Neutral Citation Number: [2021] EWHC 1454 (Admin)

CO/3943/2020

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/05/2021

Before :

THE HONOURABLE MRS JUSTICE COLLINS RICE

- -

Between

(1) MRS SUSAN TAYLOR
(2) LONGFIELD REAL ESTATE LIMITED

Appellants

- and -

MS IONE BURTON

Respondent

- -
- -

Mr Brynmor Adams (instructed by Myers & Co for the First Appellant, and by Browne Jacobson LLP for the Second Appellant) for the **Appellants**
Mr Andrew Locke (instructed by Alexander Shaw) for the **Respondent**

Hearing date: 18th May 2021

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Approved Judgment

Mrs Justice Collins Rice:

Introduction

1. Mrs Taylor owns a house in Smallthorne, Stoke on Trent. Longfield Real Estate Ltd was her letting and managing agent. They are the 'landlords'. Ms Burton is the tenant.

2. Ms Burton brought an action in the North Staffordshire Magistrates' Court against her landlords. She said the damp state of the house was prejudicial to her health, and a 'statutory nuisance' under s.79 of the Environmental Protection Act 1990. The case was heard between December 2019 and February 2020. The parties ultimately agreed the 'nuisance had been abated': the damp problem had been sorted out. Ms Burton applied for compensation for her expenses in bringing the case, under s.82(12) of the Act.

3. The Magistrates ordered Mrs Taylor and Longfield to pay £14,539.90 each. They in turn bring this appeal ('by way of case stated') against that decision. They say the Magistrates made errors of law and jurisdiction, and were not entitled to make the order they did.

Legal Framework

(i) Appeals by way of Case Stated

4. CPR Practice Direction 52E states that:

> An appeal by case stated is an appeal to a superior court on the basis of a set of facts specified by the inferior court for the superior court to make a decision on the application of the law to those facts.

It provides that procedure for stating a case from a Magistrates' Court is governed by the Criminal Procedure Rules.

5. Criminal Procedure Rule 35.3(4) and (5) sets out the requirements for the Magistrates' case stated. It must:

> (a)specify the decision in issue;
>
> (b)specify the question(s) of law or jurisdiction on which the opinion of the High Court will be asked;
>
> (c)include a succinct summary of—
>
> (i)the nature and history of the proceedings,
>
> (ii)the court's relevant findings of fact, and
>
> (iii)the relevant contentions of the parties; and

> (d)if a question is whether there was sufficient evidence on which the court reasonably could reach a finding of fact—
>
> (i)specify that finding, and
>
> (ii)include a summary of the evidence on which the court reached that finding.
>
> Except to the extent that paragraph (d) requires, it must not include an account of the evidence received by the court.

(ii) Section 82 Summary Proceedings

6. Section 82 of the Environmental Protection Act 1990 provides as follows:

> *Summary proceedings by persons aggrieved by statutory nuisances*
>
> (1)A magistrates' court may act under this section on a complaint … made by any person on the ground that he is aggrieved by the existence of a statutory nuisance.
>
> (2)If the magistrates' court is satisfied that the alleged nuisance exists, or that although abated it is likely to recur on the same premises, the court shall make an order for either or both of the following purposes—
>
> (a)requiring the defendant to abate the nuisance, within a time specified in the order, and to execute any works necessary for that purpose;
>
> (b)prohibiting a recurrence of the nuisance, and requiring the defendant, within a time specified in the order, to execute any works necessary to prevent the recurrence;
>
> and may also impose on the defendant a fine not exceeding level 5 on the standard scale.
>
> …
>
> (4)Proceedings for an order under subsection (2) above shall be brought—
>
> (a)except in a case falling within paragraph (b), (c) or (d) below, against the person responsible for the nuisance;
>
> (b)where the nuisance arises from any defect of a structural character, against the owner of the premises;
>
> …

