9393

FIRST-TIER TRIBUNAL

PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AJ/LSC/2013/0363**
Property	:	**49 Burghley Tower, Trinity Way, Acton, London W3 7HS**
Applicant	:	**London Borough of Ealing**
Representative	:	**Mr D. Harris, Solicitor; Legal Department, London Borough of Ealing**
Respondent	:	**Mr T. M. McLelland**
Representative	:	**In person**
Type of Application	:	**Service Charges – Section 27A Landlord & Tenant Act 1985**
Tribunal Members	:	**Mr L. W. G. Robson LLB (Hons)** **Ms S Coughlin MCIEH** **Mr A. Ring**
Date and venue of Hearing	:	**18th September 2013** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**16th October 2013**

DECISION

Decisions of the Tribunal

(1) In respect of the issues initially raised by the Applicant, the Tribunal determined that;

a) The Section 20 consultation notices dated 19th July 2005 and 12th June 2006 were validly served by the Applicant upon the Respondent, and in all other respects were valid.

b) The Section 20 consultation notice dated 23rd April 2010 was not validly served upon the Respondent, but in all other respects was a valid notice and contained the required information. Unless and until the Applicant is successful in obtaining an order from the Tribunal dispensing the requirement to serve the notice, the sum payable pursuant to the notice remains limited to the statutory maximum of £250.

(2) The Tribunal did NOT exercise its discretion to order that the Respondent paid the Applicant's fees of this application paid to the Tribunal under Regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003.

(3) The Tribunal made the other determinations as set out under the various headings in this decision.

The application

1. The Applicant seeks a determination pursuant to Section 27A of the Landlord and Tenant Act 1985 as to whether the consultation procedure relating to major works carried out in 2010 in respect of the refurbishment of the block in which the property is situated, and thus whether the service charges demanded by the Respondent are payable pursuant to a lease dated 1st May 1989 (the Lease).

2. After a Pre-trial Review, directions were given by the Tribunal on 25th June 2013 for this hearing. The Respondent stated at the Pre-Trial Review that he did not seek to challenge the standard or cost of the works, but relied wholly upon defects in the consultation procedure and the validity of the notices.

3. The Respondent also confirmed at the start of the hearing that he did not now challenge the form of the notices. He clarified that his reference in his statement of case to the costs of the work related to the consultation process, rather than to any other issue. The Tribunal has interpreted this to mean that one of his challenges was that the increase in the cost of the work required a further Section 20 Notice to be issued.

4. Mr Harris called two witnesses, Ms R. Sheikh, Home Ownership Officer, and Mr J. Hyland, Project Manager for the Applicant. Both were examined and cross-examined on their statements. Mr C. Maguire, Rechargeable Works Manager,

with the approval of the Tribunal also presented an oral chronology of events which was of considerable assistance, and which was substantially agreed by the Respondent.

5. The chronology as understood by the Tribunal is recorded below:

9.2.2001 - The Respondent (Mr T. M. McLelland) purchased the lease of the property from another lessee.

October 2003 - The Applicant (having received no notice of the purchase) enquired to see if the property had been sold.

November 2003 – A Notice of transfer of the Lease to the Respondent was received by the Applicant.

2006 – The Applicant obtained judgement for historic arrears on the property.

27.9.2006 Mr T. McLelland (the father of the Respondent who paid many of the bills) contacted the Legal Team at the Council, stating that he was moving to Thailand. The Applicant erroneously believed that Mr T. McLelland was Mr T. M. McLelland, the Respondent. This is evidenced by records of several telephone conversations between Mr T. McLelland and Ms Brionny Fagan (Head of Legal Services of the Applicant) dated 6th October 2006, discussing the outstanding debt. On that date Mr T. McLelland gave his correspondence address in Phuket, Thailand.

12. 10.2006 – The Council wrote to the Respondent, (Mr T. M. McLelland) in Thailand recording the conversations of 6th October 2006, and with copies of the judgement and details of the monies owed.

18.10 2006 – The Applicant's Home Ownership team wrote to the Respondent requesting their standard £30 fee for accepting notification of change of address. The Applicant agrees that no copy of that letter is in the bundle. Mr Maguire stated at the hearing that he did not think that fee had ever been paid.

