

**SOUTHERN RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL**

Case No: CHI/00ML/LSC/2010/0141

Between:

Parade Properties Limited

(Applicant)

and

M.J. Green
M.A. O'Brien
W. Wallis
K.L. Pottinger and S.A. Garbett
Exors of Mrs G. Olsen dec'd
T.C. Coles
Mr.M. and Mrs M.A.A. Sadler
P.E.Davies
Mr. G. and Mrs L.J. Byman
C. Guy

(Respondents)

Premises: Marine House, 13-14 Marine Parade, Brighton BN2 1TL ("the Premises")

Tribunal: Mr D Agnew BA LLB LLM

DETERMINATION AND REASONS

DETERMINATION:

9. The Tribunal determines that the costs of and incidental to the Tribunal hearing on 22nd September 2009 are payable by the lessees under the service charge for the year ended 24th March 2010 in the amount set out in a column added to the Statement of Applicant's Costs and Statement of Additional Costs attached hereto.

REASONS:

Background

2. On 8 September 2010 the Applicant applied to the Tribunal for an order under Section 27A of the Landlord and Tenant Act 1985 for a

determination as to the reasonableness and payability of the legal costs it had incurred in dealing with an application made by some of the lessees at the premises in respect of service charges for previous years. This had culminated in a hearing on 22nd September 2010. A cross application had also been made by the Applicant in respect of the service charge from 26th March 2009 until 26th May 2009 when the Right to Manage was acquired by an RTM Company and the two applications were consolidated and heard together.

3. Directions were issued by the Tribunal providing for the application to be dealt with by way of a paper determination and for the filing and service of statements of case.
4. The Applicant filed and served a statement of case together with a detailed schedule of costs and a supplemental schedule dealing with matters since the Tribunal's decision in the earlier proceedings. The main schedule of costs totalled £15,988 and the supplemental schedule totalled £8698.60.
5. Solicitors for the estate of Mrs Olsen submitted detailed Points of Dispute dated 18th October 2010, Mr Coles submitted a statement dated 17th October 2010 and the Respondents Green, O'Brien, Wallis and Pottinger and Garbett filed a joint statement. The solicitors for the Applicant then filed a Reply to the Points of Dispute served by Mrs Olsen's executors and that of Mr Green and others. This Reply had not been provided for in the Directions and Mr Green took exception to it being admitted. As, however, the aim is for the Tribunal to understand as much as possible what steps were taken and why in order to determine the reasonableness of the costs being claimed, the Tribunal has read these Replies but bears in mind that the Respondents have not had the opportunity of commenting further on the Replies. There does, however, have to be a limit to the number of responses that the Tribunal can allow and a Reply to Points in Dispute is usually allowed.

The Determination

6. As stated above the detail of the costs allowed as reasonable is set out in an a column added to the statement of Applicant's Costs and Statement of Additional Costs appended hereto. There are, however, some general points that the Tribunal will address in the body of this determination as follows:-
 - a) Allan Janes for the executors of Mrs Olsen deceased say that a Grade A fee earner is not justified and a Grade B fee earner should have been used. The Tribunal considers that a Grade A fee earner is justified where, as here, most of the work was carried out by a grade C fee earner and the Grade A fee earner supervises. Further, costs have been claimed at £200 per hour for the Grade A fee earner, which is less than the approved rate as stated by Allan Janes.

b) Allan Janes propose that as the service charge was reduced by 5%, the costs claimed should suffer a similar reduction. The Tribunal comments that costs do not work like that. The question is whether the work was reasonably required to be done and is the charge for that work reasonable?

c) the third general point made by Allan Janes is that they called for sight of the Applicant's retainer letter. This has been produced. The estimated costs were originally £1,000 to £5,000 plus vat and disbursements but this was subsequently revised to £13500 to £14,000 plus vat for the Tribunal hearing. It is not unusual in litigation for costs estimates to have to be revised upwards when the amount of work required to be undertaken becomes clearer. The actual costs claimed come to £15,988 inclusive of vat. The revised estimate was therefore a reasonably accurate one. The Tribunal has not seen a costs estimate for the post hearing work.

