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LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTIONS 27A & 20C OF THE LANDLORD AND TENANT ACT 1985

Case Reference:	LON/00AH/LSC/2012/0071
Premises:	Flats 1 – 8, 34-36 Coombe Road, Croydon, Surrey CR10 1BP

Applicant(s):	Mr J Lippitt, Flat 1 Mr N Nath, Flat 2 Mr D Armstrong, Flat 3 Mr V Foglia & Ms C Wilson, Flat 4 Mr J Hart and Mr J Martin Flat 5 Mr A Abedi, Flat 6 Mr C M Monaghan & Mrs J Monaghan, Flat 7 Mrs D Pryor, Flat 8
Appearances For the Applicants:	Miss T Suessenbach Mr Foglia Mr Nath
Respondent(s):	Mr J McMillan
Appearances For the Respondents:	Mr Weekes of Counsel Mr C J A Smith from McMillan Williams Solicitors Mr Dean Sudds
	Mr B M Milton BSc MRICS MAE ACIArb Attended as the single joint expert witness
Date of Hearing:	15th June 2012
Leasehold Valuation Tribunal:	Mr A A Dutton – chair Mrs S Redmond B Sc(Econ) MRICS Mrs L Walter MA (Hons)
Date of decision:	12th July 2012

DECISION

The Tribunal determines that the sums payable by the Applicants in this matter are as set out in the attached schedule.

The Tribunal further determines that the costs of these proceedings are in part recoverable as a service charge and therefore makes an order under section 20C only insofar as 50% of the costs are concerned for the reasons set out below.

REASONS

Background

1. This matter came before the Tribunal on 15th June 2012 as a result of an application made by the Leaseholders of the property at 34-36 Coombe Road, Croydon, Surrey. The Application, which was dated 24th January 2012, sought to challenge certain matters in the service charge years from 2009 to 2012 inclusive. In 2009 the challenge was to fees from Bennington Green Associates in relation to major works carried out at the property. This theme continued for 2010 where a challenge was also made to the costs of those works, the management fees charged by Cambridge Property Management Limited and the insurance for the premises. In the year 2011 there were challenges made to specific invoices, further professional charges of Bennington Green and payments in respect of major works as well as a further challenge to the insurance costs. In the year 2012 the challenges were made to management fees and insurance.

2. The Applicants have had something of a continuing battle with the Landlord, Mr McMillan, who is a solicitor and partner in the firm McMillan Willams and Co. In 2007 an application was made by some of the named of the Applicants under section 27A of the Act challenging various costs which resulted in a number of reductions in the sums being claimed by the Landlord.

3. In 2008 an application was made to the Tribunal by Mr McMillan seeking dispensation under the provisions of sections 20ZA of the Act. This decision is important in relation to the matter that came before us on 15th June this year. The decision made by the Tribunal at that time records an agreement reached which is set out in full in that decision and it is not necessary for us to recount that in this document. Suffice to say the provisions agreed were that an independent expert should be appointed by the Royal Institute of Chartered Surveyors to carry out a full survey of the roofs, guttering, down pipes, internal common parts to, and the exterior of, the property, prepare a report on the condition of the roof structure, coverings, etc and prepare a specification of works to go out to competitive tender for such works as were necessary to be undertaken. The surveyor was also asked to make comments, as appropriate,

as to the cause of any want of repairs and how long they had been in that condition.

4. The agreement went on to provide that the Applicant, that is to say Mr McMillan, would fund the costs of the surveyor and the execution of the works provided he was able to recover those costs under the provision of the lease. This was however, without prejudice to the Respondent's ability to challenge the reasonableness of those sums and whether Mr McMillan was liable for any part of those costs for failing to carry them out earlier.

