SCHEDULE OF COSTS PRECEDENT **Case Reference: CAM/38UE/OLR/2018/0140**
PRECEDENT G: POINTS OF DISPUTE

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

B E T W E E N

Melanie Jane Owen

Applicant

and

Wallace Partnership Reversionary Group Holdings Limited

Respondent

RESPONSE OF THE RESPONDENT TO THE POINTS OF DISPUTE SERVED BY THE APPLICANT

General Point	The Applicant does not object to the claimed charging rate of G.N. Stevenson. However, the Applicant considers the total claimed excessive. The form of Lease on this development was approved by the Tribunal in relation to 17 Foster Road in 2012 Case No. CAM/38UE/OLR/2012/0030. In that case costs were also in dispute and the Tribunal allowed 3.5 hours work. In 2017 in relation to 16 Foster Road the Respondent again sought to introduce new terms into the draft lease with no justification and only dropped this request following Tribunal proceedings Case Reference. CAM/38UE.OLR/217/0142. In that case legal costs were determined by the Tribunal in the sum of £1,189.00 after the Respondents claimed legal fees of £1,775.00 plus VAT, as they have done here. If the Respondent had simply agreed the same form of lease and the same legal costs as were determined following Tribunal proceedings in relation to 16 Foster Road in 2017, both parties would have saved a lot of time and expense.
	Receiving Party's Reply: The points made above by the Applicant completely ignore the point that as the Applicant's representatives know, the Respondent firmly argues that no valid Notice has been served under Section 42 of the Act in this case. Moreover, in this case the Application to Tribunal was made before any draft Lease was submitted to the Applicant or her representatives. There was therefore at that point no lease to agree to! At the point the Application was made, neither the Applicant nor her representatives could possibly know whether or not there would be any dispute about the draft Lease. Also, in order to comply with the Directions, the Respondent had to guess (and still has to guess) the amount of time which will be spent on any conveyancing work which had not even started

	when the Application to Tribunal was made. See further the attached letter dated 11th October, 2018 from ourselves addressed to the Tribunal. ***[Attachment A herewith]***
	Tribunal Decision: **The agreement to the hourly rate of £265 is noted and what appears to be an offer to settle by the Applicant at £1,189.00 plus VAT as per the decision we made a year ago.**
	(A) Notice of Claim engaged (34 units) Comments using the same numbering as the Respondent.
1.	Five minutes are claimed for taking instructions from an experience investor freeholder who completed two leases on the same development last year. The time is excessive. 3 units is suggested.
	Receiving Party's Reply: It is believed that the Applicant is claiming that 30 minutes is too much for obtaining instructions and advising. 30 minutes seeking instructions given the complexities caused by the service of the purported Section 42 Notice, as explained in Attachment A and the covering letter is entirely reasonable as advice was requested on complex specialist law.
	Tribunal Decision: **We are prepared to accept that 5 units at £132.50 is reasonable for this element**
2.	This item is conceded
	Receiving Party's Reply: Noted - thank you.
	Tribunal Decision: **We record agreement to 3 units at £79.50**
3.	4 units is claimed for notices and correspondence regarding the deposit. This is a standard procedure and 2 would suffice.
	Receiving Party's Reply: 24 minutes (4 units) is a reasonable time not only for drafting the relevant Notices about the deposit but also reporting to the Respondent that it had been received and undertaking the necessary accounting and banking formalities in respect of receiving the same.

