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

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| **Case Reference** | **:BIR/00FY/LIS/2021/0018** |
| **HMCTS code (paper, video, audio** | **: P:Paper** |
| **Property** | **: 124-126 Mansfield Road, Nottingham NG1 3HL** |
| **Applicant** | **: David Sly** |
| **Respondent** | **: Lucemi LLP** |
| **Representative** | **: HWH Estate Management LLP** |
| **Type of Application** | **: Costs- Rule 13(1)(b) of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013** |
| **Tribunal Members** | **: Judge T N Jackson<br>Mr V Chadha MRICS MCIArb MBA** |
| **Date of Decision** | **: 16th September 2021** |

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# DECISION

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## Decision

We determine that:

A. The Respondent's application for its Tribunal costs under Rule 13 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 is refused.

B. We make an order under section 20C of the Landlord and Tenant Act 1985 that none of the costs incurred or to be incurred are to be regarded as 'relevant costs' to be taken into account in determining the amount of any service charge payable by the Applicant.

C. We make an order under Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 to extinguish the Applicant's liability to pay the litigation costs.

## Reasons for decision

### Introduction

1. The Respondent has applied for a costs order under Rule 13 (1)(b) of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 in relation to proceedings arising from an application by the Applicant under the provisions of section 27A Landlord and Tenant Act 1985, ('the 1985 Act').

2. In the 1985 Act application, the Applicant sought orders under section 20C of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

### Background

3. On 6th April 2021, the Applicant applied, under section 27A of the 1985 Act, for a determination of liability to pay and the reasonableness of service charges for the years 2019 to 2021 inclusive in relation to the Property.

4. The Applicant did not send a Statement of Case by 7th May 2021 as directed by Directions dated 15th April 2021.

5. On 10th May, the Tribunal emailed the Applicant advising that it had not received the Statement of Case and required it to be submitted by 17th May 2021.It was submitted on that date.

6. The Respondent submitted their Statement of Case on 3rd June 2021 which included an application for strike out and Rule 13 costs in relation to that part of the Applicant's application that related to a County Court determination of 13th May 2020 (which related to service charges up to 30th September 2019).

7. On 8th June 2021, the Tribunal directed that:

    a. the Applicant may wish to seek independent legal advice;

b. the Applicant to send a reply to the Respondent's Statement of Case by 7th July 2021 to include representations regarding the Respondent's application for proposed strike out and Rule 13 costs;

c. the matter was to be listed for a video hearing for one day;

d. The Respondent should prepare the bundle no later than 14 days before the hearing date.

8. On 15th June 2021, the Tribunal advised the parties that the case was listed for hearing on 28th July 2021.

9. On 28th June 2021, the Respondent's representative advised the Tribunal of details of the advocate who would be their representative at the hearing.

10. On 30th June 2021, the Tribunal required the Applicant to pay the hearing fee by 14th July 2021, failing which the application would be treated as having been withdrawn.

11. On 2nd July 2021, the Applicant sought an extension of time to send a Reply to the Respondent's Statement of Case, in order to obtain legal representation.

12. On 5th July 2021, the Tribunal advised the Applicant that if he wished a postponement of the hearing listed for 28th July 2021, he would need to provide full details of the reasons why he has been unable to obtain legal advice in good time for the hearing, including the steps he had taken so far to obtain advice

13. On 13th July 2021, the Respondent filed the hearing bundle.

14. On 16th July 2021, the Applicant emailed the Tribunal to state that "We will not be proceeding with this case at this point in time due to the excessive defensive legal costs we expect to incur. Pls [sic] can you put aside this case."

15. On the same date at 14:58, the Tribunal emailed the Applicant to clarify whether he was withdrawing his application.

16. On 19th July 2021 at 16:05, the Applicant confirmed that he was withdrawing the application for the determination of service charges.

17. On 27th July 2021, the Respondent's representative applied for costs under Rule 13 and Directions were issued on 30th July 2021. The Directions required the Applicant, by 16th August 2021, to file a Reply to the Rule 13 Costs application. The Directions noted that the Respondent also sought to rely on a contractual costs' indemnity in the Lease and the Directions advised the Applicant that he may wish to consider making an application under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Act 2002, which would also need to be filed by 16th August 2021.

