



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **BIR/OOCN/OC9/2016/0036**

Property : **8 Paradise Court, Paradise Lane,
Birmingham B28 0DT**

Applicant : **Ms T M Wallace**

Representative : **Mr A Brunt of Anthony Brunt
and Company**

Respondent : **Brickfield Properties Ltd**

Representative : **Wallace LLP**

Type of Application : **Application under Sections 91(2)(d)
and 60 of the Leasehold Reform,
Housing and Urban Development Act
1993**

Tribunal Members : **Mr R T Brown FRICS
Mr P J Hawksworth**

**Date and venue of
Determination** : **Paper Determination made on
14th February 2017 City Centre
Tower, Hill Street, Birmingham B5
4UU**

Date of Decision : **14 March 2017**

DECISION

1. The Tribunal determines that the reasonable legal costs of the Respondent in dealing with the matters in section 60 of the Act are £1225.00 plus VAT (if applicable) and office copy entries of £39.00 and courier fees of £12.13.

Reasons for Decision

Introduction

2. This is a matter that deals with an application under section 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993 for the determination of the freeholder's reasonable legal costs only.
3. The Tribunal received the Application on 24th October 2016.
4. Directions were issued by the Tribunal on 6th December 2016 and were amended on 14th December requiring the Respondents to submit their case for costs by the 26th January 2017 and the Applicants reply by the 10th February 2017.
5. The parties are agreed that the Tribunal may determine the matters in issue on the papers submitted without the need for an oral hearing.
6. Submissions were exchanged by the parties and received by the Tribunal in accordance with the Tribunal's Directions..
7. The Tribunal understands that the terms of the acquisition, other than legal costs, have been agreed.
8. The Tribunal considered the issue on the papers before it on 14th February 2107.

The Law

9. The relevant law is set out below:

***Leasehold Reform, Housing and Urban Development Act 1993
Section 60, Costs incurred in connection with new lease to be paid by tenant***

(1) Where a notice is given under section 42, then (subject to the provisions of this section) the tenant by whom it is given shall be liable, to the extent that they have been incurred by any relevant person in pursuance of the notice, for the reasonable costs of and incidental to any of the following matters, namely–

(a) any investigation reasonably undertaken of the tenant's right to a new lease;

(b) any valuation of the tenant's flat obtained for the purpose of fixing the premium or any other amount payable by virtue of

Schedule 13 in connection with the grant of a new lease under section 56;

(c) the grant of a new lease under that section;

but 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.

(2) For the purposes of subsection (1) any costs incurred by a relevant person in respect of professional services rendered by any person shall only be regarded as reasonable if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs.

(3) Where by virtue of any provision of this Chapter the tenant's notice ceases to have effect, or is deemed to have been withdrawn, at any time, then (subject to subsection (4)) the tenant's liability under this section for costs incurred by any person shall be a liability for costs incurred by him down to that time.

(4) A tenant shall not be liable for any costs under this section if the tenant's notice ceases to have effect by virtue of section 47(1) or 55(2).

(5) A tenant shall not be liable under this section for any costs which a party to any proceedings under this Chapter before the appropriate tribunal incurs in connection with the proceedings.

(6) In this section "relevant person", in relation to a claim by a tenant under this Chapter, means the landlord for the purposes of this Chapter, any other landlord (as defined by section 40(4)) or any third party to the tenant's lease.

Respondent's Submissions

10. A Statement together with supporting evidence was forwarded to the Tribunal by an unidentified employee of Wallace LLP.
11. The Respondent via Wallace Co LLP produced a Costs Schedule detailing the work undertaken and the costs at each stage. The total to date amounts to £2,410.00 plus VAT and £39.00 Land Registry Fees and £12.13 Couriers fees plus VAT. For the reasons set out in paragraph 23 below, the Respondent stated that its figure was not a final figure.
12. The Respondent says the basis of charging under section 60:

'(a) Any investigation reasonably undertaken of the Tenant's right to ne w lease

(b) Any valuation of the tenant's flat obtained for the purpose of fixing the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of a new lease under section 56;

(c) the grant of new lease under that section.....'

13. The basis of charging is by time spent by the relevant fee earner. The two Partners involved are both Grade A fee earners at £450.00 per hour. A Paralegal is charged at £200.00 per hour.

14. Wallace have been acting for Brickfield for a number of years dealing with enfranchisement matters. It is reasonable that a fee earner with the relevant experience should have conduct of the matter. The Tribunal is asked to consider in connection with the reasonableness of costs, charge out rates and use of a Partner are set out in the following decisions: *Daejan Properties Ltd v Steven Twinn* LON/00BK/2007/0026 and *Andrew Allen v Daejan Properties Ltd* SB/LON/00AH/OLR/2009/0343.

