10551

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/OOAU/LSC/2014/0442**
Property	:	**Upper Floor Maisonette, 36 Ellington Street, London N7 8PL**
Applicant	:	**Mr Erno Abelesz**
Representative	:	**Mr Alan Mendelsohn of R A Management Limited**
Respondent	:	**Mrs Helen Matthews**
Representative	:	**In person**
Type of Application	:	**Liability to pay service charges and an application under Section 20C of the Landlord and Tenant Act 1985 (the Act)**
Tribunal Members	:	**Tribunal Judge Dutton** **Mrs S F Redmond BSc Econ MRICS**
Date and venue of Hearing	:	**10 Alfred Place, London WC1E 7LR on 14th January 2015**
Date of Decision	:	**3rd February 2015**

DECISION

DECISION

The Tribunal finds that the amounts claimed by the Applicant in respect of building insurance, survey fee, asbestos report and fire risk assessment are due and owing by Mrs Matthews. According to the Applicant's summary of service charges shown at page A16.1 of the bundle the total sum due is £2,571.37.

The Tribunal makes no order for costs against either party under the provisions of Rule 13 of the Tribunal Procedure (First Tier Tribunal) Property Chamber (Rules 2013) (the Rules).

The Tribunal makes no order under Section 20C of the Act.

BACKGROUND

1. Mr Mendelsohn of R A Management Limited, acting on behalf of Mr Erno Abelesz, the landlord, made application to the Tribunal to determine the liability to pay and the reasonableness of service charges for the years 2010 to 2014 inclusive. In each year we were asked to confirm whether the building insurance premium expended in relation to the subject property, the Upper Maisonette at 36 Ellington Street, London N7 8PL was recoverable. In addition to the building insurance in the year 2010 the Applicant sought to recharge a survey fee of £130.72, in the following year an asbestos test of £100.82 and in the year 2013 a fire risk assessment fee of £86.96. There were no other service charges in dispute.

2. Directions were issued on 23rd September 2014 providing for the matter to be heard by us on 14th January 2015.

3. Prior to the Hearing we were provided with a bundle of documents broken down into a number of sections. The documents included in the bundle were the application, copy of the lease and the directions, the Applicant's case with supporting papers, the Respondent's case with supporting papers, an Applicant's response with further documentation, correspondence and sundry items which we will refer to as necessary.

4. The Applicant's written statement of case is dated 31st October 2014 and by way of bullet points confirms as follows:-

   - There was no qualifying long term agreement requiring consultation.
   - That the lowest cost quotes had been used in respect of the block policy of which this property forms part.
   - That the survey in respect of the common parts was necessary as was the fire risk assessment and asbestos survey particularly in cases of properties which have multiple occupancy and were requested by flat purchasers and/or buyers.
   - It was accepted that some of the original invoices were not submitted with the service charge summary of rights but that this had been corrected subsequently. It was said that the costs were notified to the Respondent within 18 months of being incurred and in support cited two cases Johnson v County

Bideford [2012]UKUT457(LC) and MacGregor v B M Samuels Finance Group PLC [2013]UKUT 471.

- On the question of an order under Section 20C or reimbursement of costs, it was left for us to decide.

5. The Respondent's statement of case which is dated 24th November 2014 is a more detailed affair. It sets out a brief background to the development and Mrs Matthews' ownership. It appears that she acquired the lease of the Upper Maisonette in 1997 and in 2013 obtained a lease extension under the Leasehold Reform Housing and Urban Development Act 1993. The statement went on to set out the relevant service charge provisions contained in the lease and accepted that in principle, subject to an argument as to an administration fee, the costs set out in the Applicant's application detailing the five insurance premiums that were due and the three items of expenditure in respect of the insurance survey, asbestos survey and fire risk assessment were not challenged as being irrecoverable under the terms of the lease. Indeed, Mrs Matthews helpfully confirmed that the service charge costs for the survey, asbestos survey and fire risk assessments were reasonable in amount and confined her challenge to whether or not "a lawful demand" had been made within 18 months of the costs being incurred.

