

LEASEHOLD VALUATION TRIBUNAL

MIDLAND RENT ASSESSMENT PANEL

BIR/00CN/OC6/2007/0001

**DETERMINATION OF THE LANDLORD'S REASONABLE COSTS IN
RESPECT OF THE TENANT'S PURPORTED ACQUISITION OF THE
FREEHOLD**

Sections 21(1)(ba) of the Leasehold Reform Act 1967

THE PROPERTY

954 BRISTOL ROAD, SELLY OAK, BIRMINGHAM

THE PARTIES

The Applicants

David Edward Acton & Christine Acton

The Respondents

Trustees of the Birmingham South West Circuit Methodist Church Manses

THE TRIBUNAL

Mr WMS Tildesley OBE (Chairman)

Mr S Berg

Mr M Ryder

Sitting in public in Birmingham on 2 March 2007

David Acton of David Acton & Co, Solicitors, for the Applicants

Martin Dyke of Tyndallwoods, Solicitors, for the Respondents

DECISION

Summary of the Decision

1. We order that Respondents shall pay the Applicants' reasonable costs of £1,300 plus VAT, if appropriate, in connection with the first 1967 Act Notice.
- 5 2. We order that Respondents shall pay the Applicants' reasonable costs of £887 plus VAT, if appropriate, in connection with the second 1967 Act Notice.
3. We make no order for costs under paragraph 10, schedule 12 of the Commonhold and Leasehold Reform Act 2002.

The Applications

- 10 4. The Applicants made two applications for reasonable costs pursuant to sections 9(4) and 21(1)(ba) of the Leasehold Reform Act 1967 in connection with the Respondents' aborted notices to acquire the freehold under the 1967 Act dated 11 September 1998 and 9 September 2004.
- 15 5. The costs claimed were £6,464.95 (£5,502.08 plus VAT of £962.87) and £12,180.74 (£10,366.58 plus VAT of £1,814.16) for the first notice dated 11 September 1998, and second notice dated 9 September 2004 respectively.
6. The Applicants also requested an order for costs in connection with the proceedings in accordance with paragraph 10, schedule 12 Commonhold and Leasehold Reform Act 2002.

20 The Background

7. The Applicants purchased the freehold of the property at auction on 16 September 1998 with completion on 14 October 1998. The Respondents were tenants of the property a sub-lease granted on 25 March 1923 for a term of 99 years. The ground rent payable was £13 per annum.
- 25 8. On 11 September 1998 the Respondents served upon the Applicants' predecessors in title a Notice of Tenants' claim to acquire the freehold of the property under the 1967 Act. The Respondents based their claim on schedule 6 of the Leasehold Reform Act 1967, confirming that the premises have been used continuously as a minister's house in connection with a place of worship.
- 30 9. On 12 October 1998 the Applicants' managing agents submitted a Notice in Reply disputing the Respondents' claim to the freehold.
10. In 1998 as a matter of law the Respondents were not entitled to the freehold of the property by virtue of the 1967 Act provisions because they did not fulfil the residence requirement. The correct legal route for acquiring the freehold was a Notice to Treat
35 under The Places of Worship (Enfranchisement) Act 1920. The 1920 Act differed

from the 1967 Act in the acquisition procedures and the method for fixing the purchase price for the freehold.

11. The Respondents have not formally withdrawn their Notice of Claim under the 1967 Act dated 11 September 1998.

5 12. On 30 November 2001 the Respondents served upon the Applicants a Notice to Treat to purchase the freehold reversion under the terms of The Places of Worship (Enfranchisement) Act 1920.

13. On 13 December 2001 the Applicants acknowledged the Notice to Treat and claimed the value of their interest in the property to be £50,000.

10 14. The Commonhold and Leasehold Act 2002 abolished the residence requirement for the 1967 Act with effect from 26 July 2002. The Respondents received valuation advice that they would pay a lower price for the freehold under the 1967 Act than the compensation that would be payable under the 1920 Act. On 10 September 2004 the Respondents decided to serve a new Notice of Claim for the freehold under the 1967 Act.
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15. On 3 November 2004 the Respondents served a Notice in Reply denying the Respondents' claim on various grounds. One of the grounds was that the Respondents were obliged to proceed under their Notice to Treat under the 1920 Act. On 15 November 2004 the Applicants gave notice of reference to the Lands Tribunal of their claim for compensation under the 1920 Act.
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16. On 18 October 2005 the Respondents applied to the Leasehold Valuation Tribunal for determination of the price for the freehold under the 1967 Act. On 15 December 2005 the Respondents withdrew their application acknowledging that their claim under the 1967 Act was of no effect by virtue of section 5(6) of the 1967 Act which renders a 1967 Act Notice void when the compensation provisions have been invoked under the 1920 Act.
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17. On 18 May 2006 the President of the Lands Tribunal determined as a preliminary matter that the Respondents' 1920 Act Notice had not been withdrawn. Further the Tribunal had jurisdiction to decide the compensation for the freehold under the 1920 Act.
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The Disputed Issues

18. The central dispute in this Application was whether the costs of the Applicants were reasonable, incurred in pursuance of the two 1967 Act Notices and in respect of or incidental in the matters set out in section 9(4) of the 1967 Act. The Respondents contended that a reasonable figure should be no more than £250 plus VAT for each Notice with no allowance for surveyors and counsels' fees.
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19. The central dispute involved two subsidiary issues, which were:

(1) The appropriate charging rate for a freeholder who was also acting as the solicitor for the freeholders.

(2) The jurisdiction of the Tribunal to determine the Application on the basis of an itemised bill of costs rather than a global sum.

5 20. The second dispute between the parties was whether the Respondents had acted unreasonably in connection with the proceedings which merited an award of costs against them under the 2002 Act. The Applicants submitted that the Respondents' conduct caused an escalation of their costs incurred in pursuance of the 1967 Act Notices. Further the Respondents flagrantly breached the Tribunal directions which
10 prejudiced the Applicants' presentation of their Application. The Respondents contended that virtually all the costs incurred by the Applicants in respect of the 1967 Act Notices were generated by Mr Acton for his own purposes. Although they breached the Tribunal directions, it was not done flagrantly and did not constitute the conduct complained of in the 2002 Act.

15 **The Hearing**

21. On the 10 January 2007 the Tribunal received the Applicants' Application for costs under sections 9(4) and 21(1)(ba) of the 1967 Act. On the same day Tribunal copied the application to the Respondents. On 23 January 2007 the Tribunal issued directions to facilitate the hearing of the Application. On 2 February 2007
20 Tribunal notified the parties of the hearing date of 2 March 2007. There followed correspondence between Mr Acton and the Tribunal where the Tribunal advised Mr Acton that they would determine his various applications at the hearing and that the relevant procedure for determining an award of costs was that laid down in section 9(4) of the 1967 Act.

22. On 22 February 2007 the Applicants submitted by hand and fax to the Tribunal a chronology and a trial bundle together with enclosures. On 23 February 2007 the Tribunal received the Respondents' skeleton argument dated 22 February 2007.

