The Isle of Man Land Registry

THE LAND REGISTRATION ACT 1982

AND

THE LAND REGISTRATION RULES 2000

Application number:	201604310
The **Applicant:**	Michael Street Management Limited
Applicant's Advocate:	Nicola Merritt, Corlett Bolton & Co
The Property:	20/22 Michael Street Peel IM5 1HB (31-02223) and an appurtenant right over Peel Post Office and Flat 27-29 Douglas Street Peel IM5 1BB (31-01965)
Nature of Application:	First Registration of freehold estate in the Property with an absolute class of title.
The **Objectors:**	Richard John Palmer and Mary Elizabeth Palmer
Objectors' Advocate:	Paul Kerruish, Kerruish Law

IN THE MATTER of the application by Michael Street Management Limited in terms of section 46 of the Land Registration Act 1982 (the **Act**) and Rule 40 of the Land Registry Rules 2000 (the **Rules**) for entry on the register of title maintained by the Isle of Man Land Registry of rights appurtenant to 20/22 Michael Street Peel

And

IN THE MATTER of the assessment of costs in Land Registration proceedings.

DECISION OF THE LAND REGISTRAR

DATED 8 APRIL 2019

Introduction. The Application for Registration.

1 On the 6 November 2018 the parties agreed by way of Consent Order that an application to register the freehold of 20/22 Michael Street Peel could proceed once the right of way previously claimed by the Applicant had been withdrawn. The parties agreed to make written representations in the matter of the Objectors' claim for costs. The parties have consented as part of that Consent Order to summary assessment of costs by the Land Registrar in accordance with rule 135 of the Land Registry Rules 2000.

2 The application led to registration of title 31-02223 without the right of way claimed over the Objectors' land as the servient tenement which would have required rectification of title 31-01965. The application for registration was

amended to exclude the registration of the benefit or burden of the right of way. The claim to the right of way was withdrawn on 22 March 2018.

3 By paragraph 2 and 3 of the Consent Order I directed that the Objectors should submit written submissions in the matter of their claim for costs against the Applicant associated with the withdrawn application for a right of way on or before 13 November 2018 with any response of the Applicant to such application to be filed and served on or before 23 November 2018.

4 During consideration of the matter I invited the parties on 8 February 2019 to make further brief submissions on the question of the applicability of the Advocates (Conveyancing Fees) Regulations 2000 to these proceedings. These submissions were received by way of a joint statement from the parties on 1 March 2019.

The Land Registry costs jurisdiction

5 The Registrar for the purposes of the Land Registration Act 1982 acts judicially as the first tier authority for the hearing and determination of any *question, difficulties or dispute arising in any registration or other proceedings in the Registry* (Rule 120 of the Land Registry Rules 2000). Where on any application before the Registrar a dispute arises which cannot be disposed of by agreement the Registrar must hold a hearing to determine the questions in dispute or refer the matter to the Land Commissioner by Order under section 6(2) of the Act. Neither party, through counsel, have questioned the jurisdiction of the Registrar to hear and determine these proceedings.

6 My jurisdiction in relation to costs in respect of any proceedings on a hearing is derived from Rule 135 of the Rules. All costs incurred in proceedings are in the discretion of the Registrar which he will exercise having regard to the provisions as to costs contained in the Act and Rules.

"*135. **Award and taxation of costs of hearings***

(1) Subject to any provision as to costs contained in the Act and these rules, the award of costs in respect of any proceedings on a hearing before the Land Commissioner or the Registrar shall be in his discretion, and he may direct by and to whom costs are to be paid.

(2) The Land Commissioner or the Registrar, as the case may be, may, with the consent of all the parties concerned, assess such costs.

(3) The amount of any costs awarded by the Land Commissioner or the Registrar under paragraph (1) shall be taxed unless the parties agree the amount thereof or the costs are assessed under paragraph (2).