15. The Tribunal is referred to the following case where similar amounts were awarded:

M Rubin v Faroncell Ltd LON/00AM/OC9/2016/0072

Charulatta Bipin Ravani v Global Property Consulting
MR/LON/00AQ/OC9/2015/0402

Halliard Property Co Ltd v Walter Global Holdings Ltd
LON/00AK/OC9/2015/0252

16. The Respondent submits that it is necessary for the relevantly experienced fee earner to deal with the following:

- (a) Consider the tenant's entitlement to the grant of a new lease and the validity of the Notice of Claim served;
- (b) To communicate with the client to obtain the relevant information;
- (c) To carry out and consider Land Registry searches;
- (d) To correspond with the tenant's solicitors;
- (e) To instruct and correspond with the valuer;
- (f) To consider the valuation and take client's instructions;
- (g) To prepare and serve the Counter Notice;
- (h) Prepare and agree form of new lease

17. The Tribunal are asked to consider in connection with the reasonableness of costs the case of *Daejan Investment Ltd v Parkside 78 Ltd* LON/ENF/1005/03 dated 4th May 2004.

18. The costs claimed are costs incurred by Brickfield Properties Ltd in accordance with Section 60(2) being the costs Brickfield would have incurred had it been personally liable.

19. The provisions of the Act are complex in nature and accordingly the involvement of Partner (who is Brickfield's choice of Solicitor) was required to ensure that the provisions of the Act are complied with and to supervise the Paralegal.
20. The Respondent submits that the principles the Tribunal should consider in connection with the reasonableness of costs are set out in *Daejan v Parkside* (above) namely:
 - (a) that leasehold enfranchisement under the Act is a form of compulsory purchase;
 - (b) The Act makes provision for the recovery of the Landlords' 'reasonable costs';
 - (c) The statutory test of reasonableness did not turn on what the tenant may reasonably expect to pay and accordingly the Landlord was not required to find the cheapest (or cheaper) solicitors but simply give the instructions it would give if it were bearing the costs itself ('the reasonable expectation test').
21. The charge out rates of the Respondents solicitors have been approved by the Tribunal in a number of cases and it is therefore submitted that they fall within the 'reasonable expectation test'.
22. The Tribunal's jurisdiction in this matter is only held once the costs have been incurred (section 60 (1)).
23. In this case, the Respondent submitted, all the terms of acquisition have not yet been agreed and that basis only an estimate of the costs incurred can be provided until such times as the terms of acquisition are agreed.
24. The Respondent reserves the right to make further submissions regarding the estimated costs as and when the terms are agreed.

Applicant's Submissions

25. Mr Brunt for the Applicant says he has acted in other cases where he served the section 42 Notice.
26. Wallace LLP as the solicitor of choice of the Respondent have great knowledge in such matters and should be able to deal with these cases in a most efficient manner.
27. In Mr Brunt's experience Wallace have a default form of new lease.
28. Mr Brunt says that that when quoting for new work he has to provide a fixed fee and is confident he would win little business if he quoted an hourly rate.

29. Where a firm is expert in a matter it can accurately determine the cost of a job by reference to work previously undertaken.
30. It should be remembered that whatever the fee sought it must be that which the client would not balk at having to pay.
31. To continue to charge an hourly rate should cease. In 2012 Lord Neuberger said *it 'at best leads to inefficient practices, at worst it rewards and incentives inefficiency'* further it *'crucially confuses cost with value'*.
32. In Mr Brunt's experience Wallace are one of the most expensive firms which is probably why their charges have been challenged in other cases:

7 Paradise Ct - BIR.00CN/OLP/2015/0016 - £978.00 awarded.

13 Thames Ct - BIR/00CN/OC9/2013/0006 - £682.00 awarded.

1 Paradise Ct - BIR/00CN/OC9/2016/0014 - £1,175.00 awarded.

33. Given the depth of their knowledge there is no reason why Wallace should not be able to instantly provide a fee quote. It should not take more than four hours and would involve input from the entire team not just a partner.
34. Given the recent determination at 1 Paradise Court Mr Brunt submits the same amount should apply in this case (£1175.00 plus VAT and disbursements).
35. As to Wallace's Schedule Mr Brunt comments:

20th April 2016: 6 units of partner time to check a single side of A4 is excessive. Say 3 units of an assistant's time.