28.2.2007 – In the absence of a reply a reminder was sent relating to the letter of 18.10.2006. Again no copy is in the bundle, but Mr Maguire stated that he found a copy in the Applicant's file, but too late for it to be included in the bundle.

21.3.2007 – Both the Respondent Mr T. M. McLelland and his father Mr T. McLelland attended a meeting at the Applicant's office to inspect documents relating to works contracts in 1999/2000. Mr T. McLelland revealed that he was not the Respondent. (The Respondent disputes certain details recorded of the meeting, but agreed he was present). Mr T. McLelland had certain (unspecified) documents with him that had been sent to the Thai address. The Applicant's witness, Ms Sheikh described Mr T. McLelland as "bearing over" at the meeting. The Respondent described his father as "a character". The documents seen by the Tribunal suggest that Mr T. McLelland could express strong opinions.

30.10. 2007 - The Respondent's solicitor gave notice of his client's change of address to the Applicant's Home Ownership and Legal Teams to an address in Surrey, in relation to another property in Beech Avenue, Acton.

16.11.2007 – A possession hearing was held. The Applicant's notes of the hearing (not in the bundle) indicated that both Mr T. and Mr T. M. McLelland were present. Mr T. McLelland stated that he controlled all costs in relation to this property. The Applicant suggested that this statement confirmed that the Thai address was the correct one.

In 2009, the Respondent successfully argued in the County Court that Section 20 notices served by the Applicant relating to works done in 1999/2000 were defective. As a result he was not obliged to pay the charges demanded of about £20,000. Shortly after this court hearing Mr T. McLelland died, in November 2009. (Tribunal's note- the Applicant apparently knew of the death then or shortly afterwards).

23.4.2010 – The Applicant sent the Section 20 Notice in dispute to the Respondent at the address in Thailand. Before the end of the consultation period invitations were sent to all lessees to a Section 20 Consultation Surgery. A copy was sent to the property address, and also to the Thai address. The reason for sending a notice to the property address was that residents as well as leaseholders would be affected by the work. The work was being done under a qualifying long term agreement.

30.6.2010 – A "Meet the Contractor" event was held for lessees. While no copy of the letter sent to the Respondent in Thailand was available, evidence of the event was in the bundle.

15.10.2010 – A Recalculation notice was sent to the Respondent in Thailand.

16.5.2011 – The Respondent asked for the Thai address to be removed

25.5.2011 – The Respondent telephoned asking for the forwarding address to be changed to his address in Surrey.

10.11.2011 – A copy of the Section 20 Notice was sent to the Respondent's Surrey address. This resulted in correspondence where the Respondent questioned the validity of service of the original notice.

20.6.2012 – The final invoice for the work was sent the Respondent's Surrey address. Subsequently there was a meeting with the Respondent at which the Applicant's staff understood he intended to pay nothing.

17.7. 2012 – The Applicant wrote to the Respondent setting out its position. Then the matter was referred to the Legal Team.

Applicant's Case

6. Ms Sheikh, in answer to questions agreed that there was no correspondence or other contact specifically instructing the Applicant to use the Thai address. She also confirmed that the Applicant's policy on the use of overseas addresses was to

ensure that it had a forwarding address, to deal with subletting. There was no policy requiring lessees to have a U.K. contact address. If a transfer had come to the knowledge of the Applicant it would send correspondence to the property address. To change an address needed a written request, but a new address did not have to be in the U.K. The Home Ownership Team sent out Section 20 Consultation Notices. The notices were sent out by second class post. If a letter was addressed abroad she assumed the Post Team would deal with it appropriately. She confirmed that such letters would not be sent to the property address, only the correspondence address. Ms Sheikh initially considered that she had received an instruction to use the Thai address at the meeting on 21st March 2007, but agreed with the Respondent that Ms Fagan of the Legal Team had lead the meeting. Ms Sheikh herself had been present and heard the conversation. She had spoken to Mr T. McLelland about Major Works issues on a couple of occasions.

