



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

**Case reference** : **LON/00BJ/OC9/2019/0086**

**Property** : **Lower Maisonette, 71 Idlecombe Road, London SW17 9TD**

**Applicant** : **Ashrafkhan Hyderkhan and Sarah Bibi Akhoun Hyderkhan**

**Representative** : **Streathers Solicitors LLP**

**Respondent** : **Rushclose Limited**

**Representative** : **W H Matthews & Co solicitors**

**Type of application** : **S60 Leasehold Reform, Housing and Urban Development Act 1993**

**Tribunal member(s)** : **Tribunal Judge Dutton  
Mr W R Shaw FRICS**

**Date and venue of Determination** : **23<sup>rd</sup> September 2019 at 10 Alfred Place, London WC1E 7LR**

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**DECISION**

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## **Decisions of the tribunal**

- (1) The tribunal determines that the sum payable by the Applicant to the Respondent in respect of the costs payable under the provisions of s60 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act) are £4,425.00**

## **The application**

1. The applicant seeks a determination pursuant to s60 of the Act in respect of the costs payable to the respondent following the lease extension for the lower maisonette at 71 Idlecombe Road, London SW17 9TD (the Property).
2. The terms of acquisition have been agreed but the costs payable under the Act are not. The matter came before us for a paper determination on 23<sup>rd</sup> September 2019. At that time we had a bundle of papers, which had been revised to include three Upper Tribunal decisions to which we shall refer as necessary in due course.
3. The initial claim for costs made by the solicitors for the respondent, WH Matthews sought a global sum of £8,061.00 with an agreed premium of £83,000. An initial schedule set out the basis upon which those costs were claimed seeking to establish that some 9 hours had been spent with the solicitor's hourly rate being £300 on steps prior to the consideration of the terms of the lease and further 9.8 hours for that element. It is noted that the completion statement seeks to recover a greater amount in the sum of £8,205.00. The valuers costs are said to be £1,260 inclusive and do not appear to be under challenge.
4. The applicants' assessment of the costs was set out in a revised schedule dated 18<sup>th</sup> July 2019 when a figure of £3,000 plus VAT is proposed. This is supported by a statement in response, which appeared to accompany an email dated 18<sup>th</sup> July 2019 from Ms Rinn of Streathers to W H Matthews. We have noted all that has been said in this statement.
5. In response to the applicants' statement on 29<sup>th</sup> August 2019 Mr Howard of W H Matthews set out the position on behalf of his clients. In an earlier email concessions had been made in respect of two items, Item 3 of the original schedule where two units were conceded and item 7 where the claim was limited to 10 units. We have noted all that was said.
6. It seems to us that the most appropriate method of dealing with this application, in the absence of a schedule which we can complete, is to deal with the various items claimed.

7. Before we do so we set out the terms of section 60:

**S60 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.

8. We have applied the provisions of this section in considering the claim for costs. We have adopted the numbering set out on the respondent’s schedule, which is undated, but appears at page 10 onwards of the bundle given to us.
9. The hourly rate sought is £300. The applicants’ say that the costs they were charged were £250 per hour. The respondent appears to have been represented by Parminder Behal, who is recorded as an assistant solicitor at WH Matthews. We have no details as to her qualification. The respondents solicitors are based in Kingston Upon Thames, outer London where the guideline rates would suggest for a solicitor of more than 8 years qualification a rate of between £267 – £229, although we do accept that these are somewhat dated. However, by a letter dated 31<sup>st</sup> July 2019, somewhat after the event, the respondent accepts an hourly rate of £300. Taking the matter in the round we accept that a reasonable rate for this work is £300 per hour but would expect

expertise which should result in shorter time being spent on some aspects.