6. Insofar as the insurance premiums were concerned, her case here was more widely drawn and she put forward five grounds. The first was that the sums claimed in respect of the insurance were not lawfully due as no Summary of Rights or Obligations had been served in breach of Section 21B of the Act. The relevant statutory instrument is the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulation 2007 which came into force on 1st October 2007. Section 21B enables a tenant to withhold payment of a service charge which has been demanded from him if that summary of rights and obligations have not been included.

7. Ground 2 relied on by Mrs Matthews was that there had been no lawful demand for payment made within 18 months of the costs being incurred and that by reference to Section 20B of the Act she was not liable to pay any costs so incurred. Ground 3 was that there had been no consultation on a qualifying long term agreement which she said applied to the provision of insurance through a block policy with the same broker and same insurer every year. Ground 4 was that the costs of the insurance were unreasonable in amount and in this regard she put forward certain comparables and finally ground 5 was that the costs were unreasonably incurred, this being directed at the allegation that the insurance provided by the Applicant did not provide adequate or sufficient cover as the building was in effect under-insured.

8. A Scott Schedule was also provided which set out the responses in tabular form. By an undated document the Applicants responded to the Respondent's statement of case and we have noted all that has been said.

HEARING

9. The Hearing which took place on 14th January 2015 was attended by Mr Mendelsohn on behalf of the Applicant landlord and Mrs Matthews in person. There was initial discussion concerning the admissibility of certain 'without

prejudice' correspondence. There had been something of a kerfuffle prior to the Hearing which had resulted in certain correspondence being removed from the bundle before us. In fact, this correspondence was introduced by Mrs Matthews towards the end of the Hearing and we will return to this point in due course.

10. The essence of this case insofar as it relates to each of the items of expenditure is whether or not a demand within the meaning of Section 20B has to include the statutory wording for it to be a 'demand' within the meaning of the section. Mrs Matthews told us that a 'demand' means it must include the summary of rights of obligations and if it does not, it is not a valid demand. Mr Mendelsohn, however, says that all the demands had been made within 18 months of any of the costs being incurred, although he conceded that it was not until 2013 that the statutory wording was included. It appears that on 30th April 2014 Mr Mendelsohn caused to be sent to Mrs Matthews a letter containing eight invoices covering the period in dispute, all of which had the appropriate summary of rights and obligations attached. Mrs Matthews was unsure that she had actually received these documents. Mr Mendelsohn's case was that if Mrs Matthews' view on the state of demand was correct, then certainly from 30th April 2014 the necessary summary of rights and obligations had been put in place and the 18 month period would only run backwards from that date.

11. Mrs Matthews said that she did not receive this information until a letter from Lee Pomeranc, solicitors for the Applicant, on 23rd July 2014. Mrs Matthews did, however, helpfully accept that if her argument was not correct on the status of the demand, then certainly she had been given notice by way of service of invoices which were sent to her within 18 months of each liability having been incurred. Within the bundle were copies of the various invoices and as an example at page A51 there is an invoice from R A Management Limited to Mrs Matthews dated 9th February 2010 seeking to recover monies in respect of building insurance from 30th January 2010 to 30th January 2011 in the sum of £432.54.

12. Mrs Matthews indicated that the only insurance premium demand that she had not received in any of the correspondence was one for the year 2011/12 which was not sent to her until April of 2013. This was disputed by Mr Mendelsohn who said that all the flats had paid their invoices which went out on the same day. There was no accompanying letter he said. Mrs Matthews, however, in another show of pragmatism confirmed that she did not ask to see the insurance each year but would accept in this instance that although she would argue she did not receive the demand for the 2011/2012 insurance until April 2013, that if we were against her on the interpretation of what constitutes a "lawful demand" she would not take that point any further.

13. Mrs Matthews also confirmed that, as she had in her statement of case, she would not seek to challenge the quantum of the insurance survey, fire risk or asbestos surveys and accepted that they were properly incurred.

14. We then turned to the remaining issues in respect of the insurance cover.

15. The first point raised by Mrs Matthews was that in her view the arrangements for insurance constituted a qualifying long term agreement (QLTA). She said this was so because the insurance was effected through the same broker, through the same

insurance policy which bore the same number each year and with the same insurance company.

