

Schedule of Dispute s33 Costs

Case Reference: **CHI00MW/OC9/2018/0013**

Premises: **Osbourne Court, PO31 7QS**

Item	Cost	Respondent's Comments	Applicant's Comments	Tribunal's Comments/Determination
5	£147.50	Duplicates item 3(b)	Item 3(b) relates to a review of the official copies whilst item 5 in part relates to the preparation of a bundle of copy official copies.	Allowed in full
7	£118.00	Duplication of item 6	As will be noted the items of work mentioned are different.	The narrative for 7(a) and 7(b) largely duplicates 6(b) and is disallowed in part. Disallow £59

8	£545.70	8(b) duplicates item 3(a) therefore further breakdown requested as to amount of time spent	Item 8b) is a review of official copies to answer queries raised by the applicant's valuer whilst item 3(a) was a review of the official copies for advising the applicant as to the validity of the claim.	Allowed in full
15	£118.00	Not agreed as recoverable s33 costs	This item relates to communications (a) with the applicant as to the impact that this claim has on the s42 claim then received from the tenant of 42 Osbourne Court; (b) communications with the solicitor for the tenant of 42 Osbourne Court to, in essence, tell them that their client's claim is suspended by reason of this claim and (c) communications with the respondent's solicitor as to the receipt of the s42 claim from the tenant of 42 Osbourne Court.	Allowed in full
16	£472.00	Land Registry documents could have been obtained from the Respondent by requesting deduction of title under s20	(a) Whilst the scheme of the 1993 Act allows for the applicant to require the participating tenants to deduce title to their respective flats it is not mandatory that the applicant do so.	It was open to the Applicant to determine how it would investigate the claim. All items in this section are allowed in full

	<p>£28.00</p>	<p>Documents to Applicant's valuer could have been sent by email and photocopying charges thereby avoided</p> <p>Counter notice could have been sent by registered post avoiding the need for the costs of hand delivery</p>	<p>Thus, the applicant is permitted to make its own enquires as to the ownership that each participating tenant asserts to have to their flat/lease.</p> <p>(b) The electronic transmission of some 52 plus sets of official copies is theoretically possible, the time that it would take to load them onto an email or series of emails would have been disproportionate to the photocopying of those documents.</p> <p>(c) the section 21 counter notice was given on 21 March 2017. The long-stop date provided within the section 11 initial notice for the giving of such counter notice was 31 March 2018.</p> <p>The value of the claim was circa £1.1million. The consequence of failing to give a counter notice will be well known to the tribunal.</p>	
	<p>£39.05</p>			

17	£565.05 (of which £94.40 relates to VAT at 20% of Charges incurred for obtaining official copies from the Land Registry	VAT has been applied to all items including item 16 where VAT should not be charged (Land Registry charges). VAT will need to be recalculated to be applicable only to relevant items	<p>The Land Registry does not charge VAT.</p> <p>The Land Registry serves two purposes. One to maintain the records of land ownership and the other to make those records available to the public.</p> <p>To achieve the first purposes legislation requires the compulsory registration with the Land Registry of certain types of land transaction. For dealing such registrations the Land Registry charges a fee.</p> <p>To achieve the second purpose the Land Registry charges a fee for any copies of its records that members of the public may require.</p> <p>For VAT purposes however, HM Revenue & Customs do not expect solicitors to charge their client VAT on the Land Registry fees for dealing with compulsory registration matters but they do expect</p>	<p>The costs listed in section 16 are described as disbursements and as such may be recovered from the Respondent. From the information provided it seems that these are costs paid to Land Registry and others for the supply of documents.</p> <p>Whilst VAT would be chargeable on any service carried out by the Applicant's solicitor such as the collation or copying of documents received it is not accepted that VAT should be charged on payments made to others on their client's behalf.</p> <p>That part of the total VAT charge relating to disbursements is therefore disallowed.</p>

			solicitors to charge VAT on the Land Registry charges for the supply of copies. The apparent rationale for that is that when incurring a registration fee the solicitor is not providing a service to its client but it is providing a service when it obtains copies from the Land Registry.	Disallow £107.81
18	£3,390.30	Not agreed	This does not require any comment as the objection is simply the culmination of the objections referred to above.	£3,390.36 less disallowed as above £166.81 = £3,223.55
(3)		General Observation - it is noted that the Applicant's claimed s33 valuation costs total £16,734.21 comprising £14,567.61 representing over 72hrs 48mins fee earner time at a rate of £200ph, £2,075.00 representing 27hrs 36mins secretarial time at a rate of £75ph and disbursements totalling £91.60. Notwithstanding further details and observations which follow	Here the valuer has to consider: <ol style="list-style-type: none"> 1. 56 flats, 2 commercial premises, over 8 floors, with sea views of varying quality, 7 garages; 2. From researching and inspection I established 5 different main flat layout designs of 1, 2 or 3 bedrooms. Numerous further individual flat layouts. Differing quality of sea views between the flats, which is also pertinent to value. 	The Tribunal accepts that this was a complex valuation with much variation between floors, aspect, size, amenities and lease length. Clearly there must be "economies of scale" in that the research into comparables will be common to all units. Whilst a number of lessees withdrew from the process

