



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

Case Reference : LON/00BH/LSC/2014/0460-65

Property : (1) 305 BRETtenham ROAD, LONDON E17 5AT
(2) 19A CORNWALLIS ROAD, LONDON E17 6NL
(3) 33A CARR ROAD, LONDON E17 5ER
(4) 98 CARR ROAD, LONDON E17 5EN
(5) 88 FLEEMING ROAD, LONDON E17 5ES
(6) 160A FLEEMING ROAD, LONDON E17 5EU

Applicant : MR LAHRIE MOHAMED
MRS SHEHARA LAHRIE

Representative : CAVENDISH LEGAL GROUP

Respondent : FIT NOMINEE LTD
FIT NOMINEE 2 LTD

Representative : BOND DICKINSON

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

Tribunal Members : TRIBUNAL JUDGE LESLEY SMITH
MR H GEDDES, JP, RIBA, MRTPI
MR J FRANCIS

**Date and venue of
Hearing** : Thursday 29 January 2015
10 Alfred Place, London WC1E 7LR

Date of Decision : 4 February 2015

DECISION

Decisions of the Tribunal

- (1) In relation to the Reinstatement Value issue, the Tribunal determines that the area to be measured for the purposes of assessing the reinstatement value should be GEA. To that measure, should be applied the current BCIS guideline rate for reinstatement cost which, according to the Joint Expert Report is £1500 per square metre. As appears to be HMRC guidance, VAT should not be included on the rebuilding or demolition element of the reinstatement cost but should be added to the professional fees element.
- (2) In relation to the Commission issue, the Tribunal determines that the commission element of the insurance premium of 26.6% now 24.6% is reasonable and payable by the Applicants to the Respondents.
- (3) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the Respondents' costs of the Tribunal proceedings may be passed to the lessees through any service charge
- (4) The Tribunal refuses to make an order for refund of the fees paid by the Applicants.

The application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicants in respect of the service charge year 2013-14 in relation to insurance premiums. The issue which formed part of the original applications relating to administration charges was not pursued, the Respondents having accepted, it appears, that administration charges could not be sought pursuant to the Leases.
2. The relevant legal provisions are set out in Appendix 1 to this decision.

The hearing

3. The Applicants were represented by Mr Daniel Dovar of Counsel and the Respondents were represented by Ms Nicola Muir of Counsel.
4. At the outset of the hearing, Ms Muir sought to introduce into evidence a witness statement and report produced by Cardinus Risk Management ("Cardinus") on whose evidence the Respondents already relied. Mr Dovar objected to the late introduction of this evidence. Ms Muir explained that the purpose of the evidence was to provide a comparison with figures put forward by Baqus Construction Company

("Baqus" – on whose evidence the Applicants sought to rely) and Cardinus. Ms Muir indicated that much of the material relied upon in the statement and report was already in evidence (summary of valuations in 2010, what the figures were in 2014 and a comparison with the Baqus figures in 2014). She explained that the second table in the report setting out the rates applied by Baqus was based on core material in the bundle. She accepted that the figures relied on to show the Gross External Area ("GEA") and Gross Internal Area ("GIA") measurements were not in the bundle as the evidence in the bundle showed a number of different measurements and she accepted that there was not otherwise evidence of the measurements relied on by Cardinus in relation to the 2014 figures. There was a further table which showed how the figures were reached using exact measurements. The statement and report had been provided to the Applicants on 28 January 2015.

