11948

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/OOMD/LSC/2016/0055**
Property	:	**Mosaic Apartments, 26-40 High Street, Slough, Berkshire SL1 1EP**
Applicant	:	**Leaseholders of Flats 11, 18, 26, 91, 93, 103 and 105 whose names appear on the schedule annexed**
Representative	:	**Mr T Witt and Mr M R Nimba BSc (Hons) MRICS**
Respondent	:	**Wallace Estates Limited**
Representative	:	**Mr G Stevenson of Stevensons Solicitors** **Mr J James, Property Manager with Premier Block Management (PBM)** **Miss Rachel Croaker, Head of Administrative Services at PBM**
Type of Application	:	**Application to determine the reasonableness and pay ability of service charges under the provisions of Section 27A of the Landlord and Tenant Act 1985**
Tribunal Members	:	**Tribunal Judge Dutton** **Mrs S F Redmond BSc Econ MRICS** **Mr A K Kapur**
Date and venue of Hearing	:	**Slough County Court, Slough, Berkshire on 14th November 2016**
Date of Decision	:	**8th December 2016**

DECISION

DECISION

1. The Tribunal determines that the service charges claimed for the period 1st January 2015 to 31st December 2015 and 1st January 2015 to 31st December 2016 are due and owing.
2. Insofar as the major works are concerned, the Tribunal is satisfied that the costs associated with the external decoration and repairs as evidenced by the estimate of P A Finlay and Company Limited at £359,487 is reasonable. This is, of course, subject to ongoing discussions with NHBC.
3. Insofar as the Section 20 procedures in relation to re-roofing works are concerned, we were advised by the Respondents that they intended to re-issue the stage 2 notice with reduced figures following the submission of further tender responses.
4. We make no order under Section 20C of the Landlord and Tenant Act 1985 (the Act).

BACKGROUND

1. By an application dated 16th August 2016 the Applicants queried service charges and Section 20 demands for major works, the latter dated 17th November 2015, at the property Mosaic Apartments, 26 – 40 High Street, Slough (the Property). The application indicated a wish to query PBM's effectiveness in managing the Property in the light of various issues encountered. For the year 2016, again the service charge for the year ending 31st December 2016 was in issue and the Tribunal was asked to consider PBM's alleged failure to clarify issues and their alleged mismanagement giving rise to the query to the service charge demand. The comments in the application indicated a lack of belief that PBM were in a suitable position to administer the remedial works.

2. Directions in this matter were issued on 30th August 2016 and it is appropriate to note the following. Under the heading Preamble the Regional Judge Mr Edgington said this *"The function of the Tribunal under Section 27A of the Landlord and Tenant Act 1985 is to assess the reasonableness and payability of service charges – not to assess whether the managing agents are effective."* The directions then went on under the heading Statement of Case to require the Applicants by 4.00pm on 16th September 2016 to *"File with the Tribunal Office and serve on the Respondents a statement setting out, in respect of each claim for service charges, whether they are being challenged. If so, exactly why and what would the Applicants consider to be a reasonable amount. The statement should also set out the expert evidence relied upon when alleging that there are structural issues within the design of the building."*

3. With that in mind, we received a bundle of papers which included copies of the demands for the years ending 2015 in the sum of £1,268.84 and in the year ending December 2016 being the yearly service charge in advance the sum of £1,385.12, in both cases there being a contribution to the reserve fund.

4. The Applicants' statement of case appeared to be contained within a letter dated 15th September 2016 and also a batch of photographs dated 7th June 2016 and 25th October 2016. These photographs had in some cases comments added intending to show the various issues raised by the Applicants.

5. In addition to the statement of case and the photographs were short statements from Mr Nimba, who also attended the hearing and from Mr Grewal, the latter being an email. Neither of these statements were signed. The bundle included a statement of case from the Respondents dated 13th October 2016 and what appeared to be a statement of account for the year ending December 2015. An estimate for the following year was also included. There were then a number of items of correspondence passing between the parties and various details of works carried out to the Property. The Respondents also produced a bundle of photographs. Cleaning specifications were included as well as the lift maintenance agreement and a fire health and safety risk assessment report.