18. As the Applicant did not submit his Reply by 16th August 2021, on 17th August 2021, the Tribunal required a response to be sent within the next 7 days.

19. On 24th August 2021 at 14:53, the Applicant requested a few days extension to that day's deadline as he was unable to contact his solicitor from whom he was expecting

a letter to be sent to the Tribunal. However, the Applicant provided his Written Submission at 15:59 the same day.

## Hearing

20. Neither party requested a hearing. We were satisfied that we had sufficient information in the written representations and could proceed without a hearing.

## Submissions

The Respondent

21. The Respondent has submitted a Statement of Case dated 27th July 2021 and N260 Statement of Costs in the sum of £5235.50 plus VAT of £1041.30. The Respondent's representative submits that the Applicant's conduct has been unreasonable for a number of reasons including:

    a. Issuing an application regarding outstanding sums being sought by the Respondent is unreasonable in its own right and is an attempt to delay the Respondent's action to obtain those sums;

    b. The Respondent's representative had provided all requested information to the Applicant in advance of the application;

    c. The Applicant's application is vexatious and brought without any merit or justification. The Applicant has chosen to issue an application to the Tribunal instead of resolving the matter-the parties had been in correspondence since September 2019.

    d. The Applicant has included sums that have already been determined by a County Court judgement dated 13th May 2020 relating to service charges up to 30th September 2019;

    e. The Applicant was given ample opportunity in advance of the proceedings to settle sums, was allowed additional time in which to file his Statement of Case, was allowed additional time to seek legal advice, failed to file a Reply by 7th July 2021, on submitting a request for additional time provided no details of appointed legal advisors for which he stated that he required the extension, and 9 days before the hearing was due and after copies of the bundles had been provided by the Respondent, withdrew his application.

22. The Respondent's representative submits that it is appropriate to make an order due to the Applicant's behaviour and the time and costs spent by the Respondent in responding to the application and that it would be unreasonable for the Respondent to have to incur such costs. It is further submitted that the Applicant had been allowed ample time to seek legal advice.

23. In relation to quantum of costs, the Respondent's representative refers to *Sinclair v 231 Sussex Gardens Right to Manage Ltd [2015]* and *Stone v Hogarth Road London SW5 Management Ltd LRX/88/2015* which, it is submitted, support the view that costs should be awarded against the Applicant.

24. The Respondent's representative refers to specific clauses in the Lease regarding costs. Clause 2(b) in the Third Schedule (Lessee's covenants) in which the Lessee covenants:

> *"To pay to the Landlord on a full indemnity all costs and expenses incurred by the Landlord or the Landlords solicitors in enforcing the payment by the Lessee of any Annual Rent Service Payment Maintenance Adjustment Special Contribution or other monies payable by the Lessee under the terms of this Lease."*

25. Clause 15 of the Third Schedule in which the Lessee covenants:

> *"To pay to the Landlord on demand all reasonable costs charges and expenses (including legal costs and surveyor's fees) which may be incurred by the Landlord or which may become payable by the Landlord in respect of the preparation or service of a schedule of dilapidations or under or in contemplation of any proceedings in respect of the Property under sections 145 and 147 of the Law of Property Act 1925 or in preparation or service of any notice thereunder respectively notwithstanding that forfeiture is avoided otherwise than by relief granted by the court."*

26. The Respondent's representative refers to *Freeholders of 69 Marina, St Leonards on Sea v Oram [2011] EWCA* where they submit that, on a similarly constructed clause, the Court of Appeal held that given a determination is first required before a lease can be forfeit for non- payment of service charges, the landlord's legal costs of proceedings taken to obtain such a determination were 'incidental to the preparation of a notice under section 146' and therefore recoverable from the tenants if it could be shown that forfeiture was in contemplation.

