8669.

HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

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

Case Reference:	LON/00BG/LSC/2012/0534
Premises:	4 Westport Street, London, E1 ORA
Applicant:	Assethold Ltd
Representative:	David Nicholls of Counsel instructed by Conway & Co, Solicitors.
Respondent:	See list of leaseholders attached to application
Representative:	Justin Bates of Counsel instructed by Blake Lapthorn, Solicitors
Date of hearing:	10/12/2012
Appearance for Applicant:	Mrs E Gurvits Simon Levy FRICS
Appearance for Respondent(s):	
Leasehold Valuation Tribunal:	D Banfield FRICS T Sennett MA FCIEH Mrs R Turner JP
Date of Decision:	4th March 2013

The Application

1. At the conclusion of the hearing on 10th December 2012 it was greed that matters relating to S.20B of the Landlord and Tenant Act 1985 would be dealt with by way of written submissions and directions were therefore issued.
2. Submissions were received from Conway and Co on behalf of the Applicant dated 13th February 2013 which included copies of invoices, time sheets and service charge demands.
3. The Respondents' representative has not made submissions and have confirmed that they do not intend to do so.

Decision

4. In the absence of any challenge to the submissions made on behalf of the Applicant we are satisfied that our decision made on 21st January 2013 no longer needs to be qualified and now becomes final.

D Banfield FRICS

Dated 4th March 2013

HM Courts & Tribunals Service

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

Case Reference:	LONIOOBG/LSC/2012/0534
Premises:	4 Westport Street, London E1 ORA
Applicant:	Assethold Ltd
Representative:	David Nicholls of Counsel instructed by Conway & Co, Solicitors.
Respondent:	See list of leaseholders attached to application
Representative:	Justin Bates of Counsel instructed by Blake Lapthorn, Solicitors
Date of hearing:	10/12/2012
Appearance for Applicant:	Mrs E Gurvits Simon Levy FRICS
Appearance for Respondent(s):	
Leasehold Valuation Tribunal:	D Banfield FRICS T Sennett MA FCIEH Mrs R Turner JP
Date of decision:	21st January 2013

Summary Decision of the Tribunal

a) Not to allow the recovery of legal fees totalling £55,600.52 from the lessees.

b) To allow Simon Levy and Associates costs of £4,188.90

c) Not to make an order under S.20C of the Landlord and Tenant Act 1985

The Application

1. The applicant seeks a determination under Section 27A of the Landlord and Tenant Act 1985 as to whether service charges are payable. The respondents, all of whom are represented by Blake Lapthorn, agree that the items being challenged are the following:-
   - Simon Levy and Associates costs of £4,188.90
   - Greenwood & Co Costs of £55,600.52.

   Both of these cost items relate to expenditure by the landlord in respect of dealing with a Party wall matter and are included in the service charge accounts for the period ending 31December 2011 and dated 3 May 2012.

2. By letters dated 13th and 26th September 2012 from Conway and Co and Blake Lapthorn respectively, the parties agreed the directions they would like the Tribunal to make and Directions in the agreed form were issued on 28th September 2012.

3. It was noted that the agreed proposals for directions did not include provision for disclosure and it was therefore assumed that satisfactory provision had already been made.

The Hearing

4. The hearing lasted the whole of the morning. The Applicants were represented by Mr David Nicholls of Counsel who called Mrs E Gurvits a director of the landlord company, Assethold Limited and Mr Simon Levy of Simon Levy Associates, the surveyors who dealt with the party wall matter. The respondents were represented by Mr Justin Bates of Counsel.

The background

5. The applicant is the long leaseholder of 4 Westport Street (the property) under a 999 year lease. It is understood that the property comprises 14 flats and that 13 of the underlessees are the Respondents in this matter.

