

**LANDS TRIBUNAL FOR NORTHERN IRELAND**  
**LANDS TRIBUNAL COMPENSATION ACT (NORTHERN IRELAND) 1964**  
**PROPERTY (NORTHERN IRELAND) ORDER 1978**

**IN THE MATTER OF A REFERENCE**

**R/22/2010**

**BETWEEN**

**LIAM & KATE CUNNINGHAM – APPLICANTS**

**AND**

**SHEILA FEGAN – RESPONDENT (1)**

**ALAN McARDLE – RESPONDENT (2)**

**COSTS - PART 2**

**Re: Right of Way at Helen's Terrace, Newry**

**Lands Tribunal - Mr M R Curry FRICS Hon.Dip.Rating**

**Background**

1. A head lease dated 9<sup>th</sup> April 1937 created a right of way along the rear of a row of 7 houses now known as 1 to 7 Helen's Terrace. Liam and Kate Cunningham ("the Cunninghams") were the owners of the house and rear garden of No. 3. They had planning permission for an extension to their house which, to be implemented, would require the right of way to be relocated. The Cunninghams applied, under the Property (NI) Order 1978 to the Tribunal for modification of the route. Two objectors came forward. One was Sheila Fegan, the owner of the house and rear garden at No. 2; the other was Alan McArdle, the owner of the garden to the rear of No. 4. Later, on 17<sup>th</sup> June 2011, Mr McArdle withdrew his objection. Shortly afterwards, the other parties reached agreement on the substantive issue.
2. Following a hearing on the allocation of costs ( R/22/2010 Part 1) the Tribunal ordered that:
  - a. In regard to a hearing at Armagh (on 17<sup>th</sup> February 2011), which required an avoidable adjournment, the Cunninghams and Ms Fegan should have their costs for the wasted day.
  - b. Mr McArdle should also bear any other reasonable costs of the other parties in dealing with his objection.
  - c. As between the Cunninghams and Ms Fegan, the Cunninghams should bear Ms Fegan's reasonable costs, other than those to be met by Mr McArdle (as per b. above).

3. This Decision (Part 2) now deals with the assessment of Ms Fegan's reasonable costs.

### Procedural Matters

4. The Tribunal received:
- a. details of professional fees and outlays of Campbell and Grant, solicitors, claimed on behalf of Ms Fegan;
  - b. for information, details of professional fees and outlays of the Elliot-Trainor partnership, solicitors, charged to the Cunninghams; and
  - c. written submissions from Peter Girvan BL and Aidan Sands BL.

### Positions

5. The amounts Ms Fegan claimed may be summarised as follows:
- |   |            |
|---|------------|
| a. Solicitor's Professional Fees  | £5,185.80; |
| b. Vat on above   | £1,037.16; |
| c. Uplift of 50% on above for care, complexity and importance to client | £2,592.90; |
| d. Vat on above   | £518.58;   |
| e. Outlay (excluding Armagh hearing) (but including Vat)                | £4398.48.  |
6. On behalf of the Cunninghams Mr Girvan BL suggested that:
- a. the professional fees claimed did not accord with the Part 1 Decision;
  - b. the amount was disproportionate and excessive; and
  - c. the Tribunal should apply the *Civil Bills and Equity Scale* prescribed by the County Court.
7. On behalf of Ms Fegan Mr Sands BL suggested that:
- a. the professional fees and outlays claimed were fair and reasonable; and
  - b. the Tribunal should not apply the County Court Scale.

### Discussion

8. The Tribunal was referred to:
- the Lands Tribunal Rules (NI) 1976;
  - the *Civil Bills and Equity Scale* prescribed by the County Court;
  - a schedule of hourly rates set by the Taxing Master of the Supreme Court (NI);
  - Throne v Department for Regional Development [2011] R/70/2006; and
  - Limbo v Department for Social Development [2011] R/39/2009.
9. Rule 33(2) of the Lands Tribunal Rules (NI) 1976 provides:

“(2) If the Tribunal orders that the costs of a party to the proceedings shall be paid by another party thereto, the Tribunal may settle the amount of the costs by fixing a lump sum

or may direct that the costs shall be taxed by the registrar on a scale specified by the Tribunal, being a scale of costs for the time being prescribed by rules of court or by county court rules.”

