FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference:	CHI/00HP/OC9/2019/0035
Property:	Santoy, 57 Banks Road, Poole, Dorset, BH13 7PP
Applicant:	Santoy Freehold Limited
Representative:	House and Son
Respondents:	Mr and Mrs B V Leader-Creamer
Representative:	Manuel Swaden Limited
Type of Application:	Sections 33(1) and 91 Leasehold Reform Housing and Urban Development Act 1993 Application for an Award of Costs in relation to a Leasehold Enfranchisement
Tribunal Members:	Judge A Cresswell (Chairman)
Venue of Hearing:	On the Papers
Date of Decision:	18 March 2020

DECISION

The Application

1. On 4 September 2018, the Applicant served on the Respondents a Claim Notice to exercise the right to acquire the freehold of the property under Section 13 Leasehold Reform Housing and Urban Development Act 1993 ("the 1993 Act"). The Respondents served a Counter Notice dated 21 November 2018 under section 21(2)(a) of the 1993 Act.
2. The Respondents apply for their costs incurred in consequence of the Claim Notice under Section 33(1) of the 1993 Act.

Summary Decision

3. The Tribunal has determined that costs in the sum of £6646.25, £3500 and £18 all plus VAT were reasonably and properly incurred and are payable by the Applicant to the Respondents. The reasoning and further detail is set out below.

Directions

4. Directions were issued on 17 December 2019 and 19 February 2020. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration.
5. The parties did not request an oral hearing. Each side made brief written representations which were considered by the Tribunal in making this decision.

The Law

6. The relevant law the Tribunal took account of in reaching its decision is set out in the Appendix below.
7. There is guidance in the following cases:

Dashwood Properties Limited v Beril Prema Chrisostom-Gooch 2012 UKUT 215 (LC):

20. *The value of a dispute and the amount to be gained, or lost, by a party, is always a matter that a party will bear in mind when considering whether to incur costs and the level of those costs.*

21. While the issues involved in enfranchisement claims can undoubtedly be complex and LVT decisions in Daejan Properties Ltd v Parkside 78 Ltd LON ENF 1005/03, followed in Daejan Properties Ltd v Twin LON/00BK/0C9/2007/0026 and Daejan Properties Limited v Allen LON/00AH/OLR/2009/0343 establish that the LVT accepted that a landlord is entitled to instruct the solicitors of its choice and is not obliged to instruct the cheapest or most local solicitors, the LVT were perfectly entitled to take into account the actual sum in dispute in determining whether the costs of professional services in investigating the tenant's right to a new lease were reasonable and that the investigation was reasonably undertaken.

22. The LVT were entitled to determine that costs far in excess of the amounts involved were not costs that "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" and the appeal on this ground therefore fails.

23. An independent investigation of the tenant's right to the lease is, as a matter of principal, a reasonable investigation to undertake. As is pointed out by the appellant, it may well be that there are issues of conflict between the intermediate and competent landlord, if different, and it cannot be incumbent upon the intermediate landlord to need to rely upon the investigations carried out by the competent landlord.

26. I do consider that there was duplication in the instructing of two firms of solicitors with respect to the investigation of the tenant's right to a new lease (section 60(1)(i)) and the conveyancing costs (section 60(1)(iii)). In my judgment, such costs do not satisfy the proviso set out in section 60(2) of the 1993 Act.

27. The costs of instructing separate conveyancing solicitors to the solicitors advising on the tenant's right to a new lease, with the inevitable duplication that will incur, do not fall within the approach adopted in the three LVT cases referred to above. Those duplicated costs are not something that "might reasonably be expected to have been incurred by him if the circumstances had been such that [the landlord] was personally liable for all such costs." In my judgment the LVT were correct to come to the conclusion that such duplicated costs should not be recoverable.