> (5)…where more than one person is responsible for a statutory nuisance, subsections (1) to (4) above shall apply to each of those persons whether or not what any one of them is responsible for would by itself amount to a nuisance.
>
> …
>
> (6)Before instituting proceedings for an order under subsection (2) above against any person, the person aggrieved by the nuisance shall give to that person such notice in writing of his intention to bring the proceedings as is applicable to proceedings in respect of a nuisance of that description and the notice shall specify the matter complained of.
>
> (7)The notice of the bringing of proceedings in respect of a statutory nuisance required by subsection (6) above which is applicable is-
>
> (a)…
>
> (b)…not less than twenty-one days' notice.
>
> …
>
> (12)Where on the hearing of proceedings for an order under subsection (2) above it is proved that the alleged nuisance existed at the date of the making of the complaint, then, whether or not at the date of the hearing it still exists or is likely to recur, the court shall order the defendant (or defendants in such proportions as appears fair and reasonable) to pay to the person bringing the proceedings such amount as the court considers reasonably sufficient to compensate him for any expenses properly incurred by him in the proceedings.

7. Proceedings under s.82 are 'criminal in nature' (*Botross v London Borough of Hammersmith and Fulham [1995] Env LR 217 (QB)*), including as to standard of proof.

(iii) The right to compensation

8. The decided cases give guidance on the right to compensation under s.82(12). *Jones v Walsall MBC [2003] Env LR 5 (QB)* confirmed that it may be a complete answer to an application for compensation that, at the time proceedings were commenced, and in the period since notice was given under s.82(6)), the landlord 'has done all that was reasonable to gain entry to the premises' and abate the nuisance, and is therefore no longer the cause of, or the person responsible for, the nuisance. Reasonableness is a factual assessment, to be considered by reference to all the circumstances of the case.

9. On the correct approach to quantum in s.82(12) cases, further guidance is provided by the caselaw. In *Taylor v Walsall and District Property and Investment Co Ltd [1998] Env LR 600* the Divisional Court held as follows:

> Clearly section 82(12) calls for an essentially broad brush approach. It requires only the crudest form of taxation process. But that notwithstanding, where, as here, a substantial sum is claimed by way of costs, the justices must, in my judgment, take proper steps to investigate just how that claim is arrived at and the detailed grounds upon which it is sought to challenge it. What, they must ask, is the basis upon which any item or head of costs is said by the respondents not to have been properly incurred, whether wholly or in part. If items of expenditure result from unreasonable conduct of any sort on the complainant's part … those items can properly be deducted from the bill by the justices.

10. This passage was quoted with approval by the High Court in *R oao Notting Hill Genesis v Camberwell Green Magistrates' Court [2019] EWHC 1423 (Admin)*. There the Magistrates were found to have erred in not dealing with the detailed submissions made to it on an individual basis, and in failing properly to consider the submission that the use of a Grade A fee-earner for the majority of the work was unreasonable. The court also considered proportionality to be a proper consideration in the assessment of quantum in s.82(12) cases, and that an analogy might be drawn with the provision made in respect of costs in civil proceedings by CPR 44.3.

11. By subsection (5) of CPR 44.3,

> Costs incurred are proportionate if they bear a reasonable relationship to –
>
> (a) the sums in issue in the proceedings;
>
> (b) the value of any non-monetary relief in issue in the proceedings;
>
> (c) the complexity of the litigation;
>
> (d) any additional work generated by the conduct of the paying party,
>
> (e) any wider factors involved in the proceedings, such as reputation or public importance; and
>
> (f) any additional work undertaken or expense incurred due to the vulnerability of a party or any witness.

The court in *Notting Hill Genesis* emphasised that not only must the Magistrates consider these factors, they must properly explain their reasons for the decision they reach.

12. As proceedings under s.82 are 'criminal in nature' analogous guidance may also be had by reference to Crim PR 45.2(5) and (7) on the duty, in making costs decisions, to give reasons on particularly relevant factors and to the further detail provided at paragraphs 7.2.4 and 7.2.5 of the associated Practice Direction. The financial means of the paying party is a relevant consideration in the award of costs in criminal proceedings: see also the guidance given in *R v Northallerton Magistrates' Court, ex p Dove [2000] 1 Cr App R (S) 1*36 at 142-3.

