



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : **LON/00AN/OC9/2015/0154**

**Property** : **20 Keith Grove, London W12 9EZ**

**Applicants** : **Mr Philip James Waind  
Ms Sonya Natasha Gohl**

**Representative** : **Alan Edwards & Co, Solicitors**

**Respondent** : **Mr Dennis Michael Bailly**

**Representative** : **Sutton – Mattocks & Co LLP,  
Solicitors**

**Type of Application** : **Section 33 Leasehold Reform,  
Housing and Urban Development  
Act 1993 – determination of costs  
payable**

**Tribunal Members** : **Judge John Hewitt  
Mr Richard Shaw FRICS**

**Date and venue of  
Determination** : **19 May 2015  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **26 May 2015**

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**DECISION**

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## Decisions of the Tribunal

1. The Tribunal determines that the costs payable by the applicants to the respondent pursuant to section 33 Leasehold Reform, Housing and Urban Development Act 1993 (the Act) amount to £3,760.49 made up as follows:

Solicitors costs	£1,783.74
Counsel's fee	£ 500.00
Valuation costs	<u>£ 850.00</u>
	£3,133.74
VAT @ 20%	<u>£ 626.75</u>
<b>Total</b>	<b>£3,760.49</b>

2. The reasons for our decision are set out below.

**NB** Later reference in this Decision to a number in square brackets ([ ]) is a reference to the page number of the file provided to us for use at the determination.

## Procedural background

3. The property, 50 Keith Grove, comprises two self-contained flats. Both flats have been sold off on long leases. Each of the applicants is the registered proprietor of a long lease. Thus the applicants comprise the qualifying tenants for the purposes of the Act.
4. At Land Registry the freehold interest was registered in the names of Dennis Michael Baily and Victor John King.
5. The applicants served or purported to serve a series of initial notices pursuant to section 13 of the Act seeking to exercise the right to collective enfranchisement of the freehold interest. The last initial notice is dated 4 October 2013 [10].
6. By order made 20 August and drawn 26 August 2014, District Judge Ryan sitting at the County Court at London West made an order by consent [23] to the effect that:
  - 6.1 the initial notice dated 4 October 2013 served on Dennis Michael Baily and on Victor King at Myrtle Cottage, Oak Tree Farm, Lyne, Chertsey, Surrey being the most recent address provided by Mr King pursuant to section 48 Landlord and Tenant Act 1987 was a valid notice which had been validly served;
  - 6.2 pursuant to Schedule 1 to the Act Dennis Michael Baily and Victor King be removed as the reversioner and that Dennis Michael Baily be appointed the sole reversioner in place of the two of them; and
  - 6.3 the claimants in the court proceedings (the applicants in these proceedings) pay to Mr Baily costs in the sum of £600 plus VAT.

7. The respondent gave a counter-notice [16] in which it was admitted that on the relevant date the applicants were entitled to exercise the right to collective enfranchisement.
8. Following negotiations a premium of £77,500 was agreed and on 26 February 2015 the applicants were registered at Land Registry as the proprietors of the freehold interest [25].
9. Evidently the parties were unable to agree the amount of costs payable by the applicants to the respondent pursuant to section 33 of the Act and on 20 March 2015 the applicants made an application to the tribunal for the amount of those costs to be determined [3].
10. Directions were given on 23 March 2015 [27]. The parties were notified that the tribunal proposed to determine the amount of costs payable without an oral hearing, that any request for an oral hearing was to be made within 14 days and that if a request was made the application would be determined at an oral hearing on 20 May 2015. The tribunal did not receive a request for an oral hearing.
11. Pursuant to directions the tribunal has received a hearing file which contains:
  - 11.1 The statement of case of the respondent dated 1 April 2015 and the documents appended thereto which includes a revised schedule of costs claiming the total sum of £5,186.50 [39];
  - 11.2 The statement of case of the applicants in answer dated 23 April 2015 and the documents appended thereto [44];
  - 11.3 A reply by the respondent dated 28 April 2015 and the documents appended thereto [185]; and
  - 11.4 A response by the applicants dated 6 May 2015 and the documents appended thereto [201].

