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MIDLAND RENT ASSESSMENT PANEL

Case No: BIR/00CN/0C6/2003/0048

Leasehold Reform Act 1967

Housing Act 1980

**DETERMINATION OF THE LEASEHOLD VALUATION TRIBUNAL  
OF REASONABLE COSTS – SECTION 9(4) LEASEHOLD REFORM ACT 1967**

Applicant Tenants: Mr M J Westcott and Mrs G M Westcott

Respondent Freeholder: The Trustees of the Calthorpe Edgbaston Estate

Property: 68, Sir Richards Drive, Harborne, Birmingham B17 8SH

Date of Tenants' Notice  
claiming to acquire the  
freehold: 23 June 2001

Application dated: 5 June 2003

Heard at: The Panel Office

On: 11 September 2003

**APPEARANCES:**  
For the Tenants: No appearance but written representations

For the Freeholder: Mr M Dyke, Tyndallwoods, Solicitors

Members of the Leasehold Valuation Tribunal:

Mr T F Cooper BSc FRICS FCI Arb (Chairman)  
Mr D R Salter LLB  
Mr G G W Chidlow ACIS

Date of Tribunal's determination:

**04 NOV 2003**

1. **Background:** The Applicant **Tenants**, Mr M J Westcott and Mrs G M Westcott (the '**Applicant**'), took, by assignment, the benefit of a notice of claim (the '**Notice**') dated 23 June 2001 to acquire the freehold interest in 68, Sir Richards Drive, Harborne, Birmingham B17 8SH (the '**Property**') from the **Freeholder**, The Trustees of the Calthorpe Edgbaston Estate (the '**Respondent**'). On 14 February 2003 the Tribunal determined that the sum to be paid by the Applicant for the acquisition of the freehold interest in accordance with section 9 Leasehold Reform Act 1967 (as amended) (the '**Act**') is £10,440; plus the Freeholder's s.9(4) reasonable costs, with liberty to apply if not agreed.
2. By an application dated 5 June 2003 (the '**Application**'), Mr M J Westcott, the joint Applicant, applies to us to determine the reasonable costs payable by the Applicant under s.9(4) of the Act.

3. Section 9(4) of the Act provides as follows:

'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.'

4. Para 5 of Part I of Schedule 22 to the Housing Act 1980 provides that:

'The costs which a person may be required [to bear] under section 9(4) . . . of the 1967 Act . . . do not include costs incurred by a landlord in connection with a reference to a leasehold valuation tribunal.'

5. **Hearing and appearances:** The Application was heard on 11 September 2003. **Mr Westcott**, the joint Applicant, had previously notified the Tribunal that, whilst no appearance would be made, written representations were lodged. **Mr M Dyke**, Tyndallwoods, solicitors appeared for the Respondent. Written representations were served prior the hearing and the Tribunal invited further written representations, after the hearing, on documents disclosed at the hearing to ensure each party has an opportunity to present the case and meet the opposing case. The written representations procedure, subsequent to the hearing, has been completed.