5. As a result of that agreement Mr Milton was appointed as the independent single expert and in September 2009 produced a report on the condition of the property. He found that the overall condition of the main roof was fair to poor and concluded that the roof had been in that condition for some 10 to 20 years although patch repairs had been undertaken. With regard to the flat roofs he found those in extremely poor condition and that attempts had been made over the years to try and correct any defects but that the roof had been in a poor condition for some time. In relation to the external decorations he found that the timber windows were poor and that there was a certain amount of rot and decay in some of the barge boards, fascias and soffits. He then set out his recommendations giving a budget cost at that time of between £35,000 and £45,000. There was some delay in completing these works. Initially it seems there were difficulties in obtaining quotes. However, a suitable quote was obtained; following notices to the leaseholders under section 20 of the Act, the works were undertaken with the certificate of practical completion being issued in February of 2011, the rectification period expiring on 15th August 2011.

6. Following the completion of the works Mr Milton prepared his report for the Tribunal to confirm the works undertaken and dealing with any additional costs that may have been caused by the Landlord's admitted want of repair. There had been disagreement between the parties as to the documents to be shown to him which had affected his ability to produce the report when he was intending. Nonetheless the report was before us at the hearing. We will deal with Mr Milton's report and the evidence that he gave to us at the Tribunal Hearing in due course.

7. Prior to the Hearing we received bundles of documents from both parties. One thing this case was not short of was paperwork. The Applicants' bundle ran to some 1,209 pages, not content with that however we were then provided with a detailed statement of case which ran to a further 23 pages and some nine witness statements one of which by Mr Foglia ran to some 30 pages including exhibits. Matters did not stop there because the Applicant responded to the Respondent's statement of case and produced a further document which with exhibits ran to some 33 pages. It should also be mentioned that on the morning of the Hearing Miss Suessenbach thought it appropriate to produce a skeleton argument and a chronology. The skeleton argument ran to some 13 pages and the chronology to another seven. The Respondent, unable to agree it appears, a bundle with the Applicants

produced his own which added a further 205 pages to the plethora of documentation which was already before us. As a matter of comment we should say that the Tribunal was not assisted by the amount of documentation produced particularly by the Applicants. This is relevant insofar as the costs of these proceedings are concerned and we will return to this matter in due course. It did, however, make it very difficult to extract from the paperwork before us the documents that were actually of assistance in deciding this case. We did the best we could to consider the papers and believe we have read all that was relevant to the issues to be decided in a case listed for one day.

Hearing

8. At the Hearing we firstly heard from Mr Milton who took us through his report which was dated 11th June 2012. He confirmed the documentation provided by the parties which he had read and made it clear that papers sent to him by the Respondents after drafting his report did not affect his decision. He proceeded to deal with the items of disrepair as found in his earlier 2009 report generally indicating that the findings at that time had been borne out by the works that were undertaken.

9. He told us that works were placed in the hands of Collins (Contractors) Limited who priced the specification, that he and a colleague had prepared, at £52,289. This was approximately £7,000 higher than his budget estimate. He told us that three valuations of the works were undertaken during the course of the contract and certificates of payment were issued. The final account agreed with the contractor was £51,892.46 and copies of the valuation sheets, certificates issued, breakdown of the final account and certificate of practical completion were included in his report. On the issue as to whether the costs of work were more expensive due to the failure of the freeholder he found that there were items which were set out on contract instructions within his report giving a total of some £4,934.50 which he found should be offset against the costs of repair as a result of the absence of planned maintenance. He then set out his fees for dealing with the works.

10. It was put to him by Miss Suessenbach that he had not read all the documentation submitted or in the alternative had read documentation which was not appropriate. He told us, however, that he did believe that he had been deprived of documentation which had affected his ability to carry out the inspection and the report as provided for in the 2008 order.

11. He was then referred to a letter sent by the then managing agents Anderton and Son to the residents dated 28th September 2000. This letter formed a large element of the Applicants' case in seeking to establish that unnecessary costs had been incurred in carrying out the works in 2011 as a result of the Landlord's failure to carry out timely repairs. It is perhaps therefore appropriate to recount part of that letter.

"The accounts for the ended September 2000 will shortly be prepared and sent to the accountants and a service charge for the year 2000-2001 will be issued together with any shortfall in March 2001. This will give you an opportunity of putting aside funds to meet this liability which undoubtedly will not be insubstantial bearing in mind the amount of work which needs to be undertaken in this connection.

