HM Courts & Tribunals Service

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Residential Property TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTIONS 27A & 20C OF THE LANDLORD AND TENANT ACT 1985 ('the 1985 Act') and SCHEDULE 11 COMMONHOLD AND LEASEHOLD REFORM ACT 2002 ('the 2002 Act')

Case Reference:	LON/00AU/LSC/2011/0668 & 0768
Premises:	Brewhouse Yard, London EC1V 4JU
Applicants:	Leaseholders at Brewhouse Yard, London EC1
Representative:	Mr R. Southam BSc, FRICS of Chainbow Limited, Managing Agents
Respondent:	Fairhold Clerkenwell Limited (landlords) and Stonedale Property Management Limited (former managing agents)
Representative:	Mr S. Armstrong of counsel instructed by Ms Khan (a solicitor with the Peverel Group) with Mr C. Bettinson (of Estates Management Limited), Ms S. Oakenfold and Mr S. Doherty both of Stonedale Property Management Limited.
Date of hearing:	2 and 3 April 2012 (the Tribunal inspected the premises on the morning of the 2nd April 2012)
Appearance for Applicants:	As above
Appearance for Respondent:	As above
Leasehold Valuation Tribunal:	Professor J. Driscoll, solicitor (lawyer chair), Mr T. Johnson FRICS and Mrs L. Walter MA
Date of decision:	11 May 2012

Decisions of the Tribunal summarised

(1) For each of the years 2007, 2008, 2009 and 2010

The management fees are reduced by 12.5%

The costs of the insurance were reasonably incurred

The level of the commission taken in arranging the insurance was reasonable

The costs of the repairs were reasonably incurred

The costs of the lift maintenance were reasonably incurred

The temporary staff costs for the years 2008, 2009 and 2010 were reasonably incurred

The reasonable costs of electricity for the supply of electricity for the common parts is £100 per unit

For each year the charges for accountancy are reduced by 12.5%

(2) 2007

The costs of employing temporary staff for the year 2007 is reduced to £20,000

The sum of £2592.33 spent on the Piazza should be paid back into the service charge account.

The application

1. This is an application by leaseholders seeking a determination of service charges under section 27A of the 1985 Act and a determination of certain administration charges under Schedule 11 to the 2002 Act. They are the leaseholders of flats in a large mixed-use development which consists of flats

as well as commercial units. A number of houses also form part of the development. Each leaseholder holds a sublease of their flat of the head landlord which is Fairhold Clerkenwell Limited. The owner of the freehold is Choice Win Investments who are not a party to these applications. Previously the property was managed by Stonedale Property Management Limited (which is part of the Peverel group). A majority of the flat leaseholders have exercised the right to manage under the provisions in Part 2 of the Commonhold and Leasehold Act 2002. Chainbow Limited have been appointed managing agents by the RTM company. They took over management of the property on 2 November 2011. We were told that all the leaseholders participated and are members of the RTM company.

2. The origins of these claims are as follows; proceedings were instigated in the Clerkenwell and Shoreditch County Court against Ms De Mendiola who has a lease of Flat 48 Horseshoe Court, 11 Brewhouse Yard London EC1. This claim was made by Fairhold claiming arrears of service charges. After she filed a defence District Judge Sterlini ordered the transfer of the application to this Tribunal on 20 September 2011. Directions were given following an oral pre-trial review held on 1 November 2011. Mr Southam of Chainbow attended on behalf of Ms Mendiola and he told the tribunal that he was instructed on behalf of other leaseholders who wished to be joined in these proceedings. The same day an application was made on behalf of 198 other leaseholders. This led to a second pre-trial review which was held on 13 December 2011 where the directions previously given were varied.

3. As a result 198 of the flat leaseholders are parties to these proceedings. For convenience, and with the agreement of all the parties, we will refer to the leaseholders as the 'applicants' and to landlords as the 'respondents'. At the December pre-trial review counsel attended on behalf of the freeholders and it was agreed that they would only need to be made a party if there was a challenge to that part of the charges that relate to the underground park. In the event it proved unnecessary for the freeholders to be made a party to these applications.

Background to the application

4. The development may be described in the following way. It consists of four separate blocks of flats known as Cannon Court, Horseshoe Court, Gardener Court and Dickinson Court. Each block consists of flats and some of the blocks contain commercial premises as well as flats. There is a concierge service in Dickinson Court which is staffed for 24 hours each day. There are a number of common areas between these blocks including an area known as the Piazza and an underground car park. There are also a number of mews houses in the development.