(4) The rules of court relating to the taxation of costs in the High Court shall apply in any case where costs are to be taxed under paragraph (3)."

7 In addition in cases of rectification of a registered title under section 65 of the Land Registration Act the Registrar may make an order relating to the costs of rectification proceedings.

8 In relation to my discretion as to costs in respect of a hearing before the Registrar, the general rule pursuant to part 11 of the Rules of the High Court of Justice 2009 (the **Rules of Court**) is that the unsuccessful party shall be ordered to pay the costs of the successful party. However by virtue of rule 135(2) of the Land Registry Rules 2000 I have a broad discretion to make a different order and there is no established rule that costs in Land Registration proceedings will automatically follow the event nor that they shall not. Previous published decisions before the Land Registrar and/or the Land Commissioner have confirmed the breadth of this discretion. I note that in considering costs in Craine & Hommet v Cleator (Case 2013/01206) the Land Commissioner declined to award costs against the losing party because his advocate's actions were not founded in *carelessness or malintent or negligence*. Neither party have argued that this test does or should apply to these proceedings.

9 My jurisdiction to award costs in connection with all proceedings before the Registrar is derived from the Land Registry Rules 2000 which in turn devolves from section 77 of the Land Registration Act 1982 and specifically, with regard to costs from paragraphs 14-16 of Schedule 11 to the Land Registration Act 1982.

I indicated during these proceedings in the Land Registry that I would allow myself to be informed by Part 11 of the Rules of Court in substitution for the reference to taxation of costs in rule 135(4) of the Land Registry Rules 2000 since the language of taxation is no longer current in the Rules of Court. I have subsequently become aware of the provisions of section 22(3) of the Advocates Acts 1995 which supports this indication:

"A reference in any other enactment (other than an enactment under this Act) to the taxation of advocates' costs shall be treated as a reference to an assessment in accordance with this Part [Part III of the Advocates Act]"

10 It is good to be aware of Land Registry practices in other jurisdictions as the Applicant has encouraged me to do but I am not bound to follow or to seek to apply guidance documents from jurisdictions dealing with different laws and systems of Land Registration. Neither party has advanced otherwise. I make the particular point that in England and Wales hearings relating to Land Registration proceedings are now referred to the Property Chamber - Land Registration, First Tier Tribunal from HM Land Registry. Both HM Land Registry and the Tribunal have their own discrete cost awarding powers: the Land Registry costs prior to the referral and the Tribunal costs post referral. Tynwald has not imposed two separate cost regimes in the Land Registration Act 1982 upon the Land Registry in the Isle of Man.

11 The Land Registration Act 1982 and Land Registry Rules 2000 impose no restrictions on cost awards in proceedings before the Land Registrar or the Land Commissioner. As such the Land Registry jurisdiction is a full costs jurisdiction and its statutory power to award costs looks very similar to that of the courts. It is well

established that costs awards by a court will often include pre-action costs, for example, of taking legal advice or obtaining expert evidence before proceedings. Explicit provision is made for this in the Rules of Court of the High Court Rule 11.3(7)(d):

The orders which the court may make under this rule include an order that a party must pay -...
(b) a stated amount in respect of another party's costs
(c) costs from or until a certain date only
(d) costs incurred before proceedings have begun ...
(f) costs relating only to a distinct part of the proceedings.

12 It is clear from rule 127 of the Land Registry Rules 2000 that the term '*proceedings*' extends in the context of Land Registration to, for example, those actions covered by rules 11, rule 114 and rule 123(3) of the Land Registry Rules 2000. (Presentation of applications, application for priority searches and those matters requiring the service of any notice by the Registrar). Proceedings before the Land Registrar is not a term intended to be limited to the conduct of hearings only. (Section 3(5) of the Act). Neither party has convincingly argued that the Registrar's jurisdiction to award costs on a hearing is limited to part only of the proceedings in this case.

