



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

**Case Reference** : **CAM/38UE/OLR/2018/0140**

**Property** : **12 Foster Road, Abingdon, Oxon  
OX14 1YN**

**Applicant** : **Melanie Jane Owen**

**Representative** : **Franklins solicitors**

**Respondent** : **Wallace Partnership Reversionary  
Group Holding Limited**

**Representative** : **Stevensons solicitors**

**Type of Application** : **Determination of costs under s60  
and s91 Leasehold Reform,  
Housing and Urban Development  
Act 1993**

**Tribunal Members** : **Tribunal Judge Dutton  
Mrs S F Redmond BSc (Econ)  
MRICS**

**Date determination** : **27th November 2017**

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**DECISION**

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## DECISION

**The Tribunal determines that the sum payable by the Applicant in respect of the Respondent's costs under the provisions of section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act) is £1,561.60 together with the valuation fees of £714 both inclusive of VAT.**

### **BACKGROUND**

1. This is an application for the determination of the costs payable by the Applicants to the Respondent under the provisions of section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act). The parties have provided a Points in Dispute schedule which we have completed.
2. In the papers before us we had copies of the Notice and Counter Notice and the application. In addition to the Points in Dispute schedule a copy of the Upper Tribunal decisions in Sinclair Gardens Investments(Kensington) Limited and Wisbey, Metropolitan Prop. and Moss, Akora and some first Tier Tribunal decisions were provided. As though this was not sufficient we were also provided with copies of the case report from the UT in Trustees of John Lyon's Charity and Terrace Freeholds and Willow Court v Alexander. We had what appeared to be a travelling draft of the lease for the property. We were provided with a copy of the First tier Tribunal decision in respect of 16 Foster Road dated 29th November 2017, which does not appear to have been the subject of an appeal
3. The legal costs were claimed at £2,148.40 inclusive of VAT and disbursements. The valuation fees of Bureau Property Consultants appeared not challenged and are recorded at £595 plus VAT.
4. The application was originally to determine the premium payable and the terms of the lease. It would seem that the lease terms have yet to be agreed and as such it could be suggested that this application was premature. It is noted that by a letter dated 11th October 2018 the Respondent's solicitors return the draft approved as amended. We have no indication as to whether those amendments have been agreed. We will confine our decision to the question of costs under s60 of the Act.
5. The parties requested that the determination of the s60 costs be dealt with on the papers before us, which we have done.

### **THE LAW**

6. The provisions of section 60 are set out in the appendix and have been applied by us in reaching this decision.

### **FINDINGS**

7. We have completed the Points in Dispute which sets out our findings on those matters which are in dispute. We have borne in mind the findings of the Upper Tribunal in the various relevant cases put to us in this case. We have also considered the lengthy submissions of the Respondent running to some 11 pages with 71 pages of addendums. We have also noted all that is said in the Points in Dispute, both the submissions by the Applicant and of the Respondent. Whilst the Upper Tribunal is authority for the principles to be applied, each case should be decided on the facts.
8. Much is made of the allegation that the initial notice(s) were defective and the Counter Notice was served on a without prejudice basis. However, no application was made by the Landlord under s46 of the Act and it would seem, according to a letter from Messrs Stevensons acting for the Landlord, that the premium had been agreed by 11th October 2018.
9. There is also much comment concerning the terms of the proposed lease, which we understand is yet to be agreed. We have seen the original draft, the amendments made and a copy of the agreed lease for 16 Foster Road, resolved in January 2018. We are reluctant to comment in the absence of an agreed document or a request for us to make a determination of the terms. All we would say is that it is to be hoped that agreement can be reached given that the terms of the leases for 16 and 17 Foster Road have been resolved previously.
10. Turning to the Points of Dispute. As a matter of comment we note the concessions made, in particular to the hourly rate. However, there are some areas where we find that the costs are high or do not fall within the provisions of the Act.
9. Generally there has been little attempt to reach common ground by either party. On the basis of the information before us we find that the costs payable under what is shown as A is £636.00 and under B £650. This gives a total profit costs of £1,286.00, plus VAT of £257.20 and disbursements of £18.40, giving a total of costs payable under the provisions of s60 of the Act of £1,561.60 inclusive of VAT with a further £714.00 for the valuers fee, again including VAT
11. The parties appear to be alleging that there are costs claims under rule 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013. No formal application has been made. We have given an indication of our view at present and remind the parties of the Upper Tribunal findings and guidance in the case of ***Willow Court Management Company Limited and Alexander [2016] UKUT 0290 (LC)***. If either party wishes to pursue this matter further they must contact the Tribunal within 28 days explaining why such an order should be made, or should not and we will consider whether it is appropriate and if we do will issue directions.

