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**FIRST - TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : LON/00AW/OC9/2015/0064

**Property** : 13 Draycott Avenue, London, SW3 3BS

**Applicants** : Annabel Tobin

**Representative** : Bishop Sewell

**Respondents** : (1) Vita Lisi, (2) Waheed & Sharayne Shaikh;  
(3) Mishaal Almashan and (4) Brian & Zoifa  
McMahon

**Representative** : In person

**Type of Application** : Enfranchisement

**Tribunal Members:** Mr Robert Latham  
Mr Ian Holdsworth, FRICS

**Date and venue of  
Hearing** : Paper determination on 8 April 2015 at  
10 Alfred Place, London WC1E 7LR

**Date of Decision** : 10 April 2015

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**DECISION**

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The Tribunal finds that the following costs sought by the landlord are payable: (i) Legal Costs of £2,208 + VAT; and (ii) Valuer's Fees of £2,600 +VAT.

## Introduction

1. This is an application under section 13 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”). The current application by the landlord is for the determination of the costs payable by the tenants under section 33(1) of the Act.
2. On 3 February 2015, the landlord issued her current application claiming a total of £8,614.14. She attached an invoice from John Shingles, dated 16 July 2014, in respect of valuation fees of £6,406.16 together with a letter, dated 15 October 2014, in which the landlord’s solicitor, Bishop & Sewell LLP (“Bishop & Sewell”) claim £2,208 in respect of legal costs. The landlord did not tick the box indicating whether she was content for the application to be determined on the papers.
3. On 10 February, the Tribunal gave directions:
  - (i) By 24 February, the landlord was required to send the tenants a schedule of costs giving details of the basis for charging for the costs claimed and disclosing any documents on which she sought to rely. The landlord did not comply with this direction.
  - (ii) By 10 March, the tenants were to send the landlord a statement of their case. They were also required to provide details of any comparative cost estimates. On 5 March, Ms Zofia McMahon, one of the tenants, wrote to the Tribunal to inform it of the landlord’s failure to comply with the first direction. On the same day, she sent the landlord a bundle of documents relevant to the tenants’ case. This included a letter dated 2 February in which the tenants had sent the landlord three quotations from leading Chartered Surveyors. They stated that they would be willing to pay the average of these three quotations, being £2,600 + VAT. A cheque was enclosed for this sum. They also enclosed a letter from their then Solicitor, McGlennons, dated 17 February 2015, which confirmed the tenants’ agreement to pay legal fees in the sum of £2,208.
  - (iii) By 17 March, the landlord was permitted to send a statement in response. On 2 April, the landlord sent an “Applicant’s Statement of Case in Reply”.
  - (iv) By 24 March, the landlord was to file a bundle of documents. On 2 April, Bishop & Sewell submitted the requisite three copies of the bundle. This included the documents which the tenants had sent to the Tribunal on 25 March.
4. On 17 February, Bishop & Sewell notified the Tribunal that the landlord was content for the matter to be determined on the papers. On 23 February, the Tribunal amended the Directions to provide for a paper determination.
5. On 9 April, Ms McMahon wrote to the tribunal complaining that Bishop & Sewell had not sent the tenants either a copy of their “Applicant’s Statement of

Case in Reply” or a copy of the Bundle of documents. On 7 April, she contacted the case officer who advised her to request a copy of these documents from Bishop & Sewell. She received a copy of the Bundle on 8 April and made further written representations. We have reviewed our draft decision in the light of these representations.

### **The Background**

6. On 22 May 2014, the tenants served their Section 13 Notice claiming the right to purchase the freehold of their block. There were four participating tenants. There are a total of seven flats. On 15 September, the tenants conceded that their notice was invalid.

7. On 15 October, Bishop & Sewell wrote to McGlennons claiming their legal costs in the sum of £2,208 and valuation fees in the sum of £6,406.16. On 22 October, McGlennons responded requesting a breakdown of these fees. Bishop & Sewell did not respond.

8. On 1 December, Bishop & Sewell wrote to McGlennons complaining that the sum demanded had not been paid. They stated that they were instructed to apply to the Tribunal to determine the costs that were payable. On 2 December, McGlennons responded, stating that they were still awaiting a response to their letter of 22 October.

9. On 2 February, Ms McMahon wrote directly to the landlord, Ms Annabel Tobin. This letter did not seem to elicit a response.

10. On 3 February, Bishop and Sewell issued their current application. The Bundle of Documents did not include the two letters from McGlennons, dated 22 October and 1 December. The Tribunal are surprised by this omission.

