

12288



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

Case Reference : LON/00 AM/LSC/2017/0127
LON/00 AM/LDC/2017/0068

Property : 30A Barnabas Road, London E9
5SB

Applicant : Ms Lisa Cheung

**Representative
Also in attendance** : In person
Ms Kimberley Cheung

Respondent : Scopeville Limited

**Representative
Also in attendance** : Mr Abraham Glick
Mr Rosner

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

Tribunal Members : Judge Daley
Mr M Cairns MCIEH

**Date and venue of
Hearing** : 20 July 2017 at 10 am 10 Alfred
Place, London WC1E 7LR

Date of Decision : 24 July 2017

DECISION

Decisions of the tribunal

- (1) The tribunal makes the determinations as set out within the body of this Decision
- (2) The tribunal notes the respondent's concession that the lease does not provide for the payment of the legal costs as a service charges, accordingly the Tribunal makes no order under section 20C in respect of the respondent's costs occasioned by this hearing. The Tribunal makes no order for the reimbursement of the applicant's application and hearing

The application

1. The Applicants sought a determination pursuant to s.27A (3) of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether service charges for the periods 2015/16 and 2016/17 are payable. Following this application the respondent sought an application for an order dispensing with some or all of the consultation requirements under Section 20ZA of the Landlord and Tenant Act 1985 in respect of major works in the sum of £1260.00 for the applicant's contribution. The Applicant also sought an order for the limitation of the Landlord's costs under Section 20C of The Landlord and Tenant Act 1985.
 - Directions were given on 2 May 2017, where the Tribunal identified the following issues-: *"The payability and reasonableness of service and administration charges for the years 2015-16 and 2016-17."* The Tribunal noted that *"... the applicant has concerns about the entirety of the charges but in particular with charges for insulation works to the exterior for which the total charge is £1526.99."*
 - *Whether the landlord has complied with the consultation requirement under section 20 of the 1985 Act...*
 - *Whether the works, in particular the insulation works, are within the landlord's obligations under the lease/whether the costs of the work are payable by the leaseholder under the lease have been carried out to a reasonable standard.*
 - *Whether the costs of the works are reasonable, in particular in relation to the nature of the works, the contract price and the supervision and management fee.*
 - *Whether an order under section 20C of the 1985 Act should be made*

- *Whether an order for reimbursement of application/hearing fees should be made.*

The background

2. The Applicant is the leaseholder of the premises known as 30a Barnabas Road. The flat is part of a Victorian House converted into two flats. The application was brought by the leaseholder for a determination of whether service charges for major works in the sum of £1260.00 are reasonable and payable. A further application was issued by the landlord for a dispensation under section 20ZA.

The Hearing

3. At the hearing the Applicant and the respondent represented themselves.
4. The Tribunal directed that the Applications made by the parties should be determined in the following manner. The Tribunal would hear from the parties upon each of the issues in turn, and would consider the application for dispensation by hearing from the respondent prior to hearing the applicant's challenge on the reasonableness and payable of the cost of the major works.
5. The first issue was the costs of insurance which was in the sum of £87.87 for both of the years in issue, Ms Cheung in her schedule (Statement Of Case) stated that the insurance estimates and costs were not shared with her in a timely manner and that request to see copies and proof of the charges had not been fully complied with. Ms Cheung also stated that the landlord had failed to provide a copy of the Summary of Rights and Obligations in compliance with the 2007 regulations.
6. It was accepted by the applicant and the tribunal also had sight of a copy of the summary of rights and obligations which had subsequently been provided on 22 June 2017.
7. In reply Mr Glick stated that the insurance was provided by the Royal Bank of Scotland, it was a portfolio policy which covered 17 properties and the information that he had provided had been redacted for data protection/privacy reasons.
8. He also informed the Tribunal that the service charge year started on 1 November whereas the Insurance started on 1 December, in the bundle he had provided a breakdown of how it had been calculated which

provided for 30 days, between 1 November to 30 November and then 11 months service charges.

9. The respondent was asked how the applicant's service charges had been apportioned, and he stated that lease provided for the applicant to pay a fair or proper proportion of any costs or expenses which was calculated by reference to the net rateable value (clause 7 (iv)) Mr Glick stated that as rateable values no longer existed, the charges had been assessed by a surveyor who had assessed 30/ 32 Barnabas Road and had assessed the applicant's share at 20% of the total.
10. Upon being asked whether Ms Cheung queried the reasonableness of the cost of the insurance, Ms Cheung conceded that she was satisfied that the sum appeared reasonable, her concern had been that she did not have sufficient information to satisfy herself that the sum was payable by reference to her actual premises, she also accepted that the landlord had now complied with his obligation to provide the Summary of Rights and Obligations.