d) all the Respondents protest that, contrary to the Tribunal's exhortation for the Applicant to negotiate the costs with them before claiming them, they were simply presented with a service charge demand for £15988.35 with no breakdown. Some of the Respondents stated their intention not to pay anything until the Applicants entered into negotiation with them and called for a detailed breakdown of costs. This was eventually supplied with the Applicant's statement of costs which accompanied the Applicant's statement of case. The Tribunal considers that the Applicants acted unreasonably in failing to act as the Tribunal had requested in not giving the lessees the detailed breakdown of costs and negotiating the same before simply demanding the totality of their fees and then incurring costs in seeking to recover the same from the lessees and their mortgagees. This does not, however, affect the recoverability of the fees for the first Tribunal hearing although it does have a bearing on the recoverability of the post hearing costs which are referred to hereafter. It should also be pointed out that although the earlier Tribunal said that the Applicant should first try to agree the fees with the Respondents, the Tribunal has no power to prescribe that this shall happen as a mandatory requirement or as a condition precedent to the recovery of those costs.

e) Mr Green suggests that the costs charged should be proportionate to the amount claimed and this Tribunal agrees with that general proposition. It does not follow, however, that it can be successfully argued that if a certain amount of costs is proportionate to a certain amount in issue that if the amount in issue is reduced, the costs should be reduced accordingly. As applies to the comments at paragraph 6b) above, costs does not work like that. Sometimes costs can legitimately amount to a significant proportion of the amount claimed. The Tribunal repeats that it all depends on the reasonableness of the work undertaken and the

rate at which it is done but with an overall eye on the proportionality of the costs as compared with the amount claimed. This may impact on the reasonableness of the work done and the rate at which it is done.

f) the earlier Tribunal has already stated that in its view it was reasonable for the Applicant to instruct counsel and to employ the services of an expert surveyor. This Tribunal is not prepared to go behind that finding as the earlier Tribunal had the advantage of hearing the original case in full. This Tribunal can and has, however, considered the reasonableness of the fees concerned.

g) Mr Green says that the Applicant carried out unnecessary work as part of the matters in dispute were at various times abandoned yet the Applicant still incurred costs in dealing with them. The Applicant says it was necessary to do so because Mr Green kept changing his case and it was not clear what had been abandoned and what had not and on occasions he would bring matters up again which were thought to have been abandoned. The Tribunal takes the view that the Applicant could have relied on the first Tribunal restricting Mr Green to matters in dispute contained in his statement of case. If the Applicant was nervous about doing that, they could have written to Mr Green asking him specifically to clarify his position, rather than prepare the case as if all matters were still in contention. Consequently, where this Tribunal considers that work has been carried out unnecessarily, those costs have been disallowed.

h) Mr Green makes the point that the lease provisions are not sufficiently explicit to enable the Applicant to recover the costs of the original hearing by way of service charge. The earlier Tribunal had expressed itself satisfied that the lease was sufficiently widely drawn to encompass the recovery of such costs, although Mr Green makes the point that this was not argued fully before the earlier Tribunal. This Tribunal considers that Clause 2(17) and paragraph 7(e) of the Seventh Schedule of the lease are sufficiently worded to enable the landlord to recover the costs of and incidental to the earlier Tribunal hearing from the lessees. Clause 2(17) states: that the lessee covenants "to keep the lessor indemnified from and against [x] per cent of all costs charges and expenses incurred by the lessor in carrying out its obligations under its covenants herein contained or otherwise in managing the Property notwithstanding the absence of any specific covenant by the Lessor to incur the same Provided Always and it is hereby declared that without prejudice to the generality of the foregoing the lessor shall be kept indemnified from and against all costs charges and expenses incurred by the Lessor in connection with the matters specified in the Seventh Schedule hereto." Paragraph 7(e) of the Seventh Schedule refers to "legal fees in connection with the Property or the management thereof."

