

11749



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

Case Reference : **LON/00AH/LSC/2016/0188**

Property : **15 Colworth Road, Croydon,
Surrey, CR0 7AD**

Applicant : **Mr Dean H Reid**

Representative : **Ms Driscelle Naidu**

Respondent : **Escalus Property Ltd.**

Representative : **W H Matthews & Co., Solicitors**

Type of Application : **(1) For the determination of the
liability to pay a service charge
(2) Dispensation from statutory
consultation requirements**

Tribunal Members : **Judge Dickie
Mr O Miller**

**Date and venue of
Hearing** : **22 September 2016, 10 Alfred
Place, London WC1E 7LR**

Date of Decision : **20 October 2016**

DECISION

Decisions of the tribunal

- (1)** There has been a breach of statutory consultation procedures, in respect of which unconditional dispensation is granted to the landlord.
- (2)** The service charges that are the subject of this application are payable by the Applicant in full.

- (3) The application under s.20C of the 1985 Act is dismissed.

Introduction

1. The Applicant seeks 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 him in respect of the service charge year 2015/16. He disputes that the Respondent landlord complied with statutory consultation requirements set out in s.20 of the 1985 Act in respect of major works (external redecoration and associated repairs) carried out that year. The Respondent has made a cross application under s.20ZA of the 1985 Act for dispensation from any statutory consultation requirements with which the Tribunal may find it failed to comply.
2. The relevant statutory provisions are set out in the attached Appendix, and the relevant regulations referenced in the body of this decision.
3. The property which is the subject of these applications is a self contained flat within a house converted into three flats, each let on a long lease. An inspection of the property was unnecessary in light of the nature of the issues for determination.
4. The Applicant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The Tribunal was provided with a copy of the lease, which was understood to be in common form with the leases for the other two flats in the building.
5. By Clause 5(c)(i) of the lease the Respondent covenants “As often as may be necessary to maintain repair cleanse repaint redecorate and renew” the main structure of the building, including the roof. By Clause 6(7)(4) the Applicant covenants to pay the Advance Service Charge on account of his one third contribution towards the Annual Maintenance Costs, which include those of and incidental to the performance of clause 5(c). The total Advance Service Charge for the year 2015/16 was £11,183.17, of which £9,233.16 relates to the major works and was in dispute.
6. Ms Driscelle Naidu had acted as the Applicant's representative in these proceedings. She signed the application, though the Applicant did advise the Tribunal in writing that he would be represented at the Case Management Hearing on 31 May 2016 which she attended. The Tribunal is satisfied that she was his authorised representative.
7. The Tribunal issued directions to the parties. It identified that the Applicant's dispute did not relate to the standard of works and that he claimed that (i) following removal of roof tile replacement from the major works scheme, the tender accepted by the landlord was not the

cheapest and (ii) the landlord had wrongly separated minor repairs to the roof from the major works contract. The Tribunal directed the Applicant to produce an expanded statement of case which should, amongst other things, identify the alleged breaches of statutory consultation and any loss or damage suffered as a result. The matter was listed for hearing on 22 September 2016.