The Applicant

27. The Applicant has submitted a Reply to the Rule 13 costs application dated 24th August 2021.

28. The Applicant submits that he has acted reasonably throughout the proceedings namely:

    a. At all times his behaviour was reasonable, proportionate and appropriate;
    b. He was a litigant in person;
    c. The County Court judgement related only to a period ending 30th September 2019 but the application related to 2019,2020 and 2021;
    d. As the case was withdrawn there has been no determination or assessment into the merits of the application and no basis for suggesting that the application was brought unreasonably;
    e. The Tribunal should be cautious from discouraging abandonment of claims by applying costs when the alternative would be to encourage advancement of a case which an Applicant may prefer to concede in advance of a hearing;
    f. The withdrawal itself shows that the Applicant was acting reasonably as it would lead to a saving of costs;
    g. There is no allegation or evidence of any procedural flaw by the Applicant;
    h. In *Sinclair v 231 Sussex Gardens Right to Manage Limited* the Upper Tribunal confirmed that *"the mere fact that an unjustified dispute over*

*liability has given rise to proceedings cannot in itself, we consider, be grounds for a finding of unreasonable conduct";*

i. The matter was withdrawn due to the Applicant's financial position which had been impacted by Covid;

j. The case can be distinguished from *Stone v Hogarth Road London SW5 Management Ltd LRX/88/2015* as in that case, the withdrawal was conveyed only one clear day from the date of the hearing compared to the present case where notice was given 12 days in advance;

k. The Respondent's representative chose to prepare the bundle some considerable time in advance of the hearing, notwithstanding being on notice of issues in the Applicant responding on time and having sought an extension;

*l.* In *McPherson v BNP Paribas [2004]* the Court of Appeal have made it clear that in Tribunal proceedings, there is no imputation that a claim which is discontinued was bound to be unsuccessful or ought never to have been commenced.

29. In determining what order for costs should be made, the Applicant states that the Respondent's main criticism is in relation to the timing of the withdrawal as it was after the filing of the hearing bundle. The Applicant suggests that any costs order is restricted to costs reasonably and properly incurred in preparing the bundle but noting that the original Directions set no actual time for filing that bundle. The Applicant contends that the Respondent was premature in incurring the costs of collating the bundle as they should have awaited the extended date for the Applicant's submission of the Reply by which time they would have been notified of the withdrawal prior to incurring those costs.

30. In relation to quantum of the Respondent's costs as set out in the N260, the Applicant states that the use of a Grade B fee earner is unwarranted and suggests a more appropriate hourly rate of £140. The Applicant contends that the Application was limited and that the time claimed for work done on documents is wholly excessive and disproportionate. He comments on each element of the N260 and proposes a discounted figure for each.

**Deliberations**

<u>Rule 13(1)(b)</u>

31. The Tribunal may make an order under Rule 13 (1)(b) of the Rules only if a party has acted unreasonably in bringing, defending or conducting the proceedings. As the costs application has been made by the Respondent, the onus of proving unreasonable behaviour rests on the Respondent.

32. In assessing whether conduct has been unreasonable we first had regard to the guidance of the Court of Appeal in the case of *Ridehalgh v Horsefield 1994 3AER 848* when the following definition of unreasonable was given by Sir Thomas Bingham MR:

> *"Unreasonable means what it has been understood to mean in this context for at least half a century. The expression aptly describes conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be*

*described as unreasonable simply because it leads in the event to an unsuccessful result or because more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as optimistic and reflecting on a practitioner's judgement but it is not unreasonable."*

33. The application of Rule 13 was considered by the Upper Tribunal in *Willow Court Management Company (1985) Ltd v Alexander [2016] UKUT 290 LC*. The correct application of the Rule requires us to adopt the following approach when determining an application for costs:

    a. Is there a reasonable explanation for the behaviour complained of?
    b. If not, then as a matter of discretion, should an order for costs be made?
    c. If an order for costs should be made, what should be the terms of that order?

34. At paragraph 25, the Upper Tribunal further stated that a lay person who is unfamiliar with the substantive law, with Tribunal Procedure or who fails properly to appreciate the strengths or weaknesses of their own or their opponent's case, or who lacks skill in presentation, or performs poorly in the Tribunal room should not be treated as being unreasonable.

35. At paragraph 26, the Upper Tribunal stated that Tribunals should not be over zealous in detecting unreasonable conduct after the event and should not lose sight of their own powers and responsibilities in the preparatory stages of proceedings.

