

2637



**HM Courts  
& Tribunals  
Service**

**Leasehold Valuation Tribunal**  
**Case no. CAM/12UB/OLR/2012/0117**

**Premises:** Flat 41 Cockcroft Place, Cambridge CB3 0HF

**Hearing:** 27 February 2013

**Applicants:** Nicholas Owens and Frances Owens (tenants)

**Representatives:** Ginn & Co, Solicitors

**Respondent:** St John's College Cambridge (head landlord)

**Representatives:** Mills & Reeve Solicitors

**Intermediate landlord:** King Street Housing Society Limited

**Type of Application:** Lease extension pursuant to Part 1 Chapter 2 of the Leasehold Reform Housing & Urban Development Act 1993:  
determination of tenants' liability for costs under section 60

**Members of Tribunal:** Mr G M Jones - Chairman  
Mr G F Smith MRICS FAAV

## **ORDER**

UPON reading the hearing bundle and written submissions from solicitors for the parties

1. It is hereby declared that the sum payable to the Respondents by the Applicants in respect of legal costs incurred in relation to the grant of a new lease of 41 Cockcroft Place, Cambridge CB3 0HF pursuant to section 60 of the Leasehold Reform Housing & Urban Development Act 1993 is £1,600.00 + VAT and the valuation fee so payable shall not exceed £600.00 + VAT.

**G M Jones**  
**Chairman**  
**1 March 2013**

## **REASONS**

### **0. BACKGROUND**

#### **The Flat**

- 0.1 The Respondent is the freeholder formally described as the “Master Fellows and Scholars of the College of Saint John the Evangelist in the University of Cambridge” (the College). The flat is built on land let under a building lease to King Street Housing Society Limited (“the Society”) for a term of 99 years from 25 December 1978 and held by the tenants pursuant to an underlease granted under the “right to buy” legislation for a term of 99 years less 5 days from the same date. The development includes a number of leasehold flats and houses all let to the Society on similar terms and underlet either on long leases or on assured terms.

#### **The Lease**

- 0.2 There is no need to set out the terms of the existing lease, which is a fairly standard “right to buy” lease. However, the Tribunal notes that the terms of the new lease agreed between the parties are slightly different from the original terms. Firstly, of course, the new lease is, for obvious reasons, made between the College and the Tenants, rather than between the Society and the Tenants. Secondly, the new lease contains a provision for interest in case of late payment which, remarkably, the original lease does not. Thirdly, the registration fee provided for in clause 2.1.8 is not less than £50 (£15 in the original lease). Finally, the rent is a peppercorn rent as the 1993 Act requires. However, these changes ought not to have been controversial. In all other respects, the terms appear to have remained the same.

### **1. THE DISPUTE**

- 1.1 The Tenants served notice on the College in the usual way claiming the right to an extended lease in accordance with the provisions of the 1993 Act Part 1 Chapter 2. The first issue between the parties related to the question whether the Tenants were, in principle, entitled to an extended lease. Under section 5(2)(b), the Tenants would not be qualifying tenants if the immediate landlord under the existing lease was a charitable housing trust (which it patently was) and the flat formed part of the housing accommodation provided by it in the pursuit of its charitable purposes.
- 1.2 There is no need to set out here the legal arguments relevant to this issue. It is clear that Mills & Reeve were aware of the decision in the Queen’s Bench Division of Stanley Burton J in the case of Brick Farm Management Ltd –v- Richmond Housing Partnership Ltd [2006] HLR 3. The effect of this decision is that long leases are not provided by a housing society in the pursuit of its charitable purposes. In that case, the landlord did not appeal, though it did attempt to reargue the point before Hart J in the Chancery Division (see [2006] EWHC 1004 (Ch)), with no success whatsoever. It appears to this Tribunal that the decision of Stanley Burton J was patently correct, which may explain why it was not appealed and why there are no more recent reported cases on the subject.
- 1.3 Nevertheless, the College, for whom the outcome was potentially of considerable commercial value, decided to explore the issue. Its solicitors did so at considerable

length, ultimately taking Counsel's Opinion. More of that later.