23. On 23 February 2007 the Applicants wrote to the Tribunal objecting to the admission of the Respondents' skeleton argument, and applying for an award of
30 default interest and order for costs under the 2002 Act.

24. On 26 February 2007 the Tribunal advised the parties that

(1) The Leasehold Valuation Tribunal was a creature of statute.

(2) The application for costs would be determined in accordance with sections 21(1)(ba), 9(4) and 9(4A) of the Leasehold Reform Act 1967. The
35 procedure for the Tribunal was governed by the provisions of schedule 12 of Commonhold and Leasehold Reform Act 2002 and the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 as amended.

(3) Schedule 12 of the 2002 Act included a limited costs power for
40 frivolous, vexatious, abusive, disruptive or otherwise unreasonable conduct on the part of one of the parties. As such the Tribunal has no

5 statutory authority to order default interest or express powers to deal with proved failures to comply with Tribunal directions. The issue of whether a party has failed to comply with Tribunal directions may go to credibility of the party in breach and the weight attached to his evidence. Failure to comply with Tribunal directions would be relevant to a potential order for costs under schedule 12 of the 2002 Act.

10 (4) The Tribunal would first deal with the merits of the application for costs pursuant to sections 21(1)(ba), 9(4) and 9(4A) of the Leasehold Reform Act 1967 which may include representations about the weight and credibility of the parties' evidence.

(5) Next the Tribunal would consider the Applicants' application for an order for costs under schedule 12 of the 2002 Act.

15 (6) The matter of leave to Appeal to the Lands Tribunal would be dealt with if an application is made after release of the Tribunal decision on the substantive matters.

25. As there were no further representations from the parties, the Tribunal conducted the hearing in accordance with the contents of its letter dated 26 February 2007. The parties were unable to agree a statement of facts.

20 26. At the hearing we requested sight of instructions to Counsel and Counsel's advice on the understanding that the documents would not be disclosed to the Respondents and returned to the Applicants following publication of our decision. The Respondents raised no objections, and accepted that they should not see the privileged documents.

25 27. After conclusion of the hearing on 2 March 2007 the Tribunal received written representations from the Applicants concerning the evidence and submissions heard by the Tribunal. We decided to admit these representations after seeking the views of the Respondents' solicitors and giving them a right of response by 28 March 2007. We directed that we would receive no further representations. The Respondents' response was received by the Tribunal office on 30 March 2007, which was followed
30 by further written submissions from the Applicant dated 2 April 2007. We disregarded the response and further representations because they were not in accordance with our directions.

Terminology

28. We adopted the following terminology in our written decision:

- 35
- (1) The 1920 Act for the Places of Worship (Enfranchisement) Act 1920;
 - (2) The 1967 Act for the Leasehold Reform Act 1967;
 - (3) The 2002 Act for the Commonhold and Leasehold Act 2002;
 - (4) The Notice to Treat as the 1920 Act Notice;
 - (5) The Notices of Claim for Freehold as the 1967 Act Notices;

(6) The date of the first 1967 Act Notice as 11 September 1998. In some of the documentation before the Tribunal the date used for the first Notice was 18 September 1998.

The Application for Costs under sections 9(4) and 21(1)(ba) of the 1967 Act

5 **The Evidence**

29. The Applicants in support of their Applications for costs produced two itemised bills of costs prepared by a costs draftsman. We considered that the onus was on the Applicants to supply the documentation referred to in the bills of costs. Apart from a request to see instructions to Counsel and his advice which was central to the dispute, 10 we took the view that the Applicants were responsible for the presentation of their case.

30. The first bill of costs amounted to £5,502.08 plus VAT of £962.87 over the period 11 September 1998 to 13 October 2001 comprising the following elements:

15 (1) **Attendances on Court and Counsel** in the sum of £350 plus VAT of £61.25.

(2) **Chartered Surveyor's Fees** in the sum of £750 plus VAT of £131.25.

20 (3) **Solicitors' fees** in the sum of £4,029.58 plus VAT of £705.18. The fees were for two main areas of work. The first was for consultation with the Applicants' surveyors consisting of 4 hours and 32 minutes for attendances, 25 letters out and 27 phone calls. The second related to 20 hours and 35 minutes spent on perusing documents and various draft letters. There were two minor items of £37.50 for three letters to the previous freeholder's solicitors and £175 for letters out, telephone calls and attendances on counsel.

25 (4) **Fees for Costs Draftsman** in the sum of £372.50 plus VAT of £65.19 which included £75 plus VAT for the checking of the bill by Mr Acton in his capacity as principal.

31. The second bill of costs amounted to £10,366.58 plus VAT of £1,814.16 over the period 13 September 2004 to 7 November 2005 comprising the following elements:

30 (1) **Attendances on Court and Counsel** which consisted of a fee of £312.50 plus VAT to Counsel for advice on the validity of the Notice of the Tenant's claim, and another fee of £280 plus VAT to Counsel for settling the draft application for costs of the abortive notices and advising.

35 (2) **Chartered Surveyor's Fees** in the sum of £2,150 plus VAT of £376.25 plus £209.07 with VAT of £36.59 for travelling.

40 (3) **Solicitors' Fees** in the sum of £6,920.67 plus VAT of £1,211.12. The fee included attendance of 4 hours and 15 minutes, 15 letters out and eight telephone calls with the surveyors. A sum of £112 for removal of cautions lodged with HM Land Registry. Further sums of £196, £105 and £154 for letters out to Respondents' solicitors, attendances and correspondence with

the Leasehold Valuation Tribunal and attendance on Counsel respectively. The final sum of £5,436 plus VAT was for 38 hours and 50 minutes spent perusing old files of correspondence and preparing for the hearing before the Leasehold Valuation Tribunal.

5 (4) **Fees for Costs Draftsman** in the sum of £307.67 plus VAT of £53.84 which included £52.67 plus VAT for the checking of the bill by Mr Acton in his capacity as principal.

10 32. The Applicants considered that Counsel's fees were justified because of the unusual nature of the Respondents' 1967 Act Notice. The Applicants and their advisers had not encountered previously a claim under schedule 6 of the Leasehold Reform Act 1967. The serving of the second 1967 Act Notice raised novel issues regarding its validity because of the prior 1920 Act Notice which had been accepted by the Applicants.

15 33. The Applicants supplied two invoices from their chartered surveyors for their fees of £750 and £2,150 excluding VAT. Both invoices were dated 3 November 2006. The first invoice appeared to be based on the work done by the previous surveyors consisting of six hours and five minutes at the hourly fee rate of £115 spent on inspecting the property, researching market evidence and advice on the validity of the 1967 Act Notice. The second invoice was for 12 hours and 25 minutes at the hourly fee rate of £175. The Applicants' explanation for the 50 per cent increase in the hourly fee rate from the previous invoice was that the firm of chartered surveyors instructed was very experienced in the field of leasehold enfranchisement. The second invoice included a charge for time spent of at least three hours on consideration of the 1920 Act and a sum for an external inspection of the property. The invoices did not include details of when the work was carried out. Mr Acton explained that the surveyors were unable to supply detailed invoices because the Applicants were only given seven days notice to produce the invoices by the Respondents.