		below, the Respondent submits that these costs globally are significantly in excess of what would be considered reasonable costs in accordance with s33 in a case such as this	<p>3. 19 different lease lengths, and ground rent / rent review configurations, including 4 different lease lengths below 80-yrs unexpired;</p> <p>4. The participating flats and those non-participating, which was altered, a considerable number of the participating tenants withdrew from the claim.</p>	on 16 March 2017 uncertainty remained as to whether their withdrawal would be effective.
	£412.50	20 to 27 February 2017 - secretarial time in setting up spreadsheet 5hrs 30mins - unreasonable amount of time propose 2hrs 30mins	The valuer worked together with his secretary to extract and collate the data which had to be found by reading through the all leases and associated title documents. If anything, the valuer considers that he has underestimated the time spent doing this.	Allowed in full
	£620.00	24 to 28 February 2017 - fee earner in preparing and populating spreadsheet - 3hrs 10mins - unreasonable amount of time -propose 1hr 30mins	The valuer worked together with my secretary to extract and collate the data which had to be found by reading through the all leases and associated title documents. If anything, the valuer consider that he has underestimated the time spent doing this.	Allowed in full

	£66.67	28 February 2017 - fee earner in considering validity of initial notice -20mins - legal not valuation matter - propose 0hrs	The valuer had input into S.13 validity consideration. There were omissions from the S.13, such as missing pages, missing plan and the descriptions had to be considered in light of my knowledge of the of the block.	Not a valuation matter. Disallowed
	£37.50	6 March 2017 - secretarial time in downloading EPCs - 30mins - not recoverable under s33 - propose 0hrs	Information extracted from EPCs was used to as part of valuation consideration	Allowed in full
	£225.00	9 March 2017 - secretarial time in data entry and compiling list of missing information - 3hrs - unreasonable amount of time also duplicated by fee earner time (see above) - propose 0hrs	It was much more time-effective for the valuer to work together with his secretary to check the documents missing and compiling a list. Using the secretary thus saved the valuer doing it alone and spending more expensive time on it.	Allowed in full
	£750.00	13 March 2017 - secretarial time in travel to and from Isle of Wight and in attending inspections of east and west wings - 10hrs -unreasonable	The valuer inspected a considerable number of flats on one visit, and could only see that number at one visit by having an assistant saving his time by doing tasks such as photography, assisting	It is accepted that the Valuer required some form of assistance. Allowed in full

		amount of time also duplicated by secretarial time (see below) - propose 1hr	with measuring, keeping/collating documents. Had the valuer been alone, he would have needed to make two full day visits to be able to see the same number of flats, which would have cost more in time overall.	
	£600.00	16 March 2017 - fee earner time in auditing documents - 3hrs - unreasonable amount of time also duplicated by secretarial time (see below) - propose 1hr	This is the time spent checking documents, again saving the valuer time doing it alone. It involved checking differently drafted leases etc.	There are a number of different leases which need to be checked. Allowed in full
	£225.00	16 March 2017 - secretarial time in auditing documents - 3hrs - unreasonable amount of time also duplicated by fee earner time (see above) - propose 1hr	This is the time spent checking documents, again saving the valuer time doing it alone. It involved checking differently drafted leases etc.	Allowed in full
	£6,266.67	20 to 28 March 2017 - fee earner time in preparing valuation - 31hrs 20mins - unreasonable amount of time spent in preparation of	The spreadsheets were already prepared with the data but not with the valuation data to be applied. The work for this entry included: market research, analysis and collation of comparable market	It is agreed that the time spent on this was excessive. The number of flats to be valued is immaterial to the amount of research

		valuation given that spreadsheets had already been prepared - propose 4hrs	transactions for both long and short lease transactions for the various flat types. The valuer also researched comparables outside of the block itself. For every outside comparable the lease terms were checked, by downloading the relevant lease from Land Registry. The valuer's research work included Rightmove plus, Mouseprice and other online data sources, phone calls to agents to check details. This is all time-consuming and, if anything, the valuer considers that he has understated the time spent doing this.	required. It is accepted that the calculation of the individual valuations takes time but with a spread sheet already set up this should not have proved unduly onerous. 12 hours allowed. Disallow £3866.66
	£3,400.00	30 March 2017 to 26 April 2017 - fee earner time spent in researching auction freeholds and drafting and sending final report - 17hrs - not recoverable under s33 as time incurred following service of Applicant's counter notice. In the alternative an unreasonable amount of time incurred in undertaking these tasks - propose 0hrs	The valuer's summary report for the s45 counter notice was sent prior to the counter notice being given. The valuer's final full report was completed and sent at the end of April. This incorporated further freehold ground rent market research that he considered relevant to the valuation advice for the applicant, regardless of whether before or just after the counter-notice date.	It is not accepted that post s.33 costs are not recoverable. Where costs are incurred which relate to a valuation already provided they are allowed. Costs of £200 for "Research Auction Freeholds is therefore disallowed.