- 1.4 Having taken Counsel's Opinion, the College brought a claim in the Cambridge County Court under case number 1CB00557; the claim was compromised by a consent order the details of which are not entirely clear, but by which the College accepted that the Tenants were entitled to a lease extension, with no order as to costs. Despite a typographical error in the narrative to the Respondent's costs schedule, it is clear that Respondents (very properly) do not seek to recover in these proceedings any costs "insofar as they expressly or exclusively relate to" the County Court action.

## **2. THE ISSUES**

- 2.1 The parties reached agreement on all issues save costs. The Applicants agreed to pay a premium of £19,000 for the new lease, of which £300 went to the Society (whose reversion of 5 days was clearly of negligible value). The only issue before the Tribunal is what costs incurred by the Respondent the Applicant Tenants are liable to pay under the provisions of section 60. This issue has, with the consent of the parties, been dealt with by written representations. The schedule of costs submitted by the Respondent's solicitors comes to a total of £28,121.96 including VAT. Profit costs (excluding VAT) amount to £15,977.55 and disbursements to £7,450.00, of which £6,500.00 relates to the fees of Chancery Counsel (called in 1997) for three telephone conferences and £950.00 represents a valuation fee.
- 2.2 The Applicant's solicitors, whose own charges were around £3,000.00, challenge the costs schedule both on the general ground that the overall costs are excessive and disproportionate and also on various detailed grounds. A number of important issues clearly emerge from their representations. They question the hourly rates charged for fee earners at various levels and the necessity, bearing in mind the involvement of Counsel, for the extensive use of Grade A fee earners. They raise the question whether the involvement of a number of different fee earners added unreasonably to the overall costs. They offer £600.00 + VAT for the valuer's fee.

## **3. THE EVIDENCE**

- 3.1 The evidence is all in documentary form; there are no disputed issues of primary fact to be resolved. It is, however, necessary for the Tribunal to draw appropriate inferences from the primary evidence. The inferences drawn and the Tribunal's reasoning will be apparent from the discussion in Part 5 of these Reasons

## **4. THE LAW**

### **Claim for an Extended Lease**

- 4.1 Under section 42 of the Leasehold Reform Housing & Urban Development Act 1993 a qualifying tenant of a flat may serve notice of his desire to acquire an extended lease of the flat. He must pay a premium in accordance with the provisions of Schedule 13 and the landlord's reasonable costs under section 60. In case of dispute, the tenant can apply to the LVT under section 48. By section 56(1) the new lease will be for a term extending to 90 years from the term date of the existing

lease at a peppercorn rent.

- 4.2 The terms will be the same as in the existing lease, save that under section 57 the LVT may order such modifications as may be required or appropriate to take account of the omission of property included in the existing lease but not comprised in the flat; of alterations made to the property demised since the grant of the existing lease; or in certain cases where the existing lease derives from more than one separate leases, of their combined effect and of the differences (if any) in their terms. Where, during the continuance of the new lease, the landlord will be under any obligation for the provision of services, or for repairs, maintenance or insurance, the lease may also require due contribution to be made by the tenant and may provide for enforcement of such contributions as though they were rent.

#### **Costs under LRHUDA 1993**

- 4.3 The costs payable by the tenant under section 60 are: the landlord's reasonable costs of any investigation, reasonably undertaken, of the tenant's right to a new lease; any valuation of the tenant's flat for the purpose of fixing the premium or sums payable under Schedule 13; and conveyancing costs associated with the grant of a new lease. The tenant is not liable under section 60 to pay costs incurred by the landlord in connection with the application to the Tribunal, save to the extent that costs relating to valuation evidence may have been reasonably incurred for the purpose of fixing the premium, as provided by the relevant subsection. Costs are to be regarded as reasonable only if and to the extent that such costs might reasonably be expected to have been incurred by the landlord if the circumstances had been such that he was personally liable for all such costs.
- 4.4 The Tribunal has only limited power under Schedule 12 paragraph 10 to the Commonhold & Leasehold Reform Act 2002 to award inter-party costs of the application (limited to £500) in the event of misconduct by a party, which may include cases where, by reason of that party's conduct in relation to the application, costs have been wasted.