The works which are due to be carried out include:-

(i) Replacement of defective and missing guttering with additional downpipes to the rear of No 36 together with provision for two soakaways.

(ii) Fireproof doors and cupboards to enclose electricity meters and consumer board (communal hallway to No 36).

(iii) Roof overhaul.

(iv) Installation of four external PIR Security flood lamp fittings.

(v) External redecoration.

Tenders are being sought at present but it is thought that the total likely cost will be in the order of £20,000."

It was put to Mr Milton that this showed what the costs should have been had the works been carried out at that time. He however pointed out that there had been additional works undertaken in 2011 including insulation and that the works to the roof were not an 'overhaul' but a complete replacement. He was then asked whether he had assessed any of the internal damage which he confirmed he had not as he stated this was not part of his instructions. He told us that the overhaul in 2000 would only have been a stopgap measure. In his view the roof had come to the end of its original life and that if a roof replacement had occurred in 2000 then the £20,000 estimate would have been considerably higher.

12. Mr Weekes asked him to estimate the reasonable costs of the maintenance works for which the allowance was made if those works had been carried out at the appropriate time. Doing the best he could he thought that perhaps a third of the amount could be deducted for the want of repair had the works been carried out at the right time and billed to the leaseholders.

13. He confirmed with us that he had followed the section 20 procedures and that while it was possible that the notice of intention was defective in that it did not include the full works, he was satisfied that the Applicants were fully aware of what was happening given the terms of the agreement made in 2008. Criticism was made of Mr Milton in that it appeared that he had imposed a

fairly strict timeline on completing the contract and it was suggested that if he had not done so other contractors would have been willing to have quoted, in particular contractors who it appears may have been put forward by the Applicants. He was however of the view that a 20 day contract was appropriate in that it avoided certain administrative costs and although the contract went for longer than that due to inclement weather it did not increase the costs to the Applicants. He also referred us to an email dated 12th July 2010 from the Leaseholders at Coombe Road confirming that they concurred with the appointment of Collins (Contractors) as the preferred contractor of the three quotes obtained. He pointed out that the project was tendered twice as there had been no response from contractors elected by the parties to the first tender.

14. As a challenge was raised to the section 20 procedures Mr Weekes Counsel for the Respondent indicated that they would be making an application for dispensation if we were of the view that section 20 procedures had not been fully complied with.

15. After Mr Milton we heard from Mr Foglia who confirmed that his extensive witness statement set out the position. He told us that he had had a ceiling collapse in 2005 after he purchased the property and that it remained in that state for a number of months. He was then cross examined by Mr Weekes on the number of emails and letters sent to the managing agents and the Landlord but his response was that he had lived there for some five years with buckets in the kitchen, life was made a misery and had to work from home because of the state of disrepair. There was also a suggestion that a guarantee for some works at the property that had been put in place some time ago should have been visited for the purposes of carrying out some items of repair but a closer inspection of that guarantee indicated that it was not relevant to the works that were carried out in 2011.

16. On the question of insurance, it was accepted by the Applicants that a premium of £1,680 was appropriate, this having been the sum payable for the year ending July 2009 following an increase in the building's declared value from £533,780 the year before to £1,000,000. This it was said set the benchmark. However, for the following years the insurance premium had increased to over £3,000. It appears that the Applicants had contacted the insurers in 2009 which had resulted in that insurance company withdrawing cover. The Respondent then had to find alternative insurance arrangements which he did with Brit Insurance, although it was noted that the total sum insured had increased to £2,050,000. The insurance was provided on the understanding that certain works were carried out to the property. It is the Applicants' case that the increase in the insurance is as a result of the Respondent's failure to carry out timely repairs and it was challenged on that basis. It is right to record that no comparable insurance quotes were obtained by the Applicants. There then followed challenges to a number of specific invoices details of which are set out on the schedule attached and our findings made in respect of those are as set out below.