6. On 20 January 2011 the applicants were served with notices under the Party Wall etc. Act 1996 by the freeholder of the adjacent site at 12 Westport Street, Freetown Limited to which the applicants responded the following day confirming their dissent. The applicants then instructed Simon Levy and Associates to act for them and wrote to the lessees on 21 January suggesting that they also appoint the same firm. In the event only two did so, other lessees instructing local surveyors McBryer Beg. Simon Levy and Associates served counter notices on the applicant's behalf but before the award had been settled Freetown Limited commenced building works in mid-June. In the meantime however McBryer Beg had reached an agreement and published an award on 5th May 2011.

7. The applicants then instructed Greenwood and Co to issue legal proceedings and on 30 June 2011 the applicant sought an injunction to restrain further building work and an interim

injunction was granted. On 8th July the injunction was ordered to continue in slightly modified form and the hearing adjourned to 18th July 2011 at which time it was again continued until a hearing to be set for four days commencing 26th July. On 22nd July 2011 the Party Wall Award was published automatically discharging the injunction.

8. Two subsequent applications were then made; an application by the Applicant to discontinue proceedings and an application by Freetown Limited appealing against the grant of the previous injunctions. These matters were considered in the High Court by Master Marsh whose decision was issued in September 2012 and which included a costs order that;

> Freetown pay the Applicants' costs reserved by the orders of 30th June, 8th July and 18th July 2011 and the costs of the claim up to the 30th November 2011 on the standard basis.
>
> The Applicants will pay Freetown's costs of the proceedings from 1st December 2011 to 13th March 2012 on the standard basis.

Master Marsh's decision contained a full and detailed history of the matter which we do not consider necessary to repeat here.

9. Simon Levy Associates issued an invoice in respect of matters associated with the litigation dated 28 July 2011 for the sum of £4,188.90 inclusive of VAT and disbursements based on a charge out rate of £165 per hour (page 21of the bundle). An undated invoice and schedule of costs from Greenwood and Co totalling £55,600.52 inclusive of VAT and disbursements of £12,524 based on charge out rates of £138 and £409 per hour are exhibited at pages 28 to 31 of the bundle. Both these sums appear on the certified accounts dated 4 May 2012 (page 63 of the bundle). During the hearing Mr Nicholls confirmed that the applicant would in future years seek to recover further costs of this litigation including the costs of Freetown Limited as directed in Master Marsh's order. It was also confirmed that any sums reimbursed by Freetown in respect of the applicants' costs would be credited to the service charge account.

10. The Applicants consider that these items are properly charged to the service charge under the terms of the lease, were reasonably incurred and are reasonable in quantum.

11. The Respondents challenge the Applicants' ability to recover these sums under the lease, whether the sums were reasonably incurred and as to quantum.

The Lease

Provisions of the lease referred to are:

First Schedule

1. *To maintain and keep in good and substantial repair and condition and renew or replace when required the Main Structure the Common Parts and any Pipes used in common by the Tenant and other tenants of the Development and which are not expressly made the responsibility of the Tenant or any other tenant in the Development and the boundary walls and fences and all other parts of the Development and public area not included in the Lease of any flat in the Development.*

6. *To do or cause to be done all works installations acts matters and things as in the reasonable discretion of the Landlord may be considered necessary or desirable for the proper maintenance safety amenity and administration of the Development.*

Second Schedule

6. *The proper fees and disbursements (and any VAT payable on them) of the Surveyor the Accountant and any other individual firm employed or retained by the Landlord for (or in connection with) such surveying or accounting functions or the management of the Development purposes of assessing the full cost of rebuilding and reinstatement and any individual firm providing caretaking or security arrangements and services to the Development.*

12. *The cost of taking all steps deemed desirable or expedient by the Landlord for complying with making representations against or otherwise contesting the incidence of the provisions of any statute byelaw or notice concerning town planning public health highways streets drainage or other matters relating to or alleged to relate to the Development or any part of it for which any tenant is not directly and exclusively liable*