i) Mr Green also argues that as the Right to Manage was acquired before the costs relating to the earlier hearing were incurred, the landlord is now unable to recover those costs as Section 96 of the Commonhold and Leasehold Reform Act 2002 provides that the relationship of landlord and tenant has no effect in relation to management functions after the Acquisition Date. The Applicants' solicitors say this cannot be right as it would deprive the landlord of any means of recovering such costs, that in any event the Landlord is not seeking to exercise management functions but enforcing a contractual provision in the lease and further that Section 96 has no application to matters concerning re-entry or forfeiture and proceedings for a declaration that sums are properly due are required to be taken as a pre-requisite to service of a Section 146 notice. The Tribunal considers that the Applicant's solicitors are right in particular in arguing that the Applicant was not exercising a management function in responding to the application under Section 27A and subsequently making its own cross application, but was enforcing its contractual right set out in Clause 2(17) of the lease in particular. The Tribunal does not consider therefore that the Landlord is unable to recover its costs incurred in the earlier Tribunal case from the Respondents by virtue of Section 96 of the 2002 Act.

j) Mr Green says that only items which have been specifically individually timed and date recorded are claimable. The tribunal does not accept this proposition.

k) Allan Janes contends that the Tribunal should make an order under Section 20C of the Act with regard to the additional costs incurred by the Landlord in making this application concerning costs due to the fact that the Applicant failed to negotiate prior to demanding payment and that insufficient information was supplied to the Respondents. The Tribunal does not agree that no costs should be recoverable at all. There was no guarantee that even after the provision of a detailed breakdown of costs that costs would have been agreed. Indeed, notwithstanding that a detailed breakdown was supplied subsequently, it has not resulted in an agreement. Consequently, an application to the Tribunal is likely to have been necessary in any event. However, although the Tribunal does not consider a Section 20C order to be appropriate, it has assessed the additional costs at a significant discount from the full costs claimed.

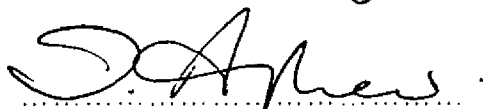
l) the Tribunal has taken account of all the Points of Dispute raised by the different lessees in response to this application, even though they may not have been expressly referred to above.

7. The Tribunal considers that an excessive amount of costs has been incurred in the Applicant trying to recover its costs post the first

hearing and before applying to the Tribunal for a determination and an excessive amount of time has been incurred in preparing this second application for hearing. These costs have therefore been reduced to what the Tribunal considers to be a more reasonable and proportionate amount.

8. In summary, the Tribunal determines that a reasonable amount to be added to the service charge for costs of the original Tribunal case is £13979.80 inclusive of vat and disbursements and for the costs of this application £3192.80 plus vat at the appropriate rate plus disbursements of £410. The parties should be able to calculate the total payable by way of costs and the apportionment between the various lessees. If there is any dispute as to these figures the matter can be returned to the Tribunal to resolve the matter on written representations within four weeks of the date of this Determination.

Dated this 9th day of December 2010


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D. Agnew BA LLB LLM
Chairman

**Residential Property Tribunal Service
Southern Rent Assessment Panel &
Leasehold Valuation Tribunal**

**Marine House, 13-14 Marine Parade, Brighton, BN2 1TL
Case No. CHI/00ML/LSC/2010/0141**

Between:

Parade Properties Limited

("the Applicant")

and

Michael Anthony M. O'Brien & Others

("the Respondents")

STATEMENT OF APPLICANT'S COSTS

The Applicant instructed Woolley Bevis Diplock LLP on 5 March 2009 and agreed the following hourly rates being recoverable as base costs:

Andrew Holt: Grade A fee earner - £200 plus VAT per hour.