Procedural Background

13. Ms Burton wrote to Mrs Taylor on 19th June 2019, and to Longfield on 28th June 2019, about the damp problem. The letter to Mrs Taylor was drafted in accordance with the pre-action protocol for housing disrepair claims in the County Court. Both letters gave notice, for the purposes of s.82(6) of the 1990 Act, of intention to bring proceedings.

14. Correspondence ensued. Mr Adams, Counsel for the landlords, emphasises that this correspondence shows their willingness to undertake repairs but their difficulties in contacting Ms Burton and obtaining access to the house. Mr Locke, Counsel for Ms Burton, emphasises that it (also) shows some, but by no means all, of the reasons for that, for which the landlords had to take responsibility.

15. Ms Burton commenced s.82 proceedings by the issue of summonses on 1st August 2019. Not guilty pleas were entered on 9th September. A two-day hearing was listed to open before the North Staffordshire Magistrates on 19th December 2019. The parties were represented (including by Counsel in the present appeal). The Magistrates heard evidence from an environmental health practitioner who had produced a report on the state of the house, and began to hear evidence from Ms Burton. The second day of the trial had to be adjourned and was not relisted until 14th February 2020. Ms Burton's evidence was completed, and Mrs Taylor's solicitor gave evidence, including being cross-examined about the correspondence regarding access.

16. In the course of the hearing on 14th February, Ms Burton accepted that, in light of repairs undertaken the week before, the statutory nuisance had been abated as of 7th February 2020. She therefore sought no remedial order from the Magistrates.

17. The only remaining issue for determination by the Magistrates was Ms Burton's s.82(12) application for compensation. The parties made submissions on liability. The Magistrates retired to consider them. They decided that a statutory nuisance existed on the date the information was laid and the landlords were responsible for it. The landlords then sought an adjournment to address the matter of quantum compensation more fully than the short notice and late hour allowed. The Magistrates refused on the grounds that that in itself would increase expense, and instead sat late and heard further submissions on the issues of quantum.

18. On liability, the landlords resisted the application on the basis that they were not the 'persons responsible' for the statutory nuisance subsisting when proceedings were commenced. Ms Burton was the person responsible because she had denied access and/or failed to heat the house properly. They relied on *Jones v Walsall* and on the correspondence in the June/July 2019 notice period.

19. Submissions on Ms Burton's behalf referred to the evidence she had given that: to the extent that her absences from the house had exacerbated the problem, these were in themselves necessitated by the impact of the damp on her health; she had run out of money for the gas meter only in the summer months when heating was not needed; she had kept the landlords up to date with her contact details but they had on occasion used out-of-date ones, resulting in missed appointments; serious family illness had caused another missed appointment; and in any event Longfield had a spare key.

20. On quantum, Ms Burton submitted a schedule of costs totalling £34,412.60. She asked for the landlords to be made jointly and severally liable. The landlords said the sum was disproportionate, relying on *Notting Hill Genesis*. Specific issues were raised as

to: the use of London lawyers and associated travel costs, including for an unnecessary site visit; the amount of hours and the grade of fee-earner, including in attendance at trial; the cost of a Newcastle-based expert. They also made submissions on Mrs Taylor's limited means and resources, and on Longfield's financial struggles.

21. On liability, the Magistrates' orders of 14th February 2020 set out that Mrs Taylor, as owner of the house (s.82(4)(b)), and Longfield, as managing agents with responsibility for repair (s.82(4)(a)), were each 'the person responsible for the nuisance'. The orders describe the nuisance in terms of the damp state of the house. The parties agree that the Magistrates were asked orally to clarify their position on the defence to liability which had been raised, and they confirmed finding that 'access was not obstructed or frustrated' (Mr Locke's instructing solicitor's notes add 'at the relevant time').

22. On quantum, the Magistrates reduced the total to £29,079.80 noting that the travel and waiting at court expenses were excessive. They refused to order joint and several liability, but directed instead that each defendant was to be liable for half the total.