16. In response, Mr Mendelsohn said that the insurance was placed through their broker Kruskal Insurance, which is an independent company. They are instructed to carry out an annual review of the insurance based on the present portfolio to a number of different insurance companies. In that regard Mr Mendelsohn produced what we were told was a copy of a document provided to him by the broker for the renewal of the 2013 insurance which indicated that other companies had been asked to provide insurance quotes. One, RSA, had sought to charge a premium of £230,000 plus tax in respect of the block policy, which we were told covered in excess of 500 properties. AXA, with whom the insurance was placed had produced a premium demand of £140,000 with tax which could be reduced if the policy's excess was increased. Five other insurance companies, including AVIVA and Zurich had not been willing to offer terms. This he said showed that the market was tested annually and that the insurance could be moved from one insurance company to another and that accordingly this did not constitute a QLTA. Mr Mendelsohn said that in the past they had insured with Guardian Royal and with AXA but presently with Allianz. He also confirmed that he was aware that the subject building had a short term let in the basement flat, which was not a problem to the present insurers and this was part of the strength of the policy.

17. It was suggested by Mrs Matthews that the property was underinsured. In this regard she relied on an email from Keelie Bland of midway insurance brokers which commented upon the phrase "one day uplift" and the relationship to declared value.

18. Mrs Matthews was honest enough to confirm that she did not really understand the wording and had no evidence to challenge the declared values shown on the latest insurance certificate to January 2015, which showed a declared value of £590,000 against a total building value of £885,000.

19. Mr Mendelsohn said that the property had been fairly recently surveyed and this has resulted in an increase in the insurance value. The annual uplift he thought was by way of indexation and that the averaging clause was not relevant to this insurance policy and referred us to a copy of the endorsements which confirmed that the average clause was deleted in respect of private dwellings and flats.

20 On the question of lower premiums Mrs Matthews had obtained certain 'comparable' evidence which is set out in tabular form on page R7 which is her response. This showed a Lansdown premium quoted of £812.26 but this related to a purpose built property, Ageas of £966.34, Bluefly of £983.43 and finally Sterling at £880.44." This appeared to be for the building. It appears, however, that none of the insurance comparables would cover a letting to a tenant who might be on benefits or to students. They appeared to be for professional persons only. Mrs Matthews conceded that the lease contains no provision for anybody to determine the identity of any tenant there may be. She, however, was of the view that the area in which the property was situated was not one which would encourage tenants who were on benefits or students.

20. Mr Mendelsohn told us that the premium for 2015 was circa £1,200 and for 2014 had been £1,127.50. Accordingly there was a difference of some £250 or so between the quotes obtained by Mrs Matthews and the actual costs of the insurance cover. Mr Mendelsohn pointed out, however, that in the case of Lansdowne which appeared to be insuring a purpose-built property, the policy excess was considerably higher than that for the current insurance.

21. Mr Mendelsohn confirmed that it was the brokers who obtained any commission, although the claims were handled through the offices of RA Management Limited.

22. On the question of management fees, we were told that this was not an issue between the parties, although we were asked to give a view as to whether or not the suggested management fee by Mr Mendelsohn of £75 per flat would be reasonable. We will return to this matter in the findings section.

23. After a short adjournment Mrs Matthews submitted without correspondence in support of her application under Section 20C of the Act and for an order that the Applicant should pay her costs in that he had acted unreasonably. She told us she had had to take half day holiday from work, which she would value at a few hundred pounds and that the 'unreasonableness' rested with the Applicant's refusal to accept the offers that she had made and also in not assisting her with the preparation of the bundle.

24. In her final submission to us she relied on the statutory provisions of Section 20B and Section 21B. She said a demand is not a demand and therefore not valid if it does not contain the statutory wording and that must be sent within 18 months of the liability being incurred.

25. Insofar as the QLTA is concerned, she thought that the present insurance arrangement was such an agreement as the same brokers, same insurers and the same policy number was used. The comparables she put forward showed a lower premium and she was not entirely happy that the cover was sufficient.

26. Mr Mendelsohn confirmed that the sum now owed by Mrs Matthews stood at £2,726.37. This reduced from the original claim of £3,830.99 which had been demanded in a letter sent to Mrs Matthews by Greenwood and Co in April of 2013.