### **The law**

12. It was not in dispute that the applicants had given a series of initial notices pursuant to section 13 of the Act and that in consequence certain costs incurred by the respondent were payable by them by virtue of section 33 of the Act.
13. Section 33 of the Act is in the following terms:

#### **33.— Costs of enfranchisement.**

*(1) Where a notice is given under section 13, then (subject to the provisions of this section and sections 28(6), 29(7) and 31(5)) the nominee purchaser shall be liable, to the extent that they have been incurred in pursuance of the notice by the reversioner or by any other relevant landlord, for the reasonable costs of and incidental to any of the following matters, namely—*

- (a) any investigation reasonably undertaken—*

- (i) *of the question whether any interest in the specified premises or other property is liable to acquisition in pursuance of the initial notice, or*
- (ii) *of any other question arising out of that notice;*
- (b) *deducing, evidencing and verifying the title to any such interest;*
- (c) *making out and furnishing such abstracts and copies as the nominee purchaser may require;*
- (d) *any valuation of any interest in the specified premises or other property;*
- (e) *any conveyance of any such interest;*

*but this subsection shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void.*

*(2) For the purposes of subsection (1) any costs incurred by the reversioner or any other relevant landlord in respect of professional services rendered by any person shall only be regarded as reasonable if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs.*

*(3) Where by virtue of any provision of this Chapter the initial notice ceases to have effect at any time, then (subject to subsection (4)) the nominee purchaser's liability under this section for costs incurred by any person shall be a liability for costs incurred by him down to that time.*

*(4) The nominee purchaser shall not be liable for any costs under this section if the initial notice ceases to have effect by virtue of section 23(4) or 30(4).*

*(5) The nominee purchaser shall not be liable under this section for any costs which a party to any proceedings under this Chapter before the appropriate tribunal incurs in connection with the proceedings.*

*(6) In this section references to the nominee purchaser include references to any person whose appointment has terminated in accordance with section 15(3) or 16(1); but this section shall have effect in relation to such a person subject to section 15(7).*

*(7) Where by virtue of this section, or of this section and section 29(6) taken together, two or more persons are liable for any costs, they shall be jointly and severally liable for them.*

### **The costs claimed**

14. Initially the respondent claimed £6,458.49 [19] broadly made up as to:

Solicitors' costs	£3,381
Court costs	£ 600
Counsel's fee	£ 500
Valuation costs	£ 850
Land Registry fees	£ 52
Misc exps	£ 8

Plus VAT thereon where appropriate.

15. A slightly revised schedule of costs was served [39] which claimed £5,906.50 broadly made up as to:

Solicitors' costs	£2,928
Court costs	£ 600
Counsel's fee	£ 500
Valuation costs	£ 850
Land Registry fees	£ 52

Plus VAT thereon where appropriate.

The costs were based on charge-out rates of a Grade A fee-earner at £250 and Grade B fee-earners at £185. These charge-out rates were not challenged.

### **Items in dispute**

16. The applicants' solicitors served a statement of case putting a number of items in dispute. The applicant's solicitors helpfully provided a schedule itemising all the costs claimed on which they noted the items in dispute, gave their reasons and indicated what sum (if any) they considered to be payable. A copy is at [172].
17. The gist of the challenges to the costs claimed focused on two aspects:
- 17.1 the fees paid to counsel and solicitors' costs associated with giving instructions to counsel and the advice given by counsel; and
  - 17.2 the amount of time claimed for dealing with certain aspects of work.

### **Findings and discussion**

#### **Costs of and associated with counsel**

18. This was a relatively straightforward enfranchisement of a small block comprising two flats and a modest area of amenity land.
19. Counsel was instructed in November 2013 shortly after the first initial notice was given, and counsel gave advice on the telephone for which he charged a fee of £500 + VAT. We have not been told on precisely what point counsel was instructed to advise but we infer from the papers before us that it was concerned with the fact that one of the two registered proprietors of the freehold had gone missing and was believed to be dead.
20. Objection is taken to the costs associated with counsel on several fronts. First this was not a complex enfranchisement and it was not necessary to instruct counsel, secondly that the advice given by counsel was connected with and covered by the consent order made by the

court in which the applicants had agreed to pay costs of £600 + VAT, and thirdly that in any event it was inappropriate to instruct someone as senior as Mr Adam Rosenthal (Call 1999).