5. Mr Dovar objected on the basis that this was an expert report for which no permission had been given and dressed up as a witness statement. That appended a report which had been carried out some time ago but not disclosed. The Applicants might have wanted to produce their own report in response and the joint expert with whom the Applicants agreed was not present at the hearing as the Respondents had not indicated that they disagreed with his evidence. If the Respondents took issue with the views of the joint expert for whose evidence the Tribunal had given permission then they should have indicated this.
6. In response Ms Muir pointed out that the joint expert's evidence gave bald figures and no background information as to how those figures had been reached. As an expert Tribunal, it was for the Tribunal to decide what to make of the joint report. However, the further Cardinus report was useful to give an insight into the measurements of the subject properties adopted. Ms Muir indicated that she was content to withdraw the witness statement if that was objected to as being expert evidence and to rely only on the further report.
7. Having adjourned briefly to consider the issue, the Tribunal decided to allow the further Cardinus report into evidence. The Tribunal considered that what it was likely to find helpful in relation to the reinstatement value issue was the Baqus figures and the Cardinus figures and the further report might assist the Tribunal in ascertaining the difference between those 2 sets of figures. The Tribunal indicated though that it would take into account when considering the Cardinus report, submissions by Mr Dovar as to prejudice to the Applicants as the hearing progressed and might discount those parts of the report if the Tribunal considered that the Applicants were prejudiced by not being able to respond to any of the figures.

The background

8. The properties which are the subject of this application (“the Properties”) are all properties on the Warner Estate in Walthamstow. The Properties are of varying sizes and types but all are leasehold and are described variously as flats or maisonettes. All are owned by one or other of the Applicants and the lessor in all cases is one or other of the Respondents.
9. Neither party requested an inspection and the Tribunal did not consider that one was necessary in light of the nature of the issues.
10. The Applicants hold long leases of the Properties (“the Leases”) which require the lessor to insure the Properties and the Lessees to contribute towards the insurance premium by way of a variable service charge. The relevant provisions of the Leases are set out in Appendix 2 and referred to below, where appropriate. The Leases for the Properties are all in the same form.

The issues

11. The only issues for determination by the Tribunal, aside costs and fees related to the reasonableness of the insurance premium charged for the Properties in the service charge 2013-14 (although the issues centre on the basis of calculation and content of the premium and therefore impact on later years). The Applicants’ cases consist of 2 elements – whether the reinstatement value is overstated (“the Reinstatement Value Issue”) and what commission if any the Respondent is entitled to include in that premium (“the Commission Issue”). Those 2 issues are dealt with separately below. It was agreed by Counsel for the parties that it was open to the Tribunal to give its determination on the basis of the principle of the issues rather than including exact figures and that the parties would then be able to work out the impact (if any) on the premium based on the determination.

The Reinstatement Value Issue

12. The Applicants’ case is that the Respondents have overstated the reinstatement value so that the premiums are excessive. The Respondents submit that there is no single correct way of determining how reinstatement values should be calculated and that the Respondents only had to show that the method adopted was reasonable.

The Tribunal’s decision

13. The Tribunal determines that the area to be measured for the purposes of assessing the reinstatement value should be GEA. To that measure, should be applied the current BCIS guideline rate for reinstatement

cost which, according to the Joint Expert Report is £1500 per square metre.

14. As advised by HMRC guidance as produced by the joint expert, VAT should not be included on the rebuilding or demolition element of the reinstatement cost but should be added to the professional fees element.

Reasons for the Tribunal's decision

15. There were 3 prongs to the Applicants' challenge in relation to the Reinstatement Value Issue. Firstly, there was a difference in approach as to whether the appropriate measure was of the GEA or the GIA. Secondly, there was a disagreement in relation to the appropriate rate per square metre which should be applied to that measure. Thirdly, there was a dispute as to whether VAT should be included in the reinstatement value or excluded.
16. The Applicants rely on either the evidence of Baqus or the report of the joint expert who was instructed on the direction of the Tribunal (Charles Stimpson Associates - "the Joint Expert Report") whose report was produced dated 19 January 2015. The Applicants also produced the Mortgage Valuation Reports for the Properties although it was accepted that these were of limited value. The Applicants also produced copies of the insurance certificate for 160A Fleeming Road for 2013-14 at a time when they were arranging their own insurance. This showed a sum insured of £89,844 and gave an annual premium of £54.32 but there was no indication as to the extent of cover or other relevant conditions. This does appear very low for a premium on a flat in London. The Applicants also produced a number of earlier renewals for properties on the Warner Estate. Those showed premiums of around £400-£800 (although some included contents cover). Again, there was no indication given of the extent of cover, excesses etc.
17. Baqus prepared cost assessments for the reinstatement value of each of the Properties dated November 2014. Their cost assessments were based on the GIA calculated from the area provided to them and adjusted in accordance with that measure. They had applied the rebuilding cost at a price per square metre although they gave no indication as to the source of that cost. Demolition costs were stated as an overall sum and there was no indication in the assessment that this was based on a cost per square metre. Mr Dovar pressed this point in responding to the Respondents' Cardinus report where comparisons were made between the Baqus and Cardinus figures which assumed that this was based on a cost per square metre. Although that leaves a question mark as to the source of the Baqus figures, the Tribunal accepts that this does undermine the comparison which Cardinus sought to draw from the figures. The professional fees which make up part of the reinstatement value were included as 15% on the rebuilding