13. *The cost to the Landlord of abating a nuisance in respect of the Development or any part of it in so far as the same is not the liability of any individual tenant.*

Third Schedule

6. *The Landlord may withhold add to extend vary or make alterations in the rendering of the Services or any of them from time to time if the Landlord reasonably deems it desirable to do so acting in accordance with the principles of good estate management.*

Matters in dispute

Recoverability under the Lease

12. Mr Nicholls for the Applicant considered that the costs incurred fell within paragraph 13 of Schedule 2 in that they were expended in order to "abate a nuisance". He suggested that the whole cost of the proceedings were recoverable not just the cost of the injunction.

13. He also considered that paragraph 12 of Schedule 2 was applicable in that costs were recoverable in respect of "the incidence of the provisions of any....notice.....

14. Support was also sought by way of paragraph 1 of Schedule 1 in that the works proposed would affect the integrity of the building and that the potential risks had been identified by the Applicant's surveyor. He also considered that paragraph 6 of Schedule 3 gave the Applicant the ability to widen the scope of paragraph 1 of Schedule 1 within the "principles of good estate management"

15. The broad wording of paragraph 6 of Schedule 1 gives the Applicant "reasonable discretion" to do other things "necessary or desirable for the proper maintenance etc etc....of the development" This clause he considered was to cover those matters that were not reasonably foreseeable at the commencement of the lease.

16. Mr Nicholls accepts that as a general principle leases should be clear and unambiguous in respect of liabilities such as legal costs but that such principles are more appropriate when considering rent recovery against a particular tenant as in Sella House Ltd v Mears [1988] rather than costs incurred in seeking to protect the property itself.

17. Mr Nicholls referred us to the guidance given by paragraphs 37, 41 and 42 of Campbell v Daejan Properties Limited [2012], Paragraphs 27 to 33 of Gilje v Charlegrove Securities Limited [2002], Paragraph 20 of Cadogan v 27/29 Sloane Gardens Limited (LRA/9/2005) in construing the lease and reminded us that the contra proferentem rule only applies where there is ambiguity and in this case there was none.

18. Mr Bates for the Respondents considered that the terms of the lease did not provide for recovery of costs such as those under consideration. He suggested that what was being asked for was an "open ended indemnity" for legal costs against a third party and that this could not be right. He said that the "Daejan case" was helpful in the law of mistake but not of service charges.

19. Also referring us to paragraph 27 of "Gilje" he considered that it should be read in 2 parts; firstly whether the terms were clear and only if not should contra proferentem be considered. In referring to the other cases cited he suggested that the lease would require "clear and unambiguous words" before such costs could be recovered.

20. He considered that the correct construction of the 1st Schedule para 1 was that the landlord was entitled to recover the cost of repairing any damage and that para 6 of the 3rd schedule did not entitle the landlord to change the meaning from a "repairing clause" to a "general power to recover". If legal costs had been intended to be covered in this clause there would have been clear words to that effect. The "sweeper clause" at Para 6 of the 1st Schedule needed to be more specific if it was to include the costs currently under consideration.

21. Mr Bates accepted that Para 6 of the 2nd Schedule related to the "management of the building" but that without specific reference to them the Courts were reluctant to determine that this included legal costs and that 'any other individual firm' could not in any event cover counsel fees. Para 12 of the 2nd Schedule he considered related to statutory and similar notices and that the wording would have to be more specific to include these costs. Para 13 of the 2nd Schedule refers to the abatement of a nuisance and the best that might be said here was that there was potential for a nuisance as referred to at para 56 of Master Marsh's judgement but no more. If he was wrong on this he suggested that "the cost of abating" may be charged only up to the granting of the injunction stopping the works.