27. He confirmed he relied upon the two cases of Johnson v County Bideford and MacGregor v B M Samuels. As to the recovery of costs, he relied on the lease terms which he said at paragraph 5(g) included the costs of or incidental to the preparation and service of a notice under the Law of Property Act 1925 and more particularly the provisions of clause 3(b)(ii) which required the lessee to pay two fifths of the expenses incurred "in respect of the management of the mansion." Insofar as his own costs were concerned, he originally indicated that he spent some 21 working days at five hours a day at a rate of £100 per hour. However, he thought the figure of £1,000 would be reasonable costs to be paid in that the Respondent had acted unreasonably in bringing her defence. He had no documentation to support this.

THE LAW

28. The law applicable to this application is set out in the schedule.

FINDINGS

29. Although a good deal of paperwork has been generated in this case, the issues are relatively clear cut. From Mrs Matthews' point of view her concerns are that in respect of all service charge expenditure none of the demands that had been made are as she terms "lawful demands." That is to say that because they did not include the statutory wording setting out the lessee's rights and obligations they do not constitute demands for the purposes of Section 20B. She says, therefore, that in a number of cases the demands were more than 18 months after costs were incurred and in connection with those costs she is not obliged to make a payment.

30. Insofar as the service charge demands relating to the various surveys are concerned, she helpfully indicated that she had no argument with the quantum or the right for those surveys to be obtained, but again she felt that they fell foul of Section 20B.

31. Insofar as the insurance issue is concerned, not only is there the Section 20B point but in addition she says that the insurance policy is affected by the consultation provisions of Section 20 of the Act because it constitutes a QLTA. She says it is a QLTA because although the insurance is payable annually, it is payable to the same insurance company, through the same broker and has the same insurance policy number. In addition, she says that the premiums are excessive when compared to the comparable quotes she has obtained and that the insurance is insufficient because the value of same does not provide sufficient cover for the estimated value of the total building.

32. She does, however, say that if we are against her as to what constitutes a demand for the purposes of Section 20B, then she accepts that she has received notification from the landlord in respect of the various items of expenditure within 18 months of those being incurred.

33. It is, however, accepted by Mrs Matthews that certainly by July 2014 she had received demands which had the statutory wording accompanying them. Mr Mendelsohn says that this happened in April 2014 but the costs for the year 2013 included the statutory wording with the demands.

34. We will firstly deal with what constitutes a demand under Section 20B of the Act. We cannot agree with Mrs Matthews' assertion that a demand is only compliant with the Section 20B requirements if it contains the statutory wording envisaged by Section 21B. Section 21B merely gives a leaseholder a right to delay making payment in respect of service charges until they have been provided with the summary of rights and obligations. This, therefore, would mean on the Applicant's case that no monies were due from Mrs Matthews until after 30th April 2014 and on her case until July of 2014. The issue, however, is whether or not the invoices which we have referred to above constitute a demand within the provisions of Section 20B. There is a difference between Section 20B(1) and (2). In sub-section (2) the tenant needs to be notified in writing that the costs had been incurred.

Under sub-section (1) it requires a demand. However, it does not seem to us that for there to be a demand it necessarily has to comply with Section 21B. We are satisfied that the invoices sent, which Mrs Matthews agrees she has received, except for the 2011/12 insurance demand, although she takes no point on that if our decision is against her, constitute a demand for payment. They also meet the requirement of Section 20B(2). The invoices clearly identify the service charge in question, clearly set out a figure which is required to be paid and to whom such payment should be made. The reasoning behind Section 20B is that a lessee should not be faced with a bill for expenditure of which he or she has not been sufficiently warned to set aside provision. It is not intended to prevent the lessor from recovering expenditure to the extent of which there was adequate prior notice. We find that the invoices clearly are adequate prior notice of expenditure. For example, the invoice which we have referred to above dated 9th February 2010 is for the insurance provision from 30th January 2010 for 12 months. Whether the premium has actually been paid by the freeholder is not wholly clear. However, the liability to make the payment clearly has been incurred by 30th January 2010 and this is notice that a contribution is required from Mrs Matthews in a defined amount.