and demolition costs. Baqus did not include VAT in their cost assessment.

18. Mr Stimpson, BSC (Hons), LLB (Hons), MRICS, ACI Arb, ICIOB, MEWI was appointed by the parties as the joint expert pursuant to direction by the Tribunal. Mr Stimpson is a Chartered Building Surveyor and barrister, a Member of the Building Surveying, Valuation and Dispute Resolution Facilities of the Royal Institution of Chartered Surveyors. He is also a member of the Chartered Institute of Building, the Chartered Institute of Arbitrators, the Law Society Panel of Expert Witnesses and the Expert Witness Institute. Mr Stimpson qualified as a Chartered Surveyor in May 1999 and was established in practice in October 1999. Before that, he had approximately 15 years' experience in building and property matters generally. The Joint Expert Report was based on a site inspection in January 2015 at which Mr Stimpson measured each of the Properties internally. He then gave a figure for the reinstatement value which should be applied to each of the Properties for insurance purposes. Following e mail requests for clarification from the Respondent, Mr Stimpson indicated that his figures were based on the GIA but multiplying that by 1.05 to reach a figure for GEA (so that he appears to accept that GEA was the appropriate measure). He had applied the BCIS guideline rate of £1500 per square metre and had excluded VAT.
19. The Respondents rely on the evidence of Cardinus. Their costs assessments were produced in 2010. At that date, they had sampled 37 properties on the Warner Estate corresponding to each of the different types of property on the estate. The valuations from those samples had then been applied to all of the properties on the estate. Cardinus conducted site visits of the sample properties and completed a full survey and valuation of those properties. Their 2010 assessments indicated that they had used guidance figures "using BCIS rates" and that they had included VAT. It appeared from a closer inspection of their costs assessments that they had then rounded up the figures to the nearest £250. Based on the 2010 survey and the figures produced by Cardinus, the Respondents' insurance broker, Oval, had indexed the 2010 rate per square metre applied (£1403 per square metre) for the following years of 4.1% (2011), 3.9% (2012), 1.8% (2013) and 2.3% (2014).
20. The Cardinus report which was produced to the Tribunal and Applicants on the day of the hearing indicated that Cardinus had carried out a desktop revaluation based on 2014 figures using both GEA and GIA. They submitted in table B that when this was done, and applying GEA rather than GIA which was in their view the right measure, the Baqus figures were not dissimilar to the Cardinus figures and that both sets of figures gave a very different figure to the Joint Expert Report which in Cardinus' view was based on an undervaluation. The Tribunal however, as indicated above, accepts the Applicants' submissions that it was not open to Cardinus to assume the

rate which Baqus had applied based on the overall cost and dividing that by the measure (and then multiplying that by GEA rather than GIA) as Baqus' figures indicate that only the rebuilding cost was based on a cost per square metre.