### **5. DISCUSSION AND CONCLUSIONS**

- 5.1 The Tribunal has examined the Respondents costs schedule with a critical eye on its own merits and by reference to the issues raised by the Applicants. The schedule is complex and displays some unusual features. There were five different fee earners involved, four solicitors (two at Grade A and two at Grade B) and a chartered legal executive (Grade D). The Grade A fee earners are charged at £268.00 per hour. One Grade B fee earner admitted in 2007 is charged at £203.00 per hour and the other (admitted in 1997) at £178 per hour, rising to £191 per hour in October 2011 (after four years' experience). The Grade D fee earner was charged at £110 per hour rising to £133 per hour in October 2012. All fees listed here and below exclude VAT.
- 5.2 The Tribunal considers that the following are unusual features in this type of case which call for careful scrutiny: -

- (a) The number of fee earners and the interaction between them;

- (b) The instances in which the same issue appears to have been revisited on a number of occasions, sometimes by the same fee earner and sometimes by a variety of fee earners;
- (c) The degree of reliance upon and the cost of Counsel, whose fees appear to be generous, to say the least.
- (d) The rationale behind the division of labour between the various fee earners is not explained and is difficult to understand;
- (e) There are clear indications that the need for communication between fee earners has added substantially to the overall costs of the exercise;
- (f) Communications between solicitors and the College and the Society were very extensive, for reasons that are unclear;
- (g) The methods used to exclude from the costs schedule the costs incurred in the County Court litigation are far from transparent.

- 5.3 The Tribunal deals first with item (g) above. Such indications as can be found suggest strongly that the exercise has not been carried out in an even-handed manner. On the contrary, the appearance is that as much as possible of the overall cost of the work done by Mills & Reeve and by Counsel has been included in the schedule, regardless of whether, on an objective assessment, its inclusion is appropriate. The Tribunal is left entirely without confidence in the assertion that County Court costs have been appropriately excluded.
- 5.4 In general, there is a lack of detail as regards the provision of supporting documentation, the purpose of particular tasks and the rationale behind the method of working. However, although no copies of Counsel's Conference Notes (two notes charged at £550.00 each) nor of the Solicitor's Attendance Notes (Items 37 and 57), have been provided to the Tribunal, copies of Counsel's fee notes have been provided. In consequence, it is possible to ascertain how much solicitor time was engaged in obtaining advice from Counsel and the apportionment of Counsel's fees can be assessed. Moreover, the extensive involvement of Counsel sheds a good deal of light on the manner in which Mills & Reeve approached the dispute.
- 5.5 The question whether section 5(2)(b) disentitled the Applicants' from claiming a new lease was addressed at the outset in November 2010. Item 5 of the costs schedule is an hour (actually 55 minutes by calculation) spent by a Grade A fee earner considering this issue. A Grade B fee earner contacted a valuer taking 12 minutes (Item 6) and also spent 24 minutes in investigating the claim and initial consideration of papers (Item 7). A Grade D fee earner spent an extraordinary 4 hrs 18 minutes in an initial investigation of the claim, consideration of section 5(2)(b) and preparing memos to the other two fee earners (Item 8); also 36 minutes in drafting Notices (Item 9). Presumably the Grade D work preceded and informed the work of the other fee earners, which ought, if it was done competently, to have minimized the time spent by the more expensive fee earners. However, that is not reflected in the costs

schedule.