The Case Stated by the Magistrates

23. An appeal by way of case stated requires the Magistrates to formulate questions of law or jurisdiction to be answered by the High Court. These are the questions the Magistrates formulated:

> (1) Did the Justices err in finding that they had jurisdiction to make an order for costs pursuant to s82(12) of the Environmental Protection Act 1990 on the basis that the Defendants rather than the Prosecutrix were the persons responsible for the existence of a statutory nuisance on the date on which the Prosecutrix made her complaint?
>
> (2) If, not did the Justices err in law in making an order that the Defendants each pay a sum in respect of costs to the Prosecutrix's solicitors?
>
> (3) If, not, did the justices err in their approach to the assessment of the amount of costs to be paid to the Prosecutrix's solicitors?
>
> (4) Did the justices err in law by failing to give adequate reasons for their decision?

24. The parties agree that the answer to the second question is 'yes' and that a direction to the Magistrates is needed to remedy that defect. The remaining three questions are in dispute in this appeal.

25. The Magistrates' stated case recites the procedural history, the relevant statutory provisions and the two authorities relied on at trial. It summarises the submissions made by each party on liability and quantum of compensation. Under the heading 'Justices' Reasons' it briefly sets out their findings on liability and quantum and why they were reached. It states that all findings were made to the criminal standard.

Grounds of Appeal

26. The landlords say that:

1. The justices erred in law in concluding that, for the purposes of s.82(12) of the Environmental Protection Act 1990, the Appellants were the persons responsible for the existence of the nuisance at the material time in circumstances where there was unchallenged evidence that the Respondent had failed to respond to the Appellants' requests for access to the premises to carry out works of repair.

2. The justices erred in law in making an order that the Appellants pay sums in respect of costs to the Respondent's solicitors who were not themselves a party to proceedings.

3. The justices erred in law in their assessment of the amount of costs to be paid by the Appellants by failing to have regard to the proportionality of the costs incurred and to the specific matters challenged by the Appellants.

4. The justices erred in law by failing to give adequate reasons for their decision. In particular:

    a. the justices failed to give any reasons for rejecting the Appellants' submissions that they were not the persons responsible for the existence of the nuisance due to the Respondent's failure to respond to requests for access to the premises to carry out works of repair; and

    b. the justices failed to give any reasons for rejecting the Appellants' specific challenges to the amount of costs claimed by the Respondent.

Analysis

(i) Appeal by way of Case Stated

27. Appeals by way of case stated, as PD 52E makes clear, are limited in scope to issues of excess of jurisdiction and error of law. They are heard in the form of legal submissions only. No evidence is adduced and the court has to proceed on the basis of the facts recited in the Magistrates' case stated.

28. The court is not concerned with the Magistrates' evaluation of evidence or finding of fact unless it discloses error of jurisdiction or law, for example because there was no evidence on which a reasonable tribunal could have reached its conclusion, or a finding of fact was perverse. Otherwise, issues going to the tribunal's weighing of the evidence before it, or its preference for one witness over another, are factual matters and not properly within the scope of the appeal.

29. The point is further emphasised by the provision made in CrimPR 35 for factual issues to be dealt with in one of two ways only: a case stated must *either* (a) in a case where the question of law is whether there was sufficient evidence on which a court could reasonably reach a finding, specify the finding and include a summary of the evidence on which the court reached that finding *or* (b) in any other case, exclude any account of the evidence.

30. The distinction between questions of law and of fact is one of substance, not label or presentation. The Magistrates' case stated here does not include questions framed as going to unevidenced or perverse fact-finding. They are framed as jurisdictional or legal issues. The substance of the first question, however, is the sustainability of conclusions on liability on the facts and evidence before the Magistrates. That is even clearer from the landlords' first ground of appeal. The fourth question comes at the same issue from the angle of sufficiency of reasoning. But the case stated includes neither 'a succinct summary of the court's relevant findings of fact' nor a summary of the evidence. This is a difficulty.