Reasonableness and Quantum

22. Mr Nicholls said that it was clear from Mr Levy's witness statement that there was a real risk to the building and that urgent action needed to be taken. It was reasonable for the landlords to act on this advice and to commence proceedings against the adjoining owner. The costs incurred were the result of the actions of the adjoining owner in opposing the application for an injunction and the judgement of Master Marsh clearly supported the reasonableness of their approach. The fact that the Applicant had been ordered to pay the other sides costs in part of the proceedings did not mean they were unreasonable in the context of recoverability of service charges. He accepted that the order of Master Marsh was for Freetown to pay part of the applicants' costs and said that this would be credited to the service charge account if and when received. It was unreasonable to require the applicants to "fund" the costs until recovery had been obtained. He further confirmed that Freetown's costs as referred to in the order would be placed on the service charge account in due course.

23. Mr Levy gave evidence as to the conduct of negotiations between him and Freetown's surveyor Mr Russell. He explained that he had real concerns that the design of the proposed works would cause harm to the subject property's foundations and cause a damp problem at the junction between the two buildings. He required full details of the design proposals and site investigations to be carried out which Freetown seemed reluctant to provide. He gave evidence of the negotiations between them and as an indication of the breakdown in cooperation between himself and Mr Russell he referred to the latter's refusal to attend a meeting to conclude the award resulting in the "third surveyor" having to conclude it on his behalf.

24. Referring to legal costs Mr Nicholls said that the costs were fully itemised and the rates were within the guidelines albeit at the top end of the scale. The applicants were entitled to instruct solicitors of their choice particularly in view of their ongoing relationship and convenient

location close to both the court and property. He challenged the suggestion that there had been no benefit to the leaseholders and said that the integrity of the building was at stake. There had been limited correspondence keeping the lessees informed of proceedings but in any case this was not a legal requirement.

25. Mr Bates referred to the judgement of Master Marsh in which Freetown were to pay part of the applicants' costs now claimed as service charge and suggested that the costs order should be enforced first and only if in default should it be attempted to place them on the service charge account. Referring to para 101.2 of Master Marsh's judgement he said that it was clear that the applicant "got it wrong" and as such it must be unreasonable for them to be recoverable from the lessees.

26. Mr Bates referred to the lack of information provided to the lessees as to the need for litigation and progress of the same.

27. As to quantum Mr Bates said that Greenwood and Co was a 2 person firm with no staff and that it was unreasonable for the majority of the work to be carried out by someone charging at £409 per hour when less expensive staff could be used. He said it was difficult for him to particularise alternative amounts but referred the tribunal to what he considered the excessive time spent on the allocation questionnaire as shown at page 28 of the bundle. In the absence of greater detail he would leave it to the LVT to determine what was reasonable.

Other matters

28. Mr Bates said that the demand shown at page 62 of the bundle was invalid in that the Landlord's address was shown as "c/o Eagerstates Ltd" and not in accordance with ss47and 48, Landlord and Tenant Act 1987, and s 21B,Landlord and Tenant Act 1985.

29. Further he said he was unable to determine whether the demand is in accordance with s.20B, Landlord and Tenant Act 1985 and whether ss 20,20ZA, 1985 Act have been satisfied in the absence of documentation from the applicants. In particular he is unable to determine whether Greenwood & Co are appointed under a Qualifying Long Term Agreement and therefore subject to consultation with the lessees.

30. Mr Nicholls referred to the tribunal's directions which specifically referred to disclosure not being required on the understanding that the parties had come to an agreement themselves. It was unreasonable for Mr Bates to now challenge costs or the nature of Greenwood & Co's appointment on the basis of lack of information when it had been open to him to request copy documents prior to the hearing.

31. Mr Bates and Mr Nicholls agreed that the matter of compliance with S20B could be dealt with by written representations and asked for directions to be issued with this determination.

Tribunal's decision

Recoverability under the Lease

32. The Applicants found themselves in a difficult situation. They were faced with actions by a third party that potentially affected the long term security of the building for which they were responsible. They took the professional advice of a surveyor and subsequently engaged a known firm of solicitors to protect their interests. The question for the tribunal in the first instance however is whether the lease entitles the applicants to recover the resultant costs from the Lessees.