6. In addition to the above, we were provided with a letter from Langley Byers Bennett, Chartered Surveyors (LBB) dated 25th May 2016 dealing with the roofing works together with supporting Section 20 documentation. A copy of the specification for the roofing works was also attached.

7. The bundle included a specification and tender analysis in respect of the external repair and redecoration works which indicated the lowest estimate was from P A Finlay and Company Limited at £359,487. Section 20 notices in relation to these works were also included and we will return to that element in due course. By a letter dated 1st September 2015 from LLBB details were provided of the external repair and redecoration works considered to be required.

8. Finally, we had a short witness statement from Mr John James the present Property Manager which confirmed the wish for a determination that the costs associated with the external repair work and decorating was reasonable.

9. Before we move on the hearing, we will just recap on the written evidence available to us.

10. By the letter of 15th September 2016 from Adelaide Jones representing the Applicants, they sought to set out their reasons for disputing the various items, being the service charge demands and major works. We have noted all that is said. The allegations are somewhat vague and rely on the photographs, which we have referred to above and which appear to constitute their statement of case. There is a dispute specifically in respect of the costs for onsite staff and for security. Under the heading Major Works there is suggestion that PBM's proposals would not remedy the building defects and we were provided with a claim's history from Zurich highlighting a number of claims over the last three years relating to the escape of water. The letter goes on to challenge whether or not the concerns relating to the cladding will remedy the defects and points out that the escape of water policy excess has now increased from £750 to £2,000 per claim. The statement goes on to indicate that they are not satisfied that the proposed works would remedy the recurring problems but are not in a position to advise what the works should cost or indeed what the works might be. The witness statements do not take the matter any further. We will refer to the photographs in the findings section of this decision.

11. The Respondent's statement of case gave some history with regard to Wallace Estates Limited's involvement, they being the freeholder of the Property, it seems from June of 2014, although PBM had in fact been managing since January of

2011. There are apparently 167 flats over seven floors on a property constructed sometime after 2007. The statement told us that each leaseholder paid the same percentage share of the service charges and responded to what were considered the specific complaints by the Applicants relating to inspections, onsite staff, security and major works. It appears that upon receipt of the batch of photographs in June of 2016 a review was undertaken, which addressed concerns in respect of the lighting and rubbish issues as well as the lack of closure of service cupboards, car parking, cleaning and lift repairs. There was also an issue raised with regard to TV and satellite maintenance, landscaping and general matters. These were dealt with in as much detail as was possible given the nature of the Applicants' case.

12. On the question of the major works, it was confirmed that there were two sets of ongoing works, one for the roof and the other for the external common parts including decorating. We were told that consultation under the provisions of Section 20 had taken place in respect of the roof in June 2016 with a stage 2 consultation in August. Apparently no observations were received. A third quote had been requested but at the hearing we were told that additional estimates had been obtained and the stage 2 consultation notice would be re-issued with the lower estimate. The statement confirmed that there was no suggestion that NHBC would accept liability for the roof repair.

13. In respect of the exterior repairs and decorating, it seems that a stage 1 consultation notice had been issued in 2015 leading on to a stage 3 consultation in November of 2015. The final consultation at stage 3 confirmed that a contract was to be entered into with P A Finlay and Company Limited at a price of £359,487 and demands in respect of these major works were sent out on 17th November 2015 seeking the sum of £2,152.62 from each leaseholder.

14. However, matters were not straight forward and no contract has yet to be entered into because the Respondents are in contact with NHBC to see whether any of these works would be covered by the NHBC certificate available for this development. Apparently, all leaseholders had been written to on 22nd August 2016 explaining the position.

15. In respect of the claim for water leaks, we were told in the statement that this related to faults with toilets in individual flats, which was not a service charge issue as these pipes were demised to leaseholders and it was for them to deal with any repairs. Finally, the statement referred to the recovery of costs for these proceedings and in the conclusion pointed out that only six leaseholders in the development of 167 had joined in with the application. In respect of the service charge demands for 2015 all but 20 flats had paid and in respect of the year 2016 all but 24 flats had paid. In relation to the Section 20 notices and the major works for the external decoration it seems that all but 18 flats had settled this sum and we were, therefore, asked to determine the service charges for the two years was acceptable and that the amount of £359,487 was a reasonable sum in respect of the decorating works subject to the NHBC's involvement.