21. The respondent's solicitors have asserted that this enfranchisement was complex. They have not indicated in what respects it was complex. We reject the notion that this was a complex enfranchisement but we accept that the fact that one of the two reversioners was missing and believed to be dead added an issue on which the respondent's solicitors may not have had previous experience. In those circumstances and given the several implications arising from that situation, both for the respondent and the solicitors advising him, and bearing in mind the amount of the premium payable, we find that it was within the range of reasonable response to seek guidance from counsel by way of a telephone conference. We are satisfied that advice was sought from counsel at an early stage and that it was not connected with the consent order made by the court in August 2014 and the fee now claimed was not included within the £600 costs referred to in the order.
22. We find that counsel's fee of £500 was modest and proportionate and whilst a less experienced counsel might have been instructed we were not persuaded the fee payable would have been much lower, if lower at all.
23. For these reasons we find that counsel's fee and the solicitors' costs associated with instructions to counsel and considering his advice fall within the ambit of section 33(1)(a)(ii) of the Act.

#### **Time claimed**

24. It does appear to us from the submissions made to us as supported by the documents put before us that the respondent's solicitors made rather heavy weather of a number of aspects of the enfranchisement process. An example is attendances on the valuer. Seven units have been claimed for. No satisfactory explanation to support that has been given. We can understand that the fact of service of a second notice will have a valuation implication because it will set a new valuation date there will not otherwise be any complexity with the valuation exercise.
25. Similarly the amount of attendances on the respondent appears to be usually high and has not been satisfactorily explained or supported.
26. There are other areas where we have concerns about the reasonableness of the time claimed for. In broad terms we prefer many, but not all, of the submissions made on behalf of the applicants. We accept and prefer the submissions of the applicants as regards incoming correspondence. The costs of dealing with such correspondence are covered within the costs allowed for outgoing correspondence.

27. We have therefore made a number of adjustments to the time claimed for. For ease of reference of the parties there is appended to this decision a copy of the applicants' points of dispute [172 – 184] on which we have endorsed in manuscript on the right hand side of the page the amount of costs we consider to be payable within the meaning of section 33 of the Act. In doing so, we have taken the opportunity to make some adjustments to correct minor arithmetical errors made by each of the parties.
28. We have not allowed the fees of £52.60 paid to Land Registry. No explanation of how and why these fees were incurred has been provided to us. It is for the applicants to deduce title, which is usually done by producing copies of the register, and the respondent is entitled to call for that evidence to be produced by the applicant. The respondent does not have to go the trouble or expense of obtaining that evidence.
29. Having made adjustments to the time claimed for we have stood back to look at the costs in the round to see if they are proportionate and within the meaning of section 33 as regards the enfranchisement exercise undertaken in connection with a two flat block where the agreed premium was £77,500. We are satisfied that they are. For these reasons we have determined the costs payable are as set out in paragraph 1 of this decision.

**The court costs of £600 + VAT**

30. These costs are payable by virtue of the court order. They are not costs payable pursuant to section 33 of the Act. Accordingly in our judgment it was not right to include those costs in our determination of the amount of costs payable pursuant to section 33. Thus we have not included them in this decision.