13 There is a regime outside the Land Registration Act 1982 contained in the Advocates (Conveyancing Fees) Regulations 2000 (SD675/00) which imposes restrictions on the fees chargeable by Advocates when providing conveyancing services (*the preparation of transfers, conveyances, leases, contracts and other document in connection with, and other services ancillary to, the disposition or acquisition of land or interests in land*). Clearly, where these Regulations apply the Registrar must take notice of these Regulations relating to the recoverability of fees from an advocate's client and as to the level of any cost award. I consider the applicability and the persuasive nature of these Regulations later.

Costs in the context of the Application

14 On settlement of the disputed registration by Consent Order it was agreed that the matter of costs should be dealt with without the need for a further hearing on the basis of written representations made by the parties' advocates. It is clear on the face of the correspondence passing between the advocates in these proceedings and produced to me in the submissions of the Objectors in tab 1 that both parties were aware of the Land Registry cost regime that applied to applications of this type and actively agreed to put this beyond the scope of their proposed settlement of outstanding issues in dispute. Both parties agreed to leave the issue of costs to be determined under the jurisdiction of the Registrar. Both parties consented to summary assessment.

15 The application before me is for the Applicant to pay the costs of the Objectors in all proceedings before the Land Registry occasioned by the application of the Applicant for first registration of their freehold title and also the registration of an interest in land. This interest (an easement benefitting the land of the Applicant and burdening the land of the Objectors) would have led to a

rectification of the Objectors' title. The Objectors maintain that they were successful in their objection and as such costs should follow the event and there should be an order that the Applicant pays the Objectors' costs. The Objectors claim that the basis of assessment should be the indemnity basis or in the alternative the standard basis.

The application for Registration was submitted on 8 December 2016.

An Order making directions preparatory to a Registrar's Hearing was made on 28 November 2017.

The dispute was finally settled by the Consent Order of 6 November 2018 leaving the issue of costs outstanding.

The Objectors claim they have successfully defended the Applicant's application for registration of a prescriptive right of way and the rectification of the Applicant's title that would have resulted from it through the hearing procedure before the Land Registrar.

The Successful Party.

16 I consider that the Objectors' position with regard to success is correct. They have successfully defeated the application of the Applicant to have an appurtenant right registered benefitting the Applicant's land and burdening the Objectors' land. I can see no doubt about this although the Applicant says I should. The Applicant's ownership of their land has of course been effected but that was not objected to by the Objectors. The questions then remains of whether it is just to award costs against the unsuccessful party? and, if so how these should be assessed?

The Objectors' application for cost

17 The Objectors submit that the Applicant gave no notice of the intention to register a right of way over the Objectors' land and it was not until this was notified to the Objectors in accordance with rule 40 of the Land Registry Rules 2000 that the Objectors became aware of the application. The significance of this, it was submitted, was to require the Objectors to obtain urgent legal advice.

18 Addressing this point, I comment that the time limit for the response to notice under rule 40 complied with the statutory minimum of 21 days. The legislation regards this period to be sufficient for a reasoned response objecting to an application to be filed with the Land Registry. I see no reason to consider that the advice was therefore any more urgent than a professional advocate might expect in any legal proceedings less still urgent enough to justify a premium attendance fee.

19 The Objectors submit that the Applicant did not take sufficient advantage of the Land Registrar's encouragement to reach a negotiated settlement suitable for both parties.

20 Following further directions of the Registrar on 28 November 2017, the Applicant filed its submissions and associated skeleton arguments on 15 December 2017. The Objectors concede that the Applicant then sought a stay in proceeding on 4 January 2018 to seek mediation. The Objectors declined this offer as they considered negotiation or mediation would be fruitless.

21 The Objectors then encouraged the Applicant to withdraw, the Applicant refused but offered mediation again in June 2018.