INSPECTION

16. We inspected the subject premises before the hearing in the presence of Mr Stevenson, Mr James and Miss Croaker for the Respondents and Mr Nimba and

Mr Witt for the Applicants. The Property comprises two blocks with a common area between which was somewhat basic but at the time of our inspection was clean. The common area also has the venting to the car park below. We also inspected the basement car park which is accessed through security gates to the rear and pedestrian access within the development. There was evidence of some water egress from leaking pipes in the ceiling and water running down the entrance driveway.

17. The access to the development both the front and rear is governed by substantial gates which operate on a fob basis. Within the immediate entrances there were to be found the post boxes for the individual flats. Inspection of the common parts indicated that they were in the main in reasonable order, clean but basic. The passageways were carpeted. The lift serving the front block was out of order at the time of our inspection and had been for a few days whilst parts were awaited. We were also shown the fire venting system at the top floor of this block where the vent appeared to have failed and was in a permanently semi-open position. There was electric heating in the common parts. We noted that the emergency exit to the common external areas was defective and could not be opened. The lighting in the lobbies appeared to be movement sensitive and there was a dummy CCTV camera in the lobby. There were apparently working cameras in the car park and lobby to the front. We inspected the bin stores which were mirror images in both blocks. We also saw the balconies, which faced into the common area and are the source of problems as a result of water ingress probably through the original design. To the rear external elevation, we noted that some cladding had been removed and sealant had been put in place with a view to this preventing water ingress. There was, however, the need for further works to this cladding which formed part of the NHBC issue as did the balconies.

HEARING

18. The hearing took place at the Slough County Court and was attended by those named on the front cover of this decision. The Applicants' case before us centred around the major works. It was first said that the Section 20 notices for the roofing works were invalid because there was a considerable difference between the two estimated tender figures of £148,160.24 for P A Finlay and Company Limited and £257,648.02 for Curry and Neville (Builders) Limited. In fact, it now seems that a lower quote of £97,317.19 has been obtained hence the intention to issue fresh stage 2 notices.

19. It was further said by the Applicants that the second issue was the scope of the works tendered for in that it was felt that these are as a result of design defects and lack of maintenance. The third free standing issue appeared to be the lack of regular inspections apparently it is said due to lack of resources and local knowledge of PBM and their ability to employ local effective contractors.

20. A complaint was made that the ongoing discussion with NHBC was not communicated clearly to the leaseholders and that the problems which were being investigated with NHBC were defects which should not form part of the Section 20 procedure.

21. It was during the course of the hearing that Mr Nimba confirmed that the Applicants were not in fact disputing the accounts but that their concerns centred around the Section 20 issues.

22. Proceeding on from that, we were referred to the first Section 20 notice which related to the roofing works and, as we have mentioned above, the disparity between the estimates and scope of the works. We were told that the intended works merely to replace the roof on the front block and there was an enquiry raised as to whether a guarantee from the main roofing contractor who had carried out the works when the building was erected had been sourced. Apparently, however, they had gone into liquidation. A suggestion was made that there may have been some connection between Wallace Estates and Durkins who were the original contractors but no evidence was adduced to uphold this suggestion. Mr Nimba submitted that it was the freeholder's duty to proceed against Durkin to see what damages could be recovered in respect of these faults. Mr Nimba confirmed there was no report from any surveyor to support their contentions but he doubted whether the problem with the roof was sufficient to warrant a full replacement.

