



**First-tier Tribunal  
Property Chamber  
(Residential Property)**

**Case reference** : **JM/LON/00BA/OC9/2022/0106**

**Property** : **102a Kingston Road,  
Wimbledon,  
London SW19 1LX**

**Applicant** : **Anthony George Butler**

**Respondent** : **Nosson Spitzer**

**Type of Application** : **To determine the costs payable on  
lease extension (Section 60 of the  
Leasehold Reform and Urban  
Development Act 1993 (“the 1993 Act”))**

**Date of Application** : **26<sup>th</sup> May 2022**

**The Tribunal** : **Judge Edgington**

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**DECISION**

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1. The reasonable legal costs of the Respondent payable by the Applicant pursuant to Section 60 of the 1993 Act are £3,109.80 including VAT and disbursements.

**Reasons**

**Introduction**

2. This dispute arises from the service of an Initial Notice dated 15<sup>th</sup> March 2021 seeking a lease extension of the property by a qualifying tenant. In these circumstances there is a liability on the Applicant to pay the Respondent’s reasonable legal and valuation costs. The valuation fee appears to have been agreed and this decision will therefore only deal with legal fees.
3. As all matters save for the legal costs were agreed, the solicitors acting for the parties agreed to that matter being dealt with by the Tribunal considering the papers only, to include any representations from the parties.
4. Bundles of documents have been lodged including many case reports, several of which are First-tier Tribunal cases which are not, of course, binding on this Tribunal. It should be said that the claim is for

£3,808.80 in costs and the tenant's solicitors seem to be indicating that a figure of £1,600.00 is fair and reasonable. The costs involved in making this application and preparing the substantial submissions etc. could be described as being disproportionate, quite apart from the hours of time that the Tribunal itself has had to spend going through the substantial bundle of nearly 200 pages plus a copy of the application and the Tribunal's directions.

### **The Law**

5. It is accepted by the parties that the Initial Notice was served and therefore Section 60 of the 1993 Act is engaged. For the reasons set out below, the Applicant therefore has to pay the Respondent's reasonable costs of and incidental to:-
  - (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;*  
*(Section 60(1) of the 1993 Act)*
8. What is sometimes known as the 'indemnity principle' applies i.e. the Respondent is not able to recover any more than it would have to pay his own solicitors or valuer in circumstances where there was no liability on anyone else to pay (Section 60(2)). Another way of putting this is to say that any doubt is resolved in the receiving party's favour rather than the paying party.

### **Legal fees**

9. The Respondent has instructed solicitors at 77 Baker Street, London W1U 6RF. As the property is in W19, the Tribunal accepted that it was reasonable to instruct solicitors in Baker Street. The statement of costs filed sets out the names of no less than 4 fee earners i.e. a senior partner (Grade A) charging £400 per hour, 2 partners (Grade B) charging £350 per hour and a solicitor (Grade C) charging £300 per hour. The total claimed is £3,808.80 including VAT and disbursements and also allowing what has become known as the *Wisbey* 'discount' of £299.00.
10. The objections are many and varied. As has been said, many previous case reports are relied upon but it is concerning to see how old some of those cases are. Perhaps I should start with the objection to the hourly rates. The Applicant has argued that the rates charged are too high.
11. The Applicant refers to the latest government guideline hourly rates and suggests that the rates to be allowed should be £373 per hour for the senior partner, £289 per hour for the other partners and £244 per hour for the solicitor. For solicitors in W1, those are the rates recommended for Grade A, Grade B and Grade C solicitors respectively. The problem

with this is that the rates are only guidelines for courts and Tribunals when assessing costs, usually on an *inter partes* basis, which this assessment is not.

12. It has always been generally accepted that enfranchisement work is exceptional as the number of expert practitioners is few and it is recognised that professional landlords would search out expert practitioners for advice and representation. They tend to charge higher than average hourly rates on the simple basis of supply and demand.
13. The person who is said to have done the majority of the legal work in this case (61 out of 102 units charged) is Victoria Huxley who appears to be 6 years qualified and is said to have undertaken hundreds of this type of case.
14. The remaining objections and responses are not easy for a Tribunal to consider because they seem to be just general discussions about what could and should have been done by the various fee earners. The Applicant's representatives say that the detail of who has done exactly what work and at what time is vague to say the least. The Tribunal would agree with that.
15. However, the contrary is also true, namely that the tenant's solicitors have not really set down what they would have charged a landlord in these circumstances.

### **Conclusions**

16. I have considered the objections and the responses and determine as follows. It should be said that the enfranchisement process went all the way up to the finalisation of the lease terms and preparation for completion. The tenant then withdrew. The reasons are not relevant and I only mention the point because the tenant's solicitors have, quite properly, not suggested that there should be any substantial discount to what would normally be charged for a case of this nature.
17. In view of the lack of detail in respect of who has done what in the landlord's solicitors, any detailed assessment has been extremely difficult. The cases relied upon are at least 4 years old – most are much older – and have covered very different cases and very different end results. However, from the particulars and breakdown I have seen, the work appears to have been undertaken competently and within a reasonable time. Interestingly, there are 4 of the most recent First-tier Tribunal cases quoted on page 117 of the bundle where the Tribunals have allowed figures between £1,010 and £1,955. Those cases are 4 years old assessing claims which must have been charges incurred some time before the decisions.
18. I am always a little concerned when looking at costs assessments where several fee earners have been involved because that almost always includes an amount of duplication because one fee earner has to consider what other fee earners have done when they are undertaking a particular task. Thus they almost always take longer to complete a particular task

than would happen if they were doing the whole case on their own and trying to split that time into sections to avoid duplication of costs is almost impossible.

19. Taking all these matters into account, I consider that the rates being claimed are, indeed, too high. On the basis that this appears to be a specialist team, it would, in my view, be reasonable for them to charge clients who were going to have to pay the costs themselves the sums of £400 for a Grade A fee earner, £325 for a Grade B and £250 for a Grade C. I am also satisfied that some of the time spent by so many fee earners would have had to involve reviewing what other fee earners had done, which a client would not expect to pay for.

20. Thus I allow:

		£
David Burns	7 units at £400	280.00
Ben Frost	4 units at £325	130.00
Victoria Huxley	57 units at £325	1,852.50
Ben Goodman	25 units at £250	625.00
Disbursement		<u>3.00</u>
		2,890.50
Discount		<u>299.00</u>
		2,591.50
VAT		<u>518.30</u>
		3,109.80



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**Judge Edgington**  
**14<sup>th</sup> September 2022**

#### ANNEX - RIGHTS OF APPEAL

- i. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to [London.RAP@justice.gov.uk](mailto:London.RAP@justice.gov.uk) to the First-tier Tribunal at the Regional office which has been dealing with the case.
- ii. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

- iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.