Application for a postponement

- 8.** Ms Naidu contacted the Tribunal by email on the afternoon of the day before the hearing to advise that she was unwell and may not be fit enough to attend as representative for the Applicant the following day. It is to be noted that this was not expressed as an application for a postponement and did not make clear that the Applicant would not be attending. Ms Naidu was however advised that, if she was asking for a postponement, she needed to supply medical evidence and any such application would be decided by the Tribunal the start of the hearing. Ms Naidu then provided self certification dated 21 September 2016 that she was unwell and unfit for work.
- 9.** The Tribunal convened for the listed hearing at 10am. Neither the Applicant himself nor Ms Naidu attended. The Respondent was represented by Mr Wijeyaratne of counsel. He opposed a postponement which would cause additional legal costs the landlord would seek to recover from the Applicant as an administration charge under the terms of his lease, or alternatively through the service charge.
- 10.** The Tribunal decided to reconvene at noon that day to determine whether to postpone the hearing or to proceed in the absence of the Applicant and his representative. An email advising this was sent to Ms Naidu, inviting the Applicant himself to confirm if he would be attending the hearing and/or to explain reasons why the hearing should not proceed in his absence. The Tribunal clerk then received from Ms Naidu confirmation that she had forwarded this email to the Applicant, who was apparently at work, and the clerk also forwarded it to him at the email address Ms Naidu then provided. However the Applicant did not respond and Ms Naidu herself replied that the Applicant would not be in a suitable or prepared position to represent himself.
- 11.** The Tribunal gave anxious consideration to whether to postpone the hearing. This was the first such application on behalf of the Applicant, and made on the grounds that his representative was unwell. The Tribunal noted however that Applicant himself had not attended or contacted the Tribunal to seek a postponement or explain his absence. Furthermore, he had not advised the Tribunal that he was unable to present his case himself, and Ms Naidu's unsupported suggestion as to that point was not persuasive.

12. The Applicant's case had been prepared by production of an eight page statement of case and a chronology, within a hearing bundle comprising relevant documents and correspondence. The Tribunal had had the opportunity to read that bundle in advance of the hearing. The issues and evidence were limited – relating only to particular allegations of failure to comply with the statutory consultation procedure and the existence of resulting prejudice. The Applicant himself would have had first hand experience of relevant events (though there was no witness statement from him), and had written all of the correspondence to the landlord that was in the hearing bundle.
13. The Applicant did not have professional representation - Ms Naidu had no apparent special qualification or expertise. The Tribunal found insufficient grounds to conclude that the Applicant would have been incapable of presenting his own case on the documents put forward. It concluded that in the light of Ms Naidu's ill health the Applicant ought to have done so, or put forward compelling reasons why he could not.
14. The Tribunal considered the question of proportionality in deciding whether to postpone, the result of which would be a burden on the Tribunal's limited resources, and increased legal costs for the landlord which ultimately may well fall upon the Applicant by way of a service or administration charge. The potential value of the claim (being the financial value of any prejudice caused to the Applicant by any statutory consultation failure) could not be identified but was clearly very low, as is discussed in the body of the decision below.
15. The Applicant's case had been put forward on paper without witness statements, and the Tribunal felt well able to consider its merit and formed the view that a postponement for the attendance of Ms Naidu would have had no effect on the likely outcome of the proceedings.
16. The Applicant had in his application advised that he would be content with a paper determination if the Tribunal thought it appropriate. The Tribunal was conscious however that by proceeding in his absence the Applicant would not have the opportunity to cross examine the Respondent's witness Ms Kate Wallis, Director of the managing agent Empress Management, whose witness statement was in the hearing bundle. However, the Tribunal considered that the documents she produced with that statement spoke for themselves and this was not a case in which the oral evidence of witnesses on disputed matters of fact was likely to be pivotal.
17. The Tribunal in all the circumstances decided to refuse the application for a postponement and it proceeded with the hearing in the absence of the Applicant.