22 As to the Objectors' submission that the Applicant did not take sufficient advantage of negotiation when encouraged to do so by the Land Registrar; I am inclined towards agreement. However, I do also recognise that the Applicant's response was not mere process and that an opening negotiation was indeed made. The behaviour of the Applicant was more receptive to negotiation at this stage of the proceedings than was the Objectors' in response to the Applicant's later mediation offers. I do not think in this regard either party behaved less well than the other overall in demonstrating receptiveness to the advantages of negotiation. The behaviour of the Applicant was certainly not sufficient to justify an award of cost on the indemnity basis on this point alone.

23 The Objectors put forward a commercial settlement offer on 6 March 2018 which included a claim for costs. This was not accepted by the Applicant who subsequently withdrew their application in so far as it related to the right of way claimed by prescription. When this withdrawal was notified to the Land Registrar this was relayed to the Applicant as is normal in contested proceedings.

24 Correspondence then ensued between the parties relating to costs. Put briefly the Objectors contended that costs were a part of a settlement of this issue since it had progressed so far. The Applicant did not consider the application before the Land Registry, having been withdrawn, would attract a cost order and did not appear willing to include this in a detailed settlement negotiation. The Objectors maintained that costs were within the jurisdiction of the Registrar and would be applied for and sensibly sought to avoid the cost of a standalone costs hearing by writing to the Applicant on 2 November 2018. The Applicant's email correspondence of 7 November 2018 in reply was produced as evidence in this cost application that the Applicant's advocate received no further instruction on the matter of a negotiated agreement including a cost settlement. The Applicant's advocate did not address this in submissions. An Advocate cannot act without instructions and I do consider it unfortunate that the Applicant did not apparently address itself to this aspect of the settlement negotiations in November 2018. However this does not cross the threshold for an indemnity award.

25 The Objectors claim they have successfully defended the Applicant's application for registration of a prescriptive right of way and the rectification of the Applicant's title that would have resulted from it through the hearing procedure before the Land Registrar. I agree as set out above.

26 The Objectors claim indemnity cost on the following grounds:

i) the refusal of the Applicant to meet and discuss the matter before making the Application
ii) the making of the Application without notice to the Objectors;
iii) the failure of the Applicant to give the Land Registry notice that they knew the claimed right was hotly contested and indeed had been by prior owners of the Objector's property;
iv) the making of false statements under oath within the affidavit evidence submitted with the applicant and prior to the hearing
v) the failure of the Applicant to negotiate a sensible solution
vi) the failure of the Applicant to make any proposition or counter offer in regard to costs.

27 In the alternative the Objectors claim costs assessed on the standard basis.

28 On the issue of the applicability of the Advocates (Conveyancing Fees) Regulations 2000 the Objectors contend in a joint statement with the Applicant that these regulations were not directed at covering fees related to matters such as the contested issue in this case. The Regulations impose a "Special cases" fee regime for any conveyancing services (as defined to include the acquisition of an interest in land) *which require additional work in respect of a first registration under the Land Registration Act 1982 if the interest in land is not registered and if the additional work is occasioned...as a result of a dispute as to registration.* I infer that the Applicant submits that the regulation should not apply to the facts of this particular application for the voluntary first registration of an interest in land and the dispute occasioned thereby, but may have applied had the application been compulsory in nature.

The Argument of the Applicant in response

29 The Applicant maintains that costs should only be payable in proceedings before the Registrar if the conduct of the person against whom costs are sought has been unreasonable. The Applicant encourages me to consider a comparison with the Land Commissioner's decision in Arwen Limited and Hereford Limited 2009/1605 where costs were awarded from the date of an open letter. The Objectors also suggests by reference to comparisons with other jurisdictions that costs should be treated differently in the Land Registry jurisdiction either side of some point at which the Registrar directs that the matter be put to a formal Hearing. No argument based on Manx Law or Manx Authorities was advanced to support this final point.