6. **Issues:** The issues for our determination are the reasonable costs incurred by the Applicant: s.9(4)(a) to (d) 'legal costs' and subs.(4)(e) 'valuation costs'. It is more usual for subs.(4)(b) 'conveyancing' costs to be determined by the Tribunal as an amount as being reasonable to be incurred on the conveyancing which is still to be undertaken but, in the case before us, the 'conveyancing' costs have been incurred.
7. **Vat:** All figures we refer to are exclusive of vat. We have no jurisdiction to determine conclusively vat matters as they are a matter for HM Customs and Excise. Therefore we make our determination exclusive of vat, save that vat shall be added at the appropriate rate if applicable.
8. **The s.9(4)(a) to (d) 'legal costs':** The main issue is simple but fundamental. Should we determine the amount of the reasonable legal costs incurred in pursuance of the Notice by reference to an itemised bill as submitted by Mr Dyke (with his firm's itemised bill as evidence) or a lump sum global figure as submitted by Mr Westcott?
9. Mr Dyke introduces his firm's itemised bill, attached to this determination. In support of the itemised bill method as the best method, he relies on the principle that the Freeholder is entitled to the costs of 'ordinary conveyancing' and, in this case where the conveyancing has been completed and the actual work can be identified with a degree of certainty, the best method for determination is the actual time engaged at an appropriate hourly rate to reflect the appropriate grade of fee earner; in contrast to the more usual situation where actual conveyancing costs have not yet been incurred and the amount determined is by inferring an amount from trends in comparable conveyancing fees. He says: that, as the conveyancing has been completed, the costs incurred for it can be established accurately from his firm's itemised bill; that the total time engaged, calculated in six minutes' intervals, is 7.3 hours; that the hourly rate should be £80 - derived from £85 as the Guideline Rate in The Supreme Court Costs Office, *Guide to the Summary Assessment of Costs*, Appendix 2, Category D. (Trainee solicitors, para legals and other fee earners), Band Three (including Outer Birmingham) and the Introduction to *Resources* from Kain Knight, law costs specialists, referring to collated hourly rates' data. Mr Dyke, in support of his preferred method, refers us to *Acton v Knott* [2001] LRA/34/2001 (LT) and the LVT's determination in relation to properties at *High Point*, Edgbaston [2003] BIR/CN/OC9/2003/0016; saying that in *Acton* the Member referred to an hourly rate as 'a proper allowance for [the appellant freeholder's] time', implying, says Mr Dyke, that time engaged is fundamental to the costs we are to determine and that, in the *High Point* case, the costs were extrapolated as there was no evidence of actual time engaged but the LVT implied that a primary consideration is the time engaged (the LVT also approved the costs of telegraphic transfer as a reasonable disbursement).
10. Mr Westcott, in written representations, says that general guidance has been established by the Tribunal's decided cases, with determinations of legal costs at between £225 and £250 but, more recently, at £275 and, therefore, £275 is reasonable, especially as the title is registered. He points out

that, as the Freeholder owns a large estate in the area (of which the Property is part), the Freeholder's solicitor should, with repetitive work, have significant economies of scale, especially assuming a 'standard pack' for purchasers. Whilst recognising that a Tribunal is not bound by its previous decisions, the amount claimed (by The Trustees of the Calthorpe Edgbaston Estate, the same freeholder as the subject case) in *High Point*, as reasonable legal costs incurred was £475 and the Tribunal determined £320. Mr Westcott contests Mr Dyke's proposition (that an itemised bill is the best evidence of the reasonable costs incurred and is conclusive), saying: that, whilst itemised billing is appropriate for 'taxation' of litigation costs, it is not appropriate for simple conveyancing; and that our jurisdiction does not imply a taxation of costs, it implies what amount would be reasonably incurred in the competitive conveyancing market with the assumption of an efficient solicitor familiar with the work. In any event, says M Westcott, if we are compelled to adopt itemised billing (taxation), Tyndallwoods' itemised bill includes 'padding', eg diarising a review of the file and receiving a letter/e-mail, each at a six minute unit (£8).