Rebecca Turnbull-Simpson: Grade D fee earner - £105 plus VAT per hour

Item No.	Description of work done	VAT @15% (£)	Disbursements (£)	Profit Costs (£)	Allowed by Tribunal
BASE COSTS INCURRED					
1.	5 March 2009 – Woolley Bevis Diplock LLP instructed				
2.	12 May 2009 – Application submitted to LVT by leaseholders (CHI/00ML/LSC/2009/0109)				
3.	3 August 2009 - Application submitted to LVT by Applicant (CHI/00ML/LIS/2009/0032) – incurred issue fee		200.00		£200
4.	24 August 2009 – Expert report by Mr Peter Overill				
5.	27 August 2009 – Supplemental expert report by Mr Peter Overill				
6.	27 September 2009 - Fee payable to Mr Peter Overill report and supplemental report	297.00	1,980.00		£1500 plus vat of £225. Some unnecessary work carried out.
7.	21 September 2009 – Telephone conference with Counsel				

Item No.	Description of work done	V.A.T. @ 15% (£)	Disbursements (£)	Profit Costs (£)	Allowed by Tribunal
8.	21 September 2009 – Conference with Counsel, Mr Peter Overill, Applicant				
9.	22 September 2009 – LVT inspection and hearing				
10.	29 September 2009 - Fee payable to Mr Peter Overill for taking instructions, attending conference and hearing	222.75	1,485.00		£1485 plus £222.75 vat
11.	29 September 2009 – Fees payable to Counsel for advising in conference and brief for hearing	525.00	3,500.00		£3500 plus £525 vat
12.	5 December 2009 - LVT's decision				
13.	26 October 2009 - Application by leaseholders for leave to appeal to Lands Tribunal				
14.	18 November 2009 - Leave to appeal refused				
	To summary	1,044.75	7,165.00	-	£7457
	ATTENDANCES, COMMUNICATIONS AND WORK DONE				
	Attendances on Parade Properties Limited				
	Letters				
15.	1 routine – 0.1 hour @ £200				
16.	19 routine – 1.9 hours @ £105				
17.	1 long – 0.2 hours @ £200				
18.	4 long – 1.2 hours @ £105				
	Telephone calls				
19.	6 routine – 0.6 hours @ £200				
20.	1 long – 0.3 hours @ £200				
21.	15 routine – 1.5 hours @ £105				
22.	5 long – 1.1 hours @ £200				
23.	17 long – 3.5 hours @ £105				
	Summary: 2.3 hours @ £200			460.00	
	8.1 hours @ £105			850.50	
				<u>1,310.50</u>	<u>£1310.50</u>
	Documents				
24.	30 March 2009 – Reviewing “Notice of claim” and issues – 0.5 hours @ £200				
25.	3 June 2009 - Considering section 27 application and issues – 2.0 hours @ £200				
26.	8 June 2009 - Preparing draft directions – 0.5 hours @ £200				
27.	15 July 2009 - Reviewing landlord's evidence – 1.0 hour @ £200				
28.	15 July 2009 - Reviewing landlord's evidence – 0.8 hours @ £105				