33. Mr Nicholls relies on various lease clauses each of which we will consider;

1st Schedule, paragraph 1. In our opinion, before the obligation placed upon the Lessors "*To maintain and keep in good and substantial repair and condition and renew or replace when required*" some element of "disrepair" must exist and it is not good enough for there simply to be potential for disrepair as in this case.

1st Schedule, paragraph 6. In considering the obligation to pay for what "*may be considered necessary or desirable for the proper maintenance safety amenity and administration of the Development*" we consider that the Applicants' actions should be considered in sequence. It seems reasonable to us that on receipt of a Party Wall Notice with potential to affect the safety and amenity of the subject property that an appropriate surveyor should be instructed to deal with the matter and we consider the costs thereby incurred that are not recoverable from the other side are recoverable under this clause.
This case went further however and the applicants considered it necessary to engage solicitors. We have therefore considered the guidance given in Sella House Ltd v Mears by Lord Justice Taylor with his reference for a need for "*specific mention of lawyers, proceedings or legal costs*". We appreciate he difference between the circumstances of that case where litigation was against a fellow lessee and this where it is against a third party. However, we are not convinced that this clause permits recovery of legal costs in the absence of a specific reference to them.

2nd Schedule, paragraph 6. This clause refers specifically to "*the Surveyor the Accountant and any other individual firm employed or retained by the Landlord for (or in connection with) such surveying or accounting functions or the management of the Development*" Clearly surveyors and accountants are referred to, legal costs are not. Neither do we consider the actions taken to fall within the definition of "*surveying, accounting or management*" and as such we do not find this clause permits recovery of legal costs. In that this clause specifically refers to Surveyors and that the actions taken by Mr Levy seem to come under the general heading of "surveying" we consider that his costs are recoverable.

2nd Schedule, paragraph 12. We accept Mr Bates' proposition that this relates to dealing with statutory notices and cannot be extended to include notices served by private parties.

2nd Schedule paragraph 13. Again we accept Mr Bates' argument that there has to be a nuisance to abate before costs can be incurred under this clause.

3rd Schedule paragraph 3. Mr Nicholls argues that this clause gives the Applicant the freedom to add to, extend or vary the services as long as it is in accordance with the "principles of good estate management" We do not share this view and consider that this is a far wider reading of what was intended to be simple adjustments to the services provided and who was to provide them rather than the inclusion of wholly new providers.

34. We therefore find that the lease does not permit the costs of Greenwood & Co to be recovered from the lessees. In case we wrong on that however we also determine the following;

Reasonableness and Quantum

35. Turning now to reasonableness we accept that the applicants' actions in responding to the party wall notice were reasonable. What else were they to do faced with potential damage from the actions of an adjoining owner? The notice could not be ignored and it was responded to promptly by instructing Simon Levy Associates to act for them. The fact that the matter then

escalated and substantial costs were incurred does not mean that this initial action was wrong.

36. We then need to look at how the matter was dealt with and whether the subsequent actions taken were reasonable. Clearly the surveyor acting for some of the lessees, McBryer Beg was able to come to an agreement far more quickly. The fact that this was possible does not however mean that the manner in which the applicants' advisors acted was unreasonable. This is supported by the very detailed judgement of Master Marsh who makes clear that the majority of the applicants' actions were fully justified. We do however share Master Marsh's view at his paragraph 101.2 that the applicant should have acted more swiftly in making an application for permission to discontinue and for this reason disallow costs incurred after 30th November 2011.