21st April 2016: There is duplication here as office copy entries were provided by Mr Brunt to Wallace.

22nd April 2016: £45.00 to email the valuer. A simple phone call would suffice.

11th May 2016: Why does the solicitor need to consider the valuation? Preparation of Section 45 Notice does not require a partner, not do they need to draft a letter to the client or the valuer. The S45 Notice could easily be sent by email. They did not write to the lessee's solicitor on 11th May and 23rd June 2016.

12th May 2016. The draft lease is a joke. It is the standard template-push the button and there it is. No more than 3 units of an assistants' time.

Letters of the 13th, 18th May, 3rd June, 26th July, 1st November, 5th, 6th, 8th, and 22nd December are not admitted.

3rd January 2017 Not admitted save for the preparation of the engrossments £35.00.

TBA: Not admitted. No need for further letters or emails.

The Tribunal's Deliberations

36. The Tribunal has considered all of the written evidence submitted by the parties and has made its determination by firstly considering which services would be recoverable under Section 60, secondly by considering the time that should reasonably be taken to deal with those matters and finally the reasonable charge out rate for the work carried out.
37. This decision is made on paper as neither party requested a hearing and thus, the Tribunal did not have the opportunity of hearing cross examination of the parties evidence. In the light of this, the Tribunal must draw such conclusions as it can from the papers submitted and apply to those conclusions its knowledge and experience of these matters as an expert tribunal.
38. Wallace and Co claim to have great experience both of the Act and of their client's assets and the Tribunal find that this experience should lead them to be able to deal with this matter simply and efficiently and therefore at minimal cost.
39. The Tribunal is uncomfortable with the fact that the individual employee of Wallace is unwilling (or not permitted by their employer) to divulge their identity to the Tribunal. It places an element of doubt in the Tribunal's mind as to the voracity of Wallace's entire statement.
40. The Tribunal note the Respondent reserves the right to ask for these costs to be reconsidered at a later date when the matter is finally completed. The Tribunal considers that it has jurisdiction to consider this matter in full despite the fact that completion has not yet taken place. The Tribunal's view is that once terms have been agreed the costs can be determined.
41. The Tribunal has little sympathy with the Respondent as they have appointed highly experienced solicitors who should be capable of accurately estimating the total costs of a simple lease renewal. By their own admission Wallace are highly experienced in these matters and despite what they say about complexity the 1993 Act has now been in place for 24 years and there are relatively few areas that have not been clarified by the Court and Tribunal process. In this case there is no evidence of any specific complexity arising out of the process. Accordingly the Tribunal finds that it is able to determine the costs payable by the Applicant on a full and final basis. The Tribunal does so in this decision and it will not entertain any further applications as to costs in this case.

42. In so far as it may be relevant the Tribunal was not told the amount of the premium agreed; however there is nothing to suggest it is such a large amount which would of itself justify additional input at partner level.
43. It is apparent to this Tribunal from the previous cases at this development and the claimed experience of the Respondents solicitors that:
 - (a) Input at Partner level needs to be no more than supervisory.
 - (b) The majority of the work can be undertaken by an assistant solicitor
 - (c) The administrative side is straightforward and can be undertaken by a paralegal.
44. The Tribunal carefully considered the time schedule put forward by Wallace LLP but finds as a matter of fact that this approach is unnecessarily complex for a simple matter of this nature. The costing clerk at Wallace LLP should, the Tribunal finds, be perfectly capable of giving a fixed price quote. The Tribunal is sceptical that the Respondent would, if it had to pay the costs itself, accept a 'time cost' approach and considers that it would seek to negotiate a 'fixed fee' rate for all its transactions with its preferred solicitor. Noting WallaceLLP's experience in these matters the Tribunal finds that the work could be undertaken in no more than 4 hours

Items recoverable under Section 60

45. The wording of Section 60 of the Act is clear as to the relevant services. It includes '*any investigation reasonably undertaken of the tenant's right to a new lease*' and '*the grant of a new lease*' together with reasonable costs which may be '*incidental to*' to these matters.
46. The Tribunal determines that instructing a valuer is, in principle, a recoverable cost for the following reasons. Section 60 (1)(b) entitles a landlord to recover from the enfranchising tenant the reasonable costs "of and incidental to any valuation of the tenant's flat obtained for the purpose of fixing the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of a new lease under section 56"
47. In the Tribunal's view the task of instructing a valuer, although in most cases entirely routine with instructions in standard form issued, is nevertheless, incidental to a valuation since without the instructions, no valuation will be undertaken and issued. As such, therefore, the costs of instruction must be recoverable. However, in an entirely straightforward case that task is purely administrative and the cost of it should be absorbed in a solicitor's overall costs if the solicitor is instructed to issue such instructions – it should not be a separate chargeable item. The position would be different if non-standard instructions had to be issued by the solicitor to the valuer concerned. So, the Tribunal will not allow a

separate chargeable item for instructing the valuer in a straightforward simple case such as the present one.