31. At the appeal hearing I was referred to (selected) evidential matters before the Magistrates, rival accounts of the proceedings, and selective quotation from the summaries of the parties' contentions before the Magistrates in the case stated. In his developed submissions, Mr Adams suggested the nub of the 'jurisdictional' error in relation to liability subsisted specifically in a *failure* of the Magistrates to make findings of fact. But, even allowing for the difficulties of proving a negative, the lack of a clear factual/evidential base makes it hard to distinguish between potential defects in decision-making and potential defects in the drafting of the case stated. The former cannot just be assumed from the latter. That is one reason it is so important for tribunals to follow the rules in preparing a case stated, and provide the appellate court with the tools for its job.

32. This sort of problem was noted in *Oladimeji v DPP* [2006] EWHC 1199 (Admin) at paragraph 4. Fairness to the parties here indicates 'doing the best that one can' (*Oladimeji* paragraph 6) to penetrate to the jurisdictional/legal heart of the matter and decide whether the Magistrates exceeded their powers or got the law wrong. On the other hand, Mr Adams having explained that no appeal to the Crown Court lies from a decision of the Magistrates under section 82(12), I must consider with equal rigour the extent to which, Parliament not having so provided, the issues raised on this appeal genuinely engage matters going beyond disagreement with the *merits* of a decision and affecting its legal *propriety*.

(ii) Liability for Compensation

33. Question 1 from the Magistrates asks whether they 'had jurisdiction' to make an order under s.82(12). The landlords' appeal does not take issue with the fulfilment of the conditions precedent which are set out on the *face* of s.82(12) for the making of such an order. The statutory nuisance existed at the date on which proceedings were commenced. The Magistrates are mandated to order defendants to pay reasonably sufficient compensation for expenses properly incurred in those circumstances.

34. The 'jurisdictional' defect alleged has to do with whether, although the defendants satisfied the descriptions in s.82(4), in the sense that those descriptions corresponded to the allegations Ms Burton was making, it had not been properly '*proved*' that they, rather than Ms Burton herself, were responsible for the existence of the statutory nuisance at the date on which proceedings commenced.

35. That in turn has to do with the elements of the *Jones v Walsall* defence advanced before the Magistrates: had the landlords done all that was reasonable to gain entry to the premises during the relevant period? Were they therefore 'not responsible' for the continuation of the nuisance at the relevant date?

36. In turn again, that test of 'all that is reasonable' is evaluative and fact-based: it has to be considered by reference to all the circumstances of the individual case. On the face of it, therefore, this question can be 'jurisdictional' only to the extent that it raises a point about whether there was no evidence that the landlords had failed to do all that was reasonable, or no reasonable Bench could have reached such a view on the evidence they did have.

37. In their grounds of appeal, the landlords say the Magistrates erred in law in holding them responsible for the nuisance 'in circumstances where there was unchallenged evidence that the respondent had failed to respond to the appellants' request for access to the premises to carry out works of repair'. The 'unchallenged' evidence referred to is the correspondence in the notice period. It is 'unchallenged' only to the extent that it is accepted the exchanges took place and show that issues of contact and access arose. The conclusions to be drawn from the correspondence were, and are, vigorously challenged, as to the conduct of both landlords and tenant. In any event, whether or not there was evidence, unchallenged or otherwise, on which the Magistrates could have concluded that the landlords were no longer responsible for the nuisance does not amount to, address or answer a 'jurisdictional' or legal question. That is not the test. The test is whether there was no evidence on which they could have concluded anything else, or no reasonable Bench could have decided otherwise on the totality of the evidence they did have.

38. As already noted, in his oral submissions Mr Adams developed the argument by proposing that the Magistrates failed to deal with the defence at all: they made no findings of fact about it. Even if they did find that 'access was not obstructed or frustrated' by Ms Burton, that is not, he says, the same as a finding that the landlords failed to do 'all that is reasonable' to enter and effect the repairs within the notice period. Nor can such a finding simply be inferred from their conclusion that the landlords were responsible for the nuisance.