5. The hearing was arranged for the 2 and 3 April 2012. Bundles of documents were prepared. The Tribunal decided to carry out an inspection of the development on the morning of the 2 April before the start of the hearing. We

were met and accompanied by Mr Southam, Mr Armstrong of counsel, Ms Khan of Peverels (his instructing solicitor), Mr Bettinson, Ms Oakenfold and Mr Doherty who are employed by the former managing agents. We carried out external inspections of the property, internal inspections of the common parts, an internal inspection of the underground car park and the common areas of the development. We describe our inspection in the following paragraphs.

Our inspection

6. The property (previously known as "The Edge") is a modern development built in 2003 of 262 flats situated in the Clerkenwell area of London comprising 4 blocks known as described in paragraph 4 above. The ground floor accommodation is in the main retail or office space and we noticed that several units are vacant and available for letting. There is an underground car park with 205 spaces for use by the commercial and residential lessees. There is also a number of modern mews houses though the owners are not parties to these applications. At the rear of the development is a concreted recreational area with a small planted area known as " The Piazza".

7. We inspected the communal areas of each block by entering the hallways, using the staircases and the lifts and by walking along the corridors. We did not inspect any of the flats. The Tribunal noted in particular that there were black marks around many of the light fittings and on the 5th floor of Gardener Court and samples of other fittings being used as possible styles for replacement in due course. In some cases light covers were missing due, we were told, to a design defect. Overall the blocks were generally clean with emulsioned walls showing scuffs (and so on) commonly seen in blocks where there is regular use by the occupiers.

The leases

8. It is necessary to summarise those terms of the leases which relate to the management of the development and the service charges. A number of leases were included in the bundles and we were told that they are in the same terms. (We were also told that the flats include flats with one bedroom, two bedrooms and three bedrooms). Some flat leases include use of a parking space as part of the demise; others do not. Given the relative complexity of this mixed-use development it is not surprising that the service charge and other provisions in the leases are themselves of some complexity. As an illustration we summarise the relevant provisions of the underlease of Flat 48, Horseshoe Lane. This particular lease does not confer the right to park in the underground car park. We do not consider it necessary to do more than a bare summary of the relevant parts of the lease. The lease specifies the service charge payable by the leaseholder by distinguishing between: (i) Apartments service charges (charges for the common parts or other parts of the building that serve the residential parts); (ii) Buildings service charge (maintaining all the buildings except for the residential parts); (iii) Block service charge (charges for maintaining the non-residential parts); (iv) Car

park service charge (self-explanatory); (v) General service charge (charges incurred in relation to the common parts of the development including the landscaped areas) and (vi) Insurance charge (self explanatory)

9. Each lease contains a specified proportion for each head of charge. For example, the lease for Flat 48 specifies the apartment charge percentage as 1.4476% and the general charges at 0.3756. The service charge year is the calendar year.

The hearing

10. The hearing started on the afternoon of the 2nd April 2012. Mr Southam presented the leaseholders' case for challenging the service charges. He told us that he would not be calling any of the leaseholders (or any other witnesses) to give evidence. He had a file containing his instructions from all the 189 leaseholders. Instead of calling witnesses he gave an account and summary of the general concerns the applicant leaseholders have had over the years in question (that is the years 2007, 2008, 2009, and 2010 . The application form for each of these service charge years simply states that 'service charges incurred contrary to the terms of the lease' without any further detail of the complaints about the charges.

11. In a signed statement dated 6 March 2012 Mr Southam set out the leaseholder's complaints. He elaborated on this in his statements to the Tribunal. He told us that he was finding it difficult to obtain statements, information or relevant documents from the previous managing agents. In summary, the leaseholders, he says, have the following complaints:

(i) Poor accounts and record keeping

(ii) Poor management (including poor management of contractors, failure to deal with problems with the communal supplies of electricity, poor communication, failure to deal with building defects, excessive costs for the Piazza area, the car parking re-charge)

(iii) The costs of the insurance are too high and excessive commission has been taken

(iv) Excessive costs for the maintenance of the lifts

(v) Excessive charges for temporary concierge (for the years 2007 - 2010)

(vi) That the management fees should be reduced (all years)

12. Mr Southam elaborated on a second (unsigned) statement included at page 311 of the hearing bundle. He also suggested that the fact that the leaseholders have taken over management of the development and have

appointed his firm as replacement managing agents is further confirmation of the level of leaseholder dissatisfaction with the performance of the previous managing agents.

13. Counsel for the landlords outlined his case and he called a number of witnesses. First, Mr Bettinson gave evidence on the insurance arrangements. He elaborated on his statement which he signed on 26 March 2012. He was asked a number of questions by Mr Southam and by the Tribunal.

14. Mr Bettison described himself as the Group Head of Insurance for Estates & Management Limited who acted as the landlord's agents in arranging insurance from the year 2007 to 2011. His company used a broker called Tyser to arrange the insurance together they reviewed the insurance each year. In 2007 a re-marketing exercise was undertaken with a number of major insurance companies including Norwich Union (now Arriva), Royal Sun and Alliance and AXA. In each successive year the same marketing exercise was carried and Zurich were also invited to tender for the insurance. To begin with AXA were appointed but after two years they proposed an increased premium on account of the high rates of claims. Zurich who submitted the most competitive premium were then appointed.

