12284

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BE/LSC/2017/0035**
Property	:	**Flat 75, Bradley House, Aspinden Road, London SE16 2DL**
Applicant	:	**London Borough of Southwark**
Representative	:	**Mr R Ahmed (enforcement officer for the applicant)**
Respondent	:	**Mr Charles Odedina**
Representative	:	**In person**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Judge L Rahman** **Mr S Mason BSc FRICS FCIArb**
Date and venue of Hearing	:	**19th June 2017 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**21/7/17**

DECISION

Decisions of the tribunal

(1) The tribunal makes the determinations as set out under the various headings in this decision.

(2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

(3) The tribunal determines that the respondent shall reimburse any tribunal fees paid by the applicant within 28 days of this decision.

(4) This matter should now be referred back to the County Court at Medway.

The application

1. Proceedings were originally issued in the County Court Business Centre under claim no. C2QZ0Q4G. The claim was transferred to the County Court at Medway and then in turn transferred to this tribunal, by order of Deputy District Judge Gore on 13/1/17.

2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The applicant was represented by Mr Ahmed at the hearing and the respondent appeared in person.

4. The respondent arrived at the tribunal shortly after 10 AM and the hearing started at 10:15 AM. The respondent stated he was not ready to proceed with the hearing and requested that the matter be adjourned on account of his ill-health, namely, stress and anxiety. The respondent stated that he worked for the Metropolitan Police as a surveillance officer in a stressful environment which has resulted in his current medical condition. The respondent stated that he has been suffering from stress and anxiety since 7 May 2017 after having a blood test which showed that his cholesterol level was high and after being told that he had an abnormal heartbeat. The respondent stated that he has been off work since 18 May 2017 and was signed off until 27 June 2017. In the circumstances the respondent wanted the hearing to be adjourned until after 27 June 2017. The respondent relied upon a medical note dated 14 June 2017 which stated that it would be more beneficial if the hearing was adjourned. The respondent confirmed that "if pushed" he could manage the hearing with breaks and that he had

asked his three witnesses to attend the hearing at 11 AM in case the hearing was not adjourned.

5. Mr Ahmed opposed the application. He stated that considerable costs had already been incurred by the applicant and a number of witnesses (6 for the applicant) had attended today prepared for the hearing. The respondent had also attended and had instructed his three witnesses to attend. The medical note relied upon by the respondent does not state that the respondent cannot give evidence. The respondent had been signed off work since 18 May 2017 yet he only made the adjournment request on 15 June 2017, which had already been refused by the tribunal.

6. The tribunal reminded itself of the overriding objective to deal with cases *fairly* and *justly*, which included, amongst other things, dealing with cases in ways which were proportionate to the importance of the case, the complexity of the issues, the anticipated costs, the resources of the parties and of the tribunal, avoiding unnecessary formality and seeking flexibility in the proceedings, ensuring so far as practicable that the parties are able to participate fully in the proceedings, using any specialist expertise of the tribunal effectively, and avoiding delay so far as compatible with a proper consideration of the issues.

7. The tribunal noted the medical note from the respondents GP did not state that the respondent was unfit to give evidence but merely stated "it may be beneficial not to be present". The respondent had of course attended the hearing and was expecting three of his witnesses to also attend later in the day. The applicant was represented by its legal representative and a further six witnesses had attended. Valuable tribunal time had been set aside and the applicant would incur further costs if the matter were to be adjourned. The respondent had been signed off from work since 18 May 2017 yet he only requested an adjournment on 15 June 2017 without good reason being shown for the delay. The respondent confirmed that if the adjournment request were refused he would be able to proceed with the hearing with adequate breaks, which the tribunal could offer. In the circumstances, the tribunal determined it would be in the interests of justice to proceed with the hearing and refused the respondents application.

The background

8. The property which is the subject of this application is a block comprising 77 dwellings set over seven stories. The block is served by four points of entry. The central entrance is provided with two lifts and is served by an intercom panel and the remaining three are served by staircases only.

9. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

10. The respondent holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

11. Mr Ahmed confirmed that the proceedings started at the County Court were in relation to estimated costs of major works carried out by the applicant. The contract start date was 16 June 2015 and the contract completion date was 30 April 2016. The one-year defects liability period expired on 30 April 2017 following which a surveyor would carry out a further inspection to identify if there were any defects which fell due to be rectified under the contract. A final account was yet to be agreed and was several months away. In the circumstances, the applicant was not ready to deal with, and the tribunal did not have jurisdiction (as the transfer was on the basis of the dispute concerning the estimated costs), to deal with the quality of the works.

12. The respondent confirmed at the hearing that he was challenging the feasibility test relied upon by the applicant to justify the major works, he challenged the estimated costs, and he challenged the section 20 consultation process.