25 34. Mr Acton asserted that he was entitled to charge a proper rate for his services as he was dealing with the Respondents' Notices in his capacity as a solicitor not as a freeholder. Mr Acton accepted that there were no formal letters of engagement between himself as the solicitor and his clients, the freeholders. Mr Acton also agreed that he had not sat down with his wife, the joint freeholder of the property, to discuss the solicitors' costs associated with the Respondents' Notices. Mr Acton, however, pointed out that the requirement for engagement letters was not in force at the time of the service of the first 1967 Act Notice.

35 35. Mr Acton contended that he was entitled to the hourly rate for a solicitor of eight years with litigation experience working outside Birmingham city centre. This hourly rate was agreed by the local Law Society with the County Court for contentious work. The respective hourly rates were as follows: £125 for 1998 and 1999, £129 for 2000, £131 for 2001 with letters and telephone calls charged at one tenth the hourly rate, £140 for 2004 and 2005 with letters out, telephone calls and e mails at £14 each.

40 36. Mr Welfare, the costs draftsman, explained that the agreed hourly rates had regard to the overhead costs of solicitors' firms and a profit element of 50 per cent. Mr

Welfare advised that non-contentious business attracted a slightly lower hourly rate. He was unable to comment upon legal charges for conveyancing work.

5 37. Mr Acton considered that his costs were justified because of the complexity of the subject matter and the failure by the Respondents' solicitors to withdraw the first 1967 Act Notice. The complexity of the matter meant that Mr Acton was required to undertake extensive research of the law and hold detailed discussions with the surveyors on the handling of the 1967 Act Notices. It was necessary for Mr Acton to keep the file under review because the Respondents did not formally acknowledge that their first 1967 Act Notice was invalid until they submitted their skeleton argument to the Lands Tribunal on 6 January 2006. When the second 1967 Act Notice was served on 9 September 2004 Mr Acton considered it appropriate to spend 11 hours and 30 minutes on perusing old files of correspondence and preparing a final version of instructions to Counsel. Mr Acton was of the view that the freeholders had no choice but to incur the costs claimed. The dispute had been going on for nine years. He would have been negligent if he ignored the various Notices and correspondence from the Respondents.

38. Mr Acton confirmed that the reference in the second bill of costs to four hours and 30 minutes perusing the 1920 Act Notice related to his work in connection with the 1967 Act Notices.

20 39. Mr Acton considered it was necessary to engage a costs draftsman to prepare the bills of costs, particularly as he used a manual time recording system. He understood that it was necessary for him in his capacity as principal to check and confirm the bills. The draftsman was also required because of the need to identify those costs which directly related to the 1967 Act Notices.

25 40. The Respondents contended overall that the Applicants' claims for costs were excessive and unreasonable. They considered the appropriate amount to order was £250 plus VAT for each notice with no allowance for surveyors or counsels' fees. The Respondents submitted that the Tribunal should apply a reality check by comparing the costs of the Applicants' counsel with the time and value purportedly expended by Mr Acton in his capacity as solicitor to the Applicants. In the Respondents' view it would have been unnecessary for the Applicants to incur substantial expenditure on solicitors' costs after having the benefit of Counsel's advice.

35 41. The Respondents considered that Counsel's fees were not properly incurred. They considered that the fees did not fall within the ambit of section 9(4)(a). The Respondents relied upon the interpretation placed by *Hague* that section 9(4)(a) did not include costs incurred by the landlord for taking general advice as to his rights under the 1967 Act.

40 42. In their skeleton argument the Respondents submitted that the Applicants' valuation costs were unnecessarily incurred. The Applicants should have waited until a valid notice was in place. At the hearing having been served with the surveyors' invoices the Respondents appeared to modify their position, contending that the amounts claimed were excessive.

43. The Respondents objected strongly to the quantum of the solicitors' costs. They pointed out that Mr Acton was representing himself and practised from home. The hourly rates claimed were not justified because the rates applied to solicitors' firms with full operational overheads. Much of the work undertaken by Mr Acton was unnecessary and appeared to the Respondents to be self generated by Mr Acton for his own purposes, particularly as they did not engage in extensive correspondence with Mr Acton.

44. The Respondents referred to specific entries in the second itemised bill of costs where it appeared that Mr Acton was claiming for time spent on the 1920 Act Notices. They also considered that the time spent on removing the cautions lodged with the HM Land Registry did not relate to the 1967 Act Notices but to the 1920 Act Notices.

45. The Respondents submitted that the costs draftsman's fees were not recoverable under section 9(4)(a) of the 1967 Act.

The Law

46. Sections 9(4) of the 1967 Act deals with the costs that the tenant is liable for in connection with his application to purchase the freehold under section 9(1) of the 1967 Act:

Where a person gives notice of his desire to have the freehold of a house and premises under this Part of this Act, then unless the notice lapses under any provision of this Act excluding his liability, there shall be borne by him (so far as they are incurred in pursuance of the notice) the reasonable costs of or incidental to any of the following matters:--

- (a) any investigation by the landlord of that person's right to acquire the freehold;
- (b) any conveyance or assurance of the house and premises or any part thereof or of any outstanding estate or interest therein;
- (c) deducing, evidencing and verifying the title to the house and premises or any estate or interest therein;
- (d) making out and furnishing such abstracts and copies as the person giving the notice may require;
- (e) any valuation of the house and premises;

but so that 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.

(4A) Subsection (4) above does not require a person to bear the costs of another person in connection with an application to a leasehold valuation tribunal.

47. Section 21 of the 1967 Act gives the Tribunal jurisdiction to determine the price payable under section 9(1) and the amount of any costs payable under section 9(4).

48. *Hague* in Leasehold Enfranchisement (2003 edition) at page 157 sets out the principles underpinning section 9(4):

5 "In order to be recoverable under section 9(4), the costs must be reasonable, they must be incurred in pursuance of the Notice and they must be in respect of or incidental in the matters set out in the said section. The person seeking to recover the costs must therefore show what costs have actually been incurred.... Furthermore it does not require a person to bear the costs of another person in connection with an application to a leasehold valuation tribunal".

10 49. The onus is on the Applicant to prove on the balance of probabilities that the costs are reasonable and incurred in respect of or incidental to the matters set out in section 9(4) (*Shina and Others v Elghanian and other* [1999] 48 EG 147.

50. *Hague* identified the following costs for which the tenant is liable for under section 9(4) of the 1967 Act:

15 (1) The landlord's valuation costs which does not include the costs of negotiation of the purchase price.

(2) The landlord's ordinary conveyancing costs.