36. At paragraph 143, the Upper Tribunal stated that:

    "*It is legally erroneous to take the view that it is unreasonable conduct for claimants in the Property Chamber to withdraw claims or that, if they do, they should be made liable to pay the costs of the proceedings. Claimants ought not to be deterred from dropping claims by the prospect of an order for costs on withdrawal, when such an order might well not be made against them if they fight on to a full hearing and fail*".

37. A principle that emerges from the cases is that costs are not to be routinely awarded pursuant to a provision such as Rule 13 merely because there is some evidence of imperfect conduct at some stage of the proceedings. It is a high threshold.

38. Having considered the facts of the present case in the light of the case law, we consider that the Applicant's conduct was not sufficiently unreasonable to open the gateway to a cost award under Rule 13 (1) of the Rules. The Applicant was a litigant in person and was therefore unlikely to appreciate that matters determined by the County Court could not be considered by the Tribunal. Further, the County Court judgement related only to the period up to 30th September 2019 which was only part of the period covered by the application. Whilst we understand that there had been correspondence between the parties regarding the service charges since September 2019, the Applicant is not required, as appears to be suggested by the Respondent's representative, to settle matters. The Applicant was perfectly entitled to bring an application, as, whilst having previously received information from the Respondent, he was seeking a determination as to the reasonableness of the charges. The Applicant, therefore, did not act unreasonably in bringing the proceedings.

39. In relation to his conduct of the proceedings, whilst we find that the Applicant's conduct was poor after he had submitted the application, particularly in relation to failing to comply with timescales set out in Directions, we are not persuaded that the conduct was so unreasonable as to pass what is a high threshold. It was open to the Tribunal using its case management powers under Procedure Rule 9 to strike out the application if it considered it appropriate to do so, but it did not. We note that the reason given for withdrawal was due to financial circumstances and that the first email regarding withdrawal was sent 2 days after the last date that the hearing fee was required to be paid. That amounts to a reasonable explanation. Further, having regard to *Willow Court,* we do not consider that it is unreasonable conduct per se, to withdraw an application.

40. Therefore, the Rule 13 costs application is refused by the Tribunal.

<u>Section 20C of the Landlord and Tenant Act 1985</u>

41. The relevant parts of Section 20C (1) reads as follows:

> "*A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before… the First Tier Tribunal… are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant…*".

42. We first considered the service charge provisions in the Lease and whether they included legal costs. The Fifth Schedule sets out 'Purposes for which the Service Charge is to be applied'. Clause 16 of Part 1 of the Schedule, which is titled 'The Estate Expenses' provides:

> "*All fees charges expenses…payable to any solicitor… whom the landlord may from time to time employ in connection with the management and all maintenance of the Estate Facilities including…all costs incurred by the Landlord pursuant to the remedy or attempted remedy of a breach of covenant by the owner lessee or occupier of any properties on the Estate and (without prejudice to the generality of the foregoing) in relation to the recovery or attempted recovery of arrears of Service Payment from any such person (whether or not such actions are successful or otherwise) where such costs are not recoverable from the person in default provided that the Landlord shall use reasonable endeavours to recover such costs from the party in default.*"

43. Clause 33 of Part 1 of the Fifth Schedule provides:

> *"The costs and expenses incurred by the landlord:-*
>
> *(a) In the running and management of the Estate and the costs and expenses (including solicitors costs) incurred in the collection of Service Payment in respect of the properties therein and any enforcement of the covenants and conditions and regulations contained in the leases granted of the properties in the Estate where such costs are not recoverable from the*

*person in default provided that the Landlord shall use reasonable endeavours to recover such costs from the party in default.*

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*(g) the fees and costs of the Landlord for general management of the Estate and any reasonable fees of any managing agents employed or engaged by the landlord to carry out the general management of the Estate."*

44. We do not find that any of the above clauses allow for the legal costs of responding to section 27A proceedings to be charged as a service charge under the Lease. The proceedings themselves do not relate to an alleged breach of covenant by the Lessee, the attempted recovery of Service Payment arrears, the collection of Service Payment or any enforcement of covenants in the Lease. Whilst it appears that the proceedings were within the context of alleged Service Payment arrears, the proceedings were initiated by the Applicant who was seeking to determine only the payability and reasonableness of the service charges.