17. By way of comment at this point of the hearing Mr Weekes thought that the challenges made by the Applicants did not appear to be to the costs of the major works or fees, just the distribution of those costs and fees between the parties taking into account the historic neglect. He reminded us that no comparable evidence had been produced by the Applicants to show that the level of insurance presently being claimed was unreasonable, nor was there any evidence before us that clearly stated the reasons for the insurers declining to provide cover. We had no correspondence from the Applicants showing what information may have been given to the insurers at the time and it appears that the Respondent's brokers had not been able to establish the position with Norwich Union. It was suggested that perhaps the Applicants may have given other information which affected the insurer's willingness to continue cover.

18. A challenge had been made to the managing agent's fees on the basis that the agreement entered into by the managing agents was for more than 12 months. A copy of the agreement was in the bundle and this showed that the term was three months from the date of the agreement with a three month notice to terminate.

19. We had noted the various challenges made to the specific invoices.

20. The Respondent's case was then put forward by Mr Weekes accepting that the Applicants were entitled to a reduction of the major works. He did, however, seek to argue that that sum should be reduced by the one third which Mr Milton said would have been the cost that might have been incurred if the works had been carried out under routine maintenance provisions. The disputed invoices were dealt with and Mr Colum Smith, the solicitor representing Mr McMillan was called to give evidence. He tendered his witness statement and was asked questions by Miss Suessenbach which did not in truth assist us in reaching our determination. Mr Sudds also gave limited evidence in support of his witness statement which was in the Respondent's bundle. Finally, Mr Weekes, who earlier in the Hearing had accepted that the section 20 notice was defective, withdrew that admission stating that he considered the notice to be correct and compliant with the Act. He confirmed that if we were of the view that it was defective, then the application for dispensation remained.

21. Miss Suessenbach thought that technically the Applicants had not been fully consulted. We then had arguments on the question of costs. Miss Suessenbach thought that the Landlord had breached his repairing covenants and it was just and equitable to make an order under section 20C particularly as the Applicants had tried to reach an agreement. Mr Weekes confirmed that in his view the provision of the lease enabled the recovery of costs and that whilst there were aspects in which Mr McMillan could be criticised, that was being dealt with before us and that apart from the major works the other issues taken by the Applicants were bad points and that that should therefore drive the basis upon which we determined the cost position.

22. It is perhaps appropriate to note that the Respondent indicated that he was more than happy for the Applicants to self-manage the property if that would be of assistance.

23. We did not consider that an inspection would be necessary.

The Law

24. The relevant aspects of law applicable to this case are shown in the attached appendix.

Findings

25. Before we make our findings in respect of these matters we should perhaps make some general comments on the case put forward by the Applicants. With all respect to them it seems to us that it was in large part misconceived. A great deal of time was spent in the documentation reciting the history of the lack of repair and the damage caused to the individual leaseholders' flats. In our finding these are matters that do not fall within section 27A of the Act and if any tenant believes that they have a claim for damage caused to their flat they should proceed through the civil courts to recover such level of damages as they believe to be appropriate. We are aware of Upper Tribunal authority which indicates that we can consider set off and counterclaims which relate to the service charge issues but no evidence was adduced by the Applicants to enable us to do so. It is for that reason that Mr Milton did not deal with the internal state of repair for the various flats although he was criticised by Miss Suessenbach for not doing so. The issue before us was the costs of the major works carried out in 2011 and what element of those costs had been caused by the accepted failings of the Respondent in carrying out timely repairs and planned maintenance.

