Justice Committee

Scottish Court Service recommendations for a future court structure in Scotland

Written submission from Phil Mills Bishop

Some of the reforms that are contained in the recently published Scottish Courts recommendations for the improvement of Social Justice across Scotland, as a whole, are welcome where inefficiencies and ineffectiveness are clearly proven and the delivery of social justice is affected.

This, however, is not the case with Stonehaven Court.

The “Justice” Committee if it were a sitting as a jury would not concur with the specific recommendation made within that report nor to the method, procedure or content in the Negative Standing Order placed by the Justice Minister on the 20th May if the evidence before it on the assumptions, costs and savings contained within the financial sections of the Scottish Courts recommendations were unsound.

The “evidence” pertaining to that unsoundness is contain within the body of this submission by reference to the Scottish Courts responses to the consultation itself, statements made by the Business Development section of the Scottish Courts Service and the Clerk to the Stonehaven Court.

My hope is that the Committee will approve any motion put to it by a Member of the Scottish Parliament to annul the Negative Standing Orders laid on 20th May...they being Sherriff Courts Districts Amendment Order 2013 SSI 20/13/152 Laid under S3 1971 Sherriff Courts Scotland Act & JP Courts Amendment Order 2013 SSI 20/13/153 Laid under S81 Criminal Procedures etc Reform Scotland Act 2007.

The SCS report acknowledges that Stonehaven is: effective and efficient in delivering social justice. Moreover, the Stonehaven Court enjoys recent improved facilities with the installation of video conferencing, additional accommodation to separate victims from witnesses and the development of a free car parking area at the back of the Court.

Historically the Stonehaven Court has sat for over 400 yrs and is an integral part of the Community.

My analysis below is based on eMail correspondence with the SCS Business Development Department which is appended to this submission and conversations with various other officials including the Clerk to the Stonehaven Court.

1) Running Costs of Stonehaven Court

The figure contained within the financial section of the Scottish Court Service’s response to the consultation is £50k per annum. However, The Scottish Court’s Business Development Department initially quoted to me a different figure ...see response below.
Even if the running cost is the higher figure the declared cash saving is £36k per annum as continuing costs after closure are stated as £14k per annum.

This £14k running cost quoted in the report for when the Court closes looks woeful low given for example the requirements of the local rating department on a listed building owner applying for zero business rates and the rigorous guidelines to protect listed building from Scottish Heritage.

Moreover, the SCS assumption is that the Stonehaven Court is a Listed B Building, however, Historic Scotland are in the process of reviewing that and upgrading it to a Listed A. This would place more stringent obligations on the SCS but it would allow the SCS to apply for grant funding for the cost of replacing the roof and heating system contained in their figures of Backlogged Maintenance…see section 3 of this submission below.

Additionally the SCS admitted that they had not taken account of the cost of continuing the water supply to the Court Building……...

“Scottish Water Business Stream is the SCS supplier. Our Water and Sewage costs are approximately £1.9K per annum. It is unlikely that we would arrange for water to be cut off in the event of closure but we would need to reassess the position nearer the time of closure, should that occur.”

2) Depreciation £38k

The savings claimed on “depreciation” cannot be justified. Depreciation is attributable to an asset to reduce it to a nil realisable value over an “acceptable” realistic fixed period of time. The SCS have confirmed to me that all of the moveable assets e.g., computers, furniture etc from Stonehaven will be transferred to Aberdeen. Therefore there is no saving of depreciation here in that depreciation will continue to run on those assets though the P&L A/c of the SCS. On questioning the SCS further it transpired that the SCS are claiming that depreciation in the report relates to the Stonehaven Court Building itself! This is not a depreciation but a revaluation of the asset and should not flow through the P&L and cannot be claimed as a “saving”. It is a “Capital” readjustment.