30 I cannot agree with the Applicant's interpretation of the Rules as it does not seem to reflect the intention of the legislation. While rule 135 refers to "*costs in respect of any proceedings on a hearing*" it does not limit itself to costs at that hearing itself to the exclusion of costs preparatory to or in registration proceedings in advance of a hearing. This would be sufficiently novel and in discord with the conventional position set out in the Rules of Court as to have required, in my opinion, express and unequivocal expression. The Applicant submits that costs should not be payable before the matter was referred to a hearing. For the reason set out above I cannot accept the discretion in rule 135 is so limited. The Applicant concedes any award of costs is entirely at the Registrar's discretion. Nor can I

accept that the cost regime contained in section 65(2C) of the Act is in anyway dependent on a decision of the Registrar to refer a rectification application to a hearing or not. This point is not addressed in either submissions.

31 The Applicant (like the Objectors) encourages me to take into account all circumstances and the conduct of the parties and I have done so. I do not consider, to adopt the language of the Land Commissioner in the Craine & Homment v Cleator decision, that either party have demonstrated *carelessness, malintent or negligence*. Indeed I am grateful for Counsels' assistance throughout these proceedings and have no doubt in concluding that the threshold for an indemnity award has not been crossed by applying the guidance adumbrated by Deemster Doyle in Clucas Food Service Limited v Ice Mann Limited and Salmon CPL 2004/6 to which the Objectors referred me. I do not consider that Mrs Scanes' undated letter to the Post Office which the Objectors produced in evidence was prudent but nor do I see it as exhibiting underhand conduct.

32 The Applicant represents that they behaved reasonably in submitting a voluntary application for registration and made reasonable efforts to negotiate with the Objectors towards a settlement. The Applicant does not address the fact that it provided a certificate to the Land Registrar in lodging its application for registration of the land and the right as claimed that **"I am not aware of any claim to possession of the land [including the rights claimed] adverse to the interest of the applicant"**. And that **"I have made a full title investigation and declare that the title is good and I am not aware of any defect which would give rise to a claim for compensation under Schedule 10 of the Land Registration Act 1982 1982 other than disclosed in the application."** The application was for the ownership of land (which is not contested) but also for the registration of a right of way (an interest in land) across the Objectors land. The erroneous registration of a right of way over a third party's land is something capable of giving rise to a claim for compensation under Schedule 10 of the Land Registration Act 1982 had the Land Registry relied on this declaration provided by the Applicant's Advocate as it is entitled to do so.

33 The Applicant submits that the Objectors' failure to negotiate after 2 October 2017 or alternatively 4 January 2018 should be fatal to their claim for costs and lead to no order for costs.

34 In the alternative, the Applicant suggests costs should be assessed on the standard basis and from 2 October 2017 only (being the date of an open letter from the Applicant initiating negotiations in response to Land Registry encouragement). Given the origins of the dispute originated in the Applicant's Advocate's certificate on the 8 December 2016 which led to notice being served on the Objectors rather than from the date on which the Applicant made a settlement offer I cannot that this date should necessarily be either the start or end point of any costing exercise.

35 On the question of the application of the Advocates (Conveyancing Fees) Regulations 2000 the Applicant makes the case that these regulations should be regarded as persuasive. The Applicant considers that these regulations are likely to be inapplicable to voluntary Land Registry proceedings since they relate (in their

submission) to vendors, purchasers and mortgagors effecting compulsory registration. The Applicant contends that whether the voluntary registration of land can be considered to constitute the "*preparation of ...documents in connection with, and other services ancillary to, the disposition or acquisition of land*" is questionable.