Judge John Hewitt  
26 May 2015

IN THE FIRST TIER-TRIBUNAL  
(PROPERTY CHAMBER)

B E T W E E N:-

(1) PHILIP JAMES WAIND  
(2) SONYA NATASHA GOHIL

Applicants

-and-

MR DENNIS MICHAEL BAILY

Respondent

APPLICANTS' STATEMENT OF CASE AS TO COSTS AGREED AND DISPUTED PURSUANT TO  
SECTION 33 OF THE  
LEASEHOLD REFORM HOUSING AND URBAN DEVELOPMENT ACT 1993 ("THE ACT")

1. 17/10/13 - 6/12/13 - Investigation in Connection with Section 13 Notice and  
Deducing, Evidencing and Verifying Title

Costs  
Allowed

<u>Work Done</u>	<u>Number/Time Spent</u>	<u>Cost</u>	<u>Disputed/Agreed &amp; Comments</u>	<u>Alternative Reasonable Cost</u>
Attendances on Landlord				
Routine Letters out	9	£166.50 (9 @ £18.50 each)	<u>Disputed</u> - Not a reasonable cost and not recoverable under s.33. Landlord had had no involvement in Property for at least a decade prior to the Applicants' claim and could not provide assistance in relation to this stage of work. Certainly no help in deducing, evidencing and verifying title & generally investigating ability of Applicants to enfranchise	2 Letters at £18.50 = £37.00

92.50



			which should have been clear from Official Copies available to Sutton Mattocks ("SM") for £3 each from Land Registry or which the Applicant would have provided.	
Letters In	3	£27.75	Disputed - Letters in not recoverable (see 6.4 of Submissions)	£0.00
Telephone Calls	2	£37.00 (2 @ £18.50 each)	Disputed - Same Reasons as in relation to routine letters above - not recoverable	1 Call @ £18.50 = £18.50
<b>Attendances on Surveyor</b>				
Routine Letters out	3	£55.50 (3 @ £18.50 ea)	Disputed - Whilst valuation of any interest in the specified property is recoverable under s.33 (1)(d) cost of negotiations not recoverable and having detailed conversations with surveyors is also irrecoverable, particularly at this stage of the process (see Tribunal case listed at 11.3 of Submissions)	1 Letter (of instruction) @ £18.50 = £18.50 2 @ 18.50
Letters In	3	£9.25 per letter	Disputed - Letters in not recoverable (see 6.4 of Submissions)	£0.00
Telephone Calls	5	@ £18.50 ea.	Disputed - For same reasons as specified above in relation to routine letters out to Surveyor	1 call @ £18.50 = £18.50 2 @ 18.50
<b>Attendances on Counsel</b>				
Routine Letters out	2	@ £18.50 ea.	Disputed - Not a reasonable cost and not recoverable under s.33 as discussing/getting opinion in relation to tactics is not permitted under statute.  The Applicants also aver that, in any event, this cost would have been covered by the £600.00 + VAT agreed in connection with the Consent Order.  SM argue that it was necessary to instruct Counsel in relation to the missing landlord and also	£0.00 2 @ 18.50

0

37.00

37.00

0

37.00

37.00

			<p>because the Applicants had instructed Counsel on the same issue. The latter is not a valid argument as the Applicants shared the information obtained from Counsel and guided SM through the process, particularly in relation to the County Court application. Indeed, the Applicants were unaware that SM had instructed Counsel until their breakdown of costs was received in October 2014. This information should have been sufficient for an experienced solicitor charging £185 p/h especially given that the s.13 notice was otherwise extremely straightforward. We also refer to 11.3 of the Submissions, in that SM cannot expect the Applicants to pay for ascertaining a situation of which they were already aware, i.e. that the other freeholder was missing, presumed deceased. They also knew the 'missing landlord' process because the Applicants' solicitor explained it to them and explained what their barrister had told them.</p> <p>Given that Counsel was instructed in relation to missing landlord, he did not offer any new information and did not appear to have any input into the way in which SM dealt with the initial notices. They just confirmed what they had always known as, when serving their Counter-Notices <i>'without prejudice to their contention that the s.13 notices were not validly served. Our client has no certainty as to whether Mr King is dead, nor does he have any address for</i></p>	
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			<p>him.' The Respondents at no time offered any suggestions or input into next steps or how the matter may be progressed.</p> <p>The instruction of Counsel and subsequent refusal to accept that valid service of the s.13 notices had been achieved is also not consistent with SM's statement that they assisted the Applicants at all times. Also, the Applicants' solicitor explained each step to SM.</p> <p>In the alternative, and if the Tribunal think that Counsel's costs can be claimed, then it is averred that the barrister instructed was unreasonably senior (called in 1999) and the cost of his instruction is unreasonable, particular as his advice was otiose and the matter was not progressed as a result of the advice.</p>	
<b>Work done on Documents</b>				
Considering Notice, investigating position	42mins @ £185 p/h	£129.50	<u>Agreed</u>	£129.50
Instructions to Counsel	21mins	<del>£73.99</del> 64.75	<u>Disputed</u> - For same reasons as set out above in relation to Attendances on Counsel	£0.00
Ordering/Reviewing office copies/considering matters	18mins	£55.49	<u>Agreed</u> - Although this could have been done by a more junior member of staff	£55.49
Preparation for call with Counsel/telephone call	1hr 6mins	£203.49	<u>Disputed</u> - For same reasons as set out above in relation to Attendances on Counsel and excessive in any event.	£0.00
Considering/attending to papers and drafting Counter-Notice	42mins	£129.50	<u>Agreed</u>	£129.50
Considering Lease	12mins	£36.99	<u>Disputed</u> - Not relevant to matter and not recoverable under s.33	£0.00