	Tribunal Decision: **We find that 4 units for this element is reasonable and accept the comments of the Respondent's solicitors thus giving a figure of £106**
4.	It is surprising that consideration of the validity of the notice did not take place at the same time as advising the client (item 1) and considering the lease, office copies and other relevant documents (item 2) this item should be disallowed.
	Receiving Party's Reply: This case required considerable consideration time because of the complexities created by the Applicant's advisers. Considering the validity of the Notice took at least 18 minutes in this case because it was necessary to consider the validity of the Notice in the context of the letter of 8th January, 2018 from Lawrence & Wightman ***[Attachment B]*** and the context of the previous purported Notice and consider what to do. It was also necessary to consider 42(7) of the Act. As previously emphasised, the view was formed and still exists that no valid Notice has been served, the Applicant being estopped by the 8th January, 2018 letter from denying the application of the said Section 42(7). This chargeable item is completely separate from initially advising the Client of the existence of the complexity (Item 1) or looking at Title documents appended (Item 2).
	Tribunal Decision: **The substance of the Initial Notice should have been considered when advising the client under item 1 above, which is why we have allowed the time claimed in full. It is to be remembered that Mr. Stevenson is a very experienced practitioner in this field , see paragraph 7 of the Respondent's statement of case. In those circumstances we consider that taking the 5 units at point 1 above and allowing a further 2 units on this occasion is sufficient. The time allowed is there 2 units at £53.00**
5.	In the dispute in relation to 16 Foster Road last year this Tribunal allowed 4 units for drafting the counter notice. The Applicant concedes 4 units.
	Receiving Party's Reply: 6 units is entirely appropriate in this case for drafting the Without Prejudice Counter Notice and the covering letter to the Applicant's representatives – Lawrence & Wightman dated 27th February, 2018 as we wanted to make absolutely clear that the Respondent did not accept that any valid Notice had been served. Again, complexities have been created by the Applicant's own advisers.
	Tribunal Decision: **We note all that is said on behalf of the Respondent. However, no application has been made to the Court under s46. in addition and much of the Counter-Notice is**

	taken up with lease terms which, it would seem, have not made their way into the final document at the moment in any event. We would allow 4 units as is conceded by the Applicant. This gives a figure of £106
6.	This item should be disallowed. This work is within the remit of the valuer and not the Respondents solicitors.
	Receiving Party's Reply: The Applicant misdirects herself if she thinks this work in connection with valuations should be disallowed. The Upper Tribunal has made quite clear that these costs should be allowed and attention is drawn to paragraph 25 of the Wisbey decision referred to in Witness Statement of 19th September, 2018. Attention is also drawn to paragraph 3(viii) paragraph 'cc' on page 4 of the Statement of Case of the Respondent. Also see Paragraph 26 of John Lyon -v- Terrace Freehold LLP [2018 UKUT 0247 (LC) ***[Attachment C herewith]*** "While the action of instructing the valuer was itself an administrative rather than professional task (following *Sidewalk Properties Ltd. v Twinn* [2015] UKUT 0122) and the solicitor's costs not therefore recoverable without more, should the solicitor consider the valuation once it is provided, the costs of doing so are prima facie recoverable as being "incidental to" the valuation."
	Tribunal Decision: **We accept that some cost is due for this item. however, we would consider 3 units to be sufficient and allow £79.50**
7.	This item should be disallowed. The letters in question were in respect of the Respondents attempt, without making an application to the Court under Section 46 LRHUDA, to establish that the notice of claim was invalid. The Respondents improperly sought an increased premium of £14,500.00 i.e. £900.00 more than in the counter notice, as a consideration for dropping this unjustified claim. None of this work should be chargeable to the Applicant.
	Receiving Party's Reply: Again the Applicant has misdirected herself. Section 46 of the Act is totally inappropriate because the Respondent has not served any Counter Notice which complies with 46(1)(a) of the Act. Quite simply, it is the Respondent's case that the Applicant has served no valid Notice under Section 42 of the Act and such purported Notices as she has served are both complete nullities. The 5 units under paragraph 7 are letters to the Respondent seeking instructions and letters to the Applicant's representatives. All of this time should be

	allowed.
	Tribunal Decision: **We have noted all that has been said. The proof of the pudding is in the eating. The premium has been agreed. No application was made by the respondent to Court. It seems unnecessary to send more than one letter to the client and perhaps two to the applicant. Doing the best we can we therefore allow 3 units at £79.50**
8.	It is not clear what needed to be done on 28th February in this respect. This item should be disallowed.
	Receiving Party's Reply: 4 units were spent on 28th February, 2018 on this file making file notes and diary notes of the relevant time limits and informing the Client Respondent of the same. All of this time should be allowed as this is good practice and essential due diligence and entirely reasonable.
	Tribunal Decision: **We do not consider that this item of work falls with the provisions of s60 of the Act and disallow same in full.**
	Summary The Applicant will agree 20 units for (A) i.e. 2 hours at £265.00 plus VAT £530.00 plus VAT. **Receiving Party's Reply:** This suggestion is entirely inadequate for the reasons stated above. The Respondent does not think any reduction is appropriate, especially bearing in mind the complexities created by the Applicant's advisers. **Tribunal Decision** **We assess the costs payable under (A) to be £636.00 plus VAT (£127.20)**
(B)	The costs which have been and/or estimated in connection with the grant of the lease is 33 units as specified by the Respondent.
	All items claimed under this heading should be disallowed save for preparation of engrossments and attending to completion. The form of Lease was agreed after negotiation in relation to 16 Foster Road last year and there was no need to spend time seeking to pursue the same amendments to the draft lease as the Respondent had to drop following Tribunal proceedings in 2017. In 2017 the Tribunal allowed a global sum of