26. We found the evidence of Mr Milton very helpful. He struck us as a competent and straightforward witness doing the best he could in the circumstances where he was being bombarded with documentation and requests by the parties. The parties failed to agree a letter of joint instruction largely we suspect as a result of the Applicants' desire to try and include internal repairing issues and in our finding Mr Milton did an excellent job in producing the report that he did and we have no hesitation in accepting his findings. The issues relating to the non-compliance with section 20 seemed to us to be something of a red herring. We accept Mr Weekes' argument that in fact the notice of intention does comply with the meaning of the Act, the more so of course as these works were undertaken following the agreement made in 2008 when the Applicants were clearly fully aware of what was being undertaken and were involved to a considerable degree in the investigation into the works required. We find that even if there was a technical breach of section 20, which we do not think is the case, there has been no prejudice caused to the Applicants because of the involvement of Mr Milton, as in our view an honest and straightforward valuer seeking to establish the truth to the

issues in respect of this matter. In addition the Applicants confirmed their acceptance of the contractor who carried out the works. We find that the costs of the major works are perfectly reasonable, and indeed were not challenged to any great degree, and the Applicants accepted that the standard of work was perfectly satisfactory. The only issue, therefore, is the amount by which those works are to be laid at the foot of the Respondent. In Mr Milton's report he concluded that the sum for which the Respondent should be solely liable was £4,934.54. Mr Weekes sought to obtain a reduction in that amount by asking Mr Milton to come up with a figure that he thought might reflect the cost of the those works if carried out at the appropriate time. Mr Milton doing the best he could 'on the hoof' as it were, thought a figure of perhaps one third might be appropriate. The sum of £4,934.50 is Mr Milton's view of the landlord's responsibility for the state of the works at the present time. It is not possible to say what costs may have been saved by planned maintenance when one considers the overall costs that were incurred. It is without doubt the case that the Landlord did not carry out the works when he should have done and we do not, therefore, consider it appropriate to reduce the amount which the Landlord should pay towards these costs from the figure put forward by Mr Milton in his report. Mr Milton did not consider it necessary to allow any reduction in costs for works had they been undertaken at the appropriate time and in those circumstances we are happy to accept the figure Mr Milton put forward in his report. The balance of the costs of major works will need to be paid by the Applicants. We do not know whether any of the Applicants have put money aside to deal with this. It would be fair to say that they have had ample opportunity to do so. We understand that these costs have been funded by the Respondent and he is entitled to reimbursement. We would therefore order that the these costs should be paid by the leaseholders within 56 days or such other longer period as the parties can agree.

27. We turn then to the question of the insurance. It is right to say that we are concerned about the dramatic increase which occurred when the insurance was moved from the Norwich Union, who declined to continue cover, to Brit. On the face of it it seems that the lack of repair of the property may have had an impact on the premium. However, there is no hard evidence to that effect. It would be supposition only. Whilst it does seem to us that the insurance broken down on a per unit basis is on the high side, but not dramatically so in our knowledge and experience, in the absence of any evidence whatsoever to suggest that the premiums are unreasonable we can do nothing other than to find that the premiums as claimed for the years in dispute are recoverable. We do not know why the insured value was increased to £2,000,000 and this may be on the high side although in our experience the declared value of the property does not have a great impact on the premium payable. Certainly the history of insurance claims which we understand have been made will have an impact.

28. We then turn to the question of the complaint that the management agreement was a qualifying long-term agreement for which there had been no consultation. With respect to the Applicants this argument just does not hold water. The qualifying agreement provisions of section 20 and the regulations

are not appropriate in this case. The management agreement was for a term of three months determinate on three months' notice and is clearly not caught by the terms of the Act. Mr Weekes had referred us to some Upper Tribunal cases that confirmed the position but it seems to us that that is a misconceived challenge by the Applicants.

29. We then turned to the individual invoices which as we have indicated we set out on the attached schedule. The first is the invoice from Bennington Green Limited for whom Mr Milton worked or was a partner and is dated 26th October 2009 in the sum of £2,376.48. Our finding in this regard is that this invoice was a joint instruction to Mr Milton to prepare a report and that the costs therefore should be shared as to 50% by the Respondent and 50% to the Applicants.

30. There then followed invoices by Bennington Green dated 20th July 2020 in the sum of £4,588.38. A further invoice on 21st April 2011 in the sum of £6,148.50 which dealt with site inspections and issuing of certificates and a final invoice this time from Mr Milton in his own capacity in the sum of £1,029. This last invoice appears not to have been challenged by the Applicants but it was said that they had not in fact seen this invoice until the proceedings.