The decision of the Tribunal

11. The Tribunal having heard the evidence are satisfied that the costs of the insurance in the sum of £87.87 for the period 2015/16 and 2016/17 is reasonable and payable. The Tribunal noted that the placing of the insurance as part of a portfolio had resulted in savings to the applicant.
12. The Tribunal considered that in future years, the landlord may wish to send a copy of the schedule to the applicant or that the applicant may wish to attend the respondent's office to inspect the insurance policy.

The Electricity

13. The Applicant's complaint concerning this was that the information concerning how the electricity costs were calculated and shared was provided relatively late (2 May 2017). Ms Cheung did accept that communal electricity was provided and that there were no problems with how this worked in practice, she also conceded that the sum charged was not excessive.
14. The costs of this was born between the two properties and as a result of not fitting a separate meter the two properties 30-32 Barnabas Road shared the cost of electricity this worked out at £17.20 per annum for both of the years in issue.

The decision of the Tribunal

15. The Tribunal upon having sight of the electricity bills and upon hearing from both parties are satisfied that the charges for electricity for both of the years in issue are reasonable and payable.

Repairs in the sum of £108.00 for the roof

16. The applicant stated that she had not been made aware that this work was to be carried out and that although the work was undertaken in September 2015, the cost document was only provided in 2017.
17. Mr Glick stated that the work was essentially repairs and maintenance to the gutters which had taken place as a result of his inspection of the property and noticing that the gutters were overflowing and needed clearing, he stated that the work had also included repairs to the brackets that supported the gutters. The Tribunal was provided with the documentation which supported this work, and Mr Glick confirmed that the company who had undertaken this work was one to which he was either a director or company secretary.

The decision of the Tribunal

18. The Tribunal considered that this was inaccurately described as roof repairs as this could be considered to be maintenance of the guttering. The Tribunal also noted that although the sum involved was relatively small the difficulty in obtaining information meant that the applicant had queried this charge.
19. Although the Tribunal was satisfied on a balance of probabilities that this work had been undertaken and that the cost was reasonable and that Mr Glick appeared to have taken steps to keep the costs down. The applicant would not have known that this work was necessary or that it was to be carried out, and this appeared to be at the heart of her challenge.
20. The Tribunal considers that this cost was reasonably incurred, however by the landlord providing information in advance, Ms Cheung may have been satisfied that this cost was reasonable had further information been provided at an earlier stage

The Major work and the Application under section 20ZA

21. This was for insulation works and also rendering. The Respondent accepted that he had not consulted under section 20, and that he had

made an application for dispensation on 22 June 2017, which had been listed to be heard together with this application. Mr Glick referred the Tribunal to photographs of the rear of the property. The rendering of the property in the photographs had perished in places. He referred the Tribunal to the report of ECD Architects which stated -: The walls appear to require maintenance...cracks to render and some dash missing in multiple areas..." Mr Glick stated that he became aware that it might be possible to obtain a grant in relation to these works if combined with thermal insulation improvements to the solid brick walls. Once this had been confirmed he had needed to act quickly otherwise he would have lost the possibility of obtaining the grant. He stated that the grant had been obtained as a result of the results of an Energy Performance Certificate inspection which had provided evidence that the thermal insulation within the building was ineffective and recommended insulation. Although he did not have a copy of the Energy Performance Certificate he stated that it was a public document which was widely available.

22. He stated that as a condition of the grant he had had to use the Local authority nominated contractor, accordingly there would have been no scope for the leaseholder to nominate her own contractor to tender for the works as part of the section 20 consultation process.
23. The Tribunal was referred to the Householder Grant Agreement dated 30 October 2015. Mr Glick also referred the Tribunal to the Invoice, he stated that just the first four items for the work which included the planning fee, Installation of scaffolding and site preparation had been costed at £1,166.25 which was approximately the same level of the sum payable by the applicant, (simple re-rendering would have taken the costs well above that level) By combining the repair with insulation work the grant meant that the insulation works had effectively subsidised the costs of the major work.
24. The total costs of the work had been £4880.00 plus vat of £240.00. The grant had been £3780.00 given this the balance payable by the applicant was £1,260.00. Accordingly there had been no financial prejudice to the applicant by his failure to consult. Had he consulted he may have lost the opportunity to have a grant contribution.
25. He also referred the Tribunal to the photographs of the rear of the premises once the work was completed, he stated that it was clear that this had added value to the property. The improved insulation would also significantly reduce heating costs.
26. In answer to the applicant's questions concerning why he had not provided details of the work and the costs at an earlier stage, particularly as the information had been available on 23 February 2017, Mr Glick stated that he had been attempting to negotiate a reduction with the contractor and that the contractor had stated that he might be

willing to agree a reduction once the work was completed. However the work had been more extensive than had been originally envisaged as the contractor had had to create recesses in the wall to deal with the carbon monoxide pipes.