10. The Tribunal was informed that the professional fees at paragraph 4 a. above were based on a schedule of hourly rates allowed by the Taxing Master and were:
  - a. Pre-April 2008 - £85;
  - b. Post-April 2008 to pre-April 2009 - £94;
  - c. Post-April 2009 to pre-April 2010 - £97;and
  - d. Post-April 2010 - £100.
  
11. In the Part 1 Decision, the Tribunal found (at Para 12) among other things, that:

“... The issue of costs is complicated by the conduct of Mr McArdle. While his objection remained, Ms Fegan’s solicitors declined to give the matter any further consideration and, as the solution was not available until Mr McArdle withdrew, that seems to be a wholly reasonable position for Ms Fegan to have taken. That avoided adding to her costs. ... “
  
12. It would appear to follow that little or no costs should have been incurred during the period between the adjourned hearing in February 2011 until Mr McArdle withdrew his objection in June 2011. That does appear to have been fairly reflected in the modest actual professional fees claimed for that period – any adjustment would be slight.
  
13. The challenge by Mr Girvan BL was directed primarily towards the professional fees. He did not address in any detail any individual aspects of the costs claimed or present an itemised objection.
  
14. In the absence of any serious challenge to the outlay element, the Tribunal accepts that element.
  
15. At present, in this jurisdiction, the only scale of costs prescribed by rules of court is that prescribed by the county court rules. Although Mr Girvan BL accepted that, for Ms Fegan, the Cunningham’s proposals would have a value in terms of their impact on family life but the monetary value or impact would be modest. He noted that an ordinary dispute about a right of way would have fallen within the County Court jurisdiction. He suggested that the Tribunal should apply the *Civil Bills and Equity Scale*. Mr Sands BL suggested that an entire terrace of houses was affected and, in these unusual circumstances, considerable research was required and the legal issues were complex. The Tribunal was an expert tribunal working in a specialist area of law, this case was no exception and the scale would not be appropriate. Further, the value of the property was not a reason to award costs on the scale (in any event

there was no valuation evidence). The Tribunal agrees that, in this case, the County Court scale would not be appropriate and it should fix a lump sum.

16. Mr Girvan BL did not challenge the time spent by the solicitors on providing the services that they did to their client Ms Fegan. However he contended that the costs claimed were disproportionate and excessive. He compared the complexity and possible value of the case with those of Throne v DRD [2011] and Limbo v DSD [2011]. The Tribunal agrees. Other factors may have affected the level of service provided to the client but the Cunninghams should not be held responsible for costs that exceeded what was reasonable in this case. The Tribunal accepts that the basic hourly rate claimed was reasonable but it is not persuaded that the Cunninghams should meet either the costs of the entirety of the time allocated to Ms Fegan's case or that it warranted an uplift for care, complexity and importance to her.

### **Conclusion**

17. The Tribunal allows as follows:

1. Solicitor's Professional Fees	£3,500.00;
2. Vat on above	£700.00;
3. Uplift on above for care, complexity and importance to client	£Nil;
4. Vat on above	£Nil;
5. Outlay (excluding Armagh hearing but including Vat)	£4,398.48.

18. Accordingly, the Tribunal fixes a lump sum of £8,598.48 as the payable costs.

### **ORDERS ACCORDINGLY**

**29<sup>th</sup> October 2012**

**Michael R Curry FRICS Hon.Dip.Rating**

**LANDS TRIBUNAL FOR NORTHERN IRELAND**

### **Appearances:**

**Applicants: Peter Girvan BL instructed by Campbell and Grant, solicitors.**

**Respondent (1): Aidan Sands BL instructed by the Elliot-Trainor partnership, solicitors.**