20 (3) The costs of or incidental to any investigation by the landlord of that person's right to acquire the freehold. This item includes the landlord's costs of investigating the claimant's title to the leasehold, and whether the tenant has been in occupation as his only or main residence for the relevant two year period but not the landlord's costs of preparing and serving a Notice in Reply, serving copies on other persons interested, and taking general advice as to his rights under the Act.

25 51. The Court of Appeal in *Covent Garden Group Limited and another v Naiva* [1995] 1EGLR 243 considered the effect of paragraph 5 schedule 22 Housing Act 1980 which has been replaced by section 9(4A) of the 1967 Act. The landlord was seeking to place an interpretation on the relevant statutory provisions so as to allow him to recover the costs of valuation report prepared for the Tribunal. The Court of
30 Appeal rejected the landlord's interpretation with Butler Sloss LJ stating that:

35 "Like the judge, regard this as an impossible construction paragraph 5, schedule 22 to the Housing Act is primary legislation. The words must be given their ordinary meaning and effect. Paragraph 5 expressly refers to section 9(4) of the Leasehold Reform Act 1967 and is an exclusionary provision. By the plainest of language paragraph 5 makes clear that the costs incurred by a landlord in connection with a reference to a Leasehold Valuation Tribunal are not recoverable by the tenant. I will not struggle further with an obvious point. The words are incapable of bearing the construction put forward by the landlord.

40 52. *Hague* relied on a Leasehold Valuation Tribunal decision in *The Scottish Widows Fund & Life Assurance Society v Abbas and others* (LON/ENF/259/98) for the proposition that

“It is considered that, where a purported Notice of Tenant’s claim is given which is subsequently agreed or determined to be invalid, the tenant is estopped from denying that section 9(4) costs are payable at any time whilst the tenant asserts that the Notice is valid”.

5 53. *The Scottish Widows*’ case was concerned with the costs provision for collective enfranchisement under section 33 of the Leasehold Reform, Housing and Urban Development Act 1993 which is similarly worded to section 9(4) of 1967 Act.

54. The Lands Tribunal decision in *Re Cressingham Properties Ltd* [1999] 2EGLR 117 held that

10 “there was no reason in principle why costs under section 9(4) should be restricted to costs paid out to a third party (out of pocket expenses) and exclude costs in the form of expenditure of time and effort by the landlord in carrying out the same activities (in house costs)”.

15 55. In the Lands Tribunal decision (LRA/34/2001), which involved an appeal by the Applicants in respect of 83 Glendon Road, His Honour Judge Michael Rich QC set out the relevant principles for determining solicitors’ costs where the solicitor has a relationship with the client:

20 “The entitlement is to (1) the reasonable costs (2) incidental to the matters listed in the paragraph (3) incurred in pursuance of the notice. The Appellants must therefore show what costs they have actually incurred. No bills have been produced. They must show that the costs are incidental to the listed matters.... Finally and in this context most importantly the costs must be reasonable. If a solicitor engages in property speculation, it may well not be reasonable that he should recover legal costs as if he was acting solely in the course of his legal practice. This would remain true whether he acted alone or together with his wife. How much less he should be allowed to recover than he might reasonable charge an independent client, is a matter for judgment upon the evidence, as to which the Tribunal has received none”.

30 56. Judge Rich issued a supplemental decision to (LRA/34/2001). It would appear that he did not have the benefit of evidence or contrary arguments from the Respondents. Judge Rich emphasised that the only guideline he was laying down for an award of costs under section 9(4) of the 1967 Act was that an award would depend upon the evidence upon what had been incurred in the particular case.

35 57. Judge Rich decided that he would allow Mr Acton the sum of £135 an hour allowed for solicitors of more than four years experience despite having no evidence that the actual rate claimed by Mr Acton had been incurred by the freeholders:

40 “I do, however, accept that the sum of £135 an hour allowed for solicitors of more than four years experience in the Coventry Combined Court Centre, is some yardstick of a reasonable rate for non-litigious business. This would in my judgement, even in the absence of any evidence as to his actual charging rates be a proper allowance for Mr Acton’s time, as a principal of his firm”.

58. Judge Rich went onto to explain his order for costs in paragraph 11 of his supplemental decision:

5 “ My reasons for determining the costs in respect of work already done derive
from my consideration of what I am persuaded on the evidence has actually
been incurred on relevant matters, rather than from my rejection of any figure
put forward by way of evidence rather than argument as being more
reasonable. I recognise that in the assessment of costs on litigious matters a
solicitor who acts for himself as a litigant would be allowed reasonable profit
costs., and, as I understand it some element of such costs will have to be
included in the Combined Courts’ costs figure. It does not however follow
10 from this that a solicitor who acts for himself as freeholder on the
enfranchisement of long leases should be so entitled in the assessment of the
solicitor’s work which he undertakes. There is a market in the reversions of
long leases, which inevitably is affected by the rights granted to the tenants
under the Leasehold Reform Act. In general the price paid for the reversion
15 particularly of a number of adjoining freeholds may be significantly affected
by the risk of the freeholders having to meet legal costs on the
enfranchisement of individual properties. Such enfranchisement may well
even be in contemplation at the date of the purchase of a parcel of reversions.
A solicitor who purchases at a price so affected , who does not in fact incur
20 such costs in full may have the opportunity of making a double profit if he is
able to charge costs so computed to a purchasing tenant”.

59. In another Lands Tribunal case (LRA 40/2002 & LRA 41 2002) involving the Applicants, NJ Rose FRICS commented

25 “I now turn to the disputed legal costs. In each case the figures proposed by
Mr Acton were based on an hourly charging rate of £145 applied to the time
spent. This rate was that adopted by the district judges at the Coventry
Combined Court Centre as a guideline for the purposes of the summary
assessment of costs of partners and solicitors of at least four years post
qualification experience. Mr Acton said that this was in line with the
30 approach that had been adopted by this Tribunal (Judge Rich QC) in a
previous appeal by the appellants concerning another house in Glendon Road,
No. 83 (*Acton and Acton v Knott*, LRA/34/2001, unreported). He said there
was no point in a landlord appealing to this Tribunal in order to obtain
guidance on the correct approach to be adopted, if the LVT then ignored this
35 Tribunal’s decision. It was, he said, essential for landlords and tenants and
their advisors to know for future occasions on other properties, and with
some element of certainty, what if anything the LVT was relying upon when
reaching its decision, “and the reasons for accepting or rejecting such
important issues arising from superior Lands Tribunal decisions.

40 Mr Acton has a direct financial interest in the outcome of these appeals, since
the disputed legal costs will be paid to the firm of which he is the sole
principal. Moreover, since there is no respondent, his is the only evidence
before me. Against that background, it was of crucial importance for Mr
Acton to take care to ensure that the evidence he gave was entirely impartial.
45 Having carefully considered that evidence, I regret that I have come to the
conclusion that he has failed to do so. My reasons are as follows. Although
he strongly criticised the LVT for failing to follow *Knott*, he has not done so
either. He has claimed for time spent in receiving and reading the tenants’
applications to the LVT, although Judge Rich held that such costs were not
50 recoverable. He has also claimed in full for time spent on receiving and
reading cautions from the Land Registry, despite Judge Rich’s observation

that such work: would seem to be difficult to bring, at least wholly, within the permissible head of costs under paragraph (a) of investigating title, and clearly is not recoverable under any other head.”