27. Ms Cheung wanted to know what the total costs of the work had been and how the work had been apportioned. In reply Mr Glick provided sight of the invoices for the other flats; he stated that the share had been apportioned by the contractor.
28. Mr Glick did not accept that the work included an element of improvement, as he stated that although it might be an improvement on what was there at the time, the work carried out had to be assessed by reference to modern building standards rather than standards that existed at the time. He also referred to clauses of the lease which provided that at clause 1 (d) in respect of services that (d) in providing after giving reasonable written prior notice to the Tenant such reasonable services facilities and amenities or in carrying out works or otherwise incurring expenditure as shall be reasonably necessary for the general benefit of the Building and its tenants whether or not the Landlord has covenanted to incur such expenditure or provide such services facilities and amenities or carry out such works...”
29. The applicant was concerned that the landlord had known for some time that the work was to be carried out and that he had not consulted, she referred to emails sent to Mr Glick asking for details of why access had been needed for an energy efficiency survey to which Mr Glick had not responded. Mr Glick denied receiving these emails. Ms Cheung conceded that she had not suffered financial prejudice as a result of the failure to consult.

The tribunal's decision and Reasons for the tribunal's decision

The Section 20ZA Application

30. Tribunal having considered the oral evidence and written submission of the parties have determined that it is appropriate to grant the order for dispensation in accordance with guidance provided by the Supreme court in *Daejan Investment Ltd –v- Benson and others* [2013] 1 WLR 854 At paragraph 44 of *Daejan* Lord Neuberger gave the following guidance for the exercise of discretion by the Tribunal on applications for dispensation-: “ *Given that the purpose of the requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT should focus when*

entertaining an application by a landlord under section 20ZA(I) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the requirements.⁴⁵ Thus, in a case where it was common ground that the extent, quality and cost of the works were in no way affected by the landlord's failure to comply with the requirements, I find it hard to see why the dispensation should not be granted (at least in the absence of some good reason): in such a case the tenants would be in precisely the position that the legislation intended them to be –i.e. as if the requirements had been complied with...

31. At paragraph 53-54 the Supreme Court gave further guidance as to how an application for dispensation could be applied, Lord Neuberger considered the contention put forward by the respondent. *"... [O]n an application under section 20ZA (i), the LVT has to choose between two simply alternatives: it must either dispense with the requirements unconditionally or refuse to dispense with the requirements... 54. In my view, the LVT is not so constrained when exercising its jurisdiction under section 20ZA(i): it has power to grant a dispensation on such terms as it thinks fit-provided, of course, that any such terms are appropriate in their nature and their effect..."*
32. In Daejan, Lord Neuberger suggested that three questions were helpful to the Tribunal in considering an application for dispensation(I) The proper approach to be adopted on an application under section 20ZA(i) to dispense with compliance with the requirements(ii) Whether the decision on such an application must be binary, or whether the LVT can grant a section 20 (I)(b) dispensation on terms;(iii)The approach to be adopted when prejudice is alleged by tenants owing to the landlord's failure to comply with the requirements. In considering the issue of prejudice to the tenants, he stated that it would be for the tenants to provide such evidence, however that "once the tenants have shown a credible case for prejudice, the LVT should look to the landlord to rebut it..."
33. The Tribunal considers that although it would have been right and proper to consult with the leaseholders at the earliest stage, Mr Glick although well motivated in wishing to carry out work in the least expensive manner possible, did appear to the Tribunal to be overly concerned with managing the expectations of the tenants, to the extent that he had not provided Ms Cheung with information about the costing when it was available in the hope that he might be able to obtain further reductions.
34. Although he was well meaning in this, Ms Cheung had not been able to properly plan for this expenditure, which meant that it had come as "something as a bolt from the blue to her".

