure against "such other risks as [it] shall deem desirable or expedient." In the circumstances, it is plainly entitled to insure against terrorism.*

*Landlord's fixtures and fittings*
*47. As regards whether the occupiers' fixtures and fittings are insured, A fails to recognise the distinction between landlord's fixtures and tenant's fixtures: see Woodfall at para 13.131. It follows that R has arranged insured in accordance with the requirements of clause 4.5.1.*

*The procedure for making a claim & alleged failure to provide copy of the insurance policy*
*48. These complaints may give rise to a claim for breach of covenant but they are not relevant to the service charges payable."*

**The Decision of the Tribunal**

(107) The Tribunal accepted the submissions of Counsel for the Respondent on this issue; that is, that the Applicant is in some difficulties in challenging the reasonableness of estimated charges. The Tribunal noted, however that the actual charges were available for the period ending 31 March 2014, and that the insurance was in the sum of £279.35, this was below the estimate (referred to by Mr Upton above).

(108) The Tribunal noted that these charges were not challenged on the grounds that the sum was not reasonably incurred. The Tribunal considered that insofar as this represents basic insurance which would in the event of a fire and or destruction of the building, reinstate the premises, the sum charged was reasonable.

(109) The Tribunal also noted that given the mixed nature of the estate, and the challenges that this entailed, it was reasonable in all the circumstances for the building to be insured by the freeholder, so as to adequately protect all of the different interests, including the landlord's on the estate. The Tribunal noted that one of the features of such a development was that it was likely to be charged a higher premium for terrorism cover.

(110) The Tribunal considered that the substance of the Applicant's complaint was that the arrangements for administering the insurance were inadequate, and that the type of cover that was provided failed to comply with the terms of the lease.

(111) Counsel Mr Upton suggested that this could only be pursued by action for breach of covenant.

(112) The Tribunal also considers that in relation to the charges for the year ending 31 March 2012, the Applicant could have argued that the service charges in relation to the insurance were not reasonable, given the poor level of service that the Applicant allegedly received, however the Applicant does not raise this issue in relation to the years in issue.

(113) The Tribunal do not consider that the current arrangements as set out by the Applicant for the administration of insurance claims (which was not denied by the Respondent were cumbersome and unwieldy.) are adequate. The Tribunal noted that the Landlord could recover for the management of this under schedule 5 of the lease.

(114) The Tribunal noted that there was an issue as to whether the landlord ought to have insured the leaseholder's fixtures, and as such this Tribunal has not found it necessary to adjudicate on this issue, as we accept that the failure to comply with the terms of the lease may give rise to a claim for breach of contract.

(115) The Tribunal considers that although it has found the charges reasonable and payable. In relation to the actual service charges for the year ending 31 March 2014, the Tribunal considers that the charges set out under the fifth schedule clause 4, which provided for the costs of effecting and maintaining insurance (pursuant to the provisions of clause 4.5.1 of the lease) ought to be reduced by 10% to reflect the inadequate nature of the current system of administering the insurance.

(116) The Applicant may wish to revisit this issue on the actual charges for the year ending 31 March 2015, as the Tribunal have not determined these charges. However, given the findings of the Tribunal on the year ending 2014, the Respondent may wish to consider whether to apply this figure to the actuals for 2015.

**The management charges**

(117) Mr McLean referred the Tribunal to clause 13.3 of the Fifth Schedule to the lease which he interpreted as requiring the landlord to divide the cost equally *between* all of the properties on which the Respondent imposed a service charge, this meant in his submission that the costs were not to be related to the cost of work done to a particular property, block or estate. Mr McLean also sought to rely upon clause 13.4 which stated that the management cost up to 31 March 1997 were not to exceed 10% of the aggregate of the costs of items set out in the Fifth Schedule. As the date of

the lease post dated this clause, in Mr McLean's submission, there was no "expiry date on this restriction" and it is estopped from now claiming that the 10% limit does not apply.