39. If the 'all that is reasonable' test is the key to whether the landlords were properly liable for the nuisance, and therefore whether the Magistrates had jurisdiction to make a s.82(12) order, then I agree that the starting point – even though not articulated as such in the question in the case stated – is whether they directed their minds to that question at all. I am not persuaded they fell into that particular error. From what I have been shown, it is apparent that the ***Jones v Walsall*** defence comprised a large part of the landlords' response to the proceedings from the outset: they said it was Ms Burton's fault that the house was damp because she failed to heat or otherwise look after it properly, and she failed to act responsibly in the notice period so as to enable repairs to be made. A substantial amount of evidential effort was directed to this very point, and the issue of s.82(12) liability was argued on the basis of it: the statement of case rehearses those submissions. I am not persuaded that the Magistrates ignored or overlooked the issue, or dismissed it as irrelevant either way. Clearly, it was a determinative issue in the case. The Magistrates rejected the defence. In my view that is sufficiently apparent from all the circumstances.

40. Question 1 asks if the Magistrates were jurisdictionally entitled to find 'the Defendants *rather than* the Prosecutrix' responsible for the nuisance. I start from the basis that that is indeed what they found. The jurisdictional question therefore comes down to whether there was evidence before them on which they could properly conclude that the landlords had not done 'all that is reasonable'. I am satisfied that there was.

41. I bear in mind, first, that the defence is not about the *comparative* reasonableness of the conduct of the landlords and the tenant. It turns on establishing that the landlords did *all* that was reasonable to gain entry and remedy the situation. By doing that, they discharge the responsibility that they otherwise automatically bear for the state of the premises. There was evidence before the Magistrates that the state of the premises was not attributable to Ms Burton's conduct by failing to heat it or otherwise, that the landlords did not respond to the notice with particular alacrity in the first place, that they bore at least some responsibility for the failures of communication with Ms Burton, that they made insufficient allowance for Ms Burton's inability for health and family reasons to comply with all their requests, that she did not 'prevent' access, and that the landlords had a key, had used it to enter the premises in her absence, and were able to effect repairs without relying on Ms Burton being present to let them in. That was Ms Burton's case, and she appears to have been extensively cross-examined on it. The defence was not rejected in an evidential vacuum.

42. Of course the landlords strongly disputed this evidence and put forward an alternative account. Once, however, the Magistrates were engaged on the exercise of evaluating which witnesses they preferred and what weight to attach to the evidence, and whether they agreed that the defence had been made out or whether they were sure of Ms Burton's case, they were doing their job and acting within their jurisdiction.

43. The question is not whether this or any other Court would have made the same decision. It is no part of my function to take issue with the merits of the decision. Evaluating evidence and drawing conclusions about what happened are functions which are entrusted solely to the Magistrates in a case like this and their decision is final. It will be set aside only if it is one that no reasonable Bench, addressing itself properly to its task, could have reached. The question is not whether the Magistrates were right or wrong to reject the defence, but whether they had no proper choice in the matter and were bound to accept it. The answer to that question is no. Who was responsible for the nuisance, and whether the landlords had done all that was reasonable, are evaluative, fact-focused questions, the answers to which depend on all the circumstances of an individual case. The Magistrates had evidence before them going both ways. No jurisdictional or legal error is disclosed merely by the decision going one way rather than another.

44. The answer to the Magistrates' first question is no. The landlords' appeal on this ground is dismissed.

(iii) Quantum of Compensation

45. The challenge made on the assessment of compensation is that the Magistrates failed to have regard to the proportionality of the costs incurred and to the specific matters challenged by the landlords.

46. Because the Magistrates declined to adjourn, this was not a case in which detailed (written) submissions on costs were made. The case stated nevertheless records that the Magistrates had Ms Burton's schedule of costs before them, that submissions on proportionality were made, with reference to *Notting Hill Genesis*, specific objections were raised and replied to on a number of particular items, and the financial means of both defendants were raised.

47. The decision made by the Magistrates rejected Ms Burton's submissions on joint and several liability and records a reduction of over £5,000 or 15% on the amount claimed.