3) Back-Logged Maintenance £383k

The SCS provided me with a detailed spread sheet showing how this figure was reached. The net figure is £290k. The difference between that and the published figure in the report is made up of 10% “fees” £29k and 20% VAT £63.8K. The following quote from the SCS to substantiate these costs are at odds on how, they are handling “depreciation savings” quoted in their report and examined above ….

“I should perhaps explain that backlog maintenance is funded from available capital, not revenue. It is for major replacement works which increase the overall value of the SCS assets. The fees cover Project Management costs and design team fees by our Facilities Management contractor; these are in line with the contractual rates.
We are liable for VAT. Where any of these costs are not incurred (for example by closure of a building), they are a saving.”

Of the net figure of £290k only some £50k could, in my opinion, be truly attributed to back logged maintenance. Indeed it could be argued that even some of this would not be saved as it would still occur e.g., annual electrical inspections etc when the Court closes.

The remaining bulk of the back logged maintenance figure is substantially for two items: completely replacing the Court’s roof (£96k) and replacing the entire heating system (£100k)…. the remainder is allocated to redecoration inside and out (£44k).

All of this £240k has curiously have been included in the budget for 2014/15. In my opinion this is not back logged maintenance but investment in the building and would need to be done, if indeed it requires to be done, when the Court closes. This is in my mind strengthen by the assumptions made by the SCS in the report on selling-off the Stonehaven Court (and other Estate Assets as outlined in their report) in order to utilise the one-off windfall(s) to implement refurbishing and building accommodations required elsewhere in the SCS Estate.

However, The Clerk to the Stonehaven Court was unaware of the need for the imminent replacing of the roof but accepted that the heating did at times require attention but not completely replacing.

Moreover, given the further assumption made by the SCS to enjoy the “wind-fall” asap from the potential resell of the Court, no potential buyer is going to look favourably at a building that requires the complete roof and heating system replaced at least not quickly and not at the price the SCS needs to realise from the sale of Stonehaven Court to help refurbish and rebuild/extend other parts of its Estate!

Therefore, on both counts if these measures of totally replacing the roof and heating system are truly necessary then they would still need to done if the Court is open or closed and therefore no saving accrues.

4) Capacity, Efficiency and Costs of Aberdeen Court Absorbing Stonehaven’s Case-Load

The capacity dangers of Aberdeen Court absorbing Stonehaven business has been made by others and demonstrates how in risk management terms that the SCS is embarking on a high risk strategy where the capacity of the Court would be stretched to 97% of its ability. The SCS own figures in their report indicate the capacity of the Aberdeen Court is 2250 “sitting days” and currently runs at 84% of capacity, or 1,892 days. The closure of Stonehaven Court and the amalgamation of its business would mean Aberdeen running at 97% of capacity (2185 days). However, even this data has been challenged by the Sherriff’s Association

Indeed even without the additional work load Aberdeen is recognised within the SCS report as being inefficient and having unacceptable time delays in its case work. The SCS report acknowledges the efficiency of case through put at Stonehaven and further acknowledges that Aberdeen Court is half as efficient at getting through its
business with its case through put at 20 weeks as opposed to Stonehaven's 10 weeks. Therefore the SCS recognising the danger that the additional case load from Stonehaven could reduce social justice not improve it allocated, in their report, £450k to provide better facilities.

On challenging this figure of £450k the reply from the SCS is very interesting and is "new" information ..... it now appears that the SCS have decided that Aberdeen Court needs no additional accommodation and therefore no allocation of £450k! This only heightens the high risk management approach by the SCS and potential further bottle neck of case load efficiency if Stonehaven Court business is transferred to Aberdeen.

"We added a number of new courtrooms to the SCS estate during an earlier courts’ unification project where we amalgamated with district Courts. We know from that experience that the average cost of adding a new court room is approximately £450k. This figure has been used as an indicator for budgeting for extra courtroom accommodation, if and where required. However, our revised planning assumption is that Stonehaven business can be absorbed without an extra courtroom being required in Aberdeen. The £450K cost is therefore no longer an issue for the purposes of relocating Stonehaven business”.