Statutory Consultation

- 18.** The Applicant challenged the major works service charges because there had been changes to the external and internal repairs and redecoration which he said resulted in a breach of statutory consultation under s.20 of the 1985 Act.
- 19.** The landlord's managing agent is Empress Management. A notice of intention¹ had been sent to the leaseholders on 8 July 2014. None made observations or nominated a contractor. That notice referred to an enclosed specification of works prepared by Messrs Fifield Glyn Chartered Surveyors (incorporating Tant Building Management Ltd.) dated 30 May 2014 which included roof replacement. Contractor estimates were tendered on the basis of that specification. The notice of intention stated:
- “8 It will not be possible for the Surveyors to carry out a detailed inspection of the higher elevations of the Building until scaffolding has been erected. The Surveyors therefore recommend a contingency of 10% of the cost of the Works in respect of which cannot at present be predicted because of the limitations of their inspection.
- 9 The Specification contains Provisional sums (PS) which has been estimated by the Surveyor and included in the Sepcification as it could not be determined until work began on site whether any such work was required and, if so, the extent of that item of work”.
- 20.** The notice of estimates² was issued on 11 February 2015 summarising the three estimates obtained (from Harte, Crayford and Taylors). All contained a 10% contingency. Two were stated to be exclusive of VAT, to be added, but Taylors were said to be “Not presently registered for VAT”. The notice referred to an enclosed analysis of estimates dated 17 October 2014 which set out all of the tenders, and included the advice “All prices are excluding VAT which needs to be added to all tenders”. The notice of estimates was accompanied by an email from Tant Building Management Ltd. advising that the roof had reached the end of its serviceable life. The covering letter enclosing the notice stated that the managing agent was unaware of reports of water ingress from the roof and had therefore asked a general contractor to estimate for repairs to the slipped slates so that consideration could be given to deferring the roof recovering for 12/24 months. The period for making observations on the notice of estimates was stated to end of 12 March 2015. The Applicant made no such observations.
- 21.** Taylors were the only contractor appointed to provide an estimate for patch repairs. Their quote dated 2 March was for £320. Thereafter, on

¹ Pursuant to Paragraph 8 of Part 2 of the Service Charges (Consultation Requirements) (England) Regulations 2003 “the Regulations”

² Pursuant to Paragraph 11(5)(b) of the Regulations

4 March 2015, the managing agent wrote to the lessees informally to consult with them about carrying out patch repairs and deferring the replacement of the roof. The Applicant did not respond but the first floor flat lessee did – saying that he wanted the roof replacement to be deferred, patch repairs to be carried out and Taylors to be appointed. On 31 March 2015 the managing agent notified the leaseholders by letter that Taylors had been awarded the contract and that patch repairs would be carried out, the roof replacement having been deferred. There was no response from the Applicant. There was no statutory consultation on the altered scheme of works. Taylors started on site in June 2015.

- 22.** Taylors were appointed as the cheapest contractor (on the basis of the quotes for full roof replacement). The Applicant contended that this amounted to a breach of statutory consultation, which required the landlord to obtain quotations for the reduced scope of works from more than one contractor. It was the Applicant's case that the cheapest contractor was not appointed, as if the roof replacement element was removed from all of the tenders, Harte's price was in fact the lowest.

Submissions, Decision and Reasons

- 23.** Mr Wijeyaratne emphasised that in the present case the schedule of works specifically forewarned of changes to the roof specification once it could be inspected. He asked the Tribunal to accept that at the time the contract was awarded the scope of the works still included roof replacement, and that the reduced scheme was only finally settled upon on an inspection on 15 July 2015 by Tant Building Management Ltd., who produced a schedule of additional items which also observed: "Main roof is still in poor condition but freeholder and leaseholders have confirmed delay for renewal until 2016/17 ... the roof is reaching the end of its serviceable life therefore provisions should be made to renew. Condition of the rear roof, still needs to be determined." He thus submitted that no additional estimates for the amended scheme of works were required by statute at the time the notice of estimates was served, and that Taylors were the cheapest contractor.
- 24.** The Tribunal acknowledges the fact that there may be variations to the scope of any works originally proposed - this clearly underpins the statutory consultation legislation, since the landlord has a duty to take into consideration observations made in respect of those works. In practice a schedule of works can be a work in progress from its creation right up to the completion of the project.
- 25.** Nevertheless, the Tribunal bears in mind that the Supreme Court in *Daejan Investments Ltd. V Benson* [2013] 1 WLR 865 considered that the purpose of the consultation requirements included ensuring that tenants are protected from paying for inappropriate works and paying more than would be appropriate. If a landlord could comply with the

requirements by consulting on scheme A, obtaining estimates for scheme A, and then contracting for scheme B with the contractor which gave the cheapest estimate for scheme A, without additional statutory consultation, that purpose would be frustrated. There must in the view of the Tribunal be a sufficient relationship between the qualifying works contracted³ and the works to which the estimates related in order for the landlord who contracts with the provider of the lowest estimate to be exempt from the third stage of statutory consultation with the lessees⁴. It will be a question of fact and in each case where there has been compliance with s.20 of the 1985 Act.