129.50

64.75

55.50

203.50

129.50

0

Checking/amending notice/checking office copies	20mins	£61.66	Disputed - Checking office copies not necessary and already charged for above. Excessive for a solicitor charging £185 ph. 12 minutes suggested reasonable for category of work.	£36.99	36.99
Considering matter/finalising Counter Notice	42mins	£129.50	Disputed - Excessive for a solicitor charging £185 ph and unreasonable. 12mins suggested reasonable.	£36.99	64.75
			<b>TOTAL</b>	<b>£480.97</b>	

2. 17/12/13 - 03/02/14 - Dealing with Notice, serving Counter-Notice, Meeting with Client, Considering Valuation Report from Surveyor

<u>Work Done</u>	<u>Number/Time Spent</u>	<u>Cost</u>	<u>Disputed/Agreed &amp; Comments</u>	<u>Alternative Reasonable Cost</u>	
<b>Attendances on Landlord</b>					
Personal attendances	42mins @ £185.00	£129.50	Disputed - Not a reasonable cost and not incidental to any matter listed in s.33.	£0.00 21mins	64.75
Routine letters out	5 @ £18.50 ea	£92.50	Disputed - Not a reasonable cost and not incidental to any matter listed in s.33. In the alternative 1 letter updating Respondent as to position suggested reasonable.	£18.50 3 @ £18.50	55.50
<b>Attendances on Tenant</b>					
Routine Letters Out	1 @ £18.50	£18.50	Disputed - Not a reasonable cost and not incidental to any matter listed in s.33. Cost of negotiations not recoverable (see Tribunal case listed at 11.3 of Submissions)	£0.00 1 @ £18.50	18.50
Letters In	1	£9.25	Disputed - Letters in not recoverable (see 6.4 of Submissions)	£0.00	0
Telephone Calls	1 @ £18.50	£18.50	Disputed - Not a reasonable cost and not incidental to any matter listed in s.33. Cost of negotiations not recoverable (see Tribunal case listed at 11.3 of Submissions)	£18.50	18.50
<b>Attendances on</b>					

Surveyor				
Non-routine letters out	18mins @ £185.00	£55.50	Disputed - Whilst valuation of any interest in the specified property is recoverable under s.33 (1)(d) cost of negotiations not recoverable and having detailed conversations with surveyors is also irrecoverable, particularly at this stage of the process (see Tribunal case listed at 11.3 of Submissions). This is particularly so when Applicants have already agreed surveyor's fees of £850.00 + VAT.	£0.00
Letters in	1	£9.25	Disputed - Letters in not recoverable (see 6.4 of Submissions)	<del>£0.00</del>
Telephone Calls	1	£18.50	Disputed - Whilst valuation of any interest in the specified property is recoverable under s.33 (1)(d) cost of negotiations not recoverable and having detailed conversations with surveyors is also irrecoverable, particularly at this stage of the process (see Tribunal case listed at 11.3 of Submissions). This is particularly so when Applicants have already agreed surveyor's fees of £850.00 + VAT.	£18.50
TOTAL				£55.50