45. The ordinary construction of the Clauses suggests proactivity on behalf of the landlord as distinct from being reactive to an issue. If the Respondent had applied under section 27A of the 1985 Act for a determination of the payability and reasonableness of disputed service charges as a step prior to commencing proceedings for alleged breach of covenant, recovery of service payment arrears or such other matters covered by the clauses and had provided evidence to that effect, then using the same rationale as in *Freeholders of 69 Marina, St Leonards on Sea v Oram [2011] EWCA,* we may have been persuaded that the costs fell within Clauses in the Fifth Schedule and could be charged as a service charge. However, the application was made by the Applicant, (the Lessee), and the costs relate to the Respondent's response to that application. Further, we consider that Clause 33(g) is too vague and generic and cannot be construed to include the costs being claimed within 'general management'. References to solicitors costs in Clauses 16 and 33(b) indicate that the solicitors costs were considered when the Lease was drafted and have been expressly included where considered necessary. We find that the Respondent's costs of responding to the Tribunal proceedings are not costs that can be charged as a service charge under the Fifth Schedule of the Lease.

46. We therefore make an order under section 20C of the 1985 Act that none of the costs of the proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

<u>Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.</u>

47. The relevant parts of Paragraph 5A read as follows:

"*A tenant of a dwelling in England may apply to the relevant…Tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs".*

48. We have had regard to Clause 2(b) in the Third Schedule of the Lease which provides the Respondent with a contractual indemnity in relation to all costs and expenses in enforcing payment of the service charge. Do the Respondent's costs of responding to section 27A proceedings relate to 'enforcing payment of the service charge?' We find that on the ordinary meaning of the phrase, they do not. The issue, as expanded upon

in paragraph 45 above, is that the Respondent did not initiate the proceedings as a step towards enforcing payment of the service charge.

49. We have had regard to Clause 15 of the Third Schedule of the Lease. The Clause relates to costs "*under or in contemplation of any proceedings in respect of the Property under sections 145 and 147 of the Law of Property Act 1925*". Whilst we note that it is stated that service charges are outstanding, the Respondent has neither stated nor adduced any evidence in either it's Statement of Case for the original proceedings nor in the Statement of Case for these proceedings, that proceedings under sections 145 or 147 are current or in contemplation. It was the Applicant rather than the Respondent who initiated the Tribunal proceedings. We therefore find that, on the current facts, the costs of the Tribunal proceedings are not costs that can be charged under Clause 15 of the Third Schedule of the Lease.

50. We therefore make an order under Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 to extinguish the Applicant's liability to pay litigation costs.

51. If it is determined that our interpretation of the Lease is incorrect, we have considered whether an order would be just and equitable.

52. As the case was withdrawn, the merits of the case have not been assessed. However, the service charges prior to 30th September 2019 could not have been considered by the Tribunal due to the County Court determination. Whilst the Applicant has not acted sufficiently unreasonably to merit the awarding of costs under Rule 13, he has not conducted his case in the most constructive or timely manner. He failed to comply with the original Direction to submit his Statement of Case by a specified date in Directions which should have been clear even to a litigant in person. He did not initiate any contact with the Tribunal to explain the omission. On 2nd July 2021 he sought an extension of time to submit his reply to the Respondent's Statement of Case as he wished to seek legal representation. He failed to respond to the Tribunal's email of 5th July 2021 in which he was advised of information required to seek a postponement of the hearing. He failed to pay the hearing fee by the required date or at all. His 'withdrawal' email of 16th July 2021 was sent after the hearing bundle had been filed by the Respondent on 13th July 2021 as they had no prior notice that there was to be a withdrawal. The 'withdrawal' email itself was ambiguous as it referred to not proceeding with the case "**at this point in time** due to the excessive defensive legal costs we expect to incur. Pls [sic] can you **put aside** this case (our emphasis)." This required clarification by the Tribunal and final confirmation of withdrawal was received on 19th July 2021, some 7 working days before the hearing date. With the possible exception of instructing the advocate to appear at the hearing, all the work required of the Respondent would have been completed by that date.