36 The Applicant argues that "*Although the Regulations are likely not applicable to this scenario, it should perhaps be in the Land Registrar's mind that if this was a First Land Registration matter following a transfer of land, there would ... be a restriction on fees for the advocate undertaking "special case" work. It would seem unfair therefore for an Advocate making a voluntary land registration application or an Advocate acting for an objector not to have any restriction on fees*". The Applicant also considers that were the Regulations to apply to an applicant for registration in the circumstances of these proceedings then it would be unfair for an Advocate acting for an objector not to have any restrictions on fees. I infer that the grounds for unfairness would be the creation of an inequality of arms. This is a sentiment with which I am in agreement. I am keen to avoid unfairness in Land Registration proceedings. I find the Regulations to be, at the least, persuasive as to the level of any costs award to be made in any Land Registration proceedings before the Registrar.

Consideration of the Applicant's case: (A-Costs jurisdiction of the Registrar) and (B-The Applicant's Response to the Objectors' case)

37 The Applicant contests points (i)-(vi) of the Objectors' claim for indemnity costs set out in paragraph 26 of this decision. As the matter was settled without a hearing I cannot reach the conclusion on the evidence before me that points (i)-(ii) were unjustifiable or that in all the circumstances (iv) is accurate. Addressing (iii) I have referred already to my belief that an incorrect certificate of title exposing the General Revenue to claims in compensation did contribute to these proceedings. Addressing (iv) I am reluctant to conclude that well-intentioned evidence even if found on a cross examination to be ill-founded should attract indemnity fees in proceedings before the Land Registry. On (v) and (vi), the apparent refusal to negotiate on costs does seem unreasonable and imprudent but again, given the broad range of discretion in the costs jurisdiction of the Registrar and its relatively infrequent use, I do not find that the Applicant's considered position on the likelihood of a costs award should attract costs other than on the standard basis.

(A) Cost jurisdiction of the Registrar

38 The Applicant refers to Rule 135(1) of the Land Registry Rules 2000 and directs me to a comparison with English rules relating to costs in proceedings before the Chief Land Registrar. In that jurisdiction costs before the Registrar and costs before the Lower Tier Property Tribunal are dealt with under different cost regimes and it is generally thought that only costs before the Registrar are awardable by the Registrar and only costs before the Tribunal are awardable by the Tribunal. This does not translate to the Isle of Man and the principle that any award for costs is entirely at the Land Registrar's discretion is expressly accepted by the Applicant.

39 The Applicant refers to the Arwen v Hereford Limited 2009/1605 before the Land Commissioner in which costs were awarded by the Land Commissioner on the facts in that case from the date of an open letter just before the referral to him (some 6 years after the submission of the application to the Land Registry).

40 The Applicant refers to the principles set out in rule 11(5) and 11(6) of the Rules of Court which refer to taking into account all circumstance and conduct of all parties. I fully take into account all the considerations set out in that Rule.

(B) The Applicant's Response to the Objectors' case.

41 The Applicant argues that it would be illogical to give notice of a prescriptive right of way. I cannot agree with this and feel that this matter could have been progressed in an altogether different way and a great deal of time and treasure saved if notice had been served in advance of the application being lodged. The Land Registrar required notice of the prescriptive right of way to be served in accordance with the provisions of the Land Registration Act and this was entirely logical.

42 The Applicant disputes that the Objectors' account of the initial contact between the parties is accurate. I do not feel in a position to reach a conclusion on this point or that to do so is necessary. It was clear that the right claimed was adverse to the Objectors' title. Common courtesy should be guidance enough that an application to register an interest over a third party's registered land should be by notice.

43 The Applicant denies the Objectors made endeavours to resolve the matter prior to 6 March 2018 even after the Applicant had made offers to settle on 2 October 2017 and 4 January 2018. I consider that it is prudent to recall the circumstances of the application being a claim for a prescriptive right over the Objectors' land which was subsequently withdrawn. Bearing in mind the clear certificate of safe holding title which an applicant is required to give to the Land Registry the burden of responsibility to resolve disputed matters likely to disturb that title is one that rests on an applicant more heavily than on an objector (acting reasonably) in a case such as this. The Applicant provided the Land Registrar with a certificate of title (on which I am entitled to rely) which erroneously certified that there were no defects of title capable of disturbing the title applied for and which could give rise to a claim for compensation under Schedule 10 of the Land Registration Act 1982 and that the Applicant was not aware of any claim adverse to the interest of the Applicant. In the event, there was a claim adverse to the interest of the Applicant in the claimed easement.