5 60. The Leasehold Valuation Tribunal in *Mr and Mrs Westcott and The Trustees of the Calthorpe Edgbaston Estate* (BIR/00CN/0C26/2003/0048) considered whether the amount of reasonable legal costs incurred in pursuance of a 1967 Act Notice should be determined with reference to an itemised bill or a lump sum global figure. At paragraph 14 the Tribunal held that

10 (1) time actually spent may assist but only to the extent that it properly represents the reasonable costs actually made.

(2) it is possible that the actual time spent may on the facts of the case not be reasonable.

15 (3) reasonable in taking all matters into account that we should take into account comparing the lump sum level of costs in the competitive conveyancing market with the assumption of an efficient solicitor familiar with the work.

(4) we should not adopt itemised billing to the exclusion of a lump sum level of costs, and

20 (5) a strict adherence to an itemised billing method, which relies on time spent would, effectively result in us taking on the role of a quasi costs judge to tax off unreasonable amounts and that if the Act intended that we should effectively tax costs then we believe that it would have indicated so with an indication of the basis of costs including in whose favour we should decide in the event of doubt (the former standard party – party or indemnity solicitor – client basis)

25 61. At paragraph 16 the Tribunal expanded upon its reasons for rejecting the itemised billing approach as the best method:

30 “In rejecting the proposition that the itemised billing should be the best method to the exclusion of the lump sum method we take account of Regulation 4D(1)(a) Rent Assessment Committee (England and Wales) (Leasehold Valuation Tribunal) Regulations 1993, as amended by the Rent Assessment Committee (England and Wales) (Leasehold Valuation Tribunal) (Amendment) Regulations 1997, which, in respect of procedural directions, require us to secure the just, expeditious and economical disposal of proceedings. We hold that this principle is also appropriate to the determination before us and that overriding reliance on itemised billing and taxation would not be consistent with the principle, as the costs of preparing an itemised bill and our consideration of each item in it would be disproportionately uneconomical relative to the amount involved: lump sum method is likely to involve significantly more economical disposal of the case before us”.

62. The 1993 Regulations have been replaced with the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003. The words “to secure the just, expeditious and economical disposal of proceedings” are found in regulation 12(3)(a).

Reasons for Our Decision

5 Our Approach

63. In their written representations and in the course of the hearing the parties referred to various decisions of the Lands Tribunal and the Leasehold Valuation Tribunal and to passages from *Hague*. In the preceding section we have set out in detail the various authorities and decisions referred to on section 9(4) of the 1967 Act so as to provide the legal background for the approach that we intend to adopt in relation to the Applications before us.

64. The various authorities emphasise that it is incumbent upon the Applicants to establish by evidence and on the balance of probabilities that their claims for costs met the requirements of section 9(4) of the 1967 Act.

65. The Respondents relied upon the Leasehold Valuation Tribunal decision of *Mr and Mrs Westcott and The Trustees of the Clathorpe Edgbaston Estate* (BIR/00CN/0C26/2003/0048) for their proposition that itemised costing was not appropriate for determining the issue of reasonable costs under section 9(4) of the 1967 Act. We consider that the Respondents’ proposition is misconceived. A decision of the Leasehold Valuation Tribunal establishes no binding precedent. Further the inherent danger with the proposition is that it deflects the Tribunal away from the statutory requirements of section 9(4) which forms the legal basis for our decision. Thus we consider that it is a matter for the Applicants to decide how they choose to present their evidence in support of their claim for costs. Our role is to decide whether the evidence presented meets the requirements that the costs must be reasonable, incurred in pursuance of the Notice and in respect of or incidental in the matters set out in section 9(4) of the 1967 Act.

66. Equally the Applicants in their written submissions have sought to extend the statutory interpretation of reasonable costs under section 9(4) of the 1967 by applying the words of section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 which deals with the award of reasonable costs associated with a Notice for an Extended Lease. In this application we are concerned with the award of costs under section 9(4) of the 1967. We are required to apply the ordinary meaning and effect of the words of section 9(4) to the facts of this case, not the meaning of section 60 of the 1993 Act.

67. The Applicants in this case sought to recover their legal costs under section 9(4)(a) and their valuation costs under section 9(4)(e). The fact that the Respondents’ Notices under the 1967 Act later proved invalid was not a bar to the recovery of the reasonable costs incurred during the period that the Respondents asserted that the Notices were valid (*Scottish Widows*). In this respect the Applicants have restricted the period of claim under the first bill of costs from 11 September 1998 (date of the

First 1967 Act Notice) to 30 November 2001 (date of the 1920 Act Notice). The period of claim under the second bill was from 9 September 2004 (date of second 1967 Act Notice) to 15 December 2005 (date of withdrawal of the proceedings before the Tribunal by the Respondents).

- 5 68. We shall deal with the applications for costs under the headings identified in the evidence, namely counsel fees, chartered surveyors' fees, solicitor costs and costs draftsman's charges.

Counsel's Fees

- 10 69. Under the two bills the Applicants sought to recover counsel fees of £350 and £312.50 plus VAT for advice on the 1967 Act Notices. The Respondents submitted that the fees were not payable under section 9(4)(a). They relied upon a passage in *Hague* which stated that the landlord could not recover costs for taking general advice on his rights under the Act. The Applicants pointed out that the Notices raised novel questions of law dealing with the interrelationship between the 1967 Act and the 1920 Act which necessitated the seeking of advice from counsel experienced in the area of leasehold enfranchisement. In their first 1967 Act Notice the Respondents based their claim for the freehold on the provisions of schedule 6 of the 1967 Act. Their second 1967 Act Notice was served when the claim under the 1920 Act was still pending. We are satisfied that the particular circumstances of this case merited a detailed investigation of the Respondents' right to acquire the freehold. In view of the complexity of the issues raised we consider it reasonable to obtain the advice of counsel expert in this specific area of the law. We disagree with the Respondents that counsel's advice fell within the category of general advice, which we would interpret as advice on the usual consequences that flow from the service of the 1967 Act Notice with no complications. Counsel submitted fee notes in respect of his advice, which we assume have been paid.

70. We, therefore, hold that counsel fees of £350 and £312.50 plus VAT were reasonable, incurred in pursuance of the two 1967 Act Notices and in respect of the Applicants' investigation of the Respondents' right to acquire the freehold.