9. Item 1. We agree with the applicants' comments in this regard, that these costs do not fall within s60. It is unclear from the letter sent by the respondent dated 31<sup>st</sup> July 2019 whether they regularly instruct W H Matthews (WHM) but what is clear is that it is an experienced company in the world of enfranchisement. It would not seem necessary to incur an hour's time on this aspect, even if we found it was allowable under the section. **We disallow £300**
10. Item 2 and 5. These items appear to have an element of duplication and some part could have been dealt with by a less costly fee earner. Nonetheless these are important steps. We consider that one hour should be sufficient. It is noted that WHM does not seem to possess a computerised time recording system. **We therefore allow £150 for each item**
11. Item 3. It seems the respondent has accepted a fee of £60 for this item. **We allow that sum considering it to be reasonable and recoverable.**
12. Item 4. This is termed preliminary notices, although no clear indication as to what notices there were, nor are copies included with the papers. The applicant does not dispute they are recoverable but suggests two units. The respondent sought 5. Doing the best we can, on the information available, **we allow £90 for this item.**
13. Item 6. We are satisfied that the drafting of a counter notice does form part of the work to undertaken. It is our finding that they have been incurred by any 'relevant person in pursuance of the notice'. (see para 24 of the UT decision in Sinclair Gardens v Wisbey, which is referred to by the respondent in its response.) The time claimed is considered reasonable and we therefore **allow the sum of £150.**
14. Item 7. Likewise in the Wisby case the costs of considering the valuation were allowed. Discussing same with the client would seem to be outside the parameters of the section. The applicants accepted a fee of £210 in its schedule dated 18<sup>th</sup> July 2019, which we consider reasonable. **This gives a total for item 5 of £210.**
15. Items 8 and 9. We do not consider the costs for considering the appointment of a new solicitor fall within the scope of s60. It does not, we find, fall to be a cost that the respondent has been incurred in pursuance of the notice. **Accordingly, the sum of £120 is disallowed.**
16. Item 9. The number of letters written seems excessive. There is no evidence to show that it was necessary to write this number, presumably charged at one unit. This gives 34 letters. We agree with the applicants' assessment of 17, **giving a fee of £510 for this item.**
17. **We calculate these items to come to £1,320 plus VAT of £264, giving a total payable for this first element of £1,584.00.**

18. We then turn to the costs associated with the conveyancing. It is suggested that nearly 10 hours was spent on this element. At first sight this seems excessive. It includes alleged breaches of the lease which we find do not fall within the work required to grant a new lease. It is not wholly clear why the valuer would be engaged. It does seem that there was tooing and froing on the terms.
19. Item 10. We find that the consideration of the terms of the lease should have taken place when the counter notice was prepared. We have already allowed one hour for that element. That would, we find be sufficient and accordingly **we disallow the sum claimed for this item which would be £150.**
20. Item 11. We can we consider that there would inevitably be some correspondence in respect of the terms of the new lease. It would seem that in the initial notice the lease was to be on the same terms. The time of 5 units for drafting the lease on the original terms is agreed. Changes appear to have been requested by the applicants and as they form part of section 60(1)(c) they should be considered. The respondent suggests 40 units, exercising the judgment of Solomon we allow 20 units in addition to the 5 agreed. There appears to be a further 22 units for correspondence. As we have indicated we do not consider the valuer need be involved at this stage. Nor do we consider it necessary for 6 letters to be sent to the client. We have allowed half the rate for the steps leading to the agreement of the lease and will therefore allow 6 letters to the applicants' solicitors and 3 letters to the client a total of 9 units. **We calculate that this results in a total sum allowable for item 11 of £1,020**
21. Items 12 and 13. It is not clear what steps fulfill the heading 'agreeing the final terms of the lease'. We find this element would fall within item 11. The preparation of the engrossment, without having the benefit of the document before us, would, we find, have included the works of a secretary. We accept that there would be some proof reading but again that could have been undertaken by a lower grade fee earner. **We will allow 3 units giving a sum of £90**
22. Item 14. We agree with the applicants' solicitors comments on this item. The completion statement is not complex. Three units would be sufficient to deal with this element and **we therefore allow the sum of £90.**
23. Item 15. Again half an hour for what should be a straight for element, usually dealt with by other staff than highly paid fee earners, seems excessive. There would be some involvement of the fee earner and the suggested time of 3 units is appropriate. **We therefore allow £90. This gives a total sum payable for the conveyancing aspect of £1,290 plus VAT of £258, giving a total of £1,548**

### **General comment**

24. In the respondent's statement in response at pages 21 to 33 of the bundle reference is made to the burden of proof, and reference made to

the UT case of Wisbey, to which we have referred above. At paragraph 31 of the decision HHJ Huskinson said this *“In my judgment on the proper construction of section 60 there is a burden upon the landlord who is claiming costs for professional services (which therefore fall within section 60(2)) to prove that the costs are (and to the extent to which) reasonable..”*. Our findings have borne in mind the provisions of section 60 (1) and (2).

25. **The total sum allowed for the respondent’s costs is therefore £3,132.00 inclusive, together with a further sum of £1,260 for the valuers fee, which was not in dispute and the land registry fee of £33.**

**Name:** Tribunal Judge Dutton                      **Date:** 20<sup>th</sup> September 2019

### **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).