44 The Applicant by reference to the Objectors' offer to settle of 6 March 2018 states that the costs element of the offer was intended to aggravate. While I consider the costs figure then stated (£7,000 plus disbursements and VAT) as high I take account of the normal practice of cost negotiations. That this offer received a bare refusal rather than a considered counter offer does in my view go to the behaviour of the Applicant which was after all applying not only for an appurtenance to benefit their land but also for it to burden the Objectors' land.

Conclusions

45 The cost regime in the Land Registry is not intended to punish applicants or to discourage applications being made in good faith or even in honest error. It is however part and parcel of seeking the benefits of the recognition by the Land Registrar of an additional right over land unsupported by a grant that if such an application is unsuccessful the applicant may expect to be responsible to any innocent objector in costs.

46 I conclude that the discretion of the Land Registrar to award costs under rule 135 in respect of any proceedings on a hearing extends to the discretion to award costs in connection with matters occurring prior to the referral of such proceeding to a hearing, where such referral to a hearing is made, as was the case in this matter.

47 I also conclude that (insofar as this matter would have resulted in the rectification of the Objectors' title) the cost provisions in section 65 of the Act apply. It is perhaps trite to state that this statement is not defeated by the fact that no rectification did in fact occur since the exercise of a power also includes the decision not to exercise such a power.

48 Given that it is not the purpose of the Land Registration Act to absolve from a registered title owner all responsibility for safeguarding their land and that it does not, for example, prohibit the acquisition of possessory or prescriptive rights over registered land I am not prepared to order that the Applicant should indemnify the Objectors fully for all costs the Objectors have incurred in the reasonable defence of their title. I have concluded that a just order would be that the Objectors should be awarded costs after assessment on the standard basis in relation to and incidental to the Application from 13 September 2017 to its conclusion only and that there should be no order as to costs in respect of the remainder of that application covering the period 29 February 2016 to 13 September 2017 being the initial (though protracted) objection stage. 13 September 2017 is the date on which I gave directions for negotiations to commence.

The assessment of Costs and the application of the Advocates (Conveyancing Fees) Regulations 2000.

49 I further conclude that the costs of the Applicant in effecting this application for registration are either within the scope of the Advocates (Conveyancing Fees) Regulations 2000 or that these Regulations should be persuasive in assessing an award of costs by application of the indemnity principle. A party in whose favour an order for costs is made may not recover more than he is liable to pay his own Advocates.

50 The application can be considered in two parts: an application for first registration on a voluntary basis and an application for registration of an interest over the Objectors' land. The interest over the Objectors' land being expressed to be a right acquired consequent on the Limitation Act 1984 was a right capable of affecting registered land without registration. Ancillary to the purported

acquisition of this right the Applicant sought an additional entry on the dominant land under section 46 of the Land Registration Act 1982 confirming the existence of the right and also on the servient tenement subjecting that land to a registered burden in accordance with section 15(3) of the Land Registration Act 1982. I consider this aspect of the application therefore to be a conveyancing service ancillary to the acquisition of an interest in land for the purposes of the Regulations. The Applicant sought to perfect by registration a right it claimed through prescription. This aspect of the application was not registered on first application and the resulting dispute as to registration occasioned additional work triggering the '*Special cases*' regulation. I concede that the application of these Regulations to this matter has not formed the basis of these proceedings and am therefore unable to conclude definitely that the Regulation do apply or should apply. However, the agreed submission of the parties on this point has not persuaded me definitely of the inapplicability of these Regulations. I am satisfied on the balance of probability that I may agree with the submission of the Applicant that even if the Regulations do not directly apply they should be persuasive as to the reasonable level of costs to be awarded.