- 30 71. The second claim for costs contained an additional Counsel's fee in the sum of £280 plus VAT dated 17 July 2006 for settling the draft Application in respect of the costs of the abortive notices and advising. We are satisfied that these fees were not incurred in respect of the investigation of the Respondents' right to acquire the freehold. Further the fees were incurred in connection with the Applicants' application for costs under section 9(4) 1967 Act which are specifically excluded by 35 the provisions of section 9(4)(A). **We, therefore, make no order for Counsel's fee in the sum of £280 plus VAT.**

Valuation Fees

- 40 72. The Applicants claimed surveyors' fees of £750 and £2,150 plus VAT in respect of the two 1967 Act Notices. The Respondents first contended that it was unreasonable for the Applicants to incur expenditure on the valuation of the property

because of the uncertainty about the validity of the 1967 Act Notices. We consider that this argument is without merit. The Respondents took no steps to withdraw their first 1967 Act Notice. They first acknowledged its invalidity in their skeleton argument to the Lands Tribunal dated 11 January 2006. The Respondents withdrew their second 1967 Act Notice on 15 December 2005, some 15 months after its service on 9 September 2004.

73. The Respondents' alternative objection to the surveyors' fees was that they were excessive and unreasonable. We hold reservations about the invoices submitted by the Applicants in support of their claim. The invoices were dated 3 November 2006. They contained no details of when the surveyors carried out the inspection of the property or performed the valuation under section 9 of the 1967 Act. The second invoice included charges for the 1920 Act Notice. We were not impressed with the Applicants' explanation that the surveyors only had seven days notice in which to compile the invoices. It was incumbent upon the Applicants to support their claim for costs with the necessary evidence to demonstrate that the costs were incurred in pursuance of section 9(4)(e) of the 1967 Act. The Respondents, however, at the hearing did not dispute that the surveyors carried out a valuation of the property for the purposes of section 9 of the 1967 Act.

74. We considered the evidence as a whole. We are satisfied that the surveyors valued the property in pursuance of the two 1967 Act Notices. The Applicants gave no evidence that the property posed complicated valuation issues. The legal complexities of this case concerned which valuation route applied, either under the 1920 Act or the 1967 Act. The legal complexities had no bearing upon how to conduct a valuation under section 9 of the 1967 Act.

75. We, therefore, conclude that the valuations were straightforward, in which case we consider that the amounts claimed were excessive and unreasonable. We find that £300 plus VAT is a reasonable amount for carrying out the first valuation. We consider that the second valuation involved updating the first valuation. This was supported by the details on the second invoice which showed that the surveyor only carried out an external inspection of the property. The second invoice charged for matters connected with the 1920 Act Notice. In those circumstances we find that the £275 plus VAT is a reasonable amount for carrying out the second valuation which reflects the work involved in updating the first valuation and changes in the hourly fee rate between the two valuations.

76. We, therefore, hold that chartered surveyors' fees of £300 and £275 plus VAT were reasonable, incurred in pursuance of the two 1967 Act Notices and in respect of the Applicants' valuation of the property.

The Legal Fees

77. Mr Acton submitted that he was acting for the freeholders (his wife and him) in his capacity as solicitor. The freeholders were thus entitled to recover the solicitors' costs based on an hourly rate for a solicitor of at least eight years experience practising outside the centre of Birmingham dealing with contentious business which

has been agreed with the Local Law Society. Mr Acton's evidence was that he had not supplied the freeholders with information about the potential costs of the case. There was no letter of engagement between him and the freeholders. Mr Acton gave no evidence about whether he took instructions from the freeholders. Mr Acton's explanation was that the requirement to supply engagement letters and costs information to clients was only a recent change to the rules governing professional conduct of solicitors. Further Mr Acton considered that it was nonsensical for him to sit down with his wife to discuss and agree his costs for doing the legal work on behalf of the freeholders. If Mr Acton was acting on the basis of a solicitor-client relationship, then he was required to comply with the rules governing professional conduct. The requirement to provide information on costs was incorporated in Practice rule 15 which came into force on 3 September 1999. Prior to that date information on costs was contained in the written professional standards. The fact that he was one of the two freeholders did not in our view obviate the requirement to comply with professional standards, if it was a solicitor-client relationship.

78. We find that there was no evidence of a solicitor-client relationship between Mr Acton and the freeholders. The freeholders had not instructed Mr Acton on the basis of the Local Law Society hourly agreed rates for contentious business. Thus there was no evidence that the freeholders incurred the solicitors' costs at the agreed local law society rate.

79. The reality of the arrangements was that Mr Acton acted for himself in the dealings with the Respondents. Mr Acton is, however, entitled to be compensated under section 9(4)(a) of the 1967 Act for the time spent using his skills and knowledge as a solicitor in investigating the Respondents' right to the freehold under the 1967 Act. In those circumstances is it reasonable for a solicitor acting effectively for himself to charge the same hourly rate as a solicitors' practice for contentious business. The Respondents submitted that it was not. According to the Respondents Mr Acton operated from home and did not have the same overheads as a solicitors' practice. Mr Acton did not challenge the Respondents' submission. Mr Welfare's evidence was that local Law Society agreed rate comprised overhead costs with a mark up of 50 per cent. Thus two thirds of the agreed rate represented overheads with the remaining third profit costs. We consider on the evidence that 50 per cent of the agreed hourly rate allowing an element for overheads of working from home is a reasonable hourly rate to compensate Mr Acton for his time spent using his skills and knowledge as an experienced solicitor acting for himself.

80. Mr Acton asserted in his additional submissions received after the hearing that we should follow the approach adopted by Judge Rich in his supplemental decision to (LRA/34/2001). We consider that our decision about the appropriate hourly rate is consistent with Judge Rich's decision in that we have based it on the evidence before us. We note that Judge Rich in his particular case did not have the benefit of hearing evidence and submissions from the other party to the proceedings.

81. The next issue to consider was whether the time spent by Mr Acton was reasonable and incurred pursuant to the 1967 Act Notices. In relation to the first Notice Mr Acton spent 20 hours and 35 minutes perusing documents, four hours and

32 minutes consulting with the surveyors plus time on letters, telephone calls and miscellaneous attendances. In the second Notice he spent 38 hours and 50 minutes on perusing various documents, four hours and 15 minutes consulting with the surveyors plus time on letters, telephone calls and miscellaneous attendances.

5 82. The Respondents pointed out that the itemised bills contained references to the 1920 Act Notices, the costs for which were to be considered by the Lands Tribunal in connection with the Applicants' reference. The Respondents contended that we should examine the bills with circumspection as in their view Mr Acton was charging for matters outside the purview of section 9 of the 1967 Act which cast doubt on the
10 credibility of the bills as a whole. Mr Acton denied that he was effectively double charging. As far as he was concerned the items charged under the bills related solely to the 1967 Act Notices. We consider that there is force to the Respondents' submissions. The bills referred specifically to the provisions of the 1920 Act which have been endorsed as accurate and correct by Mr Acton. We consider that Mr
15 Acton's endorsement of the accuracy of the bills undermined his assertion that there was no overlap between his charges for the 1920 Act and 1967 Act Notices.