21. Although Mr Dovar indicated that the figures provided variously by Baqus, Cardinus and the Joint Expert Report were all comparing like with like, it was obvious following submissions that they were not. Firstly, the Baqus figures were given in November 2014, Cardinus' figures were based on 2010 rates albeit adjusted by indexation and then effectively replaced by 2014 rates and the Joint Expert Report was based on rates as at January 2015. The rates were often not provided on a cost per square metre rate. It was not clear when overall figures were given whether that figure was based on the 2 flats in the same building or just one. It was for that reason that the Tribunal formed the view that it would have to provide its determination based on its views of the principles applied rather than actual figures and leave the parties to revalue based on those principles.
22. Before embarking on that exercise, the Tribunal expresses its view on Ms Muir's submission that the Tribunal did not have to form its own view on the principles applied save to decide whether the approach taken by Cardinus was within a range of reasonable responses to calculation since there was no single right way of calculating reinstatement value. The Tribunal disagrees. The very issue for the Tribunal is whether the reinstatement value (and therefore the premium) is reasonable. The issue is not whether the Respondents' assessment of the reinstatement value is reasonable. However, the Tribunal has taken account of the evidence the Respondent has used in fixing the reinstatement value in order to determine whether that reinstatement value is reasonable.
23. Turning first, then, to the measurement of the floor area of the Properties, it might have been thought that this was something which could accurately be assessed. It appears that this is not the case since there was a fairly significant difference between the various measures which could not just be explained by whether the GEA or the GIA had been used. Taking 98 Carr Road as an example, the mortgage valuation report gives a figure of 71 m² (which it is assumed is based on GIA), the Cardinus figure is 75 m² (based on GEA), the Baqus figure is 69 m² and the Joint Expert Report is 74.79 M² (based on GEA and a division of the figure given of 149.57). The Tribunal is not therefore in a position to say what actual measure should be applied to each of the Properties. However, the Tribunal agrees with both Cardinus and Mr Stimpson, the joint expert, that the appropriate measure is the GEA not the GIA. What the lessor is here insuring is the whole building and it makes little sense therefore to include only the measure of the interior of the individual flat. There is very little difference in the example used above between figures provided by Cardinus and the Joint Expert Report. Where there are larger differences (eg 305 Brettenham Road) that

difference should be capable of agreement either by discussion or a remeasure of that property.

24. Moving on to the price per square metre, the competing figures for total reinstatement values of each of the Properties are set out in the table below.

PROPERTY	CARDINUS 2010	CARDINUS 2014 ADJ	BAQUS	STIMPSON
305 Brettenham Rd	145,250	175,595	127,292	104,000
19A Cornwallis Rd	109,000	132,333	89,205	75,500
33A Carr Rd	145,250	175,595	87,238.50	76,000
98 Carr Rd	145,250	175,595	92,817	118,000
88 Fleeming Rd	145,250	175,595	120,144	103,000
160A Fleeming Rd	145,250	175,595	119,510	77,500

25. The Tribunal is aware that the rate which Mr Stimpson has applied is the BCIS rate (as at January 2015) of £1500 per square metre. It is not clear what rate per square metre Baqus has used as in their overall figures only the rebuilding cost is stated as being per square metre. The Tribunal knows that the rate per square metre used by Cardinus was £1403 in 2010 and that this was then increased by indexation using a measure which is not sourced. Applying those indexation measures, and assuming that they were compounded, the figure would be around £1580 which is higher than the rate applied by Mr Stimpson but not excessively so. Bearing in mind, though, that the indexation applied is unsourced and the Tribunal is not in a position to know whether the rate applied is reasonable, and since the cost per square metre applied by Baqus is not at all clear, the Tribunal accepts Mr Stimpson's view that the rate applied should be the current BCIS rate which he states is £1500 per square metre. That figure should obviously be checked before it is applied. Nor does this necessarily mean that the Joint Expert Report figures are the correct figures as those figures divided by £1500 do not appear to give the exact measures as set out in the e mail from Mr Stimpson of 21 January 2015.