(118) Mr McLean at paragraph 89.1-89.3 of his statement of case made three criticisms of the management charge, these include the fact that the cost exceeded 10%; insurance was included in the sums upon which management charges were imposed and there were management charges in relation to the certification of the accounts and the audit fees.

(119) Counsel in his skeleton stated that the costs were-:

(120) £381.40 (2013/14) and £330.55 (2014/15): this sum included the cost of auditing. In paragraph 51 of the Skeleton argument the Respondent stated-: *A's liability to contribute to and the calculation of R's management costs are set out in para 13 of the Fifth Sch. A is liable to pay the audit fee by para 8 of the Fifth Sch. Thus, it is wrong to conflate the management fee and the audit fee.* Counsel also placed reliance upon two decisions *Palley – v- London Borough of Camden LRX/10/2011 and Ref: LON/00AG/LSC/2014/0420 the First-tier Tribunal (Property Chamber)* a 66 page decision in which the management charges were considered in relation to different types of Camden leases.

(121) Counsel stated that the distinction was between 'type A leases' which imposed this 10% restriction and 'type B leases' which did not. Counsel submitted that Mr McLean had been a party to this decision albeit not an active party, in which the Tribunal found that the estimated management charge payable for 2013/14 was £235. Accordingly counsel submitted that this issue was Res Judicata and as such Mr McLean was bound by the earlier decision on this issue. In addition the estimated management charge for 2014/15 of £266.06 had been calculated by the same method as approved by the Tribunal cited above.

(122) The Tribunal noted that in his written reply, Mr McLean stated that this decision had not been communicated to him by the Respondent however he conceded and indicated that he would withdrawn this aspect of his claim.

**The decision of the Tribunal**

**(123)** The Tribunal noted the concession made by the Applicant in relation to this charge, and subject to a deduction of the element which represents the management of the insurance referred to above, The Tribunal consider that the estimate for the service charges in relation to this issue are reasonable and payable.

**(124)** Given the Applicant's concession the Tribunal has not found it necessary to adjudicate on the detailed written submissions of the parties.

**Whether the Respondent had complied with Section 20 Notice in respect of Major works invoiced on 1 April 2014**

**(125)** Mr McLean stated that there were two issues concerning this, one was that he did not recall receiving a section 20 notice prior to the work being carried out, and the second issue was that the estimate of cost set out in the section 20B notice which was subsequently served did not sufficiently relate to the actual cost of the work. In Mr McLean's submission if the notice was not sufficiently clear then there was an issue of whether it was payable.

(126) The Tribunal noted that there was an issue as to whether a Section 20 Notice had been served. The scheme of works was for lift improvements the actual cost to the Applicant was £668.76. The Respondent's in their statement of case stated that they had served the notice dated 31 January 2012, and that the Applicant had acknowledged receipt of the notice by written observations served on the Respondent's on 3 February 2012.

(127) Mr McLean was invited to consider the notice referred to which was included in the bundle. He stated that it did not accord with his understanding of what a section 20 notice should provide, he stated in his reply to the Respondent's Statement of case "... that whether or not a notice in this form meets the requirements of Section 20 is a matter for the Tribunal." and that he had not understood himself to have been taking part in a consultation exercise under section 20 when he provided the response in the letter dated 3.02.2012.

(128) He also raised a further issue, there was the percentage used by the Respondent's for the Applicant's service charge contribution to the major works which was 0.59% as opposed to 0.28% a figure which had previously been used by the Respondents.

(129) At the hearing, the Tribunal noted that the notice concerning the major work was served on the basis that the Respondent and the contractor carrying out the work, had entered into a "*Qualifying Long Term agreement" Service Charges (Consultation etco(England) Regs 2003.*

(130) This meant that the Respondent had applied for dispensation from the full section 20 procedure prior to entering into the agreement.

(131) Mr McLean relied upon his second issue which was in relation to the Section 20B notice served on 1 July 2013.

(132) Mr McLean stated that this notice stated that "the currently incurred cost figure was £213,814.75, for works to the four lifts in the estate. In the leaseholder's summary of charges for the block, the figure given was £102,291.17 for the two lifts within the block. No figure was given for the overall costs of the estate, this did not allow for "any meaningful comparison."