11. Mr Dyke also submits that disbursements incurred are recoverable. They are: obtaining office copy entries for the both the freehold and leasehold titles (£8 each - total £16) and telegraphic transfer to remit the money due to the Respondent (as the currently accepted and preferred method - £20). Mr Westcott does not accept that the cost of a telegraphic transfer is reasonable, as it is a bank charge not a legal charge.
12. In reply to our questions to achieve a just result, Mr Dyke says: (i) in reply to our proposition that the amount of the Freeholder's reasonable legal costs incurred cannot exceed the amount actually charged (the indemnity principle), that Tyndallwoods' bill was for £475 plus £36 disbursements (£16 office copy entries, £20 telegraphic transfer); and (ii) that the hourly rate of £80 is an expense rate of £72.73 plus a profit cost (mark up) of £7.27 (10%).
13. In *Acton*, the respondent took no part in the proceedings and Judge Rich, in considering the written submissions and in the absence of sufficient evidence, allowed, in his decision 17 December 2001, a further 21 days for the appellant freeholder to provide evidence of costs actually and reasonably incurred. His final decision, 1 February 2002 at para 9., does refer to a proper allowance for the appellant's time as a solicitor litigant freeholder but we hold that this has to be seen in the context of the appeal before him. We hold that *Acton* is not persuasive authority for Mr Dyke's submission on his preferred method (itemised billing) to the exclusion of a lump sum method. In *Acton* the question of the primacy of each method (itemised billing or lump sum) was not an issue; and the issues before Judge Rich were, in any event, not contested by the respondent. Whilst *High Point* was contested, we hold that we are not bound by it and, in any event, the Tribunal, at para 24. of its decision, only indicated that actual time spent 'could be a guide to the individual actions necessary to undertake [the legal] work', in the context of estimated, as opposed to actual, time spent.

14. We hold:
- 14.1 that time actually spent may assist but only to the extent that it properly represents the reasonable costs actually incurred;
  - 14.2 that it is possible that the actual time spent may, on the facts of a case, not be reasonable;
  - 14.3 that 'reasonable', in taking all matters into account that we should take into account, includes, as submitted by Mr Westcott, comparing the lump sum level of costs in the competitive conveyancing market with the assumption of an efficient solicitor familiar with the work;
  - 14.4 that we should not adopt itemised billing to the exclusion of a lump sum level of costs; and
  - 14.5 that 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 had 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).
15. In so holding, we have considered the itemised bill introduced and find that it includes items which, if we had preferred to 'tax' the bill (which we have not), we would have disallowed, adopting our understanding of a taxation. These items include time engaged on receiving letters (normally included in letters out), diarising file review, copying and administration (normally included in the expense rate, unless exceptional), unnecessary communications. We note that the court practice of six minute units has been adopted but we are not persuaded that six minute units shall apply to our requirement to determine reasonable costs actually incurred; six minute units may well be unreasonable in competitive conveyancing. We accept that, on a 'taxation', £80 per hour is not unreasonable and that the hourly rate should include a small mark up for profits cost.
16. In rejecting the proposition that 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, requires 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; a lump sum method is likely to involve significantly more economical disposal of the case before us.
17. As our determination shall take account of the costs actually incurred, we take account of Mr Dyke's helpful explanation of what was actually done, including: preparing the transfer in his firm's standard

form (reflecting economies of scale for many similar transfers), unusual features of delay in this case and the assignment of the benefit of the Notice to the Tenant.

18. We find and hold that our determination of the legal costs shall reflect: the actual work done, but not by exclusive reference to an itemised bill with a 'taxation'; and the reasonableness, by reference to all matters that we should take into account, including the prevailing level of costs in the conveyancing market. We find that the legal costs, in the absence of the unusual features, would have been £275 and, in so doing as an expert tribunal, we take account of our general knowledge and experience of the level of conveyancing costs but not relying on any special knowledge. We find that taking account of the unusual features the legal costs are £320.
19. We accept Mr Dyke's submission that telegraphic transfer and obtaining office copy register entries are reasonable disbursements incurred.
20. **The s.9(4)(e) valuation costs:** We have given the parties, after the hearing, a reasonable opportunity to make representations to us on valuation costs. Mr Dyke tells us that the Freeholder's valuation costs (£350) were ultimately paid by the Applicant. Mr Westcott says: that the inference to be drawn, from correspondence, is that the Freeholder is not willing to agree less than £350; that the normal level is in the order of £250 for straightforward case, evidenced by numerous Tribunal decisions; that the subject case was more complex involving marriage value but the Freeholder's surveyor ought to be familiar with such valuations; and that a fee of '£250 or perhaps marginally more' would be appropriate.
21. Based on the limited evidence that we have - which excludes what was actually done, eg was an inspection made? - and that it is for the Freeholder to establish reasonable costs incurred in pursuance of the Notice and using our general knowledge and experience, we find Mr Westcott's evidence more persuasive and that the valuation costs are marginally more than £250, which we determine at £275.
22. **Our determination:** As our final determination on the reasonable costs incurred under s.9(4) of the Act, the Applicant shall bear:
  - a. In respect of the Respondent Freeholder's s.9(4)(a) to (d) 'legal costs' incurred: the sum of £320 (Three hundred and twenty pounds) plus £16 (Sixteen pounds) disbursements incurred in obtaining office copy register entries plus £20 (Twenty pounds) disbursement incurred in telegraphic transfer - a total of £356 (Three hundred and fifty six pounds), plus vat if appropriate; and
  - b. In respect of the Respondent Freeholder's s.9(4)(e) 'valuation costs' incurred: the sum of £275 (Two hundred and seventy five pounds), plus vat if appropriate.