51 In the event that the '*Special cases*' regime is inapplicable then Part II, '*Miscellaneous Conveyancing Services*' may apply as an alternative. This would cap an advocate's charge-out rate at £100 to £110 per hour which appears not to be variable by written agreement. As I do not consider this to be the case and as I have received no representations on this issue I have given this no further detailed thought. I received no submissions from the Applicant disputing the amount of costs incurred by the Objectors. I am entitled to draw from this an acceptance by the Applicant that the costs incurred by the Objectors are proportionate and reasonable.

52 Addressing the particular comment disclosed to me in the correspondence passing between the Objectors and the Applicant on this issue I agree with the comment made by the Applicant that *if* these Regulations apply to compulsory acts of registration it would seem unfair for them not also to apply to applicants for voluntary acts of registration. I will also make the point that by virtue of section 31 of the Land Registration Act 1982 "*completion*" as referred to in the Schedule to the Advocates (Conveyancing Fees) Regulations 2000 must relate, in the legal regime of completion by registration only (section 23 and 31 of the Act), to include Registration proceedings. Any compulsorily registrable application only legally completes on registration and any award of title made on a voluntary basis only becomes conclusive on completion of registration. I make the point also that these Regulations do not appear to be of application to proceedings before the Land Commissioner resulting on an appeal from the decision of the Registrar or on a reference from him.

53 By way of final comment on this point it is clear that the Schedule to the Regulations calculates advocates' prescribed maximum fees by reference to "value" as opposed to consideration. The value of the land is identified in the application for registration as £500,000. The prescribed fee is accordingly £1,750 and the Special case fee £3,500+vat. This would be the maximum fee chargeable under the Regulations and would accordingly be the maximum fee recoverable

under the equality of arms and indemnity principles by application in cases to which the Regulations definitely apply.

54 By extension, I consider that the Regulations reflect the most recent of the biennial agreements of the Advocates' fee committee constituted in accordance with the Advocates Act 1995 as to the appropriate level of fees to be charged in proceedings before the Land Registrar in similar (albeit not identical) circumstances to these. Accordingly and leaving aside whether the Regulations do or do not technically apply in this case I consider the views of the learned and august members of the Advocates' fee committee highly persuasive as to the reasonableness of the costs incurred in these proceedings. I consider the sum of £3,500+vat to be proportionate and reasonable having regard to the importance of the case; the complexity of the issues involved; and, the conduct of the parties. I consider it appropriate to cap the amount of any award by applying the same principles as to maximum fees contained in rule 11.4 of the Rules of Court.

Order

55 The Applicant shall pay the costs of the Objectors in relation to work done on behalf of the Objectors after 13 September 2017 preparatory to and in advance of the hearing to determine the objection to the application of the Applicant on the standard basis following assessment subject to a cap of £3,500+vat.

56 Both parties have consented in the Consent Order of 6 November 2018 to the assessment of costs by the Land Registrar in accordance with rule 135.

57 Having undertaken assessment on the standard basis (and in the absence of submissions from the Applicant on the scale of costs either globally or by reference to individual cost lines) I assess the costs recorded as evidenced in the bundle of the Objectors. Although there are certain cost lines I would not regard as proportionate the global figure after such deductions exceeds the cap of £3,500 (inclusive of disbursements) plus vat which I consider to be reasonable and proportionate to the matter in issue. I order the sum of £3,500 (plus vat) to be paid to the Objectors forthwith by the Applicant. I make no order for interest to be added to this figure. Each party to pay its own costs in connection with these costs proceedings.

58 The Applicant is to pay £36 to the Land Registry in settlement of the fee payable for issuing a consent order and a further £36 to the Land Registry in settlement of the fee payable for issuing this order. Both fees are prescribed by the Land Registration (Fees) Order 2013.

Nick Arculus

Assistant Chief Registrar

LS 11/19