7. Mr Hyland confirmed that he had been appointed to his post on 2nd April 2008. He had sent the letter dated 11th May 2010 to the lessees about the Consultation Surgery on 19th May 2010. He confirmed that the letter in the bundle was a mail merge letter but stated that copies were sent to both correspondence addresses and property addresses, as access to properties was often needed. This procedure had started at the end of 2009 due to experience of communication problems. The reason for the significant increase in estimated costs for this particular block was because the cabling was found on inspection unfit for purpose and below new standards which applied from 1st April 2010. Also the Fire Brigade had started to insist that all paint in the common parts was stripped off and repainted with non flammable paint, rather than simply overpainting. He was aware that the cost increase was significant, and had tried to reduce costs elsewhere, where he could. When asked why he had not started the Section 20 procedure again in the light of the increase, he agreed that this might have been better, but the works had already started and the contractor would have had to be paid for stopping the work. If he had restarted the process there would have been a very high cost for a 12 week overrun. He considered that the Applicant would have been criticised if it had allowed that to happen.

8. Mr Harris and Mr Maguire also answered questions. There were three sub-teams within Home Ownership, Major Works, Service Charge and Right to Buy. All correspondence from Home Ownership was sent to Thailand commencing with a letter dated 18th November 2006. Before that all correspondence was sent to the property. About 5 letters per year were sent to Thailand. They were mainly statements so no responses were necessary. No demands were queried or returned. The annual service charges were paid by Direct Debit, so no problem arose with those charges. However the Respondent had paid in two cheques during the period, which were not standing orders - one on 5th February 2008, and another in June 2011. The Legal Team's files showed that its letters were sent to both addresses. Mr Maguire was unsure if the cheques had been received in response to letters from the Home Ownership Team, or from the Legal Team after the matter had been referred to it. He believed the cheque received in February 2008 had been in response to a letter from Home Ownership as there was no reference to costs and interest. His submission was that numerous letters had been sent to Thailand over the years. If Mr T. McLelland had found that a problem he would have complained. He was blunt. The Respondent had given

notice of change of address relating to his other property, and if he was receiving 5 letters per year on that property, he should surely have realised that he was getting none on 49 Burghley Tower. He found it surprising that the Respondent had not noticed the work. The scaffolding had been up for four years.

Respondent's Case

9. The Respondent, Mr McLelland, stated that he knew nothing of the correspondence address being changed to Thailand. He had only become aware of the telephone conversations on 6th October 2006 when they had turned up in the bundle recently. The conversations had been with the Legal Department. Ms Fagan had taken it upon herself to change the correspondence address to Thailand. There had never been any acknowledgement of letters sent to Thailand. He had never been asked or had given permission for letters to go there. His father had not had permission to do that but if his father had given such permission it was only in relation to service charge arrears. He accepted that he had been at the meeting on 21st March 2007. He agreed that his father had been helping him financially, but he had never given him a Power of Attorney. The £30 fee to change the address had never been paid. He did not think he should have realised that letters relating to 49 Burghley Tower were not reaching him. He referred to the Postal Rules in this connection. He accepted that there was deemed delivery in due course of post, but these rules did not apply to correspondence to Thailand. Throughout 2007, 2008 and 2009 the Legal Department had sent letters to him in Surrey. Other Departments had sent letters to both addresses. Once the debt on this property had got to the Legal Department he got letters about it. He could not recall the circumstances of the payment in 2008. It was 6 years ago.

10. Asked about the postal arrangement for the Thai address, he stated that his father's good friend would have forwarded any mail. He also stated that no arrangements for mail to the Thai address had been made after his father died in 2009. He thought the service charge demands were going to 49 Burghley Tower. He had lived there from 2003 to mid 2006. He then bought the property in Surrey. Since 2007 he had very rarely been to 49 Burghley Tower. He had never lived at the other property in Beech Avenue. When asked why he had not contacted the Applicant over the Section 20 Notice, he said he had not been living there. The property was let to a good friend of his father. The Respondent had asked him to send on any letters asking for money. If it did not ask for money, the letter would have gone in the bin. He agreed his father had said he had taken over for 49 Burghley Tower, but this was as a "McKenzie representative". Failing to receive the Section 20 Notice had robbed him of the right to respond to it. He would have complained about the delay. The consequence of not receiving the letter should be that he would not have to pay the cost. He had not noticed the works going on although he visited the property regularly. He had seen little bits of work, but had not seen the scaffolding or painting. The electrical works would have been hidden.