This is our final determination on the s.9(4) costs to be borne by the Applicant.

Date: **04 NOV 2003**

TF Cooper  
CHAIRMAN

A handwritten signature in black ink, appearing to be 'TF Cooper', written over a horizontal line.

|    | A  | B  | C | D | E              | F | G              | H | I           |
|----|--|--|---|---|----------------|---|----------------|---|-------------|
|    | <b>Calculation of costs in relation to the sale of the Freehold interest under the Leasehold Reform Act 1967</b> |  |   |   |                |   |                |   |             |
| 1  |  |  |   |   |                |   |                |   |             |
| 2  |  |  |   |   |                |   |                |   |             |
| 3  |  | <b>Hourly Rate</b>   |   |   | <b>£ 80.00</b> |   |                |   |             |
| 4  |  |  |   |   |                |   |                |   |             |
| 5  |  |  |   |   |                |   |                |   |             |
| 6  |  | <b>Actions actually undertaken</b>                                       |   |   |                |   | <b>Minutes</b> |   | <b>Cost</b> |
| 7  |  |  |   |   |                |   |                |   |             |
| 8  | 21.06.01   | Receive and peruse Notice of Claim by Applicant                          |   |   |                |   | 12             | £ | 16.00       |
| 9  | 31.07.01   | Prepare Notice in Reply  |   |   |                |   | 12             | £ | 16.00       |
| 10 | 31.07.01   | Respond to Applicant   |   |   |                |   | 6              | £ | 8.00        |
| 11 | 31.07.01   | Letter to Surveyor Confirming Notice in Reply Served                     |   |   |                |   | 6              | £ | 8.00        |
| 12 | 03.08.01   | Received Letter from Solicitors Acknowledging Notice in Reply            |   |   |                |   | 6              | £ | 8.00        |
| 13 | 19.11.01   | Letter to Solicitors enc Notice to Deduce Title                          |   |   |                |   | 6              | £ | 8.00        |
| 14 | 19.11.01   | Preparing Notice to Deduce Title   |   |   |                |   | 6              | £ | 8.00        |
| 15 | 19.11.01   | Letter to Surveyor Confirming Notice to Deduce Title Served              |   |   |                |   | 6              | £ | 8.00        |
| 16 | 19.11.01   | Letter to Clients Confirming Notice to Deduce Served                     |   |   |                |   | 6              | £ | 8.00        |
| 17 | 23.11.01   | Letter from Solicitors Confirming Notice of Claim Assigned               |   |   |                |   | 6              | £ | 8.00        |
| 18 | 29.11.01   | Letter from New Solicitors Complying with Notice to Deduce Title         |   |   |                |   | 6              | £ | 8.00        |
| 19 | 30.11.01   | Letter to Surveyor Confirming Notice of Claim Assigned                   |   |   |                |   | 6              | £ | 8.00        |
| 20 | 30.11.01   | Letter to New Solicitors Acknowledging Stat. Dec and Cheque              |   |   |                |   | 6              | £ | 8.00        |
| 21 | 30.11.01   | Paying in cheque   |   |   |                |   | 6              | £ | 8.00        |
| 22 | 30.11.01   | Perusal of Statutory Declaration   |   |   |                |   | 6              | £ | 8.00        |
| 23 | 30.11.01   | Apply for Index Map Search   |   |   |                |   | 6              | £ | 8.00        |
| 24 | 04.12.01   | Result of Index Map Search   |   |   |                |   | 6              | £ | 8.00        |
| 25 | 10.12.01   | Letter from Surveyor Re: Valuation Progress                              |   |   |                |   | 6              | £ | 8.00        |
| 26 | 12.12.01   | Ack Letter from Surveyor   |   |   |                |   | 6              | £ | 8.00        |
| 27 | 27.12.01   | Email from Surveyor Re: Meeting 4 January 03 with Tenant's Surveyor      |   |   |                |   | 6              | £ | 8.00        |
| 28 | 24.01.02   | Diarised - File Review   |   |   |                |   | 6              | £ | 8.00        |
| 29 | 10.04.02   | File Review  |   |   |                |   | 6              | £ | 8.00        |