Item No.	Description of work done	V.A.T. @ 15% (£)	Disbursements (£)	Profit Costs (£)	Allowed by Tribunal
29.	15 July 2009 -Preparing statement in reply and bundle – 2.5 hours @ £105				
30.	30 July 2009 - Preparing Leasehold Valuation application – 1.0 hour @ £105				
31.	17 August 2009 - Preparing statement of case and bundle – 2.1 hours @ £105				
32.	24 August 2009 - Reviewing leaseholders' statement in reply – 2.0 hours @ £105				
33.	24-27 August 2009 - Preparing hearing bundles – 5.5 hours @ £105				
34.	25 August 2009 & Reviewing expert's report – 1.0 hours @ £105				
35.	27 August 2009 & Reviewing expert's supplemental report – 0.4 hours @ £105				
36.	16 September 2009 - Preparing witness statement of Jan Gratwicke and exhibit – 0.8 hours @ £105				
37.	9 October 2009 - Reviewing the Leasehold Valuation Tribunal's determination – 0.3 hours @ £200				
38.	9 October 2009 – Reviewing the Leasehold Valuation Tribunal's determination – 2.1 hours @ £105				
39.	20 November 2009 – Reviewing leaseholders' application for permission to appeal and LVT's decision – 0.5 hours @ £105				
	Summary: 4.3 hours @ £200			860.00	
	18.7 hours @ £105			1,963.50	
				<u>2,823.50</u>	<u>£2000</u>
	Attendances on Counsel, Counsel's clerk and instructions				
	Letters				
40.	1 routine – 0.1 hours @ £105				
41.	2 long – 0.5 hours @ £105				
	Telephone calls				
42.	4 routine – 0.4 hours @ £105				
43.	1 long – 0.2 hours @ £105				
44.	10 September 2009 - Reviewing issues and preparing instructions to counsel and bundle – 1.4 hours @ £200				
45.	10 September 2009 - Reviewing issues and preparing instructions to counsel and bundle – 0.7 hours @ £105				
46.	21 September 2009 - Telephone conference with counsel – 0.2 hours @ £200				
47.	21 September 2009 - Telephone conference with counsel – 0.2 hours @ £105				
48.	21 September 2009 - Preparing for conference with counsel				

Item No.	Description of work done	V.A.T. (@ 15% (£))	Disbursements (£)	Profit Costs (£)	Allowed by Tribunal
	- 1.0 hours @ £105				
49.	21 September 2009 - Attendance at conference with counsel - 2.0 hours @ £105				
50.	22 September 2009 - Attendance at conference with counsel before hearing - 1.4 hours @ £105 Summary: 1.6 hours @ £200 6.5 hours @ £105			320.00 682.50 <u>1,002.50</u>	<u>£850</u>
	Attendances on leaseholders				
	Letters				
51.	1 routine - 0.1 hour @ £200				
52.	1 routine - 0.1 hour @ £105				
53.	1 long - 0.2 hours @ £105 Summary: 0.1 hour @ £200 0.3 hours @ £105			20.00 31.50 <u>51.50</u>	<u>£51.50</u>
	Attendances on Leasehold Valuation Tribunal				
	Letters				
54.	1 routine - 0.1 hour @ £200				
55.	4 routine - 0.4 hours @ £105				
56.	4 long - 1.3 hours @ £105				
	Telephone calls				
57.	1 routine - 0.1 hour @ £200				
58.	5 routine - 0.5 hours @ £105				
59.	2 long - 0.5 hours @ £105 Summary: 0.2 hours @ £200 2.7 hours @ £105			40.00 283.50 <u>323.50</u>	<u>£323.50</u>
	Attendances on expert				
	Letters				
60.	4 routine - 0.4 hours @ £105				
61.	1 long - 0.6 hours @ £105				
62.	30 July 2009 - Preparing letter of instructions to Mr Peter Overill - 1.5 hours @ £105 Telephone calls				
63.	7 routine - 0.7 hours @ £105				

Item No.	Description of work done	V.A.T @ 15% (£)	Disbursements (£)	Profit Costs (£)	Allowed by Tribunal
	Summary 3.2 hours @ £105			<u>336.00</u>	<u>£300</u>
	16 June 2009 - Attendance at pre-trial review				
64.	Preparing - 0.3 hours @ £200				
65.	Travel - 0.7 hours @ £200				
66.	Attendance - 0.8 hours @ £200				
	Summary: 1.8 hours @ £200			<u>360.00</u>	<u>£300</u>
	21 September 2009 - Attendance at LVT hearing				
67.	Inspection - 1.0 hours @ £105				
68.	Travel - 0.4 hours @ £105				
69.	Hearing - 3.9 hours @ £105				
	Summary: 5.3 hours @ £105			<u>556.50</u>	<u>£536.50</u>
70.	VAT on solicitors' base fees	1,014.60		<u>6,764.00</u>	<u>£5672 plus</u> <u>£850.80 vat</u>
	SUMMARY				
	Base costs incurred	1,044.75	7,165.00	-	
	Attendances, communications and work done	1,014.60		6,764.00	
	Total costs incurred	2,059.35	7,165.00	6,764.00	
	Grand total			<u>15,988.35</u>	<u>£13979.8</u>