5) Staffing

The assumption made by the SCS and contained within their report is no compulsory redundancies....however, while Executive Officers/Clerks etc have a requirement in their COP to move form Court to Court wherever it might be “sitting” this is not the case for the majority of the administrative staff who may be on part time hours etc. Administration staff might find it difficult, time and travel wearing and uneconomic to move and therefore be forced to quit. To my mind a compulsory redundancy by another name!

6) Other Costs & Assumptions Not Taken A/c of

There are no transfer costs contained in the SCS report attributed to the transfer of Stonehaven Court so the assumption appeared to be that it closed on the Friday and re-opened on the following Monday in Aberdeen! The SCS have now confirmed to me that there would be a one of cost and the move would indeed be over the weekend!

“Computers, furniture and similar assets will be relocated to Aberdeen. We have made a provision of £10k for removal/relocation costs. In terms of moving, it would likely be over a weekend.”

Having spoken with Aberdeenshire Rating Department and the Deputy Valuation Assessor for Grampian there are implications with closure of Stonehaven Court and others within the SCS report on how business rates and rateable value would be calculated given the intention of the SCS to resell and “change the use”.

4
The current rates are based on a special rateable valuation calculation and hence the rates applicable to it being a Court ... a "change of use" would trigger a different calculation and the business rates due would be significantly more.

This will have an impact on the “attractiveness” on resale of Court buildings.

SCS have made no provision on the costs associated for planning permission and “change of use” in order for them to market the sale of the Court building indeed there are no costs of market indicated at all.
Submission to Scottish Court Service Consultation – September 2012
We wish to respond to the above consultation and to the proposal that the sheriff court and justice of the peace court, currently held in Haddington, should cease and be transferred to Edinburgh. We note that proposal 6 relates not only to Haddington but also to courts at Alloa, Cupar, Dingwall, Arbroath and Stonehaven, the common theme being that the courts in all these towns are in proximity to courts in larger, nearby, towns.

In responding to questions 19, 20 and 21 (below) we would like to make a number of points before addressing these questions directly.

A court has existed in Haddington since mediaeval times. Originally accommodated in the Tolbooth opposite Newton Port, the court moved to Haddington Town House on its completion in 1742. Thereafter the court moved again to County Buildings on completion in 1832.

The street in which the County Buildings are located was formerly known as King Street but the name was changed to Court Street following the establishing of the court there.

There is therefore a long tradition of a court at the centre of the County Town of East Lothian. It is part of the history, identity and polity of the County and makes an important contribution to the civic status of the Royal Burgh.

The existence of a Court as part of a grouping of civic functions is recognised as a strength in the consultation and this arrangement exists in Haddington. This has been acknowledged in the recent Haddington Town Centre Vision prepared by consultants and published in July 2012. This report defines the Civic area of the Town containing the Courts, the local government administration including court related services, the police station, post office, churches and banks. There are good pedestrian linkages to nearby car parking.

These facilities, including the courts, draw people in from the town and surrounding area and they not only use the services within the Civic area, but also the nearby town centre to shop or have a meal and refreshment thereby providing support for Haddington Town Centre which, as with centres elsewhere, is under pressure. It is appropriate to point out that Government is currently promoting a study with a view to introducing a set of regeneration initiatives designed to bolster the declining fortunes of town centres throughout Scotland.

We believe that the closure of the court in Haddington would have serious consequences and would run counter to the Government’s much publicised initiative regarding town centres.

While the consultation makes it clear that the substantial cutbacks in revenue and capital budgets mean that there is no choice but “to find ways to deliver our services at lower annual cost” this consultation would be of limited value if centrally imposed financial constraints were to be the only or over-riding consideration.
The report acknowledges “that one size does not fit all” (2.43) and we believe that the above factors should be weighed against the need to make financial savings. Our feeling is that the impact of court closure in Haddington would be profound and would be felt in a number of ways which would be serious, albeit difficult to quantify.