18.50

0

18.50

3. 04/02/14 - 28/05/14 - In Connection with Second Notice, dealing with death certificates, drafting, serving and dealing with Second Counter Notice

Work Done	Number/Time Spent	Cost	Disputed/Agreed & Comments	Alternative Reasonable Cost
Attendances on Landlord				
Routine Letters in/out	9	£166.50 (9 @ £18.50 each)	Disputed - Not a reasonable cost and not recoverable under s.33. The second s.13 notice served upon the Respondent was exactly the same as the first, the	10 £18.50

18.50

			only difference being in the address at which Mr King was served. The Respondent had had no involvement in Property for at least a decade prior to the Applicants' claim and could not provide assistance in relation to this stage of work. The Applicants clearly explained why they were serving a second Notice (and also that it had been Counsel's advice - see "SH9"). Suggested one letter of update reasonable	
Letters in	1	£9.25	<u>Disputed</u> - Letters in not recoverable (see 6.4 of Submissions)	£0.00
Telephone Calls	4 @ £18.50 ea.	£74.00	<u>Disputed</u> - Not a reasonable cost and not recoverable under s.33. The second s.13 notice served upon the Respondent was exactly the same as the first, the only difference being in the address at which Mr King was served. The Respondent had had no involvement in Property for at least a decade prior to the Applicants' claim and could not provide assistance in relation to this stage of work. The Applicants clearly explained why they were serving a second Notice (and also that it had been Counsel's advice - See "SH9").	£0.00 10 18.50
Attendances on Tenant				
Routine Letters Out	4 @ 18.50	£74.00	<u>Disputed</u> - Not a reasonable cost and not incidental to any matter listed in s.33. Cost of negotiations not recoverable (see Tribunal case listed at 11.3 of Submissions)	£0.00 10 18.50
Letters In	3 @ £9.25 ea.	£27.75	<u>Disputed</u> - Letters in not recoverable (see 6.4 of Submissions)	£0.00
Telephone Calls	3 @ £18.50	£55.50	<u>Disputed</u> - Not a reasonable cost and not	£0.00 10 18.50

			incidental to any matter listed in s.33. Cost of negotiations not recoverable (see Tribunal case listed at 11.3 of Submissions)	
<b>Attendances on Surveyor</b>				
Letters in	1	£9.25	<u>Disputed</u> - Letters in not recoverable (see 6.4 of Submissions)	<del>£0.00</del>
<b>Work done on Documents</b>				
Considering file in light of 2 <sup>nd</sup> Notice	30min @ £185 ph	£92.50	<u>Disputed</u> - Not a reasonable cost and not incidental to any matter listed in s.33. Applicants explained to SM that the initial notice was for benefit of County Court applicant and was exactly the same as previous. Counter Notice also exactly the same. See "SH 9" and the Applicants also aver that this work was covered in the £600.00 + VAT they agreed to pay in connection with the County Court costs.	£0.00 201850
Considering file/position and dealing with 2 <sup>nd</sup> Counter Notice	36mins	£110.99	<u>Disputed</u> - Not a reasonable cost and not incidental to any matter listed in s.33. Applicants explained to SM that the initial notice was for benefit of County Court applicant and was exactly the same as previous. Counter Notice also exactly the same ("SH9"). Economies of scale must be applied.	24mins = £73.99
			<b>TOTAL</b>	<b>£92.49</b>

0  
37.50  
74.00

4. 29/05/14 - 17/02/15 - Receiving, Checking and Dealing with 3<sup>rd</sup> Section 13 Notice, Drafting and Serving Counter-Notice, Conveyancing

<u>Work Done</u>	<u>Number/Time Spent</u>	<u>Cost</u>	<u>Disputed/Agreed &amp; Comments</u>	<u>Alternative Reasonable Cost</u>
<b>Attendances on Landlord</b>				
Routine Letters out	5	£92.50 (5 @ £18.50 each)	<u>Disputed</u> - Not a reasonable cost and not recoverable under s.33.	18.50