- 26.** The contract with Taylors would have shown whether it was for the estimated or revised works, but the landlord did not produce it in evidence. There was also lack of clarity as to when the contract was awarded to Taylors. Ms Wallis said orally it was on 5 March 2015, but this would have been a breach of s.20 as the consultation period did not end until 12 March 2015. The Tribunal looked at all the available evidence, and concluded that the weight of it showed a firm decision by the managing agent from early March 2015 to carry out only patch repairs to the roof, and that the contract with Taylors was likely to reflect this. The tenders in the notice of estimates were not for the scheme of works contracted or carried out, which represented a very substantial variation likely to have made the estimates an unreliable indicator of which contractor was cheapest. In all the circumstances the Tribunal concurs with the Applicant that, technically, there was a failure to comply with statutory consultation.
- 27.** The specification did of course make clear that the scheme was provisional, and there was nothing improper in the landlord deciding to reduce the scheme of works. However, the landlord's alternative scheme was proposed at least as early as 11 February and soon became its primary proposal.
- 28.** When the contract was awarded sometime in early or mid March, based on a comparative analysis of the itemised quotes, Taylors could not be understood to have provided the cheapest estimate for the works as actually contracted. The Applicant presented the items in each of the tenders in tabular form. Harte had quoted £16,580 for roof replacement and Taylors £11,775. The Applicant removed these elements and calculated that Harte's total tender price was £22,118 (£26,541.60 including VAT) and Taylor's was £28,699.
- 29.** Mr Wijeyaratne argued that such analysis does not demonstrate reliably that Harte's quotation would have been cheaper if the works had been tendered without the roof replacement, since different contractors will load costs under different headings within a tender. Indeed, the advice to that effect had been included by Fifield Glyn

³ Referred to in Paragraph 13(1) of the Regulations

⁴ Paragraph 13(2) of the Regulations

included in the notice of estimates. Nevertheless, since the landlord had not obtained revised estimates from the other contractors, there was no factual basis for forming the view that Taylors' was the cheapest estimate for the work then proposed. Accordingly, the Tribunal finds there was a failure to comply with the requirement to serve a third consultation notice⁵.

- 30.** Ms Wallis said that at the time of awarding the contract to Taylors she had in mind that once work began it might indeed be necessary to replace the whole roof, and that the contractor in place would be in a position to replace the roof without delay or additional cost in that case. Plainly that was logical, and might well have formed the reasons in that third notice for choosing to appoint Taylors if they were not the cheapest.

VAT

- 31.** The Applicant has also objected in these proceedings to an apparent contradiction between the treatment of VAT in the notice of estimates and in the analysis of tenders, which he said implied that Taylors intended to register for VAT at some point. The relevant Regulations provide⁶:

(2) For the purposes of any estimate required by any provision of these Regulations to be made by the landlord —

(a) value added tax shall be included where applicable;

- 32.** The treatment of VAT in the documents sent to the Applicant is noted by the Tribunal. However, the landlord confirmed that Taylors' price was the cheapest for the works tendered as they were at no relevant time registered for VAT, and their final costs paid on completion to be recovered through the service charge did not include VAT.
- 33.** The notice of estimates correctly summarised Taylors' tendering exclusive of VAT, as VAT was not applicable, and the Tribunal finds no breach of the statutory consultation requirements in this respect. The analysis of estimates predated that notice by nearly four months, and in that period any initial question as to whether VAT would be chargeable on Taylors' invoice was resolved. If the Applicant was unclear owing to the inclusion of the earlier document, he had the opportunity to query the matter by making observations within the permitted period, but he did not.