20 83. The term reasonableness under section 9(4) of the 1967 Act invokes an appreciation of whether all the work undertaken by Mr Acton was necessarily incurred pursuant to the 1967 Notices. Reasonableness provides protection for the Respondents against unwarranted and excessive costs. The Respondents have employed the term "reality check" to assess whether that work was necessary. They suggested that with the benefit of Counsel's advice it should not have been necessary for Mr Acton to undertake additional substantial work. Further the costs expended by Mr Acton were disproportionate compared with the level of counsels' fees and the
25 costs that would have awarded had the matter been completed by conveyance or transfer. Mr Acton was effectively acting for himself. He was not answerable to a client for the time that he spent on dealing with the Respondents' notices. Mr Acton was not subject to the usual controls of a solicitor and client relationship, where the client would exercise some restraint upon the work carried out by Mr Acton.

30 84. We have had the benefit of reading Counsel's advice. We are satisfied from our reading of Counsel's advice that it was unequivocal and gave a clear steer of the legal position. We agree with the thrust of the Respondents' submission that armed with Counsel's advice it was unreasonable for Mr Acton to undertake additional substantial work following that advice, particularly as the ball was in the Respondents' court to
35 take the matter further in respect of the validity of the 1967 Act Notices.

40 85. Mr Acton has failed to convince us on the evidence that the four hours and 32 minutes consulting with the surveyors plus 25 letters out and 27 telephone calls in the first bill of costs were incurred in pursuance of the matters sets out in section 9(4)(a) We find from our examination of the itemised bill that the four hours and 32 minutes charged for attendances comprised 35 minutes for preparing the Freeholders' Notice of Reply, two hours and 21 minutes for negotiations with the tenants over the price and 52 minutes discussing the 1920 Act Notice. We infer that these activities generated most of the letters and telephone calls. We are satisfied that these activities were not caught by the provisions of section 9(4)(a), which leaves the 42 minutes

associated with Counsel's advice for consideration of a costs' award under section 9 of the 1967 Act.

5 86. Under the first bill of costs Mr Acton spent 20 hours and 35 minutes perusing documents, of which about seven hours were incurred after receipt of Counsel's first opinion. Mr Acton offered no substantive justification as to why it was necessary to incur the seven hours in pursuance of the matters set out in section 9(4)(a) of the 1967 Act. Some of the seven hours were taken up with re-perusing Counsel's opinion on two occasions and perusing the provisions of the 1920 Act. The remaining 13 hours and 35 minutes were connected with preparing for and considering Counsel's opinion.
10 Included within that 13 hours and 35 minutes was a charge for one hour and 30 minutes on the case of *Straddling and Higgins* which concerns the definition of Church under the 1920 Act. Further the time spent on preparing instructions and considering Counsel's opinion was disproportionate to the 18 minutes recorded for attending Counsel. We examined the instructions to Counsel which confirmed that the
15 time recorded was unreasonable. The bill also contained a charge of £37.50 for three letters out to the previous freeholder's solicitor.

20 87. We have decided on the evidence that about ten hours of Mr Acton's time was spent in pursuance of the Respondents' first Notice of Claim in connection with section 9(4)(a) of the 1967. We are satisfied that £650 plus VAT represents reasonable costs for the time spent by Mr Acton on the first Notice.

88. Under the second bill of costs Mr Acton spent 38 hours and 50 minutes on perusing various documents, four hours and 15 minutes consulting with the surveyors plus time on letters, telephone calls and miscellaneous attendances. We make the following findings on the second bill:

25 (1) The 4 hours and 15 minutes spent on attendances with the chartered surveyors and the associated travelling costs, letters and telephone calls were incurred in connection with preparing the Notice of Reply and the pending leasehold valuation tribunal application which has nothing to do with the investigation of the Respondents' right to acquire the freehold.

30 (2) The £112 charged for removal of cautions lodged by the Respondents with the HM Land Registry did not come within the purview of section 9(4)(a) of the 1967 Act which accorded with the finding of Judge Rich in LRA/34/2001 involving the same Applicants in relation to another property.

35 (3) The amounts of £196, £105 and £154 charged for letters out and attendances to Respondents' solicitors, Leasehold Valuation Tribunal and Counsel were connected in our view with the Respondents' application to the Tribunal and specifically excluded under the provisions of section 9(4)(A) of the 1967 Act.

40 (4) The 38 hours and 50 minutes spent on perusing documents included 12 hours and 35 minutes incurred after the Respondents' application to the Leasehold Valuation Tribunal which we find are caught by the exclusion in section 9(4)(A). At least seven hours and 15 minutes were taken up

with perusing the 1920 Act Notice and associated Counsels' opinion with a further three hours and 45 minutes preparing the freeholders' Notice of Reply which we consider to be outside the remit of section 9(4)(a) of the 1967 Act.

5 (5) The remaining balance of about 15 hours consisted of perusing the Notice and old files, preparing instructions to Counsel and considering his opinion. Having examined Counsel's instructions, we find that the central issue being considered was the validity of the 1920 Act Notice not the Respondents' right to acquire the freehold under the 1967 Act.

10 89. We conclude from our examination of the evidence relating to the second bill of costs that the time spent by Mr Acton had minimal connection with the matters set out in section 9(4)(a) or were specifically excluded by section 9(4)(A) of the 1967 Act. We are also mindful that by this time Mr Acton had the benefit of four separate opinions of Counsel. We are satisfied that at the time of receipt of the second 1967
15 Act Notice Mr Acton was fully aware of the issues surrounding the Respondents' right to acquire the freehold except possibly the effect of the changes brought about by the 2002 Act for which he obtained Counsel's advice. In those circumstances we consider about four hours of Mr Acton's time was a reasonable reflection of the time spent in pursuance of the second 1967 Act Notice. We are satisfied that £300 plus
20 VAT represents reasonable costs for the time spent by Mr Acton on that Notice.

90. We, therefore, hold that legal fees of £650 and £300 plus VAT were reasonable, incurred in pursuance of the two 1967 Act Notices and in respect of the Applicants' investigation of the Respondents' right to acquire the freehold.

Draftsman's Costs

25 91. The final item for consideration under the two bills of costs was the amount incurred by the costs draftsman in preparing the bills plus Mr Acton's costs as principal for checking them. The sole purpose for preparing the bills was to substantiate the Applicants' application for reasonable costs before this Tribunal. We find that such costs are specifically excluded by the provisions of section 9(4)(A) of
30 the 1967 Act. **We, therefore, make no order for the costs incurred by the costs draftsman and Mr Acton in checking the bill.**

Summary of Our Decision on Costs under sections 9(4) and 21(ba) of the 1967 Act

35 92. We order that Respondents shall pay the Applicants reasonable costs of £1,300 plus VAT, if appropriate, in connection with the first 1967 Act Notice.

93. We order that Respondents shall pay the Applicants reasonable costs of £887 plus VAT, if appropriate, in connection with the second 1967 Act Notice.