**Question 19** – do you agree with proposals to shut the courts at Haddington and transfer the court business to Edinburgh?

No.

**Question 20** – say why you disagree with the closure of these courts and how you would prefer the courts to operate in practice.

We have no view on how the courts could be better operated. We assume that they are operated effectively at the moment and that the accommodation in County Buildings is fit for purpose. Our understanding is that the possibility of closure as an option is based on financial considerations rather than any implied criticism of the current service. The well established principle that justice is best delivered locally is a matter outwith our normal remit but is part of our response based upon our understanding of the civic status of the Royal Burgh.

We feel that other costs, identified in the above paragraphs, must be taken into account before any decision is taken.

**Question 21** – how would the closure of any of these courts affect you?

HADAS is concerned with the future welfare and prosperity of Haddington. That is why we took the lead in promoting the Vision project referred to above. Our view is that the decision to close the courts here would impact in ways which are difficult to quantify but which are nonetheless very important.
Email 1

Dear Mr Mills-Bishop

I refer to your email of 1 May 2013 and now provide the information requested.

**Depreciation**
We are depreciating the value of the building; the value is made up of different elements (Substructure, Fixtures and fittings, Superstructure) as followed by Royal Institute of Chartered Surveyors. We depreciate over the life of each element of the asset.

**Recurring cost figure**
SCS obtained figures from its Facilities Management provider on costs to keep the building wind and watertight. This includes background heating for frost protection and some ad hoc security arrangements.

**Water**
Scottish Water Business Stream is the SCS supplier. Our Water and Sewage costs are approximately £1.9K per annum. It is unlikely that we would arrange for water to be cut off in the event of closure but we would need to re-assess the position nearer the time of closure, should that occur.

**Rates**
The building is Grade ‘B’ listed; as such we would not be liable for non-domestic rates when building is vacated. We have, therefore, assumed full saving on the rates.

**One-off costs**
Computers, furniture and similar assets will be relocated to Aberdeen. We have made a provision of £10k for removal/relocation costs. In terms of moving, it would likely be over a weekend.

**Building extension in Aberdeen Court**
We added a number of new courtrooms to the SCS estate during an earlier courts’ unification project where we amalgamated with district Courts. We know from that experience that the average cost of adding a new court room is approximately £450k. This figure has been used as an indicator for budgeting for extra courtroom accommodation, if and where required. However, our revised planning assumption is that Stonehaven business can be absorbed without an extra courtroom being required in Aberdeen. The £450K cost is therefore no longer an issue for the purposes of relocating Stonehaven business.

**Aberdeen Capacity**
The SCS position remains as explained in the consultation response document; that is, that the business can be accommodated with only a marginal revision of the
Aberdeen court programme, and as such there is no difficulty in accommodating Stonehaven business within the Sheriff Court at Aberdeen.

Costs of additional accommodation relying on the sale of Stonehaven Court
Additional accommodation costs will not be directly funded from any receipt of a sale. Funds from any court sale will, as detailed in the consultation paper, be used to improve remaining court services.

**Back-log Maintenance**
I should perhaps explain that backlog maintenance is funded from available capital, not revenue. It is for major replacement works which increase the overall value of the SCS assets. The fees cover Project Management costs and design team fees by our Facilities Management contractor; these are in line with the contractual rates. We are liable for VAT. Where any of these costs are not incurred (for example by closure of a building), they are a saving.

**Stafting issues**
In Stonehaven, some SCS staff are on a mobile grade, others are not. However, I should make it clear that even where any SCS staff are classed as not being on a mobile grade, SCS HR policies require them to transfer to courts within reasonable daily travel – generally taken to be 1.25 hours additional travel time. Individual staffing cases within SCS are of course confidential and therefore cannot be discussed. Consultation with the Public and Commercial Services Union about the terms of potential transfers arising out of possible court closures have taken place, and agreement has been reached on the support being made available to staff.