13. The tribunal agreed that the relevant issues for determination were as follows:

    (i) Whether the works carried out by the applicant were reasonably required?

    (ii) Whether the estimated costs were reasonable in amount?

    (iii) Whether the applicant had correctly followed the section 20 consultation process?

14. Issues concerning the actual costs (once the final accounts are available and if they exceed the estimated costs) and whether the works had been completed to a reasonable standard may be raised by the respondent or any other lessee, if they had genuine concerns, by way of a separate application to this tribunal.

15. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the 3 issues as follows.

Were the works reasonably required?

16. The material parts of the applicant's evidence can be summarised as follows:

17. Mr John Ottley, employed as a chartered surveyor at Blakeney Leigh Ltd ("BL") for 19 years, was the contact between the applicant and BL in relation to the major works. BL was instructed by Keepmoat to inspect and report on whether, and if so, the extent of any works that were required to Bradley House. Having carried out an inspection of the building, he identified several areas that required works, as set out at paragraphs 6-27 of his witness statement dated 10 May 2017, and which were subsequently carried out as part of the major works. BL provided life-cycle costings for the provision of works which would render the property safe, sound, weather tight, and free from significant defect. He confirmed in answer to questions from the respondent that he had personally attended the site to identify works that were required, he considered the original feasibility report and clarified the report, the life-cycle costing was based upon historical data from their quantity surveyors who use published data to obtain costs, the life-cycle costing did not consider the availability of any potential grants that would be available as the amount of the grant was not clear, the life-cycle costing demonstrated that external cladding to the building was more cost-effective, the feasibility report had not been tampered with since the case had been transferred to the first-tier Tribunal and any changes made (as identified by the respondent) were made in November 2014 based upon further relevant information received as it was a rolling programme and therefore revisions were made where appropriate. By way of an example, he stated that the section dealing with asbestos on page 860 of the respondents bundle clearly stated that the section was to be updated and this was subsequently updated as can be seen in the section dealing with asbestos on page 77 of the respondents bundle. The section dealing with roof on page 858 of the respondents bundle is blank. But the section dealing with the roof on page 75 of the respondents bundle includes the roof as the works had been completed.

18. Mr Daniel Simmons stated he had been employed by Calfordseaden ("CS") as an associate building surveyor and since December 2014 he had responsibility for Bradley house. The major works carried out on Bradley House were being undertaken by the partnering contractor Keepmoat, who had commissioned a feasibility report by BL. The role of CS, employed as a partnering consultant and a third-party was to review the feasibility report prepared by BL. CS undertook its own study and site visit to come to its own conclusions. CS double-checked

the feasibility report to ensure that the proposed works were required. CS carried out its inspection and agreed with the proposed works subject to some minor areas of amendment. In answer to questions from the respondent he stated that a site inspection was carried out on 17 December 2014 before deciding what works were required. He assumed the feasibility report CS had access to was the one dated November 2014. On the basis of the feasibility report and the further report provided by CS dated 5/12/15 (which was not included in the bundle), Keepmoat produced a pricing document (Task Order Price - "TOP"), which was again reviewed by CS and a further TOP review report was issued by CS (not included in the bundle). He confirmed that if CS did not agree that particular works were required, then the TOP report would not include that particular work.

19. The material parts of the respondents evidence can be summarised as follows:

20. The respondent confirmed that in his view the following works were not required as identified in the Scott schedule on page 352 of the applicants bundle and in his supplementary statement of case on page 559 of his bundle, namely; pigeon netting, removal / reinstatement of metal fencing, commercial licence Thames Water / standpipe, enabling works, relocation of existing services to walkways, adjustments to overflows to tank room, additional sum for general repairs, reinstatement around block following completion of works, and additional sum for front entrance door replacement. The respondent confirmed that the other items of work referred to in the Scott schedule were accepted as being reasonably required.

21. In cross examination he stated that he did not know whether other flats had pre-existing pigeon netting but confirmed that his flat did not have any pre-existing pigeon netting. He confirmed that everyone was told that they would have pigeon netting installed and that he looked forward to having it. However, he went on to state that pigeon netting was not needed as he did not have any problems with pigeons. The respondent was referred to paragraph 53 of his supplementary statement of case where he stated that despite the applicants claim that drainage works had been carried out he had noticed soap suds still coming out of the drains at ground floor level, therefore he concluded that the works to the blocked drains were either not carried out as recommended in the survey report or the works were not carried out to a reasonable standard. In light of what the respondent had stated, it was put to the respondent whether he accepted that drainage works were necessary, as identified and justified in the feasibility report. The respondent stated that he disagreed with the feasibility report because it had been tampered with.