35. The Tribunal are satisfied that to have under gone the full section 20 consultation process may have resulted in an increase in the costs of the work, nevertheless the ability to plan and budget for expenditure for major works cannot be underestimated.
36. Accordingly the Tribunal finds that dispensation ought to be granted on the following terms-:
37. **(i)That interest on the sums outstanding in respect of major works is not payable, unless it remains outstanding after 28 days from the date of this decision.**

The reasonableness and payability of the cost of the major work

38. The Tribunal is satisfied in respect of the wording of the lease, that clause 1 (d) was sufficiently wide for costs to be incurred for improvements such as the insulation works; however the Tribunal is not satisfied that the respondent notified the applicant in advance as required by the terms of the lease.
39. The Tribunal however has decided that the costs of the major work is reasonable and payable as the grant payment has effectively covered the costs occasioned for the insulation, and the sums payable are for the works of rendering the walls.

The repairs

40. The applicant's objection was that she did not know what this sum was for.
41. Mr Glick explained that this was not the actual costs of the work, rather the costs claimed for repairs was based on an estimate rather than the actual expenditure, the figure of £19.93 had been based on a previous year where no major work had been undertaken.

The decision of the Tribunal

42. The Tribunal finds on a balance of probabilities that the estimated sum is reasonable and payable, the Tribunal noted that the costs of repairs may increase once the actual costs was known and that this might result in a balancing charge, however in the absence of any further information the Tribunal is satisfied that the sum claimed is reasonable and payable.

The Management Fees.

43. The applicant was concerning that this had been charged on the basis of a percentage of the costs of the total work and that as major work had increased the costs of the service charges, this had increased the management fee.
44. Mr Glick accepted that this had occurred and he also accepted that charging should be on a fixed fee basis unless it was provided for in the lease. However he relied upon the modest nature of the charge which was £147.30 for 2015/16 and £25.00 for 2016/17. He also stated that the lease provided for the payment of a management fee, and placed reliance upon clause 1 (b) of the lease which provided for the tenants being -: liable to reimburse the landlord for the same and such fees for collection of the rents hereby reserved and other payments to be paid by the Tenant under this clause...”
45. He stated that he had made enquires of other managing agents to see whether his fees were reasonable and that most had indicated that they would not be prepared to carry out management of the building for less than £250.00. He indicated that in future he would consider charging on a per unit basis. The applicant did not provide any information to undermine the reasonableness of the fees.

The decision of the Tribunal

46. The Tribunal at the hearing, informed the parties that based on its knowledge and experience the fees charged were lower than the norm, and that no separate fee had been claimed for the major work.
47. The Tribunal was also satisfied that the service charges were kept at a competitive level, and that repairs and services were provided to the building. The Tribunal noted that Mr Glick accepted that communication could be improved with the leaseholder, and that he was willing to play his part in improving communication.
48. Accordingly the Tribunal is satisfied in all the circumstances that the management fee is reasonable and payable.
49. The interest fee's on the arrears in the sum of £17.71
50. The applicant asked for the reasonableness of the interest fee's to be determined.
51. Mr Glick referred the Tribunal to clauses 1 (b) (i) (ii) and (iii) of the lease which provided for interest to be paid at 2% above the Barclays Bank base rate.

The decision of the Tribunal

52. The Tribunal noted that although Mr Glick worked very effectively to resolve problems at the building this meant that he would sometimes take decisions and not communicate then until sometime later, and that he could also be more forthcoming with information. The Tribunal also noted that the summary of rights and obligations had not been provided until relatively recently, and until the respondent had complied with this requirement the service charges were not payable.
53. Accordingly the Tribunal is satisfied that the interest was not payable until 22 June 2017, this means that at the date that these charges were demanded the sum was not payable. Accordingly no interest shall be payable until 28 days following this decision.

Application under s.20C and refund of fees

54. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that the lease does not provide for the costs of the hearing to be claimed as a service charge accordingly no order is made under section 20C of the 1985.
55. The Tribunal makes no order for the Leaseholder application and hearing fees to be refunded by the landlord.

Name: Judge Daley

Date: 24 July 2017

ANNEX - RIGHTS OF APPEAL

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

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

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 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) The following shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) the amount that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,

- (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement, to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20C

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

- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Leasehold Valuation Tribunals (Fees) (England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

of any question which may be the subject matter of an application under sub-paragraph (1).

Schedule 12, paragraph 10

- (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—
- (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
 - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
- (a) £500, or
 - (b) such other amount as may be specified in procedure regulations.

- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.