Sinclair Gardens Investments (Kensington) Ltd v Wisbey [2016] UKUT 203 (LC) The Upper Tribunal (HHJ Huskinson sitting with the Registrar as an assessor) held as follows:

In *Realisations Limited v Moss* [2013] UKUT 0415 (LC) at paragraphs 9-11 the Tribunal summarises the purpose of the cost charging provisions in section 60:

"9. These provisions are straightforward and their purpose is readily understandable. Part I of the 1993 Act is expropriatory, in that it confers valuable rights on tenants of leasehold flats to compel their landlords to grant new interests in those premises whether they are willing to do so or not. It is a matter of basic fairness, necessary to avoid the statute from becoming penal, that the tenant exercising those statutory rights should reimburse the costs necessarily incurred by any person in receipt of such a claim in satisfying themselves that the claim is properly made, in obtaining advice on the sum payable by the tenant in consideration for the new interest and in completing the formal steps necessary to create it.

10. On the other hand, the statute is not intended to provide an opportunity for the professional advisers of landlords to charge excessive fees, nor are tenants expected to pay landlords' costs of resolving disputes over the terms of acquisition of new leases. Thus the sums payable by a tenant under section 60 are restricted to those incurred by the landlord within the three categories identified in section 60(1) and are further restricted by the requirement that only reasonable costs are payable. Section 60(2) provides a ceiling by reference to the reasonable expectations of a person paying the costs from their own pocket; the costs of work which would not have been incurred, or which would have been carried out more cheaply, if the landlord was

personally liable to meet them are not reasonable costs which the tenant is required to pay.

11. Section 60 therefore provides protection for both landlords and tenants: for landlords against being out of pocket when compelled to grant new interests under the Act, and for tenants against being required to pay more than is reasonable."

"The 1993 Act specifically provides in section 45 for the service by a landlord of a counter-notice. This is a crucial step in the procedure. Failure by a landlord to serve a proper counter-notice can have serious adverse effects upon the landlord's position. I consider it to be reasonable for a landlord to instruct a solicitor, experienced in this specialised area of law, to consider a tenant's claim to a new lease under section 42 and to advise upon the terms of a counter-notice.

"If a solicitor instructs a valuer to produce a valuation and then considers the valuation once it is provided, then the solicitor's costs are "incidental to" the valuation. If they are incidental to the valuation then they are properly recoverable providing they are reasonable having regard in particular to section 60(2). I observe a similar conclusion was reached by the Upper Tribunal (Martin Rodger QC, Deputy President) in ***Sidewalk Properties Ltd v Twinn*** *[2015] UKUT 0122 (LC), although I notice that in that case the Tribunal considered that the instructing of the valuer (as opposed to the later consideration of the valuer's report) was an administrative rather than a professional task for which no separate time charge could reasonably be made. I agree. "*

"The amount of the reasonable costs (excluding VAT) for a one-off transaction would have been £1650, being the sum of £1725 which was claimed by the appellant minus three units in respect of the costs of instructing a valuer at £25 per unit. "

It was reasonable for the landlord to use a Grade A fee earner for the conveyancing work. *"I consider that a rate of charge of £250 per hour (plus VAT) to be a reasonable rate of charge – the F-tT did not suggest that this was an excessive rate save in respect of the grant of the new lease."*

It would be reasonable to allow a discount of 20% to the fees to reflect the opportunity that the landlord had to negotiate a discount referable to the fact that there were several lease extension claims in the same building.

Metropolitan Property Realizations Ltd v Moss [2013] UKUT 415 (LC)
"….Wallace had rendered an interim invoice to their client. Unless that invoice was to be regarded as a sham, which was not a conclusion remotely open to the LVT on the evidence before it, it was wholly inconsistent with any notion that the solicitors were acting without the expectation of being paid by their own client albeit that their client would be entitled to be reimbursed for so much of their charges as fell within section 60 of the 1993 Act."