22. Ms Amelia Markey of flat 66 (Bradley House) gave evidence in support of the respondents claim. She adopted her witness statement on page

591 of the applicants bundle and further added that the lessees were not told about the installation of solar panels during the section 20 consultation process, her flat had pre-existing pigeon netting and she wanted it reinstated, there was wear and tear on her private balcony, and she was not satisfied with the quality of works. She confirmed that her evidence was in relation to the quality of the works, which she was not satisfied with, rather than whether the works were reasonably required.

23. Ms Patricia Merlin of flat 27 gave evidence in support of the respondents claim. The relevant parts of her witness statement on page 548 of the applicants bundle can be summarised as follows; she previously had pigeon netting which was not reinstated to its previous state, the TV plug was not reinstalled to the required standard, not all of the flat entrance doors have been repainted as promised to provide a homogenous look, the paint on the step under the doors of most of the flats were damaged, the painting on the lift landing was not done to a reasonable standard, the lift that had been constantly used by workmen during the major works had not been cleaned to a professional standard, she was not consulted on the installation of solar panels, and she had always thought that the cost of the major works were excessively overpriced due to the standard of work that was eventually carried out. The applicant did not carry out a lengthy and detailed cross examination other than putting to her that the works carried out were reasonably required as identified in the feasibility report.

24. Mr Peter Gee of flat 25 gave evidence in support of the respondents claim. The relevant parts of his witness statement on page 578 of the applicants bundle can be summarised as follows; the work to the stairwell is not to a satisfactory standard, the work to the private balcony is not to a satisfactory standard, the work to the communal walkways is not to a satisfactory standard, damage caused by the leak from the roof water tank has caused severe damage to the structure and fabric by the lift communal areas on almost all the floors, the solar panels were installed without consultation, the boiler flue of flat 25 is of a poor quality, the installation of the in-house aerial and satellite point was to a poor standard, he challenges the costs of the work because he believes the project was inordinately overpriced and had the project been "tendered to a group of non designated sole contractors the cost would have been substantially less", "there was little or no scrutiny towards providing a reasonable cost effectiveness or quality of labour", generally the work was carried out to a very low standard and the job was inordinately overpriced, he understood that the front doors would be replaced but the works were not carried out but had been charged, and they were charged for replacement of the entry doors but this never materialised. In cross examination, when asked about his background and whether he was qualified to comment on the way in which the project was costed, he stated that he had previously been in the construction industry. When asked to clarify, he stated that he had been in the construction industry 20 years ago as a plumber but has been

working in media now for the last twenty years. He confirmed that he was not aware of "qualifying long term agreements", he had no evidence to show that the project had not been tendered, and his claim that there had been no scrutiny was "purely anecdotal" in that it was a subjective statement not based upon facts. When asked to explain on what basis he thought that the cost should have been less, he stated " I can't really say".

25. The tribunal noted as follows. A qualifying long term agreement had been in place since 2008, the relevant notice of intention having been served on 17 November 2008 (page 445 of the applicants bundle). The relevant notice of proposal was served on 22 January 2010 (page 457 of the applicants bundle). The applicant decided to carry out the major works to the relevant property in 2014 and had entered into an agreement with Keepmoat as the contractor. Keepmoat instructed BL to prepare a feasibility report. BL inspected the property, carried out a feasibility study with a cost benefit analysis, and prepared a report setting out what works were required. That report was given to CS to review and to provide their own report as to what works were required. CS prepared its review report in January 2015. The feasibility report prepared by BL and the review report prepared by CS were used to identify the scope of works. The applicant had therefore identified relevant works on the basis of two separate reports, the second report being prepared by a third party instructed to scrutinise the first report. The tribunal found no persuasive or credible evidence of the feasibility report prepared by BL being tampered with. The tribunal noted the respondent had not provided any "technical" evidence to show that the works carried out by the applicant were not reasonably required. The tribunal also noted inconsistencies in the respondents own evidence. For example, the respondent stated that pigeon netting was not required yet his own evidence was that he was looking forward to having pigeon netting installed and his witnesses also confirmed that pigeon netting was required. The respondent argued at the hearing that drainage works were not required despite stating at paragraph 53 of his supplementary statement of case that drainage works were in fact required and had either not been carried out or were not carried out to a reasonable standard.

26. For the reasons given, the tribunal found all the works carried out under the major works programme were reasonably required.

Was the estimated cost of the major works reasonable in amount?

27. Mr Daniel Pescod, a quantity surveyor and partner at CS, stated the following on behalf of the applicant; the preliminaries costs for Bradley house were priced by Keepmoat in the form of a quantified schedule of rates. The schedule comprises of a standard list of contractor's preliminary cost items, priced to reflect the site setup and management levels required to undertake the works. Both the quantities and rates priced by Keepmoat were checked by CS during CS's analysis of

Keepmoats pricing (TOP) document and were found to be consistent with the framework rates agreed within the partnering contract between the applicant and Keepmoat. There are items of work which cannot be fully quantified or priced at the time Keepmoat produce their TOP. In these circumstances the contractor includes a schedule of "risk provisional sums" within a section of the TOP. The rates used to price the TOP document are market tested rates as they are competitively tendered.