Andrew Dutton

Tribunal Judge Dutton

27th November 2018

## **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

### **The Relevant Law**

#### **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 a leasehold valuation 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.

**SCHEDULE OF COSTS PRECEDENT  
PRECEDENT G: POINTS OF DISPUTE**

**Case Reference: CAM/38UE/OLR/2018/0140**

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

**B E T W E E N**

**Melanie Jane Owen**

**Applicant**

**and**

**Wallace Partnership Reversionary Group Holdings Limited**

**Respondent**

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**RESPONSE OF THE RESPONDENT TO THE  
POINTS OF DISPUTE SERVED BY THE APPLICANT**

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<b>General Point</b>	The Applicant does not object to the claimed charging rate of G.N. Stevenson. However, the Applicant considers the total claimed excessive. The form of Lease on this development was approved by the Tribunal in relation to 17 Foster Road in 2012 Case No. CAM/38UE/OLR/2012/0030. In that case costs were also in dispute and the Tribunal allowed 3.5 hours work. In 2017 in relation to 16 Foster Road the Respondent again sought to introduce new terms into the draft lease with no justification and only dropped this request following Tribunal proceedings Case Reference. CAM/38UE.OLR/217/0142. In that case legal costs were determined by the Tribunal in the sum of £1,189.00 after the Respondents claimed legal fees of £1,775.00 plus VAT, as they have done here. If the Respondent had simply agreed the same form of lease and the same legal costs as were determined following Tribunal proceedings in relation to 16 Foster Road in 2017, both parties would have saved a lot of time and expense.
	<b>Receiving Party's Reply:</b> The points made above by the Applicant completely ignore the point that as the Applicant's representatives know, the Respondent firmly argues that no valid Notice has been served under Section 42 of the Act in this case. Moreover, in this case the Application to Tribunal was made before any draft Lease was submitted to the Applicant or her representatives. There was therefore at that point no lease to agree to! At the point the Application was made, neither the Applicant nor her representatives could possibly know whether or not there would be any dispute about the draft Lease. Also, in order to comply with the Directions, the Respondent had to guess (and still has to guess) the amount of time which will be spent on any conveyancing work which had not even started

	when the Application to Tribunal was made. See further the attached letter dated 11th October, 2018 from ourselves addressed to the Tribunal. <i>[Attachment A herewith]</i>
	<b>Tribunal Decision:</b> The agreement to the hourly rate of £265 is noted and what appears to be an offer to settle by the Applicant at £1,189.00 plus VAT as per the decision we made a year ago.
	<b>(A) Notice of Claim engaged (34 units)</b>  Comments using the same numbering as the Respondent.
1.	Five minutes are claimed for taking instructions from an experience investor freeholder who completed two leases on the same development last year. The time is excessive. 3 units is suggested.
	<b>Receiving Party's Reply:</b> It is believed that the Applicant is claiming that 30 minutes is too much for obtaining instructions and advising. 30 minutes seeking instructions given the complexities caused by the service of the purported Section 42 Notice, as explained in Attachment A and the covering letter is entirely reasonable as advice was requested on complex specialist law.
	<b>Tribunal Decision:</b>  We are prepared to accept that 5 units at £132.50 is reasonable for this element
2.	This item is conceded
	<b>Receiving Party's Reply:</b> Noted - thank you.
	<b>Tribunal Decision:</b>  We record agreement to 3 units at £79.50
3.	4 units is claimed for notices and correspondence regarding the deposit. This is a standard procedure and 2 would suffice.
	<b>Receiving Party's Reply:</b> 24 minutes (4 units) is a reasonable time not only for drafting the relevant Notices about the deposit but also reporting to the Respondent that it had been received and undertaking the necessary accounting and banking formalities in respect of receiving the same.

