

I hereby award myself ?

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Vivien King considers a recent case with implications for all surveyors making party wall awards

The High Court case [The Queen on the Application of Farris Lane Developers Limited v Bristol Magistrates' Court \(Defendant\) and James McAllister \(Interested Party\) \[CO/3431/2015\]](#) has raised a few eyebrows ? and not just because of its name. It will no doubt be noted by all surveyors who are making awards under the [Party Wall etc. Act 1996](#) (the Act).

The case concerns 10 awards made by 1 surveyor. In 5 of these, he was the ?agreed surveyor ?; in the remainder, he acted jointly with the surveyor appointed by the relevant adjoining owner. Each award stated that the building owner should pay the surveyor's fees of ?1,300 plus VAT for preparing and serving the relevant notice, plus fees for their additional work at the rate of ?90 per hour plus VAT.

Facts of the case

The claimant, property owner Farris Lane Developers Ltd, instructed the surveyor, the interested party, to serve party structure notices on owners of 10 adjacent sites in Bristol at an agreed fee of ?90 per hour plus VAT. The aforementioned awards were made, and, while the claimant felt that the fees ? totalling ?24,363.72 ? were excessive, it did not appeal them, but instead simply failed to pay.

Under [section 17 of the Act](#) , the surveyor issued 10 complaints in Bristol Magistrates' Court for non-payment of his awarded fees. The claimant's defence was that the magistrates had no jurisdiction to make the orders sought by the surveyor because he was neither the building owner nor adjoining owner and his fees were not a matter of dispute between those parties.

The magistrates said that they had been making orders for unpaid fees for 10 years. They granted the surveyor a favourable judgment for his fees, but they refused to give reasons for doing so. The claimant then issued proceedings for a judicial review of the magistrates' decision.

There were 3 issues to be decided by Mr Justice Holgate.

1. Were the awards in respect of the surveyor's costs ultra vires, because they did not relate to a dispute between the building owners and the owners of the adjoining property?
2. Even if an award includes an order to pay surveyor's costs that are not disputed between the owners, can it direct a party to pay them to the surveyor directly, instead of awarding direct payments between the 2 relevant owners?
3. Had the magistrates erred in awarding costs to the surveyor based on the 38.5 hours he spent on the case multiplied by his ?90 hourly rate?

Judgment

Reviewing comments made in paragraph 7.5.1 of the RICS Practice Standards, UK, [Party wall legislation and procedure, 6th edition, guidance note](#) to the effect that case law rules that there is no contractual or statutory basis for surveyors addressing responsibility for costs in an award the judge disagreed. He said the issues before him had not previously been dealt with by any judicial authority.

Issue 1

While the Act did relate to disputes between the owning parties, an award may determine any other matter arising out of or incidental to the dispute? ([section 10\(12\)\(c\) of the Act](#)). Second, the word 'determined' is not limited to the making of a decision on a dispute. As a matter of ordinary English, the word can simply mean 'to lay down decisively or authoritatively or to pronounce or to declare'. The judge found an award under the Act is not restricted to matters about which the building owner and the adjoining owner disagree.

Issue 2

The judge rejected the contention that an award could not direct that payment be made directly to the surveyor. The statute enables the surveyor(s) to determine which party is to pay the costs awarded without limiting the discharge of that obligation in the award to a payment to another party, rather than to the surveyor entitled to receive that payment, he said.

Issue 3

Addressing the magistrates' award for costs, the judge said it was in their discretion to award the surveyor reasonable and just costs. Regarding the costs of the hearing before him, Mr Justice Holgate awarded these to the surveyor, but at the rate for a litigant in person that is, £19 per hour.

Finally, the judge commented that the claimant had an opportunity under the Act to challenge the 10 awards in the county court. However, the route down which this case had subsequently been drawn through the magistrates' court and High Court incurred costs that exceeded the challenged fees, and although this did not form any part of the basis of his judgment, he said it should be noted. His disapproval was clear.

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Further information

- Related competencies include [Contract administration](#) , [Legal/regulatory compliance](#) .
- This feature is taken from the RICS *Building surveying journal* (October/November 2016).