| 30 | 19.04.02   | E-Mail from Client Confirming Agents to Proceed to Tribunal              |   |   |                |   | 6              | £ | 8.00        |
| 31 | 17.05.02   | Letter from Surveyor Confirming Application to Tribunal Made             |   |   |                |   | 6              | £ | 8.00        |
| 32 | 20.05.02   | Letter to Surveyor Ack Let and Enc Copy of Notice in Reply as Requested  |   |   |                |   | 6              | £ | 8.00        |
| 33 | 17.10.02   | Diarised - File Review   |   |   |                |   | 6              | £ | 8.00        |
| 34 | 24.03.03   | Fax From Tenant's Solicitors Requesting Draft Paperwork                  |   |   |                |   | 6              | £ | 8.00        |
| 35 | 04.04.03   | Received Memorandum of Sale from Surveyors                               |   |   |                |   | 6              | £ | 8.00        |
| 36 | 08.04.03   | Telephoned Land Registry for Office Copy Entries                         |   |   |                |   | 6              | £ | 8.00        |
| 37 | 10.04.03   | Letter to Surveyor Requested Ground Rent Details                         |   |   |                |   | 6              | £ | 8.00        |
| 38 | 10.04.03   | Letter to Solicitors Sending Documentation                               |   |   |                |   | 6              | £ | 8.00        |
| 39 | 10.04.03   | Preparation of Draft Transfer  |   |   |                |   | 30             | £ | 40.00       |
| 40 | 10.04.03   | Preparation of Replies to Requisitions                                   |   |   |                |   | 12             | £ | 16.00       |
| 41 | 10.04.03   | Copying of Scheme of Management & Freehold Office Copy Entries           |   |   |                |   | 6              | £ | 8.00        |
| 42 | 23.04.03   | Letter from Solicitors enc signed Transfer                               |   |   |                |   | 6              | £ | 8.00        |
| 43 | 23.04.03   | Letter to Solicitors Ack Transfer and Will Chase for Ground Rent Account |   |   |                |   | 6              | £ | 8.00        |
| 44 | 23.04.03   | Letter to Surveyor Chased for Ground Rent Details                        |   |   |                |   | 6              | £ | 8.00        |
| 45 | 23.04.03   | Letter to Clients Enc Transfer for Signature                             |   |   |                |   | 6              | £ | 8.00        |
| 46 | 09.05.03   | Letter from Surveyors with Ground Rent Details                           |   |   |                |   | 6              | £ | 8.00        |
| 47 | 13.05.03   | Prepare Completion Statement   |   |   |                |   | 12             | £ | 16.00       |
| 48 | 13.05.03   | Letter to Solicitors enc Completion Statement                            |   |   |                |   | 6              | £ | 8.00        |
| 49 | 06.05.03   | Fax From Tenant's Solicitors Reconsider Costs                            |   |   |                |   | 6              | £ | 8.00        |
| 50 | 23.05.03   | Telephone Call - Taking Instructions                                     |   |   |                |   | 6              | £ | 8.00        |
| 51 | 23.05.03   | Prepare Notice to Complete and Revised Completion Statement              |   |   |                |   | 12             | £ | 16.00       |
| 52 | 10.06.03   | Letter from Surveyor Regarding Costs                                     |   |   |                |   | 6              | £ | 8.00        |
| 53 | 10.06.03   | Letter to Surveyor Confirming Notice to Complete Served                  |   |   |                |   | 6              | £ | 8.00        |
| 54 | 10.06.03   | Letter to Clients Request Counterpart Underlease                         |   |   |                |   | 6              | £ | 8.00        |
| 55 | 10.06.03   | Fax from Solicitors Confirming Tribunal Application for Costs            |   |   |                |   | 6              | £ | 8.00        |
| 56 | 10.06.03   | Fax to Solicitors Enc Draft Undertakings Re: Costs                       |   |   |                |   | 6              | £ | 8.00        |