23. At this point we were referred to the report from LBB included in the bundle dated 25th May 2016 which said in the body of the report as follows: *"Given the type and age of the roof covering and its current condition it is not suitable for piecemeal repairs of this nature and the roof requires wholesale replacement as soon as practically possible."* Under the conclusions and recommendations there are three matters:

1. *The roof requires temporary repairs to hold down the bellowing membrane to prevent it from fully blowing off the roof. This of course would be a health and safety hazard, not least allowing water to flood into the Property.*
2. *The roof membrane requires full renewal as a matter of urgency and we believe we should be instructed to prepare the detailing specification as soon as practically possible and obtain prices for consideration.*
3. *The matter should be referred to the building insurers to see if the work would form part of the building insurance claim.*

24. We were told by Mr James that the insurers did not accept that this was an insured peril. We were also told at this stage that the roof to the rear block had been replaced, under insurance cover, in 2014.

25. The Respondents through Mr Stevenson also relied on the letter from PBM to Adelaide Jones dated 22nd August 2008 which dealt with the question both of the external render issues and the NHBC involvement as well as the replacement roof issues. It was also pointed out that no observations had been received by PBM during the consultation process. We had, of course, been made aware of the intention to re-issue the stage 2 notice by reference to the reduced figures.

26. Mr Nimba told us that he accepted the roof needed repairing and the leaks stopped but he thought that a short term measure could be undertaken and temporary repairs effected. However, he had no idea of any costs of effecting temporary repairs.

27. The matter then moved on to the exterior decorations and repair works. We were told by Mr James that there was no intention to yet start the works. The reason for

this was that NHBC had asked for the works to be held in abeyance and a meeting was due to take place on 21st November when we were told the original developer would also be attending to review the matter.

28. Mr Nimba challenged the scope of the works and that the works were not in any event the lessees' responsibility. There was a suggestion, for example, that the external decorations could be dealt with by way of some high jet washing but there was no expert evidence to support this. It was also suggested that if NHBC did not provide assistance that the freeholder should commence proceedings against the developer.

29. Mr Nimba complained that there had been a meeting with NHBC previously which he had attended but the managing agent had failed to do so. Mr James accepted with hindsight that he should have been there but he understood that NHBC had all the information that they needed together with a list of the units to which they required access. However, he would be attending the forthcoming meeting. It was also suggested that at this meeting in November the building surveyor should be present as well as a general builder to review the balcony problems. We were told that a building surveyor would be there.

30. There then followed a general complaint about the lack of regular inspections, problems with the fire door and the emergency venting system and general lack of repairs to pipework in the car park and other flooding issues. There was also suggested by Mr Nimba that the fixed costs for landscaping, cleaning and health and safety management were inappropriate, although he did not dispute the audited figures he however considered the work was not being carried out and or not being properly supervised. A suggestion was made that to increase security, certainly to the front, the gates could be screened. Reference was also made to the lack of security to the internal service cupboard doors. We were told, however, the concierge made regular rounds of the Property and that he would close the doors if he noted they were open. At the conclusion of the Applicants' case Mr Nimba told us that he believed they provided sufficient information to allow the challenge. There had been a lack of expertise on the part of PBM and the lack of attendance. The Property he said needed improvement and better management would stop the building deteriorating and prevent exposure to the lessees for problems in the future.

31. Mr Stevenson on behalf of the Respondents tendered Mr James to give evidence. He had prepared a witness statement, the contents of which we had noted. We were told that PBM was accredited with both ARMA and RICS and that of the 2016 demands all but 14 had paid. We were told insofar as the major works for the external cladding and decorations were concerned, all the Applicants had settled their contribution. Mr Stevenson submitted that the main reason for the disputes was that the costs certainly of the external repairs and decorations should be dealt with by NHBC. It was confirmed that if NHBC cover was available and monies were refunded, those would be repaid to those lessees who had contributed to date. On the question of a specific problem relating to Flat 91, we were told that the majority of leaks caused to properties was coming from drainage clips to toilets which were within the demise of each individual flat and therefore would be a claim by individual leaseholders.

32. In submissions he told us it had been difficult to prepare for the case. The Applicants' case was imprecise and the Respondents had had to "guess" at what was complained of. They did their best to comment on the photographs taken in June of 2016 but the Applicants' failure to condense the issues on a precise basis had caused the Respondents to incur additional costs. Some of the Applicants' complaints were unrealistic, particularly an apparent requirement for there to be almost daily inspections of the Property. It was suggested that the freeholder took the Property as it was and could not avoid dealing with the issues that had now arisen.