⁵ Paragraph 13(1) of the Regulations

⁶ Regulation 2 of the Regulations

Variations

- 34.** The Applicant also observed that a number of items of work in the schedule were not carried out. These were:

Roof patch repairs	320
Fireboard under stairs	590
Fire letter box draft excluder	35
Fire door to meter cupboard	350
Gas covers	280
Brick repair	180
Cowel to chimney	280

- 35.** At £2,035, the total cost of these additions was well within the 10% contingency for the project in Taylor's tender. Clearance of the front garden was undertaken but this was not part of major works. The Applicant's intercom was replaced at his request. He was dissatisfied that emergency lighting and flat doors were omitted whilst work was underway without reasons being given. The Tribunal sees nothing exceptional in these contingencies and variations, or that they represent any breach of statutory consultation.

s.20ZA Application

- 36.** The Applicant raised none of his objections to the consultation process during the period for making observations, or in response to informal consultation letters sent by the managing agent. They have been made only after the fact and to this Tribunal. What concerned him at that time was the quality and price of the works. He wrote on 11 May 2015 to the managing agent expressing concerns about the reasonableness of the costs and requesting that the contract be put on hold for him to have a discussion with the other owners of the flats. Empress Management replied on 15 May 2015 declining to postpone the works, and summarised the statutory consultation carried out.
- 37.** The Applicant replied on 19 May 2015 that he would be obtaining comparative quotes, though none have ever been produced. He also intimated long term neglect of the building had increased the cost of the works, but this allegation formed no part of the application to the Tribunal. In a letter dated 11 October 2015 he raised some snagging issues and said he believed the costs of the works were too high for the quality of the work, but again this was not supported by evidence and was not reflected in the issues raised in these proceedings. The Applicant said in his application that additional quotations for these specified works had been obtained and were available, though none were produced for the Tribunal.
- 38.** The principles which the Tribunal must consider in determining whether to grant dispensation are set out by the Supreme Court in *Daejan Investments Ltd. v Benson*. In summary:

- (i) The purpose of the consultation requirements is to ensure that the tenants are protected from paying for inappropriate works and paying more than would be appropriate.
- (ii) The issue for the tribunal is accordingly the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the requirements.
- (iii) In a case where the quality and cost of the works were in no way affected by the landlord's failure to comply, dispensation should typically be granted.
- (iv) The consultation requirements are not directed at the transparency and accountability of the tender process and therefore consultation is not an end in itself.
- (v) The factual burden is on the tenant to identify relevant prejudice - the only disadvantage of which they could legitimately complain is one they would not have suffered if the requirements had been fully complied with but which they will suffer if unconditional dispensations granted. If a credible case for prejudices established, it is for the landlord to rebut it.
- (vi) If relevant prejudice is found by the tribunal, dispensation should be granted on terms to require the landlord to reduce the amount claimed as service charge to compensate the tenants for that prejudice.

39. Since the decision in *Daejan v Benson*, refusal of an application under s.20ZA will be the exception, and granting dispensation on terms to compensate for prejudice demonstrated by the tenant will be the norm. In the present case, the Applicant has failed to specify any prejudice he has suffered by reason of the breach of consultation requirements. This is in spite of being directed by the Tribunal to identify his loss and damage. Whilst asserting that there would be “significant financial loss” and “financial prejudice”, it was not in fact specified. There is in reality insufficient evidence upon which the Tribunal could quantify prejudice in financial terms. Thus, the Applicant case had no real prospect of overall success in resisting the landlord's application under s.20ZA.