31. We have concluded that the appropriate way of dealing with these invoices is to apply the percentage reduction that was applied to the costs of the major works. On our calculation the sum is just under 10% and for ease of reckoning we have applied therefore a 10% reduction from the fees of Bennington Green and Mr Milton. Again this is as set out on the attached schedule. We make no further reductions in respect of the invoices that were also under dispute namely those from PDH Property Renovations and CMS Maintenance Gardening Services. It seems to us from a review of the invoices in question and from reading the witness statements and the evidence of Mr Sudds that these costs had been properly incurred and that the sums claimed were reasonable. Accordingly no further reduction is made in respect of those matters.

32. We must next consider the question of costs. We find that the lease at paragraph 5.2 does allow the recovery. We consider also that the Applicants have to an extent brought this case upon themselves with regard to the somewhat misconceived basis upon which the application has been pursued and the sheer volume of paperwork which has been provided which has wasted Tribunal time and has made it more difficult to follow the Applicants' arguments. However, it would be inappropriate to lay the blame solely at the Applicants' door. We have found from the evidence before us that there has been a historic lack of proper management of the property and a lack of interest on the part of the Landlord. Complaints have been made for some considerable time and there has been a lack of positive response certainly until 2009. Criticism was made of Mr Foglia for bombarding the managing agents and the Landlord with correspondence and emails concerning the problems with his property. Unfortunately emails tend to encourage immediate responses. However, we have sympathy with Mr Foglia and any

other tenants in the property who were affected by the leaking roof. It must have been difficult and we make no criticism of him or others for the plethora of correspondence that passed between them, the managing agents and the Landlord caused largely by the Landlord's unwillingness to grasp the nettle and deal with the repairs. We find, therefore, that it is appropriate to allow the Landlord to recover 50% of the costs that he has incurred in these proceedings, such costs to be recoverable as a service charge. The balance of 50% the Landlord will have to bear himself. It is open to the Applicants to challenge the costs under section 27A of the Act if they think that they are excessive. We make no refund of fees.

33. We hope that now the repairs have been concluded the parties can establish some form of amicable relationship. The Respondent indicated through his representative that he would be perfectly happy for the Applicants to self-manage the block and perhaps that is the way forward. The Applicants appear to be a united group as all participated in the proceedings and we hope that that is a possible way forward to ensure that there are no further references to this Tribunal.

Chairman: ____________________
A A Dutton

Date: 12 July 2012

Schedule Annexed to the Decision of the Leasehold Valuation Tribunal in Case No LON/00AH/LSC/2012/0071

Major Works

Sum Claimed		**Amounts payable by Applicants**
Sum Claimed for major works £51,892.46		£46,957.96
Fees of Bennington Green £2,376.48		£1,188.24
Fees paid to Bennington Green £4,588.38		£4,130
Fees for Bennington Green Associates £6,148.50		£5,534
Fees payable to Mr Milton £1,029		£926
PHD Property Renovations Invoice 5th May 2011 £385		£385
CMS Maintenance Limited Invoice 31st May 2011 £336		£336
PHD Property Renovations Invoice 14th October 2011 £360		£360
CMS Maintenance Limited Invoice 31st December 2011 £560.40		£560.40

Landlord and Tenant Act 1985

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a Tenant of a dwelling as part of or in addition to the rent -
- (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the Landlord's costs of management, and
- (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the Landlord, or a superior Landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
- (a) "costs" includes overheads, and
- (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
- (a) only to the extent that they are reasonably incurred, and
- (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(1) An application may be made to a Leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
- (a) the person by whom it is payable,
- (b) the person to whom it is payable,
- (c) the amount which is payable,
- (d) the date at or by which it is payable, and
- (e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a Leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
- (b) the person to whom it would be payable,
- (c) the amount which would be payable,
- (d) the date at or by which it would be payable, and
- (e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the Tenant,
- (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,
- (c) has been the subject of determination by a court, or
- (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or 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.