15. To summarise, Mr Bettinson told us that the landlords have throughout this period sought competitive quotations from the market and that the relatively high premiums are the result of the high level of claims made under the insurance policies.

16. He also told us that his firm and Tyser share a premium in arranging the insurance. A document was annexed to his written statement which shows that an average commission of 26.12% has been taken. In his opinion this is not excessive and is well below the 50% commission the applicants claimed was taken.

17. As to the quotation the applicants obtained from Willis, (insurance brokers) he commented that this does not take account of the poor claims history and that it is significant, in his view that the current insurance his company arranged has been continued by the applicants. He also suggests that the Willis quotation shows that the level of commission his company and Tyser have shared is reasonable.

18. Counsel for the respondents then called Mr Doherty who gave evidence in which he elaborated on his statement signed on 28 March 2012. He also gave additional evidence on the adjourned hearing on 3 April 2012. Mr Doherty is an accountant employed by the Peverel Property Management Group of which Stonedale Property Management is a member. His work includes dealing with the service charge accounts relating to the developments owned and managed by the Peverel Group. He also answered questions from Mr Southam and those put to him by the Tribunal.

19. As to the complaints about the slow handover of accounts and other documents following the exercise of the RTM, he told us that there were delays with the 2010 year accounts. Because the previously appointed auditors were slow in preparing the accounts it was decided to appoint new auditors and this in turn has led to further delays.

20. He says that some £75,000 has been handed over to the RTM company. We were surprised when he told us that he did not know how much other monies are currently in the bank account holding the reserves and advance payments of service charges so we asked him to obtain the information which he did on the second day of the hearing. That figure was £175,619.

21. We then turned to the dispute over the Piazza and car park charges. He reminded us that these charges are incurred by the freeholder who in turn recovers these costs from the respondents (and other head leaseholders who have an interest in the development). The respondents pay the charges and then recover them from the leaseholders. He denied that they recover more than they pay the freeholder and he describes the discrepancies in the accounts as 'audit adjustments'.

22. Counsel then called Ms Oakenfold who elaborated on her (unsigned) statement dated March 2012. She described herself as a Senior Property Manager employed by Stonedale Property Management. Her involvement with this development started in May 2011. Ms Oakenfold also answered questions from Mr Southam and those posed by the Tribunal.

23. She denied the accusations of mismanagement and she referred to various letters and emails produced as exhibits in her statement which, she argued, show that their management was 'proactive' and of a good quality. As to the complaints over the proposed works to the electrical and light fittings works, she suggested that the documents show that there was extensive consultation with the leaseholders and that there were a number of meetings with contractors. Her company took full account of representations that were made by the leaseholders. In the event it was decided not to proceed with the works as the leaseholders had decided to exercise the RTM. As to the costs of dealing with faulty lights, she said that there were a number of design faults with the development. In her opinion the costs of any remedial works is not the responsibility of the managing agents (or the landlord) and the leaseholders should consider a claim against the developers.

24. Turning to the complaints that the costs of lift maintenance were too high, Ms Oakenfold maintains that the best cover was arranged with the company who manufactures the lift equipment ('Kone'). She notes that the leaseholders through their RTM company and their new managing agents have arranged cheaper cover. However, she doubts if this is as extensive as the cover her company has arranged. Further, that these costs may have been reduced is not surprising in the current economic climate as companies are discounting their prices to attract business.

25. As to the leaseholders' complaints of the costs of providing temporary concierge services, she told us that there is a head concierge who works 9.00 to 17.00 Monday to Friday. In addition there are two day porters who work 4 days on and 4 days off between 07.00 and 19.00 with two night porters who work also 4 days on and 4 days off between 19.00 and 07.00 and an estate worker who works Monday and Friday. Ms Oakenfold told us (and referred to various invoices) that having to employ temporary staff is an inevitable feature of providing this level of services. Temporary staff are employed where full-time staff are ill, or away on holiday, or to provide cover there a permanent member of staff resigns and temporary cover is needed until that person has been replaced.

26. She also contends that their costs given the level of service are reasonable.

27. During the afternoon of the second day of the hearing, the Tribunal adjourned to consider the form of the decision. Following this adjournment we suggested that we should make general determinations of the individual charges that have been challenged and that this would form the foundation for a revised set of figures to be produced by the respondents. Those representing the parties agreed that this is a sensible approach.

28. Finally, as to costs, those representing the parties told us that no application would be made under section 20C of the 1985 Act as the property is now being managed under the RTM.