40. The Tribunal observed that the difference in the total cost of the Harte and Taylors tenders, excluding the item for roof replacement, was £2,157.40 (or £719.13 per flat). It appeared to the Tribunal that putting the Applicant's case at its very highest, this was the only available evidence which could be relevant to the calculation of financial prejudice. However, as Mr Wijeyaratne correctly observed, the difference in these two tenders is not sufficient proof of prejudice, since the actual works carried out included a number of variations and there

- (i) The purpose of the consultation requirements is to ensure that the tenants are protected from paying for inappropriate works and paying more than would be appropriate.
- (ii) The issue for the tribunal is accordingly the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the requirements.
- (iii) In a case where the quality and cost of the works were in no way affected by the landlord's failure to comply, dispensation should typically be granted.
- (iv) The consultation requirements are not directed at the transparency and accountability of the tender process and therefore consultation is not an end in itself.
- (v) The factual burden is on the tenant to identify relevant prejudice - the only disadvantage of which they could legitimately complain is one they would not have suffered if the requirements had been fully complied with but which they will suffer if unconditional dispensations granted. If a credible case for prejudices established, it is for the landlord to rebut it.
- (vi) If relevant prejudice is found by the tribunal, dispensation should be granted on terms to require the landlord to reduce the amount claimed as service charge to compensate the tenants for that prejudice.

39. Since the decision in *Daejan v Benson*, refusal of an application under s.20ZA will be the exception, and granting dispensation on terms to compensate for prejudice demonstrated by the tenant will be the norm. In the present case, the Applicant has failed to specify any prejudice he has suffered by reason of the breach of consultation requirements. This is in spite of being directed by the Tribunal to identify his loss and damage. Whilst asserting that there would be "significant financial loss" and "financial prejudice", it was not in fact specified. There is in reality insufficient evidence upon which the Tribunal could quantify prejudice in financial terms. Thus, the Applicant case had no real prospect of overall success in resisting the landlord's application under s.20ZA.

40. The Tribunal observed that the difference in the total cost of the Harte and Taylors tenders, excluding the item for roof replacement, was £2,157.40 (or £719.13 per flat). It appeared to the Tribunal that putting the Applicant's case at its very highest, this was the only available evidence which could be relevant to the calculation of financial prejudice. However, as Mr Wijeyaratne correctly observed, the difference in these two tenders is not sufficient proof of prejudice, since the actual works carried out included a number of variations and there

is no evidence in the form of an alternative quotation that the actual works carried out by the Respondent could have been carried out at lower cost.

- 41.** In any event, the Applicant cannot in the view of the Tribunal rely on an argument that he has been prejudiced, since he had the opportunity to avoid any prejudice by responding to statutory consultation and to the additional informal consultation concerning the change in specification to postpone the roof replacement. He clearly had the chance to raise all the objections that he now does, and ask for revised or alternative tenders (including a check of the Harte estimate excluding the roof replacement but including patch repairs). The Respondent was clear at all times about the available options, engaged fully with the leaseholders in order to soften the financial blow to them by postponing the roof works, and acted in accordance with the wishes of the lessee who responded. The letter of 31 March 2015 did not comply with all of the requirements of a notice under Regulation 13(1), but he still did not take the opportunity to respond to it with observations, as well he might. The points now latterly raised in these proceedings appear to be something of an afterthought, against the history of the Applicant's failure to make any payment at all for the 2015/16 service charges, even for annual service charges he did not dispute.
- 42.** In all the circumstances the Tribunal determines that dispensation from any breach of statutory consultation should be granted without conditions.

Application under s.20C

- 43.** In his application form the Applicant applied for an order under section 20C of the 1985 Act. Taking into account the determinations above, the Tribunal refuses to make such an order. Notwithstanding that there has been a technical breach of consultation requirements, given the Applicant's failure to engage in the statutory and informal consultation processes to raise the objections he now does, and to have produced any evidence of prejudice, he cannot have hoped to have resisted an application by the landlord to dispense with consultation.
- 44.** The Tribunal has not determined whether the lease terms entitle the landlord to recover the costs of these proceedings through the service charge.

Name: F. Dickie

Date: 20 October 2016

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in

accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.