8. Leggatt J in **Kazakhstan Kagazy plc v Zhunus** [2015] EWHC 404 (Comm) at [13]: "*… it may be entirely reasonable from the point of view of a party incurring costs to spare no expense that might possibly help to influence the result of the proceedings. It does not follow, however, that such expense should be regarded as reasonably or proportionately incurred or reasonable and proportionate in amount when it comes to determining what*

costs are recoverable from the other party. What is reasonable and proportionate in that context must be judged objectively. The touchstone (of reasonable and proportionate costs) is not the amount of costs which it was in a party's best interests to incur but the lowest amount which it could reasonably have been expected to spend in order to have its case conducted and presented proficiently, having regard to all the relevant circumstances."

9. Hildyard J in **Re RBS Rights Issue Litigation** [2017] EWHC 1217 (Ch.D.), a case in which the costs exceeded £100 million, at [134]:"*... litigants are free to pay for a Rolls-Royce service but not to charge it all to the other side.*"

10. The Supreme Court's Practice Direction 13 on Costs gives the following guidance:

3. Basis of Assessment
3.1 Costs in the Supreme Court are ordered to be assessed on the standard basis or on the indemnity basis in accordance with rules 50 and 51 of the Supreme Court Rules or the equivalent bases that apply in Scotland and Northern Ireland. The court will not allow costs which have been unreasonably incurred or which are unreasonable in amount.
3.2 On the standard basis, the court will only allow costs which are proportionate to the matters in issue and will resolve any doubt as to whether costs were reasonably incurred or reasonable and proportionate in amount in favour of the paying party.
3.3 Costs incurred are proportionate if they bear a reasonable relationship to:

- the sums in issue in the proceedings;
- the value of any non-monetary relief in issue in the proceedings;
- the complexity of the litigation;
- any additional work generated by the conduct of the paying party; and
- any wider factors involved in the proceedings, such as reputation or public importance.

Costs which are disproportionate in amount may be disallowed or reduced even if they were reasonably incurred or even if they were necessarily incurred.

Guidelines on Fees Allowed
Solicitors practising in England and Wales (5)
15.1 The Court adopts the guideline rates issued by the Senior Courts Costs Office for summary assessment and the rates are the starting point for all assessments. These are consolidated figures that include a mark-up for care and attention. Form 5 must be completed using a consolidated figure for the hourly rate. If a rate is charged that exceeds the guideline rate an explanation must be given under the heading 'Fee earners and hourly rates' in part 1 of Form 5.
15.2 The following table sets out the current hourly rates and localities:
Grade of Fee Earner A London 1: £409

Consideration and Determination

11. The Tribunal sets out below the submissions of the parties in relation to disputed heads of costs:
The hourly rate of Manuel Swaden £450 per hour
The Applicant

We appreciate that Mr Manuel is an experienced Solicitor with many years of property experience. We accept that he would therefore be deemed a Grade A fee earner. The Tribunal will have knowledge of the appropriate hourly remuneration. We note the quoted rate of £450 per hour and although we appreciate that the firm is in London and it is normal for rates in London to be higher than in the Provinces, the appropriate ceiling in the Provinces for this type of work is, we believe, in the region of £300 per hour. We therefore believe that Mr Manuel's remuneration to be excessive and would suggest that this is capped at a rate of £400 per hour, (£40 per unit).

The Respondents

Whilst the Applicant's comments are noted the suggestion of capping the Respondents' solicitor's legal fees at £400 per hour is arbitrary and does not reflect either Mr Manuel's charging rate or rates applicable to a London firm. The charging rate of partners in central London undertaking this time for work is very likely to exceed at this level and thus the rate of £450 per hour should remain.

The quantum of time charged £7,380 in total

The Applicant

We have carefully been through the schedule of recorded time and considered whether these fall within Section 33. We note that the S.21 Notice was served on 21 November 2018, by which time 54 units of time had been incurred. At the hourly rate sought this would equate to £2,430, yet we note that invoice number 2018/19P39 was for £3,000 plus disbursements. The time incurred of 54 units seems reasonable, but we suggest that this should be at £40 per unit, making a total of £2,160.