From the time sheets provided at pages 28 – 31 of the bundle this means that the following sums are to be deducted;

Attendance at hearing on 16 December 2011	1,227.00
VAT	245.40
Application for time fee	45.00
Amanda Eilledge fee	1,350.00
David Nicholls fee January 2012	1,800.00
Total disallowed	£4,664.40

37. We have also considered whether it was reasonable for the applicants to instruct Greenwood & Co or whether they should have found a less expensive firm where some of the work could have been undertaken by a more junior (and cheaper) person. Although no evidence has been provided it may of course have been possible to obtain the service at a lower cost. What we have to determine however is whether the costs actually incurred were reasonable or not. We have heard the reasons for instructing Greenwood & Co due to their familiarity with the property and convenient location and as such are satisfied that it was reasonable for them to be instructed. Mr Bates has suggested that some of the time spent was excessive but has not provided any detailed criticism. As such we find the hours charged subject to the above deductions to be reasonable.

We note that none of Mr Levy's fees relate to after 30th November and no deduction needs therefore to be made.

38. We have considered Mr Bates' argument that only if it is not possible to enforce the order against Freetown Limited should these costs be place on the service charge and find some merit in his case. However, neither can it be right for the landlord to have to pay out money on the understanding that he may be able to recover it at some time in the future. It is common practice for insurance claims to be credited some time after the costs of remedial work have been carried out and, if "straddling" a year end may well fall in to two service charge years. As such it seems reasonable to us that the costs are charged in the year in which they occur with any recovery from a third party being credited when received.

Other matters

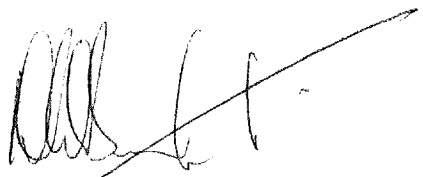
39. Mr Bates makes the point that the demand failed to comply with ss 47 and 48 Landlord and Tenant Act 1987 in that the demand does not show the landlords' address. We accept that the address is shown as care of the managing agent; the purpose of this requirement was however for a tenant to be able to know how to contact his landlord and as such no prejudice has occurred. A copy of the required notice under s 21B Landlord and Tenant Act 1985 appears at page 65 of the bundle and we are satisfied that this was likely to have accompanied all of the demands. As such we find this requirement has been satisfied.

40. Mr Bates also suggests that without sight of any form of agreement, Greenwood & Co's appointment may have been a Qualifying Long Term Agreement and therefore subject to consultation under S.20 Tenant Act 1985. Whilst a copy of their terms of engagement would have been helpful we are satisfied that it is most likely that they were appointed on the usual basis between solicitor and client and that their appointment was for this one matter only and not a "QLTA"

41. Mr Bates is also concerned that based on the documentation with which he has been provided he is unable to determine whether S.20B of the Landlord and Tenant Act 1985 has been complied with. Mr Nicholls suggested that he was unable provide the documents requested at the hearing but would wish to make written submissions on the matter. We therefore make the Directions appended to this decision.

Application under s.20C

42. The respondents ask for an order under S 20 of the Landlord and Tenant Act 1985 preventing the landlord placing the cost of these proceedings on the service charge. The grant of such an order does not necessarily follow the event and in this case we consider that the only way that the landlord could obtain some certainty as to recoverability was to make an application to this tribunal. As such we consider that it was reasonable for the applicant to do so and decline to make an order.



D Banfield FRICS:

Date 21st January 2013

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 -
which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the Landlord's costs of management, and
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 -
"costs" includes overheads, and
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 -
only to the extent that they are reasonably incurred, and
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 -
the person by whom it is payable,
the person to whom it is payable,
the amount which is payable,
the date at or by which it is payable, and
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 -
the person by whom it would be payable,
the person to whom it would be payable,
the amount which would be payable,
the date at or by which it would be payable, and
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 -
has been agreed or admitted by the Tenant,
has been, or is to be, referred to arbitration pursuant to a post dispute arbitration agreement to which the Tenant is a party,
has been the subject of determination by a court, or
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

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.

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—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;

in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;

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;

in the case of proceedings before the Upper Tribunal, to the tribunal;

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.