26. The remaining issue is whether VAT should be included or excluded. The position here can be shortly stated. Baqus contends that VAT should be excluded. Cardinus contend that VAT should be included on the whole reinstatement value. Mr Stimpson's response is not completely clear. He says in an e mail of 19 January 2015 that "*the position seems to be that a completely new dwelling can be constructed exempt from VAT but anything else would attract VAT... and in any event professional fees and repairs to a partially destroyed building will all be subject to VAT...*". He goes on to include an extract from HMRC. The relevant part of that extract reads as follows:-

“The basis of a Reinstatement Cost Assessment is the cost of totally rebuilding the insured property....a zero-rated building is constructed when ‘it is built from scratch, and before work starts, any pre-existing building is demolished completely to ground level..and it is either designed as a dwelling or a number of dwellings’. Dwellings can also be zero-rated if ‘the new building makes use of no more than a single façade ...of a pre-existing building, the pre-existing building is demolished completely (other than the retained façade) before work on the new building is started, and the façade is retained as a condition or requirement of statutory planning consent or similar permission’... Work that is closely connected with the dwelling can also be zero rated. This includes ...demolishing the existing buildings and structures as part of a single project to construct a new building or buildings in their place, carrying out ground works, providing site clearance, and works that allow the building to be used... VAT is not therefore applicable to total rebuilding of dwellings and should not be included in a house Reinstatement Cost Assessment. Although the rebuilding cost figures in Rebuild Online make no allowances for VAT on building costs, VAT has to be paid on professional fees and on other work unconnected to othe construction of a dwelling... Therefore VAT has been included on the professional fees...”

27. Ms Muir submitted that the Respondent was still entitled to include VAT on the whole reinstatement value as it was a principle of insurance that the landlord should insure to the maximum sum necessary. That was considered to be reinstatement value on the basis of the property requiring demolition and rebuilding. However, Ms Muir submitted, there was a possibility that the property might be damaged to a lesser extent which would not necessarily require rebuilding but might be equally costly particularly if VAT were excluded on a rebuild but included in relation to repair. Mr Dovar’s answer to this was that if it were uneconomic to repair a significantly damaged building so that demolition and rebuilding were cheaper, including consideration of the VAT position, an insurer would be likely to opt for the latter even if that were not otherwise required. The Tribunal agrees with that view.
28. Accordingly, in light of the HMRC guidance (which should be checked), the Tribunal considers that VAT should not be included in the rebuilding or demolition cost but should be included in the professional fees element. Since the figures in the Joint Expert Report do not include any VAT element, it will be necessary for some calculation to be done – possibly on the basis suggested by Baqus of an assumption of fees being a percentage of the rebuilding and demolition cost and then adding VAT to that element.

The Commission Issue

29. The Applicants contend that the Respondents are not entitled to retain the commission paid on the insurance premium (26.6% of which 22%

paid to the Respondents in 2013 reduced to 24.6% of which 20% paid to the Respondents in 2014) since this was not payment for work carried out and is not therefore payment for services carried out. Even if it was, it would amount to an impermissible attempt to avoid the terms of the Leases which do not include a provision to recover the cost and expenses of services associated with the procuring of insurance. The Respondents' case was simple – the commission paid is part of the premium and is therefore due under the terms of the Leases. Ms Muir relied on *Williams v Southwark London Borough Council (2001) 33 HLR 22*.

The Tribunal's decision

30. The Tribunal determines that the commission element of the insurance premium of 26.6% now 24.6% is reasonable and payable by the Applicants to the Respondents.

Reasons for the Tribunal's decision

31. Dealing firstly with what the Applicants are required to pay for insurance under the Leases, clause 1(iv) provides that they are bound only to pay "*a yearly sum equal to the sum or sums which the Lessor shall from time to time pay by way of premium...*".
32. The Tribunal heard evidence from Mr Alan Wardrop of Oval, the Respondents' insurance broker. Contrary to the Respondents' written case (including the witness statement of Ms Andrews the Respondents' insurance manager), Mr Wardrop gave evidence that the commission paid to the Respondents was calculated as a percentage of the insurance premium rather than a payment for services carried out by the Respondents. It was, however, the evidence of Mr Wardrop that, as the insurance was arranged by him as broker via delegated authority and not directly with the insurance company, it would always be the case that commission would be paid by the insurance company to the broker and that 26.6% or now 24.6% (which included 4.6% retained by Oval) was not unreasonable. In fact, he said that commission could be up to 40%. Mr Wardrop was pressed by both Mr Dovar and the Tribunal in relation to how it could be said that he could justify a commission of 26.6%/24.6% for himself when he was currently receiving only 4.6% for brokerage in this case. However, he held firm and insisted that if the Respondents were not receiving the 22%/20% in addition to the 4.6% which he received for the work which they were doing in relation to running the insurance, then a commission of this sort of percentage would still be paid to him as broker by the insurance company for arranging the insurance via delegated authority which involved either him as broker or the Respondents in this case carrying out work which would otherwise fall onto the insurance company such as chasing payment of premiums, issuing certificates and dealing with claims. Mr Wardrop was very clear that the commission was part of the premium