35. In those circumstances, we find that Mrs Matthews' argument that a demand under Section 20B can only be effective for the preservation of the landlord's position in relation to liabilities incurred 18 months before if it includes the statutory wording under Section 21B to be incorrect. We find comfort in this view in that in sub-section (2) it refers to notification in writing and does not even mention a demand. It is right to say, as we have above, that if the statutory wording had not been included in the demand/invoice, then it is not payable until it has been. However, on Mrs Matthews' case this was from July of 2014 at the latest. Accordingly insofar as that element of the argument is concerned, we find in favour of the Applicant.

36. We do not consider that the insurance contract is a QLTA. It provides for insurance cover on an annual basis. We were told that the market is tested by the landlord and were provided with evidence of alternative figures obtained in the year 2013. Mr Mendelsohn said that this exercise is carried out on an annual basis. They have a block policy and they have decided that this block policy provides best cover for those properties included, which also covers the subject premises at Ellington Street. The contract lasts for 12 months. It can be changed to another insurer at the end of the 12 month period and indeed the evidence from Mr Mendelsohn is that they have done so in the past. In those circumstances we do not consider that the insurance arrangements constitute a QLTA and therefore Section 20 does not apply to the annual payments.

37. Insofar as the totality of the premium is concerned, we noted the comparable evidence provided by Mrs Matthews. We do not consider that Lansdown is a comparable as it refers to a purpose-built building. So far as the other insurance comparables are concerned, they are only £250 or so below that which has been achieved by the landlord. It is acknowledged law that the landlord is not obliged to accept the cheapest quote. Furthermore, the policy which is in place by the landlord covers any form of letting that there may be in the property. Although Mrs Matthews says that the property is not one which would be let to people on benefits or students, of course there is always the danger that a tenant who goes

into occupation as a professional may as a result of job losses become somebody who does require assistance through benefits. Although the lessee could terminate the agreement with the sub-tenant, if the rent is being paid it is unlikely that they would do so. There appears to be no control over the type of tenant and in those circumstances we think that policies limited only to professional tenants may not cover the situation. Given that difference and the fact that there is little between the landlord's actual premium and those quotes obtained by Mrs Matthews, results in us finding that insofar as the amount of the premium is concerned, it is not unreasonable and is therefore payable.

38. Insofar as the declared value is concerned, it did not seem that Mrs Matthews really understood what was being argued on her behalf in the email to which we have referred and generally. Mr Mendelsohn explained that the averaging clause does not apply and there was no suggestion that the declared value was too low. Indeed it seems that a valuation had been undertaken in the not too distant past. Certainly Mrs Matthews had no evidence to suggest that the declared values were unreasonable. In those circumstances, we do not think there is any evidence available to us to find that the insurance is unreasonable insofar as the values are concerned and accordingly we dismiss Mrs Matthews' claims in relation thereto.

39. Mrs Matthews confirmed that she took no issue with the costs of and the need for the various surveys and inspections. That being the case and taking into account our findings on other issues we accordingly dismiss the totality of Mrs Matthews' claims and turn then to the question of costs.

40. The landlord is not without blame. No notices complying with Section 21B have been served until last year, although may be those the year before did have the statutory wording attached. Nonetheless, the payments, certainly on Mr Mendelsohn's argument, did not become due until after 30th April 2014. We have found against Mrs Matthews on her legal argument with regard to the contents of the demand which formed the bedrock of her case. Our view is that neither side has acted unreasonably in either bringing the application or defending it. Accordingly any suggestion that there should be costs visited upon one or other under the provisions of Rule 13 of the Rules is rejected by us. We do not propose to make an order under Section 20C in favour of Mrs Matthews because she has been unsuccessful in her defence. However, if the Applicant decides to make a claim for costs as a service charge, this can be challenged by the lessees under the provisions of Section 27A of the Act and of course the landlord will need to be satisfied that any costs incurred by R A Management Limited are recoverable under the terms of the lease. No specific application for reimbursement of fees was made to us by Mr Mendelsohn.

41. We were asked to comment on the proposed level of management fees, put at £75 per unit per annum by Mr Mendelsohn. On the face of it that would not seem an unreasonable sum, but we make no finding in that regard. It will be for the Landlord to be satisfied that the lease allows such a sum to be charged.

Judge: Andrew Dutton

A A Dutton

Date: 3rd February 2015

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 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.