	£500.00 in respect of these aspects which the Applicant will agree.
	Receiving Party's Reply: Frankly, the Respondent does not know and cannot know what time will be spent on all of the matters listed in 'B'. The Applicant is plainly in no better position. It is obviously the Respondent's view that no time whatsoever need be spent because no valid Notice has been served. The Respondent does not therefore envisage that completion will ever take place. If, however, despite the Respondent's views, completion does take place, the estimates given in 'B' are reasonable. Obviously difficulties are caused for all parties by this Application being made to this Tribunal at this premature time. Equally obviously, if completion does take place, as a matter of professional conduct costs will only be requested on the basis of time actually spent.
	Tribunal Decision: **We are concerned that the application we are asked to deal with is based on incomplete and estimated work. How are we expected to assess the costs on this basis. Further we do not understand why the matter remains in this state when the premium requested on the Counter-Notice has been agreed by the Applicant. Why is time being spent on continuing to argue the effectiveness of the Initial Notice? As we are asked to determine these costs associated with a lease that has yet to be settled we conclude that best we can do is to assess the time we would think would be required to settle the lease, for which two other neighbouring properties at 16 and 17 have already been agreed. We conclude that taking into account the elements numbered 1 - 7 under (B)a charge of £650 would be appropriate** **We conclude that the total payable in respect of the costs under the provisions of s60 of the Act is £1,286 plus VAT of £257.20 and the valuers fee £714 inclusive of VAT**
Point 3	**Application for an order for costs under Rule 13 Tribunal Procedure Rules 2013**
	The Applicants solicitors spent 3 hours on 4th October 2018 dealing with amendments to the draft lease and preparing these costs submissions. Her hourly charging rate is £250.00 plus VAT per hour and it is frustrating to be dealing a year later with exactly the same points and arguments as were made in relation to the form of lease on 16 Foster Road and ultimately either conceded by the Respondent or determined by the Tribunal. Application is therefore made by the Applicant under Tribunal Procedure Rules 2013 Rule 13 for an Order that the Applicants costs in this respect are met by the Respondent.
	Receiving Party's Reply: In view of what is said earlier in this paper and in the covering letter, this point is a complete misconception by the Applicant's representatives. Bluntly, an Application to the Tribunal should not have been proceeded with at this time by the Applicant's representatives without the Applicant securing an Order from the Court that the Applicant had served a valid Notice under Section 42 of the Act. Moreover, it is an abuse of process for the Applicant to actually make an Order for Costs under Rule 13 of the Tribunal Procedure Rules 2013 at this stage and this was made clear in Willow Court Management Company (1985) Limited against Alexander [2016] L&TR34. A copy of that case is attached herewith ***[Attachment D herewith]*** and in that

	case the UpperTribunal could not have made it any clearer that any Application for Costs under that Order should only be made after a Determination – even then, only on the basis of conduct which was clearly unreasonable on behalf of the other party. The Tribunal's attention is particularly drawn to paragraph 43 of the Decision.
	Tribunal Decision: **We do not consider that an application under Rule 13 is warranted, certainly not at this time. There are a number of issues concerning the procedures adopted by both sides in this case. The Willow Court case should be studied. If either party considers it is justified in seeking an order under Rule they must make application to the Tribunal within the time limits set out in the Rule. Directions will then be issued. Better still it seems to us that time should be spent bringing this matter to a conclusion for the benefit of the parties**

Served on behalf of the Respondent by Stevensons Solicitors on 10th October 2018.

Dated: 11th October 2018

Signed ….....

On behalf of the Respondent:

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