I hope this is of assistance

**Email 2**

Dear Mr Mills- Bishop:

I refer to your e-mail of 23 April 2013 to [redacted] and now provide additional information sought.

**Depreciation**
Government bodies have to account for depreciation as a cost, so sufficient budget is needed to cover this cost; if SCS depreciation costs fall there is a saving. The depreciation savings all relate to the Stonehaven building; the transfer of business has no impact on that.

**Backlog maintenance**
As with all SCS estate, Stonehaven backlog costs are based on the BMI Specialist Report: Legislation Non-Compliance and Condition Appraisal Systems published by the Royal Institute of Chartered Surveyors (RICS). This appraisal identifies the costs and risk priority of any works required to return the estate to RICS condition B (satisfactory condition). SCS has been investing in the region of £6-8 million per annum over its whole estate to tackle the highest priority issues. Should a court close, SCS saves on the investment necessary to address that particular backlog maintenance issue.
Stonehaven backlog maintenance issues  
See the spreadsheet attached. [Annexe B]

Staffing Issues  
There is sufficient accommodation in Aberdeen to accommodate Stonehaven staff.

Factors affecting valuation of Stonehaven  
The SCS Property Department has an Estate Management Property Consultancy contract. The present provider has held this contract for a number of years and is very familiar with the Scottish Property market and in particular the flooding problems in Stonehaven. However, I should make it clear that SCS does not own the Police Station part of the building; the only use of that part of the building by SCS is a sharing arrangement in respect of the cells whereby the court uses them for court custody purposes when required.

I hope this is of assistance.

Email 3  
Good afternoon Mr Mills-Bishop and thank you for your call on Friday afternoon about information in the consultation document.

The primary sources of the information used in page 78 are:

• £42k building running costs – these are the actual costs incurred by SCS as building owner and operator each year to heat, light and maintain the building and generally keep it fit for purpose. If closed, this cost will drop to £14k annually until disposal of the building.

• £28k depreciation – represents standard accounting charge based on independent valuation of the building.

• The backlog maintenance figure was provided by independent property experts based on survey of our estate.
## Stonehaven backlog maintenance spreadsheet

<table>
<thead>
<tr>
<th>Property</th>
<th>Zone Name</th>
<th>Summary</th>
<th>Description</th>
<th>Unit</th>
<th>Costs</th>
<th>Year</th>
<th>Comments</th>
<th>Remedial Action</th>
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<td>Whole Block</td>
<td>17 Electrical System</td>
<td>17.99 Other</td>
<td>No</td>
<td>£24,000</td>
<td>2011</td>
<td>5 Year electrical inspection overdue (March 2010)</td>
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<td>Minor repair required to wall at front entrance - re-bed stone copes on pier</td>
<td>Overhaul/repair</td>
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<td>Minor repair required (if planners allow) to stone baluster to prevent deterioration</td>
<td>Overhaul/repair</td>
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<td>Stonehaven SC</td>
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<td>06 External Grounds &amp; Gardens</td>
<td>06.02 Walls, Fencing &amp; Gates</td>
<td>No</td>
<td>£1,000</td>
<td>2012</td>
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<td>Whole Block</td>
<td>02 External Fabric</td>
<td>02.01 External Walls &amp; Finishes</td>
<td>No</td>
<td>£1,000</td>
<td>2015</td>
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<td>Stonehaven SC</td>
<td>Whole Block</td>
<td>02 External Fabric</td>
<td>02.05 External Decoration</td>
<td>No</td>
<td>£5,000</td>
<td>2014</td>
<td></td>
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<td>Whole Block</td>
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<td>03.04 Rainwater Goods</td>
<td>No</td>
<td>£2,000</td>
<td>2011</td>
<td></td>
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<td>Stonehaven SC</td>
<td>Whole Block</td>
<td>03 Roof</td>
<td>03.01 Coverings - Pitched</td>
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<td>£96,000</td>
<td>2014</td>
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<td>Following other repairs. Externally, finishes in toilets at west end of 1st floor will require renewal</td>
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<td>04 Internal Fabric</td>
<td>04.03 Ceilings Finishes</td>
<td>No</td>
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<td>2011</td>
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<td>Renew internal decorations</td>
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<td>04.06 Internal Decoration</td>
<td>No</td>
<td>£20,000</td>
<td>2014</td>
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<td>Hamworthy press unit with expansion vessel nearing end of life</td>
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<td>09 Boilers &amp; Calorifiers</td>
<td>09.02 Pressurisation Plant</td>
<td>No</td>
<td>£10,000</td>
<td>2015</td>
<td>Replace old cast iron single pipe heating system with modern twin pipe together with radiators</td>
<td>Replace</td>
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<td>Replace</td>
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<td>11 Heating Systems</td>
<td>11.01 Distribution Pipework</td>
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<td>£100,000</td>
<td>2015</td>
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<td>Not well insulated outside plantroom. Upgrade with new heating</td>
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<td>11.05 Insulation</td>
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<td>14.01 Water Storage &amp; Header Tanks</td>
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<td>01 Pressure Systems Safety</td>
<td>01.01 Written Scheme of Examination</td>
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<td>1998</td>
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<tr>
<td>Stonehaven SC</td>
<td>Whole Block</td>
<td>05 Workplace (Health, Safety &amp;</td>
<td>05.09 Safety Glazing</td>
<td>No</td>
<td>£2,000</td>
<td>2010</td>
<td></td>
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<td></td>
<td></td>
<td>Welfare) Regulations 1992</td>
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</tbody>
</table>