|    | A        | B  | C | D | E | F | G   | H | I      |
|----|----------|--|---|---|---|---|-----|---|--------|
| 57 | 10.06.03 | Preparing Draft Undertakings   |   |   |   |   | 12  | £ | 16.00  |
| 58 | 10.06.03 | E-Mail from Client Regarding Forwarding Counterpart Underlease       |   |   |   |   | 6   | £ | 8.00   |
| 59 | 12.06.03 | Letter from Solicitors Enclosing Signed Undertaking                  |   |   |   |   | 6   | £ | 8.00   |
| 60 | 12.06.03 | Telephone Call From Solicitors - Notice to Complete Not Valid?       |   |   |   |   | 6   | £ | 8.00   |
| 61 | 13.06.03 | Letter from Solicitors Enc Cheque to Complete                        |   |   |   |   | 6   | £ | 8.00   |
| 62 | 13.06.03 | Prepare Invoice  |   |   |   |   | 6   | £ | 8.00   |
| 63 | 23.06.03 | Cheque Cleared - Letter to Surveyor Settled Account                  |   |   |   |   | 6   | £ | 8.00   |
| 64 | 23.06.03 | Fax to Clients Accounts Department - Confirm Bank Transfer Completed |   |   |   |   | 6   | £ | 8.00   |
| 65 | 23.06.03 | Letter to Clients Enclosing Copy Transfer                            |   |   |   |   | 6   | £ | 8.00   |
| 66 | 24.06.03 | Letter to Tenant's Solicitors Enclosing Completed Documents          |   |   |   |   | 6   | £ | 8.00   |
| 67 | 24.06.03 | Copying Powers of Attorney   |   |   |   |   | 6   | £ | 8.00   |
| 68 | 27.06.03 | Letter from Clients Enc Counterpart Underlease                       |   |   |   |   | 6   | £ | 8.00   |
| 69 | 27.06.03 | Letter to Solicitors Enc Counterpart Underlease                      |   |   |   |   | 6   | £ | 8.00   |
| 70 | 27.07.03 | Letter from Surveyor Ack Payment of Invoice                          |   |   |   |   | 6   | £ | 8.00   |
| 71 |          |  |   |   |   |   |     |   |        |
| 72 |          |  |   |   |   |   |     |   |        |
| 73 |          |  |   |   |   |   |     |   |        |
| 74 |          |  |   |   |   |   |     |   |        |
| 75 |          |  |   |   |   |   |     |   |        |
| 76 |          |  |   |   |   |   |     |   |        |
| 77 |          |  |   |   |   |   | 438 |   |        |
| 78 |          |  |   |   |   |   |     |   |        |
| 79 |          |  |   |   |   |   | 7.3 |   |        |
| 80 |          |  |   |   |   |   |     |   |        |
| 81 |          |  |   |   |   |   |     | £ | 584.00 |