- 5.6 Then, for reasons that are unclear, the Grade A fee earner spent a further 42 minutes on investigation of the claim; consideration of Grade B fee earner research; and advice to “transactional colleagues” (Item 14). The Grade B fee earner appears to have spent the very surprising time of 5 hrs 36 minutes considering housing trust issues; checking King Street Rules and related documents; researching cases on housing trust exemption; preparing detailed memo on same (Item 15) and 18 mins in correspondence with the valuer (Item 16). Presumably, the Grade B work preceded and informed the Grade A work and ought to have minimized the time spent by the most expensive fee earner. Total costs of these items amount to £2,101.75. Meanwhile, there was a certain amount of other correspondence.
- 5.7 Next in this sequence of apparently repetitive activity is Item 23; a further 24 mins spent by the Grade A fee earner considering the housing trust exception and other grounds (unspecified) for non-admission of the claim. This presumably followed or overlapped with Item 24; the Grade B fee earner holding tactical meetings; conducting further research on right to buy leases; and considering the relationship between the right to buy legislation and the 1993 Act. Also Item 25, tactical meetings/advice 18 mins. In the judgment of the Tribunal, a competent and experienced solicitor ought to have been able to do all this work in about an hour.
- 5.8 Also in the category of apparently repetitive or unnecessary work (or at least work the Applicants ought not to be required to pay for) is Item 42: the Grade A fee earner internal tax advice on status of the Society 2 hrs 48 minutes. And (following the first conference with Counsel) Item 43: the Grade B fee earner considering and discussing Counsel’s advice with the Grade A fee earner 42 minutes. Also Item 47: the Grade B fee earner reviewing correspondence in and from the Society; considering issues; and preparing internal memo on current position re charitable housing trust status 1 hr and Item 58: the Grade A fee earner reviewing correspondence relating to the Society’s charitable status 42 minutes.
- 5.9 If all this time was in fact spent, in the judgment of the Tribunal it demonstrates extreme inefficiency. Too many fee earners were involved and those doing the bulk of the work do not appear to have been sufficiently familiar with the relevant law and practice to carry out their work in a reasonable time. The Grade A fee earner supervising the work ought to have spent only a few minutes reviewing the work of others. Crucially, it was unreasonable to spend any substantial amount of time researching a single point of law when it was known that there was a definitive High Court decision. To advise one’s client that a highly experienced Chancery Judge like HHJ Levy QC and a High Court Judge were both wrong would be a bold step. Clearly Counsel’s Opinion was needed if that issue was to be pursued.
- 5.10 It is surprising that Mills & Reeve, in those circumstances, ran the case for 8 months, at considerable expense to the College, before taking Counsel’s Opinion. It appears to have been a shocking waste of time and money. It is far from clear what useful work was actually being done during most of this period. The investigation of the charitable status of the Society ought to have taken no more than a few minutes and, perhaps, a telephone call to the Society. Beyond that, it was necessary only to

read a summary of the Brick Farm decision.

- 5.11 Moreover, this is not the type of work for which Grade A fees can reasonably be charged because the sums involved are generally (and in this particular case) modest. A competent solicitor experienced in this kind of work ought, in the judgment of the Tribunal, to have spent no more than an hour in completing all the necessary work and advising the client to seek Counsel's Opinion if the client was interested in contesting the Applicants' right to a new lease. A reasonable hourly rate for such a solicitor to charge for this work was, in the judgment of the Tribunal, no more than £220.00, with routine aspects of the work being delegated to an assistant at Grade C or D charging around £125.00 per hour.
- 5.12 Counsel's first involvement was on 2 August 2011, when he read his Instructions and conducted legal research. By this time the dispute had been running for over 8 months, apparently without Mills & Reeve having any clear idea whether there were any reasonable grounds for disputing the Applicants' entitlement to a new lease.
- 5.13 On 3 August 2011 a telephone conference was held between Counsel and a Grade A fee earner. The solicitor's time for preparation and conference was 1 hr 24 minutes (Item 36) and he took a further 30 minutes to write an attendance note (Item 37). Thus his fees in relation to the conference amount to £373.24, to which must be added the time spent in drafting Instructions, said to be 1 hr 12 mins at a cost of £320.61 (Item 29). For reasons that are unclear, he also spent 24 minutes in communications with Counsel's clerk (Item 30), in addition to the basic instruction letter taking 6 mins (Item 31). After the conference, he sent an e-mail taking 6 minutes (Item 38) and a further 12 minutes in communication with Counsel's clerk (item 39).
- 5.14 Bearing in mind the level of his fees, it seems reasonable to assume that Counsel was held out as expert in this field. No times are given, but the Tribunal can draw an inference as to the hourly rate of charge. Using the experience of its members (and, in particular, of the Chairman) the Tribunal estimates Counsel's reading and research time, if properly instructed, at no more than 1 hr 30 mins at the outside. Counsel's conference time ought not reasonably to have been more than 1 hr and the time needed to prepare his Note not more than 1 hr. Counsel's total fees of £2,800.00 thus represents an hourly rate in the region of £800.00 per hour. The whole of these solicitors' costs and Counsel's fees have been included in the costs schedule. Presumably, the argument is that these costs related to investigating whether the Applicants were disentitled by reason of section 5(2)(b) from claiming a new lease. Nevertheless, they were costs that could have been claimed in the County Court case and would presumably have been so claimed had the Respondent succeeded in that case. However, the chances of that happening were, in the judgment of the Tribunal, extremely slim at best.
- 5.15 The Tribunal; accepts that some of this work related to an investigation of the Applicants' right to a new lease. It was reasonable to seek Counsel's Opinion on the question whether the decision in the Brick Farm case was correct. However, the costs were, in the judgment of the Tribunal, far in excess of what was reasonable. Instructing competent Counsel and obtaining Counsel's advice at a competitive fee