53. We did not accept the Applicant's point regarding 'the Respondent choosing to prepare the bundle some considerable time in advance of the hearing, notwithstanding being on notice of issues with the Applicant responding on time and having sought an extension'. The Directions dated 8th June 2021 required the Respondent to send the bundle no later than 14 days before the hearing date, which was subsequently listed for 28th July 2021. The Respondent's representative filed the hearing bundle on 13th July 2021,15 days before the hearing and therefore in accordance with the Direction. The Applicant cannot rely on his own failures to

comply with Directions to criticize the Respondent when they do comply with a specific Direction.

54. The Directions dated 8th June 2021 advised the Applicant that he may wish to consider taking independent legal advice. The Tribunal were never provided with details of any legal representation.

55. Taking matters in the round, and noting particularly that there has not been a determination on the merits of the case, we would have considered it just and equitable to reduce the Applicant's liability to pay by 50%.

56. In relation to the amount of the costs, we had regard to the Guide to the Summary Assessment of Costs 2005 and to the Guideline hourly rates that were in effect from 2010 (rather than the updated Guide of 2021 which does not come into effect until 1st October 2021). However, conscious of the age of the previous guideline hourly rates, we used our expertise as an expert Tribunal as to current hourly rates. We found that the use of a Grade B fee earner (Solicitors and Chartered Legal Executives with over 4 years post qualification experience including at least four years litigation experience) at £195 per hour was reasonable. However, we agreed with the Applicant that the time claimed for work done on documents is excessive and unreasonable. In relation to the 1 hour spent on reviewing the Application form, the Application form itself was limited – it related to 3 service charge years only and was restricted to matters relating to insurance, general management, car park gate and Reserve Fund. We would reduce it to 0.5 hour which we consider to be more than reasonable. The Lease is a standard Lease and a solicitor experienced in this work should be able to navigate the Lease to find the relevant service charge provisions in 1 hour rather than the 1.5 hour claimed. In relation to the Review of the Applicant's Statement of Case (pages 167-176), the document has less than half a page of content on each page, and in some cases considerably less and we would therefore reduce the length of time taken by 50% to 1 hour. We accepted 0.20 hours for a Review of Directions as there were two sets of Directions. The volume of documents included within the hearing bundle does not reflect a time claim of 3 hours for the review of documents received from the client. We would reduce the time to 2 hours from 3 as there were likely some additional documents that would have been provided but were not relevant and which the solicitor would have needed to assess.

57. We considered it unreasonable to claim any time for the research of case law. The hourly rate reflects an experienced litigation solicitor and the issues the subject of the section 27A application are not complex or out of the norm for an experienced solicitor. Having regard to the issues involved, the length and content of the Respondent's Statement of Case (pages 98-102), we considered the time claim of 6 hours to be unreasonable and would reduce it to 3 hours. We considered the time claim of 3.5 hours to assist with the Respondent's witness statement (pages 192-197) to be excessive. The witness is a partner in the managing agent firm whom we would expect to have sufficient knowledge both of the subject matter relating to the Property and also of the requirements of writing witness statements more generally. We would have reduced the time claim of 3.5 hours to 2.5 hours.

58. We agreed that 0.5 hours to prepare the Schedule of Costs was reasonable. Having regard to the content and volume of the hearing bundle, we considered that 2 hours to prepare the hearing bundle was excessive and would reduce it to 1.5 hours which we considered to be generous.

59. In relation to instructing an advocate for which there is a time claim of 1 hour, other than an email to the Tribunal on 28th June 2021 advising of their name and contact details, we had no evidence as to the work comprised in the hour. There is no disbursement for Counsel or advocate in the costs application or referred to in the Respondent's submission. Clearly some contact was made in order to allow his details to be provided. In the absence of evidence, we would reduce the time claim to 0.5 hour. In relation to the time claim of 2 hours for the application for costs which includes the original application via email, review of Directions and the drafting of the Statement of Case (4 pages) we considered 2 hours to be reasonable.

60. In conclusion we would reduce the hours claimed on the N260 Schedule from 23.7 hours to 14.7 hours which at £195 per hour equates to £2866.50. We added to that £390 for letters out and £195 for phone call to arrive at a total of £3,451.50 for reasonable legal costs of the proceedings, plus VAT. In view of the level of service charges in dispute, we considered this amount to be proportionate.

**Appeal**

61. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties and must state the grounds on which they intend to rely in the appeal.

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Judge T N Jackson