			<p>The second s.13 notice served upon the Respondent was exactly the same as the first, the only difference being in the address at which Mr King was served. The Respondent had had no involvement in Property for at least a decade prior to the Applicants' claim and could not provide assistance in relation to this stage of work. The Applicants clearly explained why they were serving a second Notice (and also that it had been Counsel's advice).</p> <p>Also see 11.4 of Submissions and "SH9".</p> <p>Suggested one letter of update reasonable.</p>	
<b>Attendances on Tenant</b>				
Letters In	3 @ £9.25 ea.	£27.75	<del>Disputed</del> - Letters in not recoverable (see 6.4 of Submissions)	<del>£0.00</del>
<b>Attendances on Surveyor and Other</b>				
Letters in	1	£9.25	<del>Disputed</del> - Letters in not recoverable (see 6.4 of Submissions)	<del>£0.00</del>
<b>Work done on Documents</b>				
Considering file in light of 3 <sup>rd</sup> Notice and dealing with 3 <sup>rd</sup> Counter Notice	36mins	£110.99	<del>Disputed</del> - Not a reasonable cost and not incidental to any matter listed in s.33. Applicants explained to SM that the initial notice was for benefit of County Court applicant and was exactly the same as previous. Counter Notice also exactly the same. Economies of scale must be applied. See "SH9".	18mins = £55.49
<b>TOTAL</b>				<b>£73.99</b>

55.50

5. Work carried out by JW @ £250.00 per hour - See "SH4"

<u>Work Done</u>	<u>Number/Time Spent</u>	<u>Cost</u>	<u>Disputed/Agreed &amp; Comments</u>	<u>Alternative Reasonable</u>
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				Cost
Briefly advising client on letter of 4 <sup>th</sup> October 2013 (i.e. date of first initial notice)	18mins	£75.00	<u>Disputed</u> - Not a reasonable cost and not recoverable under s.33. In any event already claimed for under first heading.	£0.00 20/25
Revising letters from 2011	30min	£125.00	<u>Disputed</u> - Not a reasonable cost and not recoverable under s.33. In any event matter began in 2013.	£0.00
Reviewing file, reviewing titles, preparing TR1	1 hour	£250.00	<u>Disputed</u> - Excessive. See 11.6 Submissions. Suggested time for partner doing what was, by his own admission, a 'terribly simple TR1'. Partner then queried whether other freeholder would need to sign and how we would do this. Clear from Court Order that unnecessary - 36mins	£149.99
Reviewing applicants' amendments to draft in light of Order made	30mins	£125.00	<u>Disputed</u> - Draft Consent Order (same as one granted) was supplied to Partner from outset and amendments were actually in relation to making the Transfer compliant with the Act (see clause 11) which a partner with commensurate experience in this area should have been aware of.	£0.00
Preparing revised TR1, checking position as to merger	30min	£125.00	<u>Disputed</u> - Revised slightly in line with Applicants' solicitor's explanation. Applicants' solicitor also provided amended TR1 in word form. 12 mins considered appropriate if anything.	£49.99
Applicants advise the two leases will not after all be merged, revising TR1	15mins	£62.50	<u>Disputed</u> - Applicants' solicitor explaining that merger is a matter of intention and currently have no instructions so clearly indemnities to be included. Respondent's solicitor replying that 'he had complied with term of Order and asking Applicants' solicitors to draft appropriate indemnities.	£0.00 (as Applicants' solicitor provided indemnity wording and amended draft)