48. Applying the logic set out above, the task of considering the valuation upon its receipt is also clearly incidental to that valuation but where a solicitor instructs the valuer and considers the subsequent valuation, that task cannot be categorised as purely administrative. In effect, the client has delegated to his solicitor the task of ensuring that (a) the valuer has understood and applied his instructions and (b) that the valuation is in accordance with the principles laid down in the Act. Such a consideration, is not, in the Tribunal's view purely administrative but should be the subject of a separate charge. A chargeable time element of 6 minutes to 12 minutes is appropriate, the Tribunal considers, depending on the length and complexity of the valuation concerned. In this case, 6 minutes is deemed appropriate.

Time taken

49. The Tribunal does not consider, on the evidence presented, that this case is particularly complex and both parties acknowledge that a significant number of transactions had taken place on this estate previously, which undoubtedly would have an effect on the time spent.
50. After careful consideration of the papers submitted (and the evidence contained therein) the Tribunal concluded that the work involved could have reasonably been completed in four hours with input as follows:

Partner - 1/2 hour
Assistant Solicitor 3 hours
Paralegal 1/2 hour

Chargeable Rate

51. The Tribunal considered in detail the submissions by both parties as to the charge out rate. This Tribunal is not bound by previous decisions of the First-tier Tribunal generally and, although it has regard to the Civil Procedure Rules, it is not bound by them but by The Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rules 2013.
52. The Tribunal considered the wording in section 60 (2) of the Act which clearly states that '*...any costs incurred by a relevant person in respect of professional services rendered by any person shall only be regarded as reasonable if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for such costs*'.

53. The Tribunal considers that this phrase does not, as the Respondent's Representatives imply, state that the Applicant should be responsible for any costs that a landlord's solicitor should charge so long as evidence is produced that the landlord would pay the same, but, in fact, the inclusion by Parliament of the words '*only*' sets this as the upper limit as to the amount of costs that would be payable.
54. In addition, the repetition of the reasonable element in relation to '*costs in respect of such services*' again requires the Tribunal to not simply accept the Respondent's agreement to pay, but requires the Tribunal to consider whether such costs (even if agreed) were reasonable. If this were not the case, the provisions in respect of the Tribunal's jurisdiction under section 91 of the Act to determine the costs would not have been required.
55. The work in this case has not been identified as containing any particularly complex matter or disputed point of law. The Tribunal accepts that the landlord is entitled to appoint whichever solicitor it prefers to undertake this work but it does not, however, accept that just because a landlord chooses to appoint a highly qualified (or over qualified) solicitor to undertake the work that the Applicant should automatically be responsible for the extra cost.
56. The Senior Courts Costs Office "Guide to Summary Assessment of Costs" sets out the hourly rates used by Courts for assessing costs. Those tables thus, provide some guidance to Tribunals. The rates, which date from 2010 and were reviewed in 2013/24 (which resulted in an indefinite freeze for April 2015) set out the charging rates awarded to solicitors acting in the Courts. It is however clear to this Tribunal that the freeze on such rates has more to do with government policy than the reality of costs in 2016. Moreover, as stated above, the rates within the tables provide guidance to Tribunals but are not binding on them. With this in mind the Tribunal concluded that the following rates were reasonable for a firm based in the London area:

Partner £450.00
Assistant £300.00
Paralegal £200.00

Summary

57. The Tribunal's conclusions above find that the work should have been capable of being completed in 4 hours based on 1/2 of Partner time, 3 hours of Assistant time and 1/2 hour Paralegal. In addition recoverable expenses include Office copy entries and courier fess. Plus VAT if applicable. Thus:

Partner £225.00
Assistant £900.00
Paralegal £100.00

Total £1225.00 plus Office copy entries £39.00 and courier fees £12.13.

58. If the Respondent is registered for VAT purposes, it will be able to recover the VAT on those fees because those services will have been supplied to the Respondent, not the Applicants. In such circumstances VAT will not be payable by the Applicants.

Appeal Provisions

59. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).
60. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
61. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Robert Brown Chairman