(133) Counsel in his reply stated that the purpose of serving an estimate was to provide an indication of the costs that were payable. In his submission this was an estimate of the charges, and the landlord was not bound by the figure in the estimate. The Respondent considered that the Applicant would have understood that 50% of the overall cost of the work was attributed to

O'Donnell Court and that the sum charged to Mr Mclean was his share at 0.59% of the block cost, together with a 10% fee in respect of the costs of management of the major works.

(134) Counsel in his skeleton argument stated at paragraph 63 *"... a landlord may know that it has incurred costs but may be unable to state with any precision what the amount of those costs are. In those circumstances it should serve notices under s.20B(2) to stop time running against it, specifying a figure for costs which it is content to have as a limit on the cost ultimately recoverable, erring on the side of caution so as to include a figure which it feels would suffice to enable it to recover in due course its actual costs, when all uncertainty had been removed: Brent London Borough Council v Shulem B Association Ltd at [58]. In other words, the landlord is entitled to 'over-estimate' the costs in a Section 20B notice."* As a result the costs incurred specified in a Section 20B notice may not be the same as the actual costs incurred.

**The decision of the Tribunal**

(135) The Tribunal noted that the Respondent had included a copy of the notice served, and that the service of the notice and the details of the Applicant's response are referred to in the witness statement of Mr Harding The Tribunal accepts that the shortened section 20 process was followed, which is in keeping with the requirements where the scheme of works is subject to a long term qualifying agreement. Accordingly the Tribunal finds that the section 20 notice was complied with and that costs of the major work ( subject to the reasonableness ) are payable by the Applicant.

(136) *Brent London Borough Council v Shulem B Association Ltd at [58].* Considers the implications for the landlord of serving notice under Section 20B(2). This case makes it clear that a landlord who underestimates the cost to be incurred for which the tenant is likely to be required to contribute, is at risk of under recovering the cost, and this may be the reason for the Respondent's slight overestimation.

(137) The Tribunal noted that the Respondent's cost appear to have been apportioned by reference to the block rather than the estate and given the wide discretion of the landlord in the manner of apportioning the service charges, this method is permissible . The Tribunal have made findings in relation to the car park which should be applied in relation to all of the cost at the block for which the landlord is liable to make a contribution on behalf of the car park, in the tribunal's view this includes the major works.

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

(138) At the hearing the Applicant applied for an order under section 20 C of the Landlord and Tenant Act 1985. He also applied for reimbursement of his fees for the Application to the Tribunal in the sum of"250.00 and for his hearing a fee of £190.00.

(139) Mr McLean stated that he had tried to engage in dialogue with the Respondent with a view to resolving the issues, at every stage since 2011 without success.

(140) Mr Upton stated that the making of an order should depend of the degree of success of the parties, If the Tribunal were with the Respondent then no order should be made in the Applicant's favour. It was not accepted that the Respondent's had failed to engage with the Applicant, in Mr Upton's submissions they had settled issues were possible, and it had been clear at the hearing, that a number of issues had "fallen away" and that the Respondent was construing a very wide clause appropriately in relation to the method of apportioning the service charges. - *? what clause and what for?*

(141) The Tribunal has decided to grant an order under Section 20C. The Tribunal noted that the Applicant had not succeeded in his claim; however this case has raised many issues which were complicated by the nature of the estate, and the Tribunal considers that given the issues with insurance, and the Applicant's issues with the correct apportionment which were legitimate and not trivial, that it was reasonable for this claim to have proceeded to a determination.

(142) In all the circumstances of this case the Tribunal considers that it is just and reasonable to make an order under s.20C of the Act that the costs incurred by the Landlord in connection with these proceedings are not to be taken into account in determining any service charge payable by the tenant.

(143) The Tribunal makes no order for the reimbursement of the hearing or application fees.

**Name:** Ms M W Daley **Date:27/02/15**

## 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 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) a leasehold valuation 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 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.

**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).