The Respondents

The Applicant's comments are noted but it is not accepted that only fifty four of the units referred to would be recoverable under Section 33 of the Act. The Applicant does not specify which units they are selecting to be disregarded.

Counsel's fee up to S.21 Notice £1,500

The Applicant

We do not consider that it is correct for Counsel's fees to be recoverable. If Mr Manuel is as experienced as he says, then we believe the drafting of the Counter Notice would have been within his area of expertise. We note the invoice of Miss Katie Helmore of Landmark Chambers recites that she drafted the Counter Notice. In fact the Counter Notice was a short form of document, and contained proposals for retention of part of the Additional Freeholds and for a Leaseback in relation to Flat 1. Unusually the Counter Notice was silent on the inclusion of the rights that would be granted over the retained Freehold for maintenance purposes of the building. Additionally, the Counter Notice contained at paragraph 10 is an unusual Covenant which was not found in any of the Underleases. We do not believe that the legal issues were sufficiently complicated to warrant the advices of Counsel prior to the service of the S.21 Counter Notice. In any event, on Manuel Swaden's website, they advertise that one of their Partners, Tamara Lester, is an expert in the Leasehold Reform legislation, and so we believe that all the appropriate knowledge could have been obtained in house.

The Respondents

This matter was unusually complex due to the various factors and in particular the continued long and exclusive use of parts of the building which fall outside

of the "boundaries" of the Flat (1) to be leased back. The Respondents were particularly concerned to ensure the areas of the building over which exclusive use had been exercised for a period in excess of 50 years were properly provided for in their Counternotice. Review of the correspondence will show that the Applicant's representative (a Surveyor) did seek to opine on the form of the Counternotice and its proposals contained which supported the decision to seek Counsel's advice.

In addition had Counsel not been instructed, considerable additional time would have incurred at the hourly rate of Mr Manuel which is likely would have exceeded Counsel's costs.

Quantum of legal costs, post S.21 Notice £4,950
The Applicant
Post service of the S.21 Notice, we see that 164 units of chargeable time have been incurred. By the time the S.21 Notice was served, the Respondents' proposals for the enfranchisement of Santoy had crystallised. They wished to have a Leaseback in relation to Flat 1 and they wished to retain the Freehold interest in the yard area on the RH side of the building. They sought a covenant preventing further redevelopment (which we believe would not have been upheld) and they counter proposed a price. We believe that the Respondents' investigations had been carried out by that time, and we therefore believe that the only further legal cost properly incurred beyond the date of the S.21 Notice would have been the conveyance. We have therefore put a green line against such items on Manuel Swaden's timesheet, which we believe properly fall within Section 33(1)(e). This totals 32.5 units (£1,300 at £400 per hour).
The Respondents
The Applicant's selective acceptance of costs is noted but not agreed.
The fact that the clauses were incorporated in the draft lease back and the transfer which were subsequently negotiated does not mean that the time involved in the drafting and their negotiation should be disregarded and lessen the Applicant's obligation to meet the Respondents' costs. The settlement of this matter is on terms achieved by direct negotiations between the Applicant and Respondents (not their advisers) but considerable details need to be resolved to finalise the documentation which was negotiated between the solicitors.

Counsel's fee post service of S.21 Notice £1,000
The Applicant
As the Respondents' proposals for the enfranchisement had been set out in the S.21 Notice, we do not believe that Counsel's further involvement to be recoverable under S.33.
The Respondents
Seeking Counsel's further advice was necessitated by the assertions made by the Applicant's surveyor as to his opinion of the Legal entitlements of the Respondents. As stated, the property (and the use of it by the Respondents) was unusual and the issues raised to seek the challenge the position would have had an impact on value and the ultimate terms of settlement. Accordingly, further advice was required as to how to achieve the outcome the clients were seeking being mindful of the Statutory process and what the Tribunal could order.