	<p><b>Tribunal Decision:</b>  <b>We find that 4 units for this element is reasonable and accept the comments of the Respondent's solicitors thus giving a figure of £106</b></p>
4.	<p>It is surprising that consideration of the validity of the notice did not take place at the same time as advising the client (item 1) and considering the lease, office copies and other relevant documents (item 2) this item should be disallowed.</p>
	<p><b>Receiving Party's Reply:</b>  This case required considerable consideration time because of the complexities created by the Applicant's advisers.</p> <p>Considering the validity of the Notice took at least 18 minutes in this case because it was necessary to consider the validity of the Notice in the context of the letter of 8<sup>th</sup> January, 2018 from Lawrence &amp; Wightman [<i>Attachment B</i>] and the context of the previous purported Notice and consider what to do. It was also necessary to consider 42(7) of the Act. As previously emphasised, the view was formed and still exists that no valid Notice has been served, the Applicant being estopped by the 8th January, 2018 letter from denying the application of the said Section 42(7). This chargeable item is completely separate from initially advising the Client of the existence of the complexity (Item 1) or looking at Title documents appended (Item 2).</p>
	<p><b>Tribunal Decision:</b>  <b>The substance of the Initial Notice should have been considered when advising the client under item 1 above, which is why we have allowed the time claimed in full. It is to be remembered that Mr. Stevenson is a very experienced practitioner in this field , see paragraph 7 of the Respondent's statement of case. In those circumstances we consider that taking the 5 units at point 1 above and allowing a further 2 units on this occasion is sufficient. The time allowed is there 2 units at £53.00</b></p>
5.	<p>In the dispute in relation to 16 Foster Road last year this Tribunal allowed 4 units for drafting the counter notice. The Applicant concedes 4 units.</p>
	<p><b>Receiving Party's Reply:</b>  6 units is entirely appropriate in this case for drafting the Without Prejudice Counter Notice and the covering letter to the Applicant's representatives – Lawrence &amp; Wightman dated 27<sup>th</sup> February, 2018 as we wanted to make absolutely clear that the Respondent did not accept that any valid Notice had been served. Again, complexities have been created by the Applicant's own advisers.</p>
	<p><b>Tribunal Decision:</b>  <b>We note all that is said on behalf of the Respondent. However, no application has been made to the Court under s46. in addition and much of the Counter-Notice is</b></p>



	<p>taken up with lease terms which, it would seem, have not made their way into the final document at the moment in any event. We would allow 4 units as is conceded by the Applicant. This gives a figure of £106</p>
6.	<p>This item should be disallowed. This work is within the remit of the valuer and not the Respondents solicitors.</p>
	<p><b>Receiving Party's Reply:</b>  The Applicant misdirects herself if she thinks this work in connection with valuations should be disallowed. The Upper Tribunal has made quite clear that these costs should be allowed and attention is drawn to paragraph 25 of the Wisbey decision referred to in Witness Statement of 19<sup>th</sup> September, 2018. Attention is also drawn to paragraph 3(viii) paragraph 'cc' on page 4 of the Statement of Case of the Respondent.</p> <p>Also see Paragraph 26 of John Lyon -v- Terrace Freehold LLP [2018 UKUT 0247 (LC) <i>[Attachment C herewith]</i></p> <p>"While the action of instructing the valuer was itself an administrative rather than professional task (following <i>Sidewalk Properties Ltd. v Twinn</i> [2015] UKUT 0122) and the solicitor's costs not therefore recoverable without more, should the solicitor consider the valuation once it is provided, the costs of doing so are prima facie recoverable as being "incidental to" the valuation."</p>
	<p><b>Tribunal Decision:</b>  <b>We accept that some cost is due for this item. however, we would consider 3 units to be sufficient and allow £79.50</b></p>
7.	<p>This item should be disallowed. The letters in question were in respect of the Respondents attempt, without making an application to the Court under Section 46 LRHUDA, to establish that the notice of claim was invalid. The Respondents improperly sought an increased premium of £14,500.00 i.e. £900.00 more than in the counter notice, as a consideration for dropping this unjustified claim. None of this work should be chargeable to the Applicant.</p>
	<p><b>Receiving Party's Reply:</b>  Again the Applicant has misdirected herself. Section 46 of the Act is totally inappropriate because the Respondent has not served any Counter Notice which complies with 46(1)(a) of the Act. Quite simply, it is the Respondent's case that the Applicant has served no valid Notice under Section 42 of the Act and such purported Notices as she has served are both complete nullities. The 5 units under paragraph 7 are letters to the Respondent seeking instructions and letters to the Applicant's representatives. All of this time should be</p>

	allowed.
	<p><b>Tribunal Decision:</b>  <b>We have noted all that has been said. The proof of the pudding is in the eating. The premium has been agreed. No application was made by the respondent to Court. It seems unnecessary to send more than one letter to the client and perhaps two to the applicant. Doing the best we can we therefore allow 3 units at £79.50</b></p>
8.	It is not clear what needed to be done on 28 <sup>th</sup> February in this respect. This item should be disallowed.
	<p><b>Receiving Party's Reply:</b>  4 units were spent on 28<sup>th</sup> February, 2018 on this file making file notes and diary notes of the relevant time limits and informing the Client Respondent of the same. All of this time should be allowed as this is good practice and essential due diligence and entirely reasonable.</p>
	<p><b>Tribunal Decision:</b>  <b>We do not consider that this item of work falls with the provisions of s60 of the Act and disallow same in full.</b></p>
	<p><b>Summary</b></p> <p>The Applicant will agree 20 units for (A) i.e. 2 hours at £265.00 plus VAT £530.00 plus VAT.</p> <p><b>Receiving Party's Reply:</b>  This suggestion is entirely inadequate for the reasons stated above. The Respondent does not think any reduction is appropriate, especially bearing in mind the complexities created by the Applicant's advisers.</p> <p><b>Tribunal Decision</b>  <b>We assess the costs payable under (A) to be £636.00 plus VAT (£127.20)</b></p>
(B)	The costs which have been and/or estimated in connection with the grant of the lease is 33 units as specified by the Respondent.
	All items claimed under this heading should be disallowed save for preparation of engrossments and attending to completion. The form of Lease was agreed after negotiation in relation to 16 Foster Road last year and there was no need to spend time seeking to pursue the same amendments to the draft lease as the Respondent had to drop following Tribunal proceedings in 2017. In 2017 the Tribunal allowed a global sum of