**Remedial Action:**
- Inspect
- Overhaul/repair
- Redecorate
- Replace
- Further investigation required
- Upgrade
- Replace
- Inspect
- Replace
- Upgrade
<table>
<thead>
<tr>
<th>Property</th>
<th>Zone Name</th>
<th>Summary</th>
<th>Description</th>
<th>Unit</th>
<th>Costs</th>
<th>Year</th>
<th>Comments</th>
<th>Remedial Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stonehaven SC</td>
<td>Whole Block</td>
<td>11 Legionella (Control Of) - Incorporating HSE Guidance Document L8</td>
<td>11.08 HW Outlet Temperature</td>
<td>No</td>
<td>£1,000</td>
<td>2010</td>
<td>Monthly hot water temperatures monitored and below 50°C. Increase to over within 1 minute</td>
<td>Upgrade</td>
</tr>
<tr>
<td>Stonehaven SC</td>
<td>Whole Block</td>
<td>13 Emergency Lighting &amp; Means of Escape</td>
<td>13.01 Containment</td>
<td>No</td>
<td>£10,000</td>
<td>2010</td>
<td>Suitable seal all service penetration through fire resisting structures</td>
<td>Overhaul / repair</td>
</tr>
<tr>
<td>Stonehaven SC</td>
<td>Whole Block</td>
<td>14 Gas Safety (Inst &amp; Use) Regulations 1998</td>
<td>14.99 Other</td>
<td>No</td>
<td>£4,000</td>
<td>2010</td>
<td>Paint gas pipe yellow in building to meter. New gas meter with diagram in meter cupboard</td>
<td>Overhaul / repair</td>
</tr>
<tr>
<td>Stonehaven SC</td>
<td>Whole Block</td>
<td>15 Disability Discrimination Act (1995)</td>
<td>15.01 Car Parking</td>
<td>No</td>
<td>£2,000</td>
<td>2010</td>
<td>Allow for carrying out a disabled access audit on the premises. Cost shown covers report on all headings</td>
<td>Further Investigation Required</td>
</tr>
</tbody>
</table>

**Base Cost of identified sub total** | £290,000 |
---|---|
10% fees | £29,000 |
sub total | £319,000 |
20% VAT | £63,800 |
sub total | £382,800 |

**Backlog Maintenance** | £382,800 |