Application for Costs under Paragraph 10 of Schedule 12 of the 2002 Act

94. Paragraph 10 schedule 12 of the 2002 Act provides so far as is relevant that

- 1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph 2.
- 2) The circumstances are where –
 - 5 a) *Not applicable*
 - b) He has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- 10 3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed –
 - a) £500 or
 - b) *Not applicable*
- 15 4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.

18 95. The Applicants contended the Respondents behaved unreasonably with not acknowledging that the first 1967 Act Notice was invalid which generated unnecessary costs on the part of Applicants. Further the Respondents did not comply with Tribunal directions by failing to specify and identify their objections to the bills of costs no less than 28 days before the hearing. The Applicants contended that they were unfairly prejudiced by late service of the Respondents' skeleton argument. Thus the Respondents were in flagrant contempt of the Tribunal. In their correspondence subsequent to the hearing on 2 March 2007 the Applicants contended that the Respondents' solicitors had been disingenuous by referring to the Lands Tribunal decision (LRA/34/2001) at the hearing without prior warning to them.

20 96. The Respondents' solicitors were mindful that their clients were a charity and that they did not have the resources to fund extensive litigation. The solicitors were unable to explain why they did not formally withdraw the first 1967 Act Notice. However, the solicitors noted that the substantial hours incurred by Mr Acton in respect of the first 1967 Act Notice was not in response to correspondence sent by them. Further the solicitors had withdrawn the Leasehold Valuation Tribunal proceedings in respect of the second 1967 Act Notice as soon as they became aware of its invalidity. The Respondents' solicitors had not engaged with Mr Acton in correspondence over the two bills of costs. They were content for the disputed matters to be determined by the Tribunal. However, they did point out to the Applicants that two of the bills (four in total) served related to the Lands Tribunal proceedings. They also accepted service of disputed bills of costs even though they were described incorrectly as costs in relation to High Court proceedings. The solicitors apologised for the late delivery of the skeleton argument but argued that at the most it was disrespectful to the Tribunal not unreasonable within the meaning of paragraph 10, schedule 12 of the 2002 Act.

40 97. In order for us to make an order for costs we have to be satisfied that the Respondents acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings before the Tribunal. We consider

that the Respondents' handling of the first 1967 Act Notice was not relevant to the issue of unreasonableness because it predated the commencement of the proceedings before the Tribunal and did not hinder those proceedings. Also the wording of paragraph 10, schedule 12 of 2002 Act is concerned with the parties' conduct not their representatives' conduct. There was no evidence before us that the Respondents themselves acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the application. The Applicants' complaint was against the Respondents representatives. In our view it is a moot point whether an order for costs under paragraph 10 can be made against a party for the unreasonable behaviour of their representatives.

98. The Applicants' complaints against the Respondents' representatives were that they sat on the bills of costs and flagrantly ignored the Tribunal directions. The trial file contained copies of two letters from the Respondents' solicitors addressed to David Acton & Co. The first letter dated 5 January 2007 referred to two open offers issued before Christmas 2006 to settle the outstanding matters including costs which were rejected by the Applicants. Further that letter outlined to the Applicants the correct avenues for determining the disputes regarding costs. Their second letter of 15 January 2007 summarised the Respondents' response to the four bills of costs. They pointed out that two of the bills related to costs incurred before the Lands Tribunal. The Representatives stated that their general grounds for contesting the other two bills of costs which would form the application before the Leasehold Valuation Tribunal. We find that the Respondents' representatives responded constructively to the bills of costs submitted by the Applicants. They did not sit on the bills.

99. On the 10 January 2007 the Tribunal received the Applicants' application for costs under sections 9(4) and 21(1)(ba) of the 1967 Act. On the same day Tribunal copied the application to the Respondents. On 23 January 2007 the Tribunal issued directions which required the Respondents to state their objections in writing by identifying on the Applicants' bill of costs any item which the Respondents requires to be determined by the Tribunal by no later than 28 days prior to the hearing. Further the parties were directed to lodge statements, agreed facts, agreed trial bundle and skeleton arguments not less than 14 days before the hearing. The Respondents' solicitors acknowledged receipt of the directions on 29 January 2007.

100. On 2 February 2007 the Tribunal notified the parties of the hearing date of 2 March 2007. On 8 February 2007 Mr Acton informed the Tribunal that the Respondents' representatives had not made any objections to the bill of costs by the required time of 28 days before the hearing which was on 2 February 2007. Further Mr Acton submitted the Tribunal should proceed and determine the costs in accordance with the amounts claimed in view of the Respondents' failure to object in time. There followed exchanges of correspondence between Mr Acton and the Tribunal where the Tribunal advised Mr Acton that they would determine his various applications at the hearing and that the relevant procedure for determining an award of costs was that laid down in section 9(4) of the 1967 Act.

101. On 22 February 2007 the Applicants submitted by hand and fax to the Tribunal a chronology and a trial bundle together with enclosures. On 23 February

2007 the Tribunal received the Respondents' skeleton argument dated 22 February 2007.

102. Both parties were caught out by the efficiency of the Tribunal in fixing an early hearing date, which resulted in their non-compliance with the direction regarding the lodgement of documents no later than 14 days before the hearing. In addition the Respondents' representatives failed to comply with the direction specifying their objections to the Applicants' bills of costs no later than 28 days before the hearing. They would not have been aware of their breach until they received the notice of the hearing date. The early posting of the hearing date meant that the representatives were not given an opportunity to comply with the direction.

103. The Respondents' skeleton argument was received by the Tribunal and presumably by the Applicants on 23 February 2007 which was seven days before the hearing. The Applicants contended that they were unfairly prejudiced by the late delivery of the skeleton argument. On 15 January 2007 the Respondents notified the Applicants that they were disputing the quantum of costs. Their skeleton argument explained their objections which were based on the general principles underpinning the award of section 9(4) costs. We find that the Applicants were not unfairly prejudiced by the late delivery of the Respondents skeleton argument. They were aware from an early stage that the Respondents were disputing the claim for costs. The skeleton argument introduced no novel or complicated representations. The argument addressed the basic principles for an award of costs which the Applicants would have been obliged to cover in making their application for costs before the Tribunal.

104. The Applicants also complained about the Respondents introduction of the Land Tribunal case (LRA/34/2001) at the hearing without notice. The Applicants were aware of the details of the case as they were parties to it. Further we admitted the Applicants' post hearing written submissions which set out their representations about the Lands Tribunal decision.

105. We find that the Respondents took constructive action following receipt of the Applicants' bills of costs. Further the late delivery of the Respondents' skeleton argument did not unfairly prejudice the Applicants with the presentation of their case before the Tribunal. The Respondents' representatives did not flagrantly breach the Tribunal directions.

106. **We are satisfied that the Respondents' representatives did not act frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings. We, therefore, make no order for costs under paragraph 10 schedule 12 of the 2002 Act.**

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Michael Tildesley
MICHAEL TILDESLEY OBE
CHAIRMAN
RELEASE DATE:

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