Reasons for our decisions

29. These applications are made under section 27A of the 1985 Act a copy of which is appended to this decision. It was agreed by the parties that determinations are sought for the service charge years 2007 – 2010. Although the leaseholders originally challenged certain administration charges under the provisions in the 2002 Ac these were not pursued at the hearing.

30. There were no disputes between the parties over the correct interpretation of the leases. The issues related, therefore, to the reasonableness of the service charges in terms of both the quality of the services provided and the actual costs of them.

31. In arriving at our determinations of the disputed charges we have considered the evidence and the very extensive documentation provided. As noted earlier in this decision Mr Southam did not call any witnesses and did not prepare any signed witness statements. He presented the applicant's case on the basis of the information and the instructions he received. To be fair he was able to support many of the complaints by reference to the documents. Nevertheless, his case would have been all the more persuasive if some of the leaseholders (perhaps those most closely associated with the exercise of the RTM) had attended the hearing to give oral evidence and to be available for cross-examination.

32. We deal first with the management charges. The general approach (based on a rate per flat) is not, in our experience excessive for the service charge years in dispute. However, as counsel for the respondent conceded in his closing submissions some of the criticisms made by the applicants have foundation. The accounts should have been prepared with greater expedition and the managing agents should have sorted out the problems with the electricity. Mr Southam made a fair point that the fact that the leaseholders have gone to the trouble and the expense of exercising the RTM is evidence of their dissatisfaction with the quality of management. However, we consider his proposed 50% reduction far too harsh given the scale and the complications of managing the residential elements of this development. We determine that the management charges should be reduced by 12.5% for each of the service charge periods in dispute.

33. As to the insurance we start with the well-known principle that a landlord is not required to find the cheapest insurance available. It was helpful to have the oral evidence of Mr Bettinson who explained in some detail the procedures he says took place each year when his company arranged the insurance. We accept his explanation that the rise in the premiums was caused by the large number of claims. Mr Southam produced a statement from a broker which proposed lower premiums but it is not clear whether this broker has taken account of the level of claims in preceding years. Mr Bettinson's evidence satisfies us that his company took appropriate steps to make sure that the costs of insuring were and remained competitive. We therefore determine that the costs of the insurance were reasonably incurred and recoverable under the leases.

34. Similarly, we are satisfied that the commission that was taken is in line with current practice and justified as the recipients of the commission arrange the insurance and between them process any claims. Accordingly we determine that the payment and receipt of the commissions received for arranging the insurance was reasonable.

35. Turning to the costs of the lift maintenance, we consider that the importance of this is such that few leaseholders would reasonably want to economise on these costs. Whilst it is true that Mr Southam has found a less costly service, we do not think that this shows that the previous agents acted unreasonably. We also consider that choosing the company that is responsible for the manufacture of these installations and who could therefore be fairly be expected to be expert, was a reasonable course to take. We determine that the costs of the lift maintenance were reasonably incurred and recoverable in full from the leaseholders.

36. As to the costs of employing temporary staff the additional costs is for the most part reasonable. The costs are documented and we accept that in order to provide this 24 hour service provision has to be made for temporary cover when a member of staff is unable to work because of illness or because they are taking their holidays. Full records have been maintained of this expenditure.

37. The one exception are the charges for the year 2007 which are out of line with the other years. No convincing explanation for this was given by those giving evidence for this disparity. We determine that these charges should be reduced to £20,000 for 2007 in line with the the figures for the other years. However, for the years 2008, 2009 and 2010 we determine that these costs were reasonably incurred.

38. For each year the reasonable costs of electricity for the supply of electricity for the common parts is £100 per unit. No convincing explanation was given for far greater costs for two of the blocks. We consider that the previous managing agents should have investigated this. Accordingly we determine that the reasonable cost of providing electricity is £100 per unit.

39. The complaints about the production of the accounts are referred to above and respondents accepted that many of these criticisms are well-founded. They accepted that they still hold substantial sums of money which belongs to the leaseholders. We determine that these costs should be reduced by 12.5% for each of the service charge years.

40. As to the next steps, the parties will no doubt agree the charges in a way consistent with these general determinations. As to the County Court proceedings, a copy of this decision will be sent to them. No doubt the parties to that claim will seek to avoid any further costs so that claim can be settled as well.

41. We finish with some comments on the presentation of these applications. We were grateful to those representing the parties for the clear way in which they presented their cases. However, we were concerned that the parties appear to have spared no expense in preparing the bundles which we estimate run to some 2,500 pages. In all there were five bundles and there was a considerable degree of repetition in the papers.

Chair:	
	James Driscoll
Date:	11 May 2012

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 20B

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

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

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation 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 a leasehold valuation tribunal;
(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation 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).

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—

(a) specified in his lease, nor
(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to a leasehold valuation tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) 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.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or
(b) on particular evidence,

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.