	£500.00 in respect of these aspects which the Applicant will agree.
	<p><b>Receiving Party's Reply:</b>  Frankly, the Respondent does not know and cannot know what time will be spent on all of the matters listed in 'B'. The Applicant is plainly in no better position. It is obviously the Respondent's view that no time whatsoever need be spent because no valid Notice has been served. The Respondent does not therefore envisage that completion will ever take place. If, however, despite the Respondent's views, completion does take place, the estimates given in 'B' are reasonable. Obviously difficulties are caused for all parties by this Application being made to this Tribunal at this premature time. Equally obviously, if completion does take place, as a matter of professional conduct costs will only be requested on the basis of time actually spent.</p>
	<p><b>Tribunal Decision:</b>  <b>We are concerned that the application we are asked to deal with is based on incomplete and estimated work. How are we expected to assess the costs on this basis. Further we do not understand why the matter remains in this state when the premium requested on the Counter-Notice has been agreed by the Applicant. Why is time being spent on continuing to argue the effectiveness of the Initial Notice? As we are asked to determine these costs associated with a lease that has yet to be settled we conclude that best we can do is to assess the time we would think would be required to settle the lease, for which two other neighbouring properties at 16 and 17 have already been agreed. We conclude that taking into account the elements numbered 1 - 7 under (B) a charge of £650 would be appropriate</b></p> <p><b>We conclude that the total payable in respect of the costs under the provisions of s60 of the Act is £1,286 plus VAT of £257.20 and the valuers fee £714 inclusive of VAT</b></p>
<b>Point 3</b>	<b>Application for an order for costs under Rule 13 Tribunal Procedure Rules 2013</b>
	<p>The Applicants solicitors spent 3 hours on 4<sup>th</sup> October 2018 dealing with amendments to the draft lease and preparing these costs submissions. Her hourly charging rate is £250.00 plus VAT per hour and it is frustrating to be dealing a year later with exactly the same points and arguments as were made in relation to the form of lease on 16 Foster Road and ultimately either conceded by the Respondent or determined by the Tribunal. Application is therefore made by the Applicant under Tribunal Procedure Rules 2013 Rule 13 for an Order that the Applicants costs in this respect are met by the Respondent.</p>
	<p><b>Receiving Party's Reply:</b>  In view of what is said earlier in this paper and in the covering letter, this point is a complete misconception by the Applicant's representatives. Bluntly, an Application to the Tribunal should not have been proceeded with at this time by the Applicant's representatives without the Applicant securing an Order from the Court that the Applicant had served a valid Notice under Section 42 of the Act.</p> <p>Moreover, it is an abuse of process for the Applicant to actually make an Order for Costs under Rule 13 of the Tribunal Procedure Rules 2013 at this stage and this was made clear in Willow Court Management Company (1985) Limited against Alexander [2016] L&amp;TR34. A copy of that case is attached herewith [<i>Attachment D herewith</i>] and in that</p>

	<p>case the Upper Tribunal could not have made it any clearer that any Application for Costs under that Order should only be made after a Determination – even then, only on the basis of conduct which was clearly unreasonable on behalf of the other party. The Tribunal’s attention is particularly drawn to paragraph 43 of the Decision.</p>
	<p><b>Tribunal Decision:</b> <b>We do not consider that an application under Rule 13 is warranted, certainly not at this time. There are a number of issues concerning the procedures adopted by both sides in this case. The Willow Court case should be studied. If either party considers it is justified in seeking an order under Rule they must make application to the Tribunal within the time limits set out in the Rule. Directions will then be issued. Better still it seems to us that time should be spent bringing this matter to a conclusion for the benefit of the parties</b></p>

**Served on behalf of the Respondent by Stevensons Solicitors on 10th October 2018.**

**Dated: 11th October 2018**

**Signed .....**

**On behalf of the Respondent:**

**Glenn N. Stevenson  
Stevensons Solicitors  
Gorgate Chambers  
Gorgate Drive  
Hoe  
Dereham  
Norfolk, NR20 4HB.**

**Ref: ALH.WPLE96**