rate ought, in the judgment of the Tribunal, have cost no more than £1,000.00.

- 5.16 The Tribunal assumes that, on this first occasion, Counsel advised fully on the section 5(2)(b) issue; certainly that ought reasonably to have been the case if he was properly instructed. Counsel's next involvement was on 10-11 August 2011, when he drafted "Details of Claim" and gave further advice at a total cost of £1,250.00. These items could not be included in the costs schedule because they patently related to the County Court litigation.
- 5.17 On 15 November 2011 Counsel was again instructed to advise by telephone. This would be reasonable only if the further advice required related exclusively to procedural or practical aspects of the County Court case and the Tribunal so finds. A Grade A fee earner again drafted instructions taking 24 minutes (Item 50) and spent 1 hr 18 mins conferring (item 51), total Grade A solicitor's fees £452.87. On this occasion, a Grade B fee earner appears to have done the bulk of the work of instructing Counsel, taking 3 hrs 42 minutes; making three telephone calls taking 18 minutes; sending two e-mails taking 12 minutes; participating in the telephone conference 1 hr 18 minutes; and preparing an attendance note 1 hr 54 minutes (items 53 -57), a total of 7 hrs 24 minutes at a further cost of £1,404.91.
- 5.18 Counsel's fee note shows that he charged £1,500.00 for reading his instructions and further legal research; £700.00 for time spent in conference; £550.00 for settling a Conference Note and drafting Particulars of Claim; and a further £1,000 for drafting Particulars of Claim (in addition to the £1,250.00 previously charged). For this work in a County Court case, these were huge fees. The third and fourth items obviously relate to the County Court case and have not been included in the costs schedule; but the first two items have been included in full. The Tribunal is unable to understand what aspect of all this expensive activity could possibly have been reasonably incurred in connection with the items listed in section 60. The overwhelming likelihood is that all this work related exclusively to procedural and practical aspects of the County Court case and the Tribunal so finds. If the work in fact relates to the section 5(2)(b) issue, assuming (as we do) that Counsel did his work competently on the first occasion, it was unnecessary.
- 5.19 Counsel again advised in conference by telephone on 27 January 2012 (Item 62). A Grade A fee earner was involved throughout (1 hr 36 mins – Item 60) and a Grade B fee earner for 48 mins (Item 61). The reason for this advice is unclear; the Tribunal finds that it related exclusively to procedural or practical aspects of the County Court case. On this occasion Counsel charged £2,000.00, of which £1,500.00 is included in the costs schedule. The Tribunal can think of no reason why any advice would have been needed at this stage that fell within section 60 and finds accordingly that none of these costs ought to have been included in the costs schedule.
- 5.20 Another aspect of the case is the extraordinary amount of time included in the costs schedule as time spent in communications with the Respondent College and with the Society. Clearly, it was necessary to keep the College and the Society informed. But that ought to have been a simple matter. Both clients were sophisticated organizations well able to grasp sufficiently the relatively simple legal principles



involved without the need for complex or repetitive explanations.