**Residential Property Tribunal Service
Southern Rent Assessment Panel &
Leasehold Valuation Tribunal**

**Marine House, 13-14 Marine Parade, Brighton, BN2 1TL
Case Nos. CHI/00ML/LSC/2010/0141**

Between:

Parade Properties Limited

("the Applicant")

and

Michael Anthony M. O'Brien & Others

("the Respondents")

PARADE PROPERTIES LIMITED'S STATEMENT OF ADDITIONAL COSTS

Description of Fee Earners:	£	Allowed by Tribunal
Andrew Holt - Grade A - £210.00 plus VAT per hour		
Rebecca Turnbull-Simpson - Grade D - £150 plus VAT per hour		
Attendances on Parade Properties Limited:		
Letters:		
18 routine - 1.8 hours @ £150.00		
6 long - 1.7 hours @ £150.00		
Telephone calls:		
7 routine - 0.7 hours @ £150.00		
1 long - 0.4 hours @ £210.00		
11 long - 2.9 hours @ £150.00		
Total - 0.4 hours @ £210.00	= 84.00	£1149
- 7.1 hours @ £150.00	= 1,065.00	
Attendances on Leaseholders and Marine House Brighton RTM Limited:		
Letters:		
35 routine - 3.5 hour @ £150.00		
7 long - 2.5 hours @ £150.00		
Telephone calls:		
7 routine - 0.7 hours @ £150.00		
2 long - 0.6 hours @ £150.00		
Total - 7.3 hours @ £150.00	= 1,095.00	£300
Attendances on Leaseholders mortgagees		

Letters:				
16 routine	- 1.6 hours @ £150.00			
11 long	- 3.0 hours @ £150.00			
Telephone calls:				
7 routine	- 0.7 hours @ £150.00			
3 long	- 0.8 hours @ £150.00			
Total	- 6.1 hours @ £150.00	=	£915.00	£150

Attendances on Leasehold Valuation Tribunal:

Letters:				
1 routine	- 0.2 hours @ £150.00			
Telephone calls:				
1 long	- 0.3 hours @ £150.00			
Total	- 0.5 hours @ £150.00	=	75.00	£75

Attendances on Trading Standards:

Telephone calls:				
1 long	- 0.3 hours @ £150.00			
Total	- 0.3 hours @ £150.00	=	45.00	£45

Attendances on Documents:

Reviewing file	- 0.2 hours @ £210.00			
Reviewing file	- 0.2 hours @ £150.00			
Reviewing lease, service charge accounts and certification	- 1.1 hours @ £150.00			
Reviewing LVT's decisio	- 0.2 hours @ £150.00			
Reviewing leaseholders' and RTM's dispute	- 0.8 hours @ £210.00			
	- 4.4 hours @ £150.00			
Obtaining Land Registry entries	- 1.4 hours @ £150.00			
Preparing a detailed breakdown of costs	- 2.5 hours @ £150.00			
Preparing Leasehold Valuation application	- 0.5 hours @ £210.00			
	- 1.5 hours @ £150.00			
Reviewing LVT's directions	- 0.1 hours @ £210.00			
	- 0.3 hours @ £150.00			
Preparing statement of case and bundle	- 5.5 hours @ £150.00			
Preparing Applicant's statement of costs (as directed)	- 4.0 hours @ £150.00			
Preparing this statement of costs	- 2.0hours @ £150.00			
Total	- 1.6 hours @ £210.00	=	336.00	£1473
	- 23.1 hours @ £150.00	=	3,465.00	

Disbursements

Land Registry fees	=	60.00	£60
LVT's application fee	=	350.00	£350

Total solicitors' costs		7,080.00	£3192
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