11. On 17 February, McGlennons informed Bishop & Sewell that they were not instructed in respect of the current costs application. They confirmed that the tenants agreed to settle the legal fees in the sum of £2,208.

### **The Statutory Provisions**

12. Section 33 provides, insofar as relevant for the purposes of this decision:

(1) Where a notice is given under section 13, then (subject to the provisions of this section and sections 28(6), 29(7) and 31(5)) the nominee purchaser shall be liable, to the extent that they have been incurred in pursuance of the notice by the reversioner or by any other relevant landlord, for the reasonable costs of and incidental to any of the following matters, namely—

(a) any investigation reasonably undertaken—

(i) of the question whether any interest in the specified premises or other property is liable to acquisition in pursuance of the initial notice, or

- (ii) of any other question arising out of that notice;
- (b) deducing, evidencing and verifying the title to any such interest;
- (c) making out and furnishing such abstracts and copies as the nominee purchaser may require;
- (d) any valuation of any interest in the specified premises or other property;
- (e) any conveyance of any such interest;

but this subsection shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void.

(2) For the purposes of subsection (1) any costs incurred by the reversioner or any other relevant landlord in respect of professional services rendered by any person shall only be regarded as reasonable if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs.

(3) Where by virtue of any provision of this Chapter the initial notice ceases to have effect at any time, then (subject to subsection (4)) the nominee purchaser's liability under this section for costs incurred by any person shall be a liability for costs incurred by him down to that time.

(4) The nominee purchaser shall not be liable for any costs under this section if the initial notice ceases to have effect by virtue of section 23(4) or 30(4).

(5) The nominee purchaser shall not be liable under this section for any costs which a party to any proceedings under this Chapter before the appropriate tribunal incurs in connection with the proceedings.

## **The Principles**

13. *Drax v Lawn Court Freehold Limited* [2010] UKUT 81 (LC) established principles for the assessment of costs under Section 33. In summary, costs must be reasonable and have been incurred in pursuance of the section 13 notice in connection with the purposes listed in sub-paragraphs 33(1)(a) to (e). The nominee Applicant is also protected by section 33(2), which limits recoverable costs to those that the Respondent would be prepared to pay if he were using his own money rather than being paid by the Applicant.

14. This does, in effect, introduce what was described in *Drax* as a "(limited) test of proportionality of a kind associated with the assessment of costs on the

standard basis". It is also the case, as confirmed by *Drax*, that the Respondent should only receive his costs where it has explained and substantiated them.

15. It does not follow that this is an assessment of costs on the standard basis. That is not what section 33 says, nor is *Drax* an authority for that proposition. Section 33 is self-contained.

### **The Tribunal's Determination**

#### The Legal Fees

16. It is apparent that these fees have been agreed in the sum of £2,208 + VAT. The Tribunal finds that this sum is payable.

#### The Valuer's Fees

17. The Applicant claims £5,338.47 + VAT. We have been provided with the invoice from Justin Shingles dated 16 July 2014. This is a fixed fee of £5,250 + disbursements of £88.47. The invoice refers to a letter dated, 10 July 2014. We have not been provided with a copy of that letter.

18. The landlord was directed to provide details justifying this charge by 24 February 2015. The landlord failed to comply with this direction. Neither did the landlord send the tenants a copy of their "Applicant's Statement of Case in Reply". Where one party fails to comply with its directions, the Tribunal will ensure that the other party is not prejudiced by that default.

19. The tenants have provided quotations from three leading Chartered Surveyors: (i) Jones Lang Lasalle: £2,250 + VAT; (ii) Cluttons: £2,250 + VAT; and (iii) Boston Radford: £3,250 + VAT. They are willing to pay the average of the three quotations, namely £2,600 + VAT. Indeed, it would seem that they have paid this sum by cheque.

20. The Tribunal considers the fixed fee charged by Justin Shingles to be excessive. The Tribunal understands that he is not a qualified surveyor. Neither is he a RICS registered valuer. The valuation of seven flats in a block is a relatively straight forward process. A fee of £1,100 to value a single flat would be reasonable, together with £250 for each additional flat. The Tribunal is satisfied that the sum of £2,600 + VAT is the maximum that the landlord is entitled to recover. This is the sum tendered by the tenants. The Tribunal is satisfied that this is sufficient to include the modest disbursements which were incurred.

21. The Tribunal is surprised that the landlord felt it necessary to issue this application. Had Bishop & Sewell responded to the pre-action correspondence, this matter should have been settled by agreement.

**Robert Latham,  
Tribunal Judge**

**10 April 2015**