50.00

150.00

25.00

50.00

0

Applicants' trainee solicitor supplies amended wording	30mins	£125.00	Disputed - See above. By SM's own admission the Applicants' solicitor did this work and they appear to be charging Applicants for something the Applicants have already paid Alan Edwards & Co to do.	£0.00	50.00
Finally agreeing TR1	15mins	£62.50	Disputed - One line email of agreement sent by SM. No engrossments provided, after chasing they asked the Applicants' solicitor to provide and execute their own.	£25.00 (i.e. one email)	25.00
Passing final TR1 to freeholder for execution in escrow	24mins	£100.00	Disputed - Unreasonable for senior partner to prepare and charge for the preparation of engrossments and sending same to Respondent. The Tribunal is asked to note that Applicants' trainee solicitor noticed basic mistake made by SW in relation to address in TR1 at this stage. Refer to 11.6 in Submissions in this connection. Suggested 18mins @ £185.00 appropriate.	£55.49	55.50
			<b>TOTAL</b>	<b>£280.47</b>	
			<b>TOTAL LEGAL COSTS</b>	(£983.42 but Applicants prepared to round up) <b>£1,200.00 inc. VAT</b>	

DISBURSEMENTS:

£1,783.74

<u>Item</u>	<u>Cost</u>	<u>Disputed/Agreed &amp; Comments</u>	<u>Alternative Reasonable Cost</u>
Counsel's fees	£500.00 + VAT	Disputed - Not a reasonable cost and not recoverable under s.33 as discussing/getting opinion in relation to tactics is not permitted under statute.  The Applicants also aver that, in any event, this cost would have been covered by the £600.00 + VAT agreed in connection with the Consent Order.	£0.00

500.00

		<p>SM argue that it was necessary to instruct Counsel in relation to the missing landlord and because the Applicants had also instructed Counsel. The latter is not a valid argument as the Applicants shared the information obtained from Counsel and guided SM through the process, particularly in relation to the County Court application. Indeed, the Applicants were unaware that SM had instructed Counsel until their breakdown of costs was received in October 2014. This information should have been sufficient for an experienced solicitor charging £185 p/h especially given that the s.13 notice was otherwise extremely straightforward. We also refer to 11.3 of the Submissions, in that SM cannot expect the Applicants to pay for ascertaining a situation of which they were already aware, i.e. that the other freeholder was missing.</p> <p>Given that Counsel was instructed in relation to missing landlord, he did not offer any new information and did not appear to have any input into the way in which SM dealt with the initial notices. They just confirmed what they had always known as, when serving their Counter-Notices '<i>without prejudice to their contention that the s.13 notices were not validly served. Our client has no certainty as to whether Mr King is dead, nor does he have any address for him.</i>' The Respondents at no time offered any suggestions or input into next steps or how the matter may be progressed.</p> <p>The instruction of Counsel and subsequent refusal to accept that valid service of the s.13 notices had been achieved is also not consistent with SM's statement that they assisted the Applicants at all times and the Applicants' solicitors explained each step to SM.</p> <p>In the alternative, and if the Tribunal think that Counsel's costs can be claimed, then it is averred that the barrister instructed was unreasonably senior (called in 1999) and the cost of his instruction is unreasonable, particular as his advice was otiose and the matter was not progressed as a result of the advice.</p>	
Surveyor	£850.00 + VAT	<u>Agreed</u> - Applicants' solicitors have instructed SM to deduct this sum from the costs they are holding as security.	£850.00
Land Registry	£52.60	<u>Disputed</u> - No invoices/breakdown of this cost and Applicants at loss as to why this	£0.00

850.00

0

		cost incurred. SM only need to get 3 office copies (freehold, 2x leasehold) and Applicants would have supplied these in any event if asked. Applicants also dealt with all aspects of registration following the conveyance and also refer to 11.5 of Submissions.	
Costs agreed relating to Part 8	£600.00 + VAT	<u>Agreed</u> - Although Applicants do not consider this sum to be recoverable under s.33, they agreed to pay Respondent's costs in relation to County Court claim in order to ensure matter progressed. Not strictly necessary given that Respondent stood to gain considerable amount of money as a result of the Court Order enabling him to become Reversioner and completion to be reached.  Applicants' solicitors have instructed SM to deduct this sum from the costs they are holding as security.	<del>£600.00</del>
		TOTAL	<u>£1,740 inc.</u> VAT

Summary

Solicitors costs  
Valuation costs  
Counsel's fee

1783.74  
 850.00  
 500.00  


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 3133.74  
 626.75  


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 £ 3760.49

VAT 20%