28. In answer to questions from the respondent he stated the TOP rates were competitively tendered as a tendering process had been followed in 2008, the rates are subject to annual BMI uplift, and the contractor is tied to that rate.

29. The respondent stated in oral evidence that he relied upon paragraphs 83 – 86 of his supplementary statement of case dated 23 May 2017, the material parts of which can be summarised as follows; the factual documentary evidence put forward by the applicant to support the costs are not reasonable. He further stated that there was an issue with the TOP figures. In cross examination he stated he was aware of the need for a backup contractor, he was aware the applicant had used its backup contractor, but he was not informed why the backup contractor had been used. The contract had not been re-tendered because the applicant was fearful of the consequences from the original tenders. When it was put to the respondent that the applicant had chosen a main contractor and a backup contractor and that both had been tendered for, the respondent stated that he accepts that was so.

30. The tribunal noted as follows. The estimated cost was based upon a previously tendered qualifying long term agreement schedule of rates that was subject to an annual uplift. The quantities and rates priced by Keepmoat were checked by CS during CS's analysis of Keepmoats pricing (TOP) document and were found to be consistent with the framework rates agreed within the partnering contract between the applicant and Keepmoat. The respondent has provided no persuasive or credible evidence in rebuttal to demonstrate that the estimated cost was excessive or unreasonable.

31. For the reasons given, the tribunal found the estimated cost for the major works to be reasonable.

Had the applicant correctly followed the section 20 consultation process?

32. The respondent confirmed that he had received the relevant consultation notices and that he had made observations. However, he stated the applicant failed to carry out the works they had promised to do and had included other works not consulted upon. The respondent stated, as per the notice of intention dated 6 March 2015 on page 51 of

the applicant's bundle, the applicant proposed the following works: concrete cleaning and repairs, asphalt roofing renewal, asphalt repair and renewal to walkways and balconies, communal decorations, external wall insulation works, rainwater goods repair, and front entrance door renewal. However, the applicant carried out the following works not consulted upon (referred to in the Scott schedule one pages 352-354): Georgian wired screens, drainage works, instalment of metal fencing, tank room and chimney repairs, enabling works, relocation of existing services to walkways, adjustments to overflows to tank room, CCTV, window repairs, additional sums for general repairs, reinstatement around block following completion of works, and additional sum for front entrance door replacement.

33. Mr Trevor Wellbeloved, employed as capital works consultation manager in the applicant's home ownership services, stated as follows: the solar panels were not part of the consultation process or included in the estimated costs and the tenants will not be charged for that item. Some works concerning the CCTV were intended to be carried out but the applicant decided not to charge the tenants and therefore that element did not appear in the estimated costs. The second page of the notice of intention dated 6 March 2015 (page 52 of the applicants bundle and referred to by the respondent in the preceding paragraph) states "A general outline of the proposed works contained in the entire contract is:" and lists the works referred to by the respondent in the preceding paragraph. However, the fourth page of that notice (page 54 of the applicant's bundle) states "Attached to this notice is a calculation spreadsheet that summarises the works...". The document on page 345 of the applicant's bundle is the document referred to and was sent with the section 20 consultation notice on 6 March 2015. This mirrors the Scott schedule referred to by the respondent. He explained that the second page of the notice of intention did not detail every item of work as some people can find this overwhelming and confusing therefore it was better practice to give a general outline of the proposed works. This was not inconsistent with the requirements of section 20 as the guideline was to provide a brief summary of the works. But in any event, the detailed breakdown of the works had been served with the section 20 consultation notice.

34. The tribunal noted as follows. The respondent accepts that he received the relevant notices. Proposed works consulted upon but not carried out does not invalidate the consultation process. Having heard evidence from Mr Wellbeloved and upon consideration of the documents referred to, the tribunal is satisfied that the applicant had consulted upon all the disputed works referred to by the respondent in the Scott schedule.

Application under s.20C and refund of fees and costs

35. The tribunal determines that the respondent shall reimburse any tribunal fees paid by the applicant within 28 days of this decision.

36. The applicant acted reasonably in connection with the proceedings and was successful on all the disputed issues, therefore the tribunal decline to make an order under section 20C. The tribunal notes the applicant indicated at the hearing that no costs would be passed through the service charge.

The next steps

37. This matter should now be returned to the County Court at Medway.

Name: Mr L Rahman **Date:21/7/17**

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

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

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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

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

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

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
(aa) in the case of proceedings before a residential property tribunal, to that tribunal;
(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

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

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.