- 5.21 In addition to short communications, of which one would expect to see a few, there are lengthy reports and communications Items 17-19; 21-22; 26-28; 33; 35; 45; 49; 63; 68; 71; 72 and 81. If, as may be the case, the College was a demanding or needy client, it cannot be reasonable to expect the Applicants to pay any additional costs incurred by reason of that fact. Moreover, it seems extremely likely that all of these lengthy communications would have related exclusively to procedural or practical aspects of the County Court case and the Tribunal so finds.
- 5.22 Miscellaneous estimated costs £660.00 (Item 85) appear to be an estimate of costs not yet incurred and the Tribunal is not satisfied that such costs will be incurred or, if they are incurred at all, that any more than a nominal charge would be justified.
- 5.23 The new lease is based on the original lease, with minor variations that, as the Tribunal finds, ought not to have been controversial. A Grade B fee earner is shown (Items 75-76) as drafting the new lease taking 3 hrs 36 mins (plus internal communications 18 mins), total cost £791.70. The Tribunal considers this a wholly unreasonable sum to charge for this work. It is routine work that ought to have been delegated to a legal executive charging no more than £125 per hour at a total cost of no more than £200.
- 5.24 The Tribunal considers that the Respondent's approach to the costs schedule is fundamentally flawed to the extent that it would not be fair to the Applicants to try to isolate items that ought to be allowed. Accordingly, the Tribunal has assessed the Respondent's reasonable costs from first principles.
- 5.25 In the experience of the Tribunal, there are in Cambridge many properties held from Colleges or the University on long leases. Dealing with lease extensions and collective leasehold enfranchisements under the 1993 Act and enfranchisements under the 1967 Act is familiar work for a number of Cambridge solicitors. There is a competitive market for this type of work and it would not be reasonable for a landlord to employ a solicitor at a non-competitive rate and then expect the tenant to reimburse him accordingly; if he employs expensive solicitors, he must do so at his own expense. Fixed fees are usual for this type of work, rather than an open-ended hourly rate. In the current economic climate, price-based competition is likely to be particularly keen. In the judgment of the Tribunal, this is the course the Respondent ought reasonably to have taken and, on that basis, a reasonable charge for the entire legal process in this case, excluding costs of and arising out of the County Court case, was no more than £1,600.00 plus the valuer's fee.
- 5.26 The Respondent is clearly bound by its compromise agreement in the County Court case. The Tribunal considers, on an objective test and in the absence of evidence to the contrary, that the parties must have intended that neither should be able to recover from the other by any means any costs that could have been claimed (depending upon the outcome) in the County Court case. Accordingly, the concession made by the Respondent, to the effect that only costs expressly or exclusively relating to the County Court case should be excluded, does not go far enough. The Tribunal finds in particular that the Respondent has agreed not to claim

any of the costs of investigating the section 5(2)(b) issue.

- 5.27 In the event that, contrary to the findings of the Tribunal, the costs of investigating the section 5(2)(b) issue are payable by the Applicants, the Tribunal would assess the reasonable costs of that process at £1,000.00 + VAT, to include initial investigation; drafting Instructions to Counsel; and Counsel's Opinion from reasonably experienced specialist Counsel. If, as appears to be the case, the College chose to instruct particularly expensive Counsel, the additional costs of so doing were not, in the judgment of the Tribunal, reasonably incurred in the context of a single lease extension of a small flat in Cambridge. In reaching this conclusion, the Tribunal considers it an important factor that the legal issue was thoroughly explored and decided (unfavourably from the Respondent's point of view) some years ago by a High Court Queens Bench Judge on appeal from a highly experienced Circuit Judge exercising Chancery jurisdiction on a daily basis, since when the decision does not appear to have been challenged by any of the numerous social landlords whose leases are affected by it.
- 5.28 The valuer has not yet submitted his account; the valuer's fees are estimated at £950.00. The valuation itself is a simple exercise and, in the experience of the Tribunal, comparable evidence is readily available in Cambridge. In the judgment of the Tribunal, a fee of not more than £600.00 (as offered by the Applicants) would be reasonable and any sum in excess of that amount would not be reasonably incurred. Of course, the invoice may be for a smaller sum. The Applicants are not liable to pay any valuation fee unless and until a valuation fee has been agreed (which does not appear to be the case) or until the valuer has submitted an invoice. In any event, the Applicants are not liable to pay more than the valuer in due course invoices.
- 5.29 Accordingly, the Tribunal assesses the legal costs the Applicants are liable to pay to the Respondent in this case under section 60 at £1,600.00 + VAT and the valuation fee at not more than £600.00 + VAT.

**Geraint M Jones MA LLM (Cantab)**  
**Chairman**  
**1 March 2013**