The case stated records that the Magistrates decided to reduce the travel and waiting at court expenses on the grounds that they were 'excessive'.

48. In his developed submissions, Mr Adams expanded on the demands of both proportionality (with particular reference to the objectives that s.82 procedure be kept simple and summary, and the need for heightened scrutiny of proportionality in cases involving conditional fee arrangements) and on particularity, where he says of the Magistrates' decision that whole themes were missed.

49. I start with the characterisation of the s.82(12) assessment exercise in *Taylor v Walsall* as essentially broad brush and requiring only the crudest form of taxation process. I also note that this is a case in which a substantial amount is claimed by way of compensation, bearing in mind that this is a summary process. A number of points arise.

50. First, as to proportionality, if regard is had to the analogous Rules, then this is an exercise in taking an overview, but one based on acknowledgment of the relevance of a number of factors. Here, in particular, the value of the non-monetary relief sought (the repairs needed to the house) and the conduct not only of the litigation but of the parties themselves, were potentially relevant.

51. Then as to particularity, the 'themes' which were raised were: the choice of a London legal team; reliance on Grade A fee-earners and high hourly rates; travel, waiting and attendance time; the cost of the expert. The particular theme of the landlords' lack of means was also emphasised, both before the Magistrates and on appeal.

52. In these circumstances, the question is the extent of the problem raised for this case by *Notting Hill Genesis*. I sympathise with the Magistrates' desire to get on with things and avoid further expense and delay. However, a substantial amount of compensation was claimed, the proceedings had come to an abrupt early end, and the landlords had made an (unopposed) application for time to prepare (written) costs submissions on quantum. None of that means the Magistrates necessarily went wrong in pressing ahead at the end of a long day in court, but it increases the risk that the broad brush will miss some parts that need covering.

53. It may be that the Magistrates did make a fair assessment of the proportionality of the costs claimed, in the round, that they gave their minds to all the particular heads of objection raised, and that the reduction they made represented a fair and sustainable reflection of the factors put before them. But on the materials before me it is not easy to be satisfied that important issues were not missed. In particular, the silence on the issues of proportionality (with reference to the value of what was a non-monetary claim, and to the conduct of the parties which was apparently in issue on both sides), and of the landlords' means, is troubling.

54. 'Doing one's best' with scant materials has its limits and those limits have been reached on this issue. I cannot tell whether the Magistrates did a proper job in assessing quantum or not. That is a problem in itself. If I have reached the point of guesswork, that is the point at which fairness requires another look. I am bound accordingly to conclude that the Magistrates erred at least to the extent of insufficiently articulating their decision, and that there is at least potential injustice in their perhaps too summary approach. It is important that the parties should have a basic understanding of how a sum is arrived at and some reassurance that they have been heard on the key issues.

55. In reaching that conclusion, it is important to make a number of points clear. This *is* a summary process and it is *not* proper for parties to go to significant lengths and expense in litigating quantum. Nor is it at all incumbent on Magistrates to deliver reasoned judgments on compensation or to be subjected to unrealistic, oppressive and needless standards of point-by-point analysis. I am making the decision I am in this case because there are limits to what can be inferred from a brief reference to excessive travel and waiting expenses, and because I do not have enough information before me fairly to do anything else.

56. I make the following observation also. S.82(12) has received a degree of judicial scrutiny, and the s.82 regime as a whole is now a developed and mature system, well understood by practitioners. The analogies drawn in the decided authorities, and recommended to me, with rules of court for assessing costs in both civil and criminal proceedings, are, however, just that: analogies. S.82(12) is drafted in terms which *mandate* Magistrates to order the payment of an amount of *compensation*, which in their view is *reasonably sufficient* in view of expenses properly incurred. While assistance may be gained from analogous concepts such as proportionality, and from the approach courts are familiar in taking to ensure that awards of costs are fair, it is important not to lose sight of the words of the statute. The Magistrates are properly engaged on an exercise in assessing reasonably sufficient compensation for expenses properly incurred. What 'expenses' have been 'properly incurred in the proceedings' is one aspect. But s.82(12) creates a distinctive entitlement, and the assessment of 'reasonably sufficient compensation' is a distinctive statutory duty, in a scheme in which procedural provision is made to help minimise the need for complainants to litigate at all. The wider statutory context remains important.