Respondents's Valuation costs of myleasehold £4,500
The Applicant

We have not been provided with any supporting information regarding the costs of myleasehold beyond the last two paragraphs of Manuel Swaden's letter dated 13 January. It appears that Manuel Swaden introduced myleasehold to the Respondents. We have not been advised whether competitive estimates were obtained. We would query why a London Valuer was used when there are many Surveyors in the Bournemouth and Poole conurbation with expertise to carry out this work. We note that Manuel Swaden are Members of the Association of Leasehold Enfranchisement Practitioners (ALFP) and we know that there are Valuers within the Bournemouth and Poole conurbation who are members. The advantage of using a Valuer local to the subject property is of course in relation to values and particularly in relation to development aspects with the additional benefit of the saving of travel time. We believe that the advice to enable the Respondents to respond to the S.13 Notice, both in terms of the value of that part of the building owned Freehold, Flat 1 for example on which there was a subsequent Leaseback, the value of the flats, the deferment rate, the capitalisation rate and any consideration of development value, could have been carried out within ten hours of chargeable time. We are instructed that Mr Yasin attended on 17 October 2018 (although the account was dated 18 September 2018?), and spent no longer than two hours inspecting the site and the flats although he may have stayed longer to look at Flat 1. We have spoken to Mr Howard Gross FRICS at Goadsby, who advised that his hourly rate was in the region of £220 per hour. We believe that some time may have been expended on considering further development of the lower ground floor, but we believe that this was time wasted because of planning policies relating to the flood zone and, in any event, the areas were demised to flats and could not be assigned separately and previous planning consents required these areas to be ancillary only to the flats

The Respondents

Whilst the Applicant's surveyors comments are noted the Respondents' surveyors comment that the comparable quotes are not evidence which can be presented before a Tribunal. The Respondents' Surveyors assert that presentation of the alternative quotations does not meet the standards required of a member of the RICS or comply with the RICS guidance code "surveyors acting as expert witnesses".

Production of emails from local surveyors and estimates of charges without full disclosure of whether the surveyors were asked to value this particular block with its individual characteristics undermines the credibility of the information offered. The Surveyors argue that the alternative estimates of costs should be considered to be inadmissible in the absence of details and background instruction.

Tribunals have been very clear that the freeholder is entitled to choose whichever surveyor he or she wishes and is not bound to instruct somebody on the basis of how cheaply they can undertake the work or on their geographical location. The Respondents chose London Surveyors who are experts in the field and agreed with them a fee for the matter which is not believed to be unreasonable

The Tribunal

12. The Tribunal has followed the guidance of the Supreme Court, High Court and Upper Tribunal in the cases referred to above.