33. We were asked not to make an order under Section 20C because extra costs had been incurred as a result of the imprecise nature of the case from the Applicants. No expert evidence had been produced by the Applicants and they had not complied with the directions. There was, he said, no evidence to require a reduction in their service charges claimed and the demands for major works.

THE LAW

34. The law applicable to this case is set out in the schedule attached.

FINDINGS

35. We refer back to the specific terms of the directions order issued by Regional Judge Edgington. He made it quite clear in those directions our ability to deal with the perceived failings of the managing agents and the need for the Applicants to be concise and precise in those areas for which they sought to challenge costings. During the course of the hearing Mr Nimba conceded that there was no claim to be made in connection with the 2015 and 2016 accounts. Accordingly, the sums demanded in respect of both matters we find to be properly payable.

36. The issues really centred around the major works. Insofar as the roof is concerned, it is unfortunate that in ten years or less there needs to be a wholesale replacement. We noted that this replacement has already been undertaken to the rear block. The only expert evidence we have is that of LBB and we have already referred to the extract from their report concerning the needs for the roofing works. We are satisfied that on the evidence adduced to us, given also that there have been problems with the rear block, that roofing works require to be dealt with. We are also satisfied on the evidence given to us by the Respondents that this is not a matter that can be dealt with by insurance and clearly the matter cannot be allowed to remain as it is. It is the responsibility of the lessees under the lease to cover these costs. We are not able to take the question of the roofing works any further at this stage other than to say it seems to us that the works are required and given that there is now a much reduced estimate from which new stage 2 consultation is to be undertaken, we conclude that it is appropriate for these works to proceed.

37. Insofar as the external decoration and repair is concerned, this is a more problematic issue. NHBC are involved and they have yet to make a final determination as to whether all or part of these works will be covered by the certificate. There seems to be little doubt that the problems caused with the balconies are a design issue in that there appears to be no ability for water trapped underneath the wooden slats to run free. This has, we were told, caused water to

penetrate backwards towards the flat and has caused quite severe staining to the exterior render. The specification has been created by surveyors and we are satisfied that the extent of the works they have outlined are reasonable. The cost has also been established to our satisfaction at £359,487 being the lowest of the three estimates obtained. We were told also the company that provided that estimate, P A Finlay and Company Limited, are prepared to stand by the figure provided a contract is proceeded with and instructions given by the Spring of next year. One would hope that given that there is a meeting by 21st November 2016 that there would be certainty as to the progress to be made. In the absence of any indication, as yet, from NHBC, it leaves the freeholder in a difficult position. Inevitably works will need to be undertaken and in the absence of any other party willing to pay, the costs are likely to fall on the leaseholders under the terms of the lease, unless the freeholder considers it appropriate to bring an action against the original developer. That seems to us to be a problematic course and we make no suggestions in that regard.

38. It is to be hoped, however, that NHBC will provide some comfort and thus reduce the overall expenditure to be met by the individual leaseholders. However, we can see no reason to complain about the actions taken by PBM or the freeholder in this regard. There has been little or no evidence adduced by the Applicants. No proper report has been filed and no expert evidence adduced to indicate an alternative way of dealing with the matter. In those circumstances we must reject the arguments put forward by the Applicants and find in favour of the Respondents. Clearly the works to the roof are required and a lower estimate has been obtained which is beneficial to the lessees. The s20 process will, no doubt run its course and the Applicants can participate. As far as the external decoration and repairs are concerned, the parties will have to wait the outcome of the NHBC involvement before final financial liabilities can be quantified. However, we find no fault in the route presently taken by the Respondents in this regard.

Andrew Dutton

Judge:

A A Dutton

Date: 8th December 2016

ANNEX – RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide

whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -

(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
   (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
   (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
   (a) an amount prescribed by, or determined in accordance with, the regulations, and
   (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

(aa) in the case of proceedings before a residential property tribunal, to that tribunal;

(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

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

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.