Decision

11. The Tribunal considered the documents and evidence. It noted that neither side had put forward any relevant case law or legal argument. In the absence of any submissions on this point, the Tribunal has therefore considered the

relevant terms of the Lease, which sets out the agreement between the parties, and the Interpretation Act 1978. Since this case revolves around only the questions of service of the Notice, and whether the increased in the estimated cost invalidated the Notice other statutory provisions relating to the form and content of notices relating to service charges have not been considered.

12. The First part of Clause 13 of the Lease provides:
"ANY NOTICE UNDER THIS LEASE shall be in writing and any notice to the Lessee shall be deemed to be sufficiently served if left addressed to the Lessee at the demised premises or sent to the Lessee by post...."

13. Section 7 of the Interpretation Act 1978 provides:
"Where an Act authorises or requires any document to be served by post (whether the expression "serve" or the expression "give" or "send" or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying, and posting a letter containing the document and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post".

14. Leaving a notice at the premises seems obvious. However neither the Lease nor the terms of Section 7 is particularly illuminating on the details of posting in this case. Sending by post must include addressing and pre-paying the letter, and there must additionally be implied some significant connection between the address on the envelope and the recipient. The recent case of *Calladine-Smith v Saveorder Ltd [2011]EWHC 2501 (Ch),* interpreting the effect of Section 7, sheds some light on the issue. In the High Court Morgan J. decided that the deeming effect of Section 7 required a letter to be properly addressed, pre-paid and posted, but this deeming effect could be negatived by proving that a notice had not been delivered by a specified date. Further the standard of proving non-delivery was the ordinary civil standard of the balance of probabilities; there was no requirement for the tenant to lead positive evidence of non-delivery.

15. On the facts, the Tribunal considered that the position of neither party was particularly strong. On the one hand the Respondent seemed to have shut his eyes to the obvious, particularly as he had some experience as a lessee, and indeed he had succeeded in court in having previous Section 20 notices relating to the property declared invalid. He should have known that correspondence was not reaching him, particularly after his father died. Also he stated that he had instructed the tenant at 49 Burghley Tower to "bin" any correspondence which did not ask for money, so even if the Applicant had sent the Section 20 notice there, it would probably not have reached him, as it was not a demand for money. On the other hand the Applicant's Home Ownership Team had apparently ignored its own guidelines on at least two occasions, firstly by ignoring the requirement for written notice of a change of address (with or without payment of the fee), and secondly by not serving the notice by posting it to the property when it became aware of Mr T. McLelland's death. It also failed to leave a copy of the notice at the property, which was permitted by the Lease, and which was the standard procedure in the Applicant's Legal Team. The Home Ownership Team (which served the notice in issue) merely

wrote to an address which had been noted down in a meeting run by the Legal Team. Both Teams work closely, and even attended joint meetings with the Respondent, but they were using different correspondence addresses. For a different property, Home Ownership had registered the correct address for the Respondent.

16. Examining the evidence more closely, it was perhaps understandable that the Applicant did not initially realise that Mr T. McLelland was not the Lessee. However that particular problem had been cleared up, at the latest, by 21st March 2007. At the meeting Mr T. McLelland had taken charge, with the Respondent taking relatively little part. The relationship seemed characterised by Ms Sheikh's evidence that the Respondent had been summoned back to the meeting by his father after the Respondent had gone outside to take a phone call. There seemed little evidence to support the Respondent's submission that his father had given the Thai address for the limited purpose of dealing with historic service charge arrears. The Tribunal decided that by conduct the Respondent had allowed his father to become his agent in relation to 49 Burghley Towers, and this was clearly demonstrated at the meeting on 21st March 2007. Despite the breach of its own procedures, the Tribunal found that the Applicant was correct in using the Thai address until the death of Mr T. McLelland in November 2009.

17. It was not mentioned in Mr Maguire's chronology, but in his letter of 8th December 2011 the Respondent notes that Ms Werner of the Applicant's Legal Team knew of his father's death when it occurred in November 2009. In that letter the Respondent made a complaint alleging misconduct by Ms Werner as a result of that knowledge. The Applicant apparently made no reply to that allegation, which seemed slightly surprising. The Applicant's Statement of Case merely noted the death in November 2009 without further comment. In correspondence and at the hearing the Respondent alleged that his father had died on the last day of the previous court case. These statements were not challenged by the Applicant. The Tribunal therefore found that the Applicant was aware of Mr T. McLelland's death in November 2009.