13. What is in issue in respect of the Applicant's application for costs is whether the costs claimed were reasonably incurred and are reasonable in sum and whether the costs are payable in accordance with the Act of 1993 and whether the Applicant should be required to pay those costs.
14. This Decision is based upon the information provided to the Tribunal by the parties.
15. The Tribunal finds that Section 33(2) is satisfied as it has noted that the solicitor had submitted an interim invoice for its fees (see **Metropolitan Property Realisations Ltd v Moss** above).
16. Enfranchisement claims are complicated issues. The Tribunal cannot criticise the Applicant for instructing a solicitor partner (a grade A fee earner), given such complications when looking at the particular context of this case involving a lease back and retained interests. The Tribunal notes, however, that the fees claimed by the solicitor do not accord with the rates for grade A fee earners for London, as detailed within the guideline hourly rates, repeated in the Supreme Court's guidance. Paying particular attention to this case, the Tribunal finds that it is not reasonable to expect the Applicant to meet solicitor costs above the guideline rates and accordingly caps those at £409 per hour.
17. The Tribunal has analysed the work conducted by the solicitor, which is helpfully detailed in a schedule and partly illustrated by relevant documentation in the bundle, and finds that, save as separately disallowed below, the work detailed was what the Tribunal would have expected to occur following receipt of a Notice of Claim and that the time recorded as expended is reasonable for the tasks detailed.
18. Having found that it was proper to instruct a grade A fee earner, the Tribunal cannot see that there was any reasonable requirement for the instruction of counsel. Surely the very purpose of instructing a grade A fee earner is because of their particular expertise and experience. The reason for the instruction of counsel expressed by the Respondents is not, the Tribunal finds, shown by it to be a good reason in the circumstances detailed. Also, the involvement of counsel involved extra work, her briefing, her need to get up to speed with the facts, etc. The Tribunal would have expected a grade A fee earner to have attended to the whole of the consideration of the procedures necessary; it does not accept the Respondents' assertion that considerable extra time would have been expended by Mr Manuel had counsel not been instructed.
19. The Tribunal, accordingly, disallows the 21.5 units associated with the instruction of counsel, together with counsel's fees in the sum of £2,500, but allows a further 2 hours of solicitor costs, some 20 units or £818 on the basis that the work did need to be done.
20. The surveyor's fee of £4500 has more than the air of the Rolls-Royce referred to in **Re RBS Rights Issue Litigation.** The comparables advocated by the Applicant cannot be assessed as such in the absence of more detail about the properties involved. It is for the Respondents, however, to justify the cost, and simply to say that it chose experts in the field and agreed with them a fee which is not believed to be unreasonable is not enough to justify such a large fee, notwithstanding the experience and expertise of the surveyor in question. In the absence of such justification, the Tribunal reduces the surveyor's fee to £3,500.
21. The Tribunal calculates the residual costs as follows: 164 units at £409 minus 21.5 units plus 20 units = 162.5 units or £6646.25. Also payable are the surveyor's fee in the sum of £3500 and Land Registry fees of £18. All 3 sums plus VAT at 20%.

22. The residual costs of £6646.25, £3500 and £18 all plus VAT claimed by the Respondents arose as a result of the service by the Applicant of its Claim Notice. Having found that the costs were reasonably incurred and that they are a reasonable sum, reflecting the work actually and properly conducted, the Tribunal concludes that they are payable by the Applicant to the Respondents.

Judge A Cresswell

APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

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

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

APPENDIX

Leasehold Reform Housing and Urban Development Act 1993

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 a leasehold valuation 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.

91 Jurisdiction of . . . tribunals
(1) . . . Any question arising in relation to any of the matters specified in subsection (2) shall, in default of agreement, be determined by [the appropriate tribunal].

(2) Those matters are—

(a) the terms of acquisition relating to—

(i) any interest which is to be acquired by a *nominee purchaser* [RTE company] in pursuance of Chapter I, or
(ii) any new lease which is to be granted to a tenant in pursuance of Chapter II,

including in particular any matter which needs to be determined for the purposes of any provision of Schedule 6 or 13;

(b) the terms of any lease which is to be granted in accordance with section 36 and Schedule 9;

(c) the amount of any payment falling to be made by virtue of section 18(2);

[(ca) the amount of any compensation payable under section 37A;]

[(cb) the amount of any compensation payable under section 61A;]

(d) the amount of any costs payable by any person or persons by virtue of any provision of Chapter I or II and, in the case of costs to which section 33(1) or 60(1) applies, the liability of any person or persons by virtue of any such provision to pay any such costs; and

(e) the apportionment between two or more persons of any amount (whether of costs or otherwise) payable by virtue of any such provision.

(9) [The appropriate tribunal] may, when determining the property in which any interest is to be acquired in pursuance of a notice under section 13 or 42, specify in its determination property which is less extensive than that specified in that notice.

(11) In this section—

"the nominee purchaser" and "the participating tenants" have ["RTE company" has] the same meaning as in Chapter I;
"the terms of acquisition" shall be construed in accordance with section 24(8) or section 48(7), as appropriate;

[(12) For the purposes of this section, "appropriate tribunal" means—

(a) in relation to property in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and

(b) in relation to property in Wales, a leasehold valuation tribunal.]