57. Finally, I should emphasise that my decision does not give rise to any particular expectation about the quantum of compensation which may in due course be awarded in this case. I am ordering that the matter be looked at afresh and a new decision made and articulated; it is a fact-sensitive decision. Nor does it give rise to an expectation of anything more than a brief indication of reasons, sufficient to show that the Magistrates have duly considered the main headings of submission by the parties.

58. The answer to the Magistrates' third question is yes. The landlords' appeal on this ground is allowed.

(iv) Sufficiency of Reasons

59. The conclusion I have reached on quantum of compensation necessarily implies an insufficiency of reasoning on that account. It is unnecessary to consider it further.

60. The conclusion I have reached on liability for compensation also points in general terms to a sufficiency of reasoning on that account. In my view, it is sufficiently apparent that the Magistrates addressed their minds to all the components of liability, both those specified on the face of s.82 and the (rejection of a) *Jones v Walsall* defence. Mr Adams objects that the rejection of the defence is not as a matter of logic implied by the finding that Mrs Taylor was liable 'as owner', even if it is arguable that that implication does arise from the finding that Longfield was liable as managing agents 'with responsibility for repair of the property'. As I have set out, however, I am satisfied that it sufficiently appears that the Magistrates considered, and rejected, the defence and indeed that, in all the circumstances of this particular case as far as I have them before me, the finding of the *continuing* liability of the landlords for the nuisance found on the facts to have

existed at the commencement of the proceedings cannot reasonably be understood on any other basis.

61. Mr Adams further objects, however, that it is insufficiently clear on what grounds the defence was rejected. He says the landlords do not know why they lost, and that in itself is a source of unfairness and a sign of error. As I have set out, what is clear about the landlords' liability is that its principal source is the findings of fact on the state of the house and their status as proper defendants further to s.82(4). They sought to displace their liability by blaming Ms Burton for the state of the premises and for the fact that repairs were not undertaken before proceedings commenced. She gave evidence about that, and was cross-examined on her evidence. Whether liability properly shifted to Ms Burton or not was entirely a matter of evaluating the evidence the parties chose to give and forming a view of where the balance came down. It came down against the landlords and in favour of the tenant. The Magistrates were satisfied that Ms Burton had not created the nuisance herself and that the landlords had not been prevented from repairing it as alleged or at all. That is why the landlords lost.

62. The Magistrates do not have to give a commentary on the evaluative exercise. The explanation of verdict in proceedings of a criminal nature may be discharged by a demonstration that the Magistrates have satisfied themselves as to the ingredients of liability (*R oao McGowan v Brent Justices [2001] EWHC (Admin) 814*). Where a disappointed litigant 'cannot understand why they lost', care is needed: that may signal uncertainty or obscurity as to basis, or it may signal vehement disagreement as to merits. Only the former is a proper symptom of legal error. The landlords may not find themselves able to acknowledge *why* the Magistrates preferred the evidence contrary to their defence, but *that* they did so is plain enough.

(v) Conclusions

63. I have not found jurisdictional or legal error in the substance or reasoning of the Magistrates' decision on liability to pay compensation. To that extent this appeal is dismissed.

64. I have concluded that legal error appears in the insufficiency of indication that the Magistrates took a proper approach to the assessment of quantum of compensation. The parties accept, and I agree, the Magistrates made a legal error in ordering the compensation to be paid to Ms Burton's solicitors. In these respects this appeal is allowed.

65. The Magistrates' Orders ought to be quashed to the extent of the sums specified and the payee indicated.

66. The case ought to be remitted to the Magistrates for consideration of the amount to be ordered to be paid to Ms Burton, by Mrs Taylor and Longfield Real Estate Ltd (in such proportions as appears fair and reasonable), which is reasonably sufficient to compensate her for any expenses properly incurred by her in the proceedings.