and that the commission and the premium would remain the same even if the Respondents took no commission.

33. Mr Wardrop was also asked about the effect of the commission percentage on the overall premium in terms of competitiveness of the insurance quotations. Mr Wardrop's evidence was that he had, in 2013, approached 11 companies for quotations. He said that when quotations were sought, those would be for overall premiums and would not take account of the brokerage commission which, as a percentage of the premium, would be negotiated separately. The decision to pass back a large proportion of that commission to the Respondents in exchange for them taking on some of the work which would otherwise be done by Oval was also a process of negotiation including an element of commercial negotiation.
34. Ms Muir relied on the case of ***Williams v LB Southwark***. Mr Dovar sought to distinguish this on the basis that in that case there was a lease clause which permitted the landlord to recover also costs and expenses of arranging the insurance whereas the Leases here did not. Ms Muir pointed out that the finding of the Court in ***Williams*** that if not recoverable as commission, the landlords there could recover as part of their costs and expenses, was obiter. The Court accepted in that case that "*the purpose of a service charge is to enable the landlord to recover the costs of services supplied*" and not to provide a profit. In that case, notwithstanding that it was common ground that the local authority was not carrying out services which cost the 20% of the premium obtained as commission, the Court held they were still entitled to retain that commission as consideration for the service provided.
35. In light of Mr Wardrop's very clear evidence that if the commission were not being passed to the Respondents, it would be paid to Oval and his evidence that 26.6% or 24.6% was if anything low for this type of insurance arrangement, the Tribunal considers that the commission of 26.6% and now 24.6% is not unreasonable. The Tribunal did consider whether it should take the view that the commission was not payable to the Respondents by the Applicants in light of the clause which would not permit the Respondents to recover the cost and expenses of arranging and dealing with insurance. However, in light of the evidence, it is clear that the commission is part of the premium negotiated by Oval and if it were not being paid to the Respondents, Oval would receive the same or similar percentage. There could be no quarrel by the Applicants if that were the case and accordingly, the Tribunal accepts that the commission is part of the premium and as such is payable under the Leases.

Application under s.20C and refund of fees

36. In the application, the Applicants made an application for a refund of the fees that they had paid in respect of the application/ hearing¹. In the application, the Applicants also applied for an order under section 20C of the 1985 Act. Taking into account the determinations above, the Tribunal does not order a refund of fees. The Applicants succeeded on one issue in part but failed in relation to the other issue. On the same basis, the Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondents may not pass any of their costs incurred in connection with the proceedings before the Tribunal through the service charge.

Name: Lesley Smith

Date: 4 February 2015

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

APPENDIX 1

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 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, 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.

APPENDIX 2

RELEVANT LEASE CLAUSES

Clause 1(iv)

...AND ALSO YIELDING AND PAYING on demand by way of further rent a yearly sum equal to the sum or sums which the Lessor shall from time to time pay by way of premium.... for keeping the demised premises insured against loss or damage by fire explosion or aircraft and other insured risks under the Lessor's covenant in that behalf hereinafter contained...

Clause 3(2)

To insure and keep insured the demised premises in a sum not less than the full reinstatement value thereof as determined by the Lessor's Surveyor (including Architects and Surveyors fees and loss of two years ground rent) against loss or damage by fire explosion or aircraft and the other risks normally included in a houseowners comprehensive policy with the Commercial Union Assurance Group or with such other insurance office or underwriters of repute to be specified by the Lessor and to make all payments necessary to maintain such insurance within seven days after the same shall become payable....