18. The consequence of this finding is that the knowledge of Ms Werner in the Legal Team has to be imputed to the Home Ownership Team, particularly in the circumstances of this case where they worked closely together, and Home Ownership itself also had registered the Respondent's correct address for another property. A further consequence is that the Applicant's staff should have realised by the end of 2009 that the correspondence address held for the Respondent was no longer current. Ms Sheikh gave evidence that in a case where a transfer was understood to have taken place, notices would be sent to the property. If that had occurred, much trouble would have been avoided.

19. In summary therefore, two Teams working closely within the Applicant's organisation used different addresses and procedures relating to service of notices. The Legal Team served notices on both the property and the last registered address of the lessee, using the full effect of the Lease to ensure service of notices. The Home Ownership Team took a riskier approach, in serving the last address at which they believed correspondence would reach the lessee or his agent. Once Mr T. McLelland died this belief was ill-founded.

20 It is thus difficult to accept that the Section 20 Notice dated 23.4.2010 sent several months after his death was "properly addressed" as required by *Calladine-Smith* noted above, particularly when other staff members were in contact with the Respondent, and the previous history of unsuccessful litigation over service charges at this property. It seems irrelevant that the Respondent could or should have known of the confusion, or that he might own the property at the Thai address. He consistently stated that he had not received the notice until it was sent to his Surrey address much later. He had registered an address for service which was effective, and his whereabouts were thus well known to the Applicant. The Applicant tried and failed to show that he had received any correspondence at the Thai address after November 2009. Responsibility for proving service remains with the Applicant until it can get itself within the Calladine-Smith requirements.

21. The Tribunal decided on the balance of probabilities that the notice had not been properly addressed to the Respondent. The Applicant had therefore not fulfilled the requirements of Section 20. The sum demanded pursuant to the Section 20 notice is thus statutorily limited to a maximum of £250.

22. Due to the Tribunal's decision above, the question of increased costs above the estimate in the notice might be considered irrelevant, but for completeness, particularly if a Section 20ZA application is made later, the Tribunal considered from the evidence before it that the specification of the work set out in the Section 20 Notice had not changed. However the work to be done on the subject block had increased, mainly due to the poor state of the cabling, subsequent changes in legislation and safety practice. Also the problem had been discovered after commencement of the work, and Mr Hyland had given evidence of the financial consequences of halting the work while a fresh Section 20 procedure was followed. The Respondent did not develop any further argument on the increase in costs, although he had made it clear he had no other objections to the cost or quality of the work done. Tribunal decided that the increase in the costs had not invalidated the Notice, and did not require a new consultation to be carried out.

23. The Applicant, in the application form (p.7), apparently requested that the Tribunal grant dispensation to the Applicant (under Section 20ZA of the Act). At the hearing, Mr Harris stated that his client was not ready to make such an application at this hearing, and would be prejudiced if the Tribunal proceeded with this matter. If the Applicant decides to make such an application, this Tribunal should hear the matter, due to its knowledge gained in this case.

24. The Tribunal reminds the parties of the recent group of cases which clarify the financial and other considerations to be taken into account in Section 20ZA applications, commonly described as Daejan v Benson (2013 UKSC 14 and 54) decided in the Supreme Court, and also the new costs regime relating to applications to this Tribunal made after 1st July 2013. The parties should consider obtaining legal advice on those points, when deciding whether to make or object to any Section 20ZA application.

Costs and Fees

25. The Respondent did not make an application under Section 20C of the Landlord and Tenant Act 1985 at the end of the hearing, although the matter was discussed. Mr Harris confirmed to the Tribunal that the Applicant would not seek to charge the costs of this application to the service charge. The Respondent was happy to rely upon that assurance, although the Tribunal had offered to make to make a Section 20C order based upon the landlord's concession.

26. Mr Harris applied for an order under Regulation 9 of the Leasehold Valuation Tribunals (Fees)(England) Regulations 2003 that the tenant reimburse the Applicant's fees paid to the Tribunal totaling £350. The Respondent stated he would accept the tribunal's view on whatever was fair. The Respondent had substantially succeeded in defending the application. The Tribunal thus decided that it would make no order, in the circumstances of this case.

Signed: Lancelot Robson
Mr L. W. G. Robson LLB (Hons)
Tribunal Judge

